FINAL ORDER

The hearing examiner filed an initial decision in this case on May 13, 1963. Subsequently, on July 25, 1963, the Commission, having been informed by complaint counsel that no petition for review would be filed, issued an order staying the effective date of the initial decision. The Commission has now determined not to place the case on its own docket for review. Accordingly,

It is ordered, That the Commission's order of July 25, 1963, staying the effective date of the initial decision, be, and it hereby is, vacated.

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

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

By the Commission, Commissioners Dixon and MacIntyre not concurring.

IN THE MATTER OF

MILTON FETTNER TRADING AS MILTON FURS

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

Docket C-582. Complaint, Sept. 12, 1963—Decision, Sept. 12, 1963

Consent order requiring a manufacturer, retailer and wholesaler of furs in Cincinnati, Ohio, to cease violating the Fur Products Labeling Act by failing to show on labels and invoices and in advertising when fur products contained cheap or waste fur, to show on labels and in advertising the true animal name of fur and when fur was "natural", to disclose on labels that certain furs were "secondhand" and to show on invoices the country of origin of imported furs; using in advertising the names of animals other than those producing certain furs; advertising falsely that prices of fur products were reduced "1/4 to 1/2 and more"; failing to maintain adequate records as a basis for pricing claims; and failing in other respects to comply 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 Milton Fettner, an individual trading as

Milton Furs, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Milton Fettner is an individual trading as Milton Furs.

Respondent is a manufacturer, retailer and wholesaler of fur products with his office and principal place of business located at 148 West Fifth Street, Cincinnati, Ohio.

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

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

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

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

2. To show that the fur product was composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such was the fact.

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:

1. The term "Natural" was not used on labels 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.

2. The disclosure "Secondhand", where required, was not set forth on labels, in violation of Rule 23 of said Rules and Regulations.

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

4. 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.

5. 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.

6. Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth separately on labels 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.

7. 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 respondent in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated under such Act.

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

To show the country of origin of imported furs used in fur products.

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

1. 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, where required, was not set forth on invoices, in violation of Rule 20 of said Rules and Regulations.

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

PAR. 7. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that certain advertisements intended to aid, promote and assist, directly or indirectly in the sale and offering for sale of such fur products were not in accordance with the provisions of Section 5(a) of the said Act.

Among and included in the aforesaid advertisements, but not limited

thereto, were advertisements of respondent which appeared in issues of the Cincinnati Inquirer, a newspaper published in the city of Cincinnati, State of Ohio.

Among such false and deceptive advertisements, but not limited thereto, were advertisements which failed:

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

2. To show that the fur contained in the fur product was bleached, dyed or otherwise artificially colored when such was the fact.

PAR. 8. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondent falsely and deceptively advertised fur products in that certain of said fur products were falsely or deceptively identified with respect to the name or designation of the animal or animals that produced the fur from which the said fur products had been manufactured in violation of Section 5(a)(5) of the Fur Products Labeling Act.

Among such falsely advertised fur products, but not limited thereto, were fur products advertised as "Broadtail" thereby implying that the furs contained therein were entitled to the designation "Broadtail Lamb" when in truth and in fact they were not entitled to such designation.

PAR. 9. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondent falsely and deceptively advertised fur products in that certain of said advertisements contained the name or names of an animal or animals other than those producing the fur contained in the fur product, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 10. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondent falsely and deceptively advertised fur products in violation of the Fur Products Labeling Act in that the said fur products were not advertised in accordance with the Rules and Regulations promulgated thereunder in the following respects:

1. The term "Dyed Broadtail-processed Lamb" was not set forth in the manner required, in violation of Rule 10 of said Rules and Regulations.

2. The term "natural" was not used to describe fur products which were not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Rule 19(g) of the said Rules and Regulations.

PAR. 11. In advertising fur products for sale as aforesaid respondent represented through such statements as "Save ¼ to ½ and more" that prices of fur products were reduced in direct proportion to the

percentages stated and that the amount of said reduction afforded savings to the purchasers of respondent's products when in fact such prices were not reduced in direct proportion to the percentages stated and the represented savings were not thereby afforded to the said purchasers, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 12. In advertising fur products for sale as aforesaid, respondent made pricing claims and representations of the types covered by Subsections (a), (b), (c) and (d) of Rule 44 of the Regulations under the Fur Products Labeling Act. Respondent in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such pricing claims and representations were based, in violation of Rule 44(e) of the said Rules and Regulations.

PAR. 13. The aforesaid acts and practices of respondent, as herein alleged are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Milton Fettner is an individual trading as Milton Furs with his office and principal place of business located at 148 West Fifth Street, Cincinnati, Ohio.

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 Milton Fettner, an individual, trading as Milton Furs, or under any other trade name, and respondent's representatives, agents and employees, directly or through any corporate or other device in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur products; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which 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:

A. Misbranding fur products by:

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

2. Failing to set forth the term "Natural" as part of the information required to be disclosed on labels under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

3. Failing to disclose that fur products contain or are composed of secondhand used fur.

4. Failing to set forth on labels the item number or mark assigned to fur products.

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

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

7. Failing to set forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and

Regulations promulgated thereunder on labels in the sequence required by Rule 30 of the aforesaid Rules and Regulations.

8. Failing to set forth separately on labels attached to fur products of two or more sections containing different animal fur the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder with respect to the fur comprising each section.

B. Falsely or deceptively invoicing fur products by:

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

2. Failing to disclose on invoices 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.

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

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

1. 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.

2. Falsely or deceptively identifies any such fur product as to the name or designation of the animal or animals that produced the fur contained in the fur product.

3. Sets forth the name or names of any animal or animals other than the name of the animal producing the furs contained in the fur product as specified in the Fur Products Name Guide and as prescribed by the Rules and Regulations.

4. Fails to set forth the term "Dyed Broadtail-processed Lamb" in the manner required where an election is made to use that term instead of the words "Dyed Lamb".

5. Fails to set forth the term "Natural" as part of the information required to be disclosed in advertisements under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe fur products which

are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

6. Misrepresents in any manner the savings available to purchasers of respondent's fur products.

7. Falsely or deceptively represents in any manner that prices of respondent's fur products are reduced.

8. Represents, directly or by implication, through percentage savings claims that prices of fur products are reduced to afford purchasers of respondent's fur products the percentage of savings stated when the prices of such fur products are not reduced to afford to purchasers the percentage of savings stated.

9. Makes 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 respondent full and adequate records disclosing the facts upon which such claims and representations are based.

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

RUGBY RUG MILLS, INC., ET AL.

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

Docket C-583. Complaint, Sept. 12, 1963—Decision, Sept. 12, 1963

Consent order requiring three associated corporate importers and distributors of rugs, with common offices in New York City, to cease violating the Textile Fiber Products Identification Act by labeling as "70% Reprocessed Wool, 30% Virgin Wool", rugs which contained substantially less woolen fibers than so indicated; failing to disclose on labels affixed to rugs the true generic names of the fibers present and the true percentage thereof by weight; and furnishing false guaranties that their rugs were not misbranded; and to cease violating The Federal Trade Commission Act by representing falsely, through use of the word "Mills" in one corporations name, that they were the manufacturers of the products they sold.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Rugby Rug Mills, Inc., Rugby International Corp., and Rug Buyers Corp., corporations, and Herbert S. Rosenfeld, Charles H. Gordon and Helene M. Rosenfeld, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Rugby Rug Mills, Inc., Rugby International Corp., and Rug Buyers Corp., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York.

Individual respondents Herbert S. Rosenfeld, Charles H. Gordon and Helene M. Rosenfeld are officers of each of the corporate respondents and formulate, direct and control the acts, practices and policies of the corporate respondents, including the acts and practices complained of herein.

Respondents are importers and distributors of textile fiber products, namely rugs, with their office and principal place of business located at 295 Fifth Avenue, New York, New York.

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

PAR. 3. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the Rules and Regula-

tions promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised or otherwise identified as to the name or amount of the constituent fibers contained therein.

Among such textile fiber products, but not limited thereto, were rugs labeled by respondents as "70% Reprocessed Wool, 30% Virgin Wool", whereas, in truth and in fact, such rugs contained substantially less woolen fibers than represented as well as other fibers not set forth on the label.

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

Among such misbranded textile fiber products but not limited thereto, were rugs with labels on or affixed thereto which failed:

(a) To disclose the true generic names of the fibers present; and

(b) To disclose the true percentage of the fibers present by weight.

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

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

PAR. 7. In the course and conduct of their business, respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, and distribution of textile products, in commerce, and now cause, and for some time last past have caused, their products, including rugs, when sold, to be shipped from their place of business in the State of New York to purchasers thereof in various other States of the United States and maintain, and at all times mentioned herein have maintained, a substantial course of trade of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 8. In the course and conduct of their business in soliciting the sale of and in selling textile products, respondents Rugby Rug Mills, Inc., and the individual respondents do business under the name Rugby Rug Mills, Inc., and use said name on letterheads, invoices, labels and tags, and in advertisements of their products.

PAR. 9. Through the use of the word "Mills" as part of the corporate name Rugby Rug Mills, Inc., the aforesaid respondents represent that they own or operate mills or factories in which the textile products sold by them are manufactured.

PAR. 10. In truth and in fact the aforesaid respondents do not own, operate or control the mills or factories where the textile products sold by them are manufactured, but buy the finished products from others. The aforesaid representations are therefore false, misleading and deceptive.

PAR. 11. There is a preference on the part of many dealers to buy products, including textile products directly from factories or mills, believing that by doing so lower prices and other advantages thereby accrue to them.

PAR. 12. In the conduct of their business, at all times mentioned herein, said respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of textile products of the same general kind and nature as those sold by respondents.

PAR 13. The use by such respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead dealers and other purchasers into the erroneous and mistaken belief that said statements and representations were, and are, true, and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR 14. The aforesaid acts and practices of respondents as alleged in Paragraphs 7 through 13 were, and are, to the prejudice and injury of the public and of respondents' competitors, and constituted, and now constitute unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 Rugby Rug Mills, Inc., Rugby International Corp., and Rug Buyers Corp. are corporations organized, existing and doing business under and by virtue of the laws of the State of New York with their offices and principal places of business located at 295 Fifth Avenue, in the city of New York, State of New York.

Respondents Herbert S. Rosenfeld, Charles H. Gordon, and Helene M. Rosenfeld are officers of said corporations and their address is the same as that of said corporations.

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 Rugby Rug Mills, Inc., Rugby International Corp., and Rug Buyers Corp., corporations, and their officers, and Herbert S. Rosenfeld, Charles H. Gordon and Helene M. Rosenfeld, individually and as officers of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce", and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising, or otherwise identifying such prod-

ucts as to the name or amount of constituent fibers contained therein.

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

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

It is further ordered, That respondents Rugby Rug Mills, Inc., a corporation, and its officers, and Herbert S. Rosenfeld, Charles H. Gordon and Helene M. Rosenfeld, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of rugs or any other textile products in commerce, as "commerce", is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly, using the word "Mills", or any other word or term of similar import or meaning, in or as part of respondents' corporate or trade name, or representing in any other manner that respondents perform the functions of a mill or otherwise manufacture or process the rugs or the textile products sold by them, unless and until respondents own and operate, or directly and absolutely control the mill wherein said rugs or other textile products are manufactured.

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 ZINMAN TRADING AS EDWARD'S FUR SHOP

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

Docket C-584. Complaint, Sept. 12, 1963—Decision, Sept. 12, 1963

Consent order requiring a Boston retail furrier to cease violating the Fur Products Labeling Act by failing, in labeling, invoicing and advertising, to show the true animal name of fur, when fur was used or secondhand, and when it was "natural"; failing on labels and invoices, to show when furs were artificially colored, to show the country of origin of imported furs on invoices and in advertising, and to identify the manufacturer, etc., on labels; using the term "Broadtail" improperly on invoices; and failing to comply in other respects 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 Edward Zinman, an individual trading as Edward's Fur Shop, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Edward Zinman is an individual trading as Edward's Fur Shop.

Respondent is a retailer of fur products with his office and principal place of business located at 21 West Street, Boston, Massachusetts.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has been and is now engaged in the introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and has sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have 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 that were not labeled and fur products with labels which failed:

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

2. To show that the fur product contained or was composed of used fur, when such was the fact.

3. To disclose that the fur contained in the fur product was bleached, dyed, or otherwise artificially colored, when such was the fact.

4. 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 into 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 on labels in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(b) The term "natural" was not used on labels 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.

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

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

(e) 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.

(f) 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.

(g) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth separately on labels 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.

(h) 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 respondent in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated under such Act.

Among such falsely and deceptively invoiced 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 show that the fur product contained or was composed of used fur, when such was the fact.

3. To disclose that the fur contained in the fur product was bleached, dyed, or otherwise artificially colored, when such was the fact.

4. To show the country of origin of imported furs used in fur products.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced with respect to the name or designation of the animal or animals that produced the fur from which the said fur products had been manufactured, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products which were invoiced as "Broadtail" thereby implying that the furs contained therein were entitled to the designation "Broadtail Lamb" when in truth and in fact, they were not entitled to such designation.

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 on invoices in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(b) The term "Persian Lamb" was not set forth on invoices in the manner required by law, in violation of Rule 8 of said Rules and Regulations.

(c) The term "Dyed Broadtail-processed Lamb" was not set forth on invoices in the manner required by law, in violation of Rule 10 of said Rules and Regulations.

(d) The term "natural" was not used on invoices 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.

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

(f) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth with respect to the "fur" or "used fur" added to fur products that had been repaired, restyled, or remodeled, in violation of Rule 24 of said Rules and Regulations.

(g) 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.

(h) 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 violation of the Fur Products Labeling Act in that certain advertisements intended to aid, promote or assist, directly or indirectly, in the sale and offering for sale of such fur products, were not in accordance with the provisions of Section 5(a) of the said Act.

Among and included in the aforesaid advertisements, but not limited thereto, were advertisements of respondent which appeared in issues of the Boston Sunday Globe, a newspaper published in the city of Boston, State of Massachusetts.

Among such false and deceptive advertisements, but not limited thereto, were advertisements 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 imported furs contained in fur products.

PAR. 9. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondent falsely and deceptively advertised fur products in violation of the Fur Products Labeling Act in that the said fur products were not advertised in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) The term "Persian Broadtail Lamb" was not set forth in the manner required, in violation of Rule 8 of the said Rules and Regulations.

(b) The term "natural" was not used to describe fur products which were not pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Rule 19(g) of the said Rules and Regulations.

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

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

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with

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

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

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

1. Respondent Edward Zinman is an individual trading as Edward's Fur Shop with his office and principal place of business located at 21 West Street, Boston, Massachusetts.

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

A. Misbranding fur products by:

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

2. Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regula-

tions promulgated thereunder in abbreviated form on labels affixed to fur products.

3. Failing to set forth the term "natural" as part of the information required to be disclosed on labels under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

4. Failing to disclose that fur products contain or are composed of secondhand used fur.

5. Failing to set forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations thereunder on one side of labels affixed to fur products.

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

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

8. Failing to set forth separately on labels attached to fur products composed of two or more sections containing different animal fur the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder with respect to the fur comprising each section.

9. Failing to set forth on labels the item number or mark assigned to a fur product.

B. Falsely or deceptively invoicing fur products by:

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

2. Setting forth on invoices pertaining to fur products any false or deceptive information with respect to the name or designation of the animal or animals that produced the fur contained in such fur product.

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

4. Failing to set forth the term "Persian Lamb" in the manner required where an election is made to use that term instead of the word "Lamb".

5. Failing to set forth the term "Dyed Broadtail-processed Lamb" in the manner required where an election is made to use that term instead of the words "Dyed Lamb".

6. Failing to set forth the term "natural" as part of the information required to be disclosed on invoices under the Fur Products Labeling Act and Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

7. Failing to disclose that fur products contain or are composed of second-hand used fur.

8. Failing to set forth the information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder with respect to the "fur" or "used fur" added to fur products that had been repaired, restyled or remodeled.

9. Failing to set forth separately 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.

10. Failing to set forth on invoices the item number or mark assigned to fur products.

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

1. 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.

2. Fails to set forth the term "Persian Broadtail Lamb" in the manner required where an election is made to use that term instead of the word "Lamb".

3. Fails to set forth the term "natural" as part of the information required to be disclosed in advertisements under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe fur products which

are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

4. Fails to disclose that fur products contain or are composed of secondhand used fur.

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

PRESTON WOOLEN COMPANY, INC., ET AL.

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

Docket C-585. Complaint, Sept. 12, 1963—Decision, Sept. 12, 1963

Consent order requiring associated corporate manufacturers of wool products in Norwich, Conn., to cease violating the Wool Products Labeling Act by labeling and invoicing certain fabrics falsely as to the amounts of woolen and other fibers contained therein; failing to disclose the correct amount of woolen and other fibers present in fabrics; and failing to comply in other respects with requirements of the Act.

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 Preston Woolen Company., Inc., Norwich Textile Co., Inc., corporations, and Aaron Furman, and Gershon Furman, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of the said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Preston Woolen Company, Inc., and Norwich Textile Co., Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Connecticut.

Individual respondents Aaron Furman and Gershon Furman are officers of corporate respondents. Said individual respondents co-

operate in formulating, directing and controlling the acts, policies and practices of the corporate respondents including the acts and practices hereinafter referred to.

Respondents are manufacturers and distributors of wool products with their principal place of business located at Norwich, Connecticut.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, 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 stamped, tagged, labeled 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 certain fabrics stamped, tagged or labeled as containing designated amounts of woolen and other fibers, whereas, in truth and in fact, said fabrics contained different amounts of woolen and other fibers than represented.

PAR. 4. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged, labeled or otherwise identified 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 certain fabrics with labels on or affixed thereto which failed:

(1) To disclose the correct amount of woolen fibers present in the wool product.

(2) To disclose the correct amount of fibers other than woolen fibers contained in the product.

PAR. 5. Certain of said wool products were misbranded in violation of the Wool Products Labeling Act of 1939 in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 4(a)(2) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder was set forth in handwriting on labels, in violation of Rule 10 of said Rules and Regulations.

(b) Information required under Section 4(a)(2) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder was set forth in abbreviated form on labels in violation of Rule 10 of said Rules and Regulations.

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

PAR. 7. Respondents in the course and conduct of their business, as aforesaid, have made statements on invoices and shipping memoranda to their customers misrepresenting the fiber content of certain of their said products.

PAR. 8. The acts and practices set out in Paragraph 7 have had and now have the tendency and capacity to mislead and deceive the purchasers of said products as to the true content thereof and to cause them to misbrand products manufactured by them in which said materials were used.

PAR. 9. The acts and practices of the respondents set out in Paragraph 7 were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted and now constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the 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. Respondents Preston Woolen Company, Inc., and Norwich Textile Co., Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with their office and principal place of business located in the city of Norwich, State of Connecticut.

Respondents Aaron Furman and Gershon Furman are officers of said corporations, and their address is the same as that of said corporations.

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 Preston Woolen Company, Inc., Norwich Textile Co., Inc., corporations, and their officers and Aaron Furman, and Gershon Furman, individually and as officers of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, distribution or delivery for shipment in commerce, of wool fabrics 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 of such products by:

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

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

3. Setting forth information required under Section 4(a)(2) of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form on labels affixed to wool products.

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

the Rules and Regulations promulgated thereunder in handwriting on labels affixed to wool products.

It is further ordered, That respondents Preston Woolen Company, Inc., Norwich Textile Co., Inc., corporations, and their officers, and Aaron Furman, and Gershon Furman, individually and as officers of said corporations, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of fabrics or any other textile products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or amount of constituent fibers contained in fabrics or any other textile products on invoices or shipping memoranda applicable thereto or in any other manner.

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

IN THE MATTER OF

PORTE MANUFACTURING CO., INC., ET AL.

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

Docket C-586. Complaint, Sept. 12, 1968—Decision, Sept. 12, 1968

Consent order requiring two associated corporations in Brooklyn, N.Y., to cease selling automatic transmission fluid having a lubricating oil base of previously used oil that had been reprocessed, with no clear disclosure of such prior use in advertising or on containers; and to cease representing their hydraulic brake fluid as "guaranteed" without disclosing that the "guaranty" was limited to a refund of the price of the brake fluid or replacement thereof.

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 Porte Manufacturing Co., Inc., a corporation, Genuine Chemical Corp., a corporation, Raphael Porte, individually and as an officer of each of said corporations, and Betty Cooper, individually and as an officer of Porte Manufacturing Co., Inc., 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 thereto would be in the public

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

PARAGRAPH 1. Respondent Porte Manufacturing Co., Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, Genuine Chemical Corp., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Raphael Porte and Betty Cooper are officers and formulate, direct, and control the acts, practices, and policies of the corporate respondent, Porte Manufacturing Co., Inc.

Raphael Porte is an officer of Genuine Chemical Corp., and formulates, directs and controls the acts, practices and policies of the corporate respondent, Genuine Chemical Corp.

Individual respondent, Raphael Porte, is likewise the individual owner of The Ray Chemical Co., Joray Manufacturing Co., Presto Electric Co., Circle Manufacturing Co. and Castoyl Mfg. Co.

All respondents have their principal office and place of business located at 3179 Atlantic Avenue, Borough of Brooklyn, County of Kings, city and State of New York.

PAR. 2. Respondent Porte Manufacturing Co., Inc., is now, and has been, engaged in the manufacturing, offering for sale, sale and distribution of automatic transmission fluid, and hydraulic brake fluid under the brand name of "PORTO". Said respondent has likewise manufactured automatic transmission fluid for The Ray Chemical Co. under the brand name "SUPER 21"; automatic transmission fluid for the Joray Manufacturing Co. under the "JORAY" brand name; automatic transmission fluid for the Castoyl Manufacturing Co. under the brand name of "CASTOYL"; hydraulic brake fluid for the Genuine Chemical Corp. under the brand name of "GENUINE"; hydraulic brake fluid for the Joray Manufacturing Co. under the brand name of "STANDARD", and hydraulic brake fluid for the Presto Electric Co. under the brand name of "PRESTO".

Respondent's automatic transmission fluid has, among other functions, a lubricating function.

Said products have been marketed nationally and have been resold at automotive accessory places of business, both wholesale and retail.

PAR. 3. In the course and conduct of their business, respondents have caused said automatic transmission fluid and hydraulic brake fluid, when sold, to be shipped from their place of business in the State of New York to the purchasers thereof located in various other States of the United States, and at all times mentioned herein have maintained a substantial course of trade in said automatic transmis-

sion fluid and hydraulic brake fluid in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, the respondents have sold automatic transmission fluid which has a lubricating oil base, that consists in whole, or in substantial part, of previously used oil that has been reprocessed or re-refined.

For the purpose of inducing the sale of automatic transmission fluid, respondents have not clearly and conspicuously disclosed the prior use of said oil in their advertising or on the containers of said product.

PAR. 5. In the course and conduct of their business, and for the purpose of inducing the sale of hydraulic brake fluid, respondents have made numerous statements and representations using the word "guaranteed", but have not conspicuously and fully disclosed, either in their advertising or on their containers, the nature, extent and conditions of the guaranty and the manner in which the guarantor will perform thereunder.

PAR. 6. In truth and in fact:

(a) The automatic transmission fluid advertised, sold and distributed by the proposed respondents was manufactured from oil which was in whole, or in part, re-refined from oil that had been previously used for lubricating purposes.

(b) The "guaranty" was deceptive because only after having purchased said hydraulic brake fluid, and a claim made, did the purchaser ascertain the true fact that said guaranty was limited to a refund of the price of hydraulic brake fluid, or replacement thereof.

PAR. 7. By the aforesaid practices, respondents have furnished, or otherwise placed in the hands of wholesalers and retailers, directly or indirectly, the means and instrumentalities by and through which they may mislead the public as to the nature of the oil used in the manufacture of said automatic transmission fluid and as to the nature and scope of said "guaranty" used in connection with the sale of hydraulic brake fluid.

PAR. 8. In the conduct of their business at all times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms and individuals, in the sale of automatic transmission fluid and hydraulic brake fluid.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true, and into the purchase

of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

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

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; 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 aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having reason to believe that the respondents have violated the Federal Trade Commission Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent Porte Manufacturing Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent Genuine Chemical Corp., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent Raphael Porte is an individual and an officer of each of said corporations. Respondent Betty Cooper is an individual and officer of Porte Manufacturing Co., Inc., only.

Each of the aforementioned companies and respondents have maintained, and still maintain, their principal office and place of business

at 3179 Atlantic Avenue, Borough of Brooklyn, County of Kings, city and State of New York.

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 Porte Manufacturing Co., Inc., a corporation, and its officers, Raphael Porte and Betty Cooper, individually and as officers of said corporation; Genuine Chemical Corp., and its officer, Raphael Porte, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device in connection with the manufacturing, offering for sale, sale, or distribution of lubricating oil, including, but not limited to automatic transmission fluid and hydraulic brake fluid, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising, offering for sale, packaging or selling, lubricating oil, including, but not limited to automatic transmission fluid, which is composed in whole or in substantial part of oil which has been reclaimed, or in any manner processed from previously used oil, without disclosing such prior use to the purchaser, or potential purchaser, in advertising and in sale promotion material, and by a clear and conspicuous statement to that effect on the front panel or front panels of the container.

2. Representing in any manner that lubricating oil, including, but not limited to automatic transmission fluid, composed in whole or in part of oil that has been manufactured, reprocessed, or re-refined from oil that has been previously used, has been manufactured from oil that has not been previously used.

3. Representing, directly or by implication, in any manner, that their 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.

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

RHODA LEE, INC., ET AL.

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

Docket C-587. Complaint, Sept. 13, 1963—Decision, Sept. 13, 1963

Consent order requiring three associated corporate manufacturers of ladies' sportswear in New York City, to cease violating the Textile Fiber Products Identification Act by failing to show plainly on labels the true generic name of the constituent fibers and the percentage thereof, and the name of the country where imported products were processed or manufactured; and by removing and mutilating, prior to sale to the ultimate consumer, the identifying tags, etc., required to be affixed to such products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Rhoda Lee, Inc., Elberton Manufacturing Company, and Rilla, Inc., corporations, and their officers, and Fred Alcott and Isidor Alcalay, individually and as officers of said corporations, and Adolf Alcalay, individually and as an officer of Rhoda Lee, Inc., hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Rhoda Lee, 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 525 Seventh Avenue, New York, New York.

Respondents Elberton Manufacturing Company, and Rilla, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Georgia with their office and principal place of business located at Highway 17, Elberton, Georgia.

Respondents Fred Alcott, Isidor Alcalay, and Adolf Alcalay are officers of corporate respondent Rhoda Lee, Inc., and formulate, direct and control the acts, practices and policies of said corporate respondent.

Respondents Fred Alcott and Isidor Alcalay are officers of corporate respondents Elberton Manufacturing Company and Rilla, Inc., and formulate, direct and control the acts, practices and policies of such corporate respondents.

The office and principal place of business of individual respondents Fred Alcott and Adolf Alcalay is the same as that of corporate respondent Rhoda Lee, Inc.

The office and principal place of business of individual respondent Isidor Alcalay is the same as that of corporate respondents Elberton Manufacturing Company and Rilla, Inc.

Respondents are manufacturers and distributors of textile fiber products including ladies' sportswear.

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

PAR. 3. Certain of said textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled or otherwise identified as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products which were not labeled to show in words and figures plainly legible:

(1) The true generic names of the constituent fibers present in textile fiber products; and

(2) The percentage of each of such fibers; and

(3) The name of the country where imported textile fiber products were processed or manufactured.

PAR. 4. After certain textile fiber products were shipped in commerce, respondents have removed and mutilated, and have caused

and participated in the removal and mutilation of, the stamp, tag, label or other identification required by the Textile Fiber Products Identification Act to be affixed to such products, prior to the time such textile fiber products were sold and delivered to the ultimate consumer, in violation of Section 5(a) of said Act.

PAR. 5. The acts and practices of respondents as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder and constituted, and now constitute, unfair 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 Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Textile Fiber Products Identification Act; 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 aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having reason to believe that the respondents have violated the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and having determined that complaint should issue stating its charges in those respects, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent Rhoda Lee, 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 525 Seventh Avenue, New York, New York.

Respondents Elberton Manufacturing Company and Rilla, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Georgia with their office and

principal place of business located at Highway 17, Elberton, Georgia.

Respondents Fred Alcott, Isidor Alcalay and Adolf Alcalay are officers of Rhoda Lee, Inc.

Respondents Fred Alcott and Isidor Alcalay are officers of Elberton Manufacturing Company and of Rilla, Inc.

The office and principal place of business of respondents Fred Alcott and Adolf Alcalay is the same as that of respondent Rhoda Lee, Inc.

The office and principal place of business of respondent Isidor Alcalay is the same as that of respondents Elberton Manufacturing Company and Rilla, Inc.

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 Rhoda Lee, Inc., Elberton Manufacturing Company, and Rilla, Inc., corporations, and their officers, and Fred Alcott and Isidor Alcalay, individually and as officers of said corporations, and Adolf Alcalay, individually and as an officer of Rhoda Lee, Inc., and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from misbranding textile fiber products by failing to affix labels to such products showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

It is further ordered, That respondents Rhoda Lee, Inc., Elberton Manufacturing Company, and Rilla, Inc., corporations, and their officers, and Fred Alcott and Isidor Alcalay, individually and as

officers of said corporations, and Adolf Alcalay, individually and as an officer of Rhoda Lee, Inc., and respondents' agents, representatives and employees, directly or through any corporate or other device, do forthwith cease and desist from removing or mutilating, or causing or participating in the removal or mutilation of, the stamp, tag, label, or other identification required by the Textile Fiber Products Identification Act to be affixed to any textile fiber product, after such textile fiber product has been shipped in commerce and prior to the time such textile fiber product is sold and delivered to the ultimate consumer.

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

IN THE MATTER OF

PAINTSET FASHIONS, INC., ET AL.

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

Docket 8468. Complaint, Feb. 13, 1962—Decision, Sept. 17, 1963

Order dismissing complaint charging New York City dress manufacturers with violating the Flammable Fabrics Act for the reason that the fabrics complained of as being dangerous when worn were silk handkerchiefs less than 24 inches square and so exempted from the provisions of the Act when complaint was issued.

COMPLAINT

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

PARAGRAPH 1. Respondent Paintset Fashions, Inc., is a corporation, duly organized, existing and doing business under and by virtue of the laws of the State of New York. Respondents Louis Smolowe

and Herbert Smolowe are president and treasurer, respectively, of the corporate respondent and formulate, direct, and control its policies, acts, and practices. The business address of all respondents is 49 West 37th Street, New York, New York.

PAR. 2. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have manufactured for sale, sold and offered for sale, in commerce; have imported into the United States; and have introduced, delivered for introduction, transported and caused to be transported, in commerce; and have transported and caused to be transported for the purpose of sale or delivery after sale in commerce; as "commerce" is defined in the Flammable Fabrics Act, articles of wearing apparel, as the term "article of wearing apparel" is defined therein, which articles of wearing apparel were, under Section 4 of the Flammable Fabrics Act, as amended, so highly flammable as to be dangerous when worn by individuals.

Among the articles of wearing apparel mentioned above were dresses style Numbers 7563 and 7564 which contained fabric decoration consisting of silk squares flammable under the Flammable Fabrics Act.

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

Among the articles of wearing apparel mentioned above were dresses style Numbers 7563 and 7564 which contained fabric decoration consisting of silk squares flammable under the Flammable Fabrics Act.

PAR. 4. Respondents have furnished their customers with a guaranty with respect to the articles of wearing apparel mentioned in Paragraphs 2 and 3 hereof, to the effect that reasonable and representative tests made under the procedures provided in Section 4 of the Flammable Fabrics Act, as amended, and the Rules and Regulations promulgated thereunder, show that said articles of wearing apparel are not, in the form delivered by respondents, so highly flammable as to be dangerous when worn by individuals. There was reason for respondents to believe that the articles of wearing apparel covered by such guaranty might be introduced, sold, or transported in commerce.

Said guaranty was false in that with respect to some of said articles of wearing apparel, respondents have not made reasonable and representative tests.

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

Mr. Thomas J. Anderson for the Commission.
Mr. H. S. Tunick, New York, N.Y., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

On February 13, 1962, the Federal Trade Commission issued its complaint, charging that the named respondents were and are engaging in acts and practices in violation of the Flammable Fabrics Act and the rules and regulations promulgated thereunder, which 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.

The said complaint reads in part, "Respondents * * * have manufactured for sale * * * articles of wearing apparel * * * so highly flammable as to be dangerous when worn by individuals. Among the articles of wearing apparel mentioned above were dresses." It is further alleged in the complaint that respondents have furnished their customers a guaranty with respect to the mentioned wearing apparel to the effect that tests made under procedures provided in the Flammable Fabrics Act show that such articles of wearing apparel are not highly flammable as to be dangerous when worn by individuals and that the guaranty was false in that such tests had not been made. On behalf of the respondents, a motion was filed for a more definite statement of the complaint in certain particulars. Counsel for the parties met with the hearing examiner for a prehearing conference at Washington, D.C., on May 3, 1962,[1] at which time, among other things, the said motion was considered and disposed of on the record.

Respondents in their motion and in the discussions at the prehearing conference expressed indignation (and justly so, in light of the admitted facts) with reference to an official press release of the

[1] Louis Smolowe, one of the respondents and president of the corporate respondent, died on April 21, 1962. A prehearing conference scheduled for April 24, 1962, was reset for May 3, 1962.

Commission in connection with issuance of the complaint in this case, stating in part:

The complaint alleges the concern has manufactured dresses which were so highly flammable as to be dangerous when worn.

It is their position that the statement was unfair and harmful to the respondents in that the public and trade are led to think that the fabrics in their dresses are flammable, whereas the only thing that is involved here is a small silk handkerchief which accompanied the dresses.

Pursuant to the request of complaint counsel at the prehearing conference, the complaint was amended by adding after the word "dresses" appearing in the last sentence in paragraphs 2 and 3 thereof the words and figures "style numbers 7563 and 7564 which contained decoration consisting of silk squares flammable under the Flammable Fabrics Act." The respondents filed answer to the complaint, as amended, which is in the nature of a general denial and alleges "that the complaint relates solely to certain silk handkerchiefs less than twenty-four inches square which the Federal Trade Commission has held in its opinion issued May 18, 1954, to be not covered by the Flammable Fabrics Act, as amended."

Hearings were held in the city of New York, New York, on June 13, 14 and 15, 1962, and on the latter date the record was closed for the receipt of evidence. Proposed findings of fact, conclusions of law, and order were filed by counsel for the parties. The hearing examiner has given consideration thereto and all proposed findings of fact and conclusions not hereinafter specifically found or concluded are herewith rejected. Upon consideration of the entire record herein, the hearing examiner makes the following findings of fact and conclusions:

Respondent Paintset Fashions, Inc., is a corporation duly organized, existing and doing business under and by virtue of the laws of the State of New York. Respondent Louis Smolowe died on April 21, 1962. At all times mentioned in the complaint, and up to the time of his death, he was president of the respondent corporation and during said period he alone formulated, directed and controlled its policies, acts and practices. Richard E. Smolowe, a son of said respondent, succeeded his father as president and now controls the policies of the corporation. The respondent Herbert Smolowe, a brother of said Louis Smolowe, is treasurer of the corporate respondent, but at no time mentioned in the complaint or thereafter did he formulate, direct and control its policies, acts and practices. The business address of all respondents is 49 West 37th Street, New York, New York.

The respondent corporation is engaged in the manufacture and sale of women's wash dresses and kindred products. It has three plants located at Walhalla, South Carolina, Salem, South Carolina, and Lavonia, Georgia, where it manufactures upwards of 72,000 garments a week. It sells direct to chainstores, mail-order houses, and other retailers and ships its products from its Walhalla plant to its customers located in various places throughout the United States. Paintset Fashions does not weave any of the fabrics used in its products. Although some synthetics are used, the bulk of its garments are made of cotton material. The respondent corporation has imported into the United States some of the materials used in its dresses, but there is no evidence in the record that it imported any articles of wearing apparel.

The charge herein is based upon the sale and delivery during the month of May 1961 of approximately 5,000 cotton dresses known as Styles Nos. 7563 and 7564. Each dress was sold with a small silk handkerchief which was looped through the ring of a belt.[2] The belt has a prong buckle and is held in place on the dress by passing through a cotton crochet string loop affixed to each side of the dress. The handkerchief was easily removable from the belt and the belt was easily removable from the dress. The handkerchief was not sewn or otherwise permanently attached to the dress. No claim is made of any violation of the Flammable Fabrics Act as regards such dresses, or the fabrics or materials of which they were made, except insofar as the handkerchiefs are concerned.

The handkerchiefs sold with the dresses were squares that varied in size from 7 to 10 inches with rounded corners and a sewn rolled edge. Paintset Fashions purchased them in finished form from a supplier located in New York, New York, and they were placed on the belts as accessories without any processing or other change in form.

The fabric (a textile free from nap, pile, tufting, block or other type of raised fiber surface) from the handkerchiefs involved was submitted to tests as prescribed in the procedures provided under the Flammable Fabrics Act and pursuant to the provisions of the said Act, as amended, was classified as Class 3, rapid and intense burning, the time of flame spread being less than three and one-half seconds, which is deemed under the Act to be so highly flammable as to be dangerous when worn by individuals.[3]

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[2] Respondent, in a previous year or years on other style numbers than the ones involved here, pinned the handkerchief to some dresses by the use of a very small safety pin.

[3] The report of the laboratory tests shows that the fabrics tested passed the tests *before washing* but failed *after washing*.

In the industry a handkerchief is an article made of a woven fabric with a finished edge not exceeding 24 inches in its finished size. They are accessories and are used for utilitarian or decorative purposes, or both. Some highly decorative handkerchiefs are frequently used for utilitarian purposes. The type of handkerchief involved here is strictly for ornamentation in that it has no absorbency to it.

Women have customarily purchased handkerchiefs separately for ornamental purposes as accessories to their costumes and have applied them by tucking them in their pockets, sleeves, buttonholes or belts, or by pinning or tying them to their dresses or other garments.

For many years, manufacturers of dresses have been selling dresses with handkerchiefs either tucked in pockets or pinned or looped or tied to the garment, the handkerchiefs being easily removable so that they can be readily replaced by another handkerchief or other accessory to provide color and variety to the costume. Since the Flammable Fabrics Act went into effect, manufacturers have sold handkerchiefs with dresses in this way on the assumption that a handkerchief was not covered by the Act. The basis for such an assumption was an interpretation made by the Commission.

On April 20, 1954, a notice was published in the Federal Register that the Federal Trade Commission would, beginning on May 11, 1954, give consideration to an interpretation of the term "article of wearing apparel" as it is used in the Flammable Fabrics Act. The matters to be considered were: (1) whether handkerchiefs up to a finished size of 24 inches square, and (2) whether handkerchiefs and scarfs (irrespective of size) fall within the definition of the term "article of wearing apparel" as it is used in the Flammable Fabrics Act. Interested parties were invited to participate by submitting in writing to the Commission on or before such date their views, arguments or other data pertinent to the matter. The Commission, after due consideration of the matter, together with all views, arguments and other data submitted to it, and being fully advised in the premises, issued an opinion on May 18, 1954:

(1) That handkerchiefs up to a finished size of twenty-four (24) inches square are not "articles of wearing apparel" as that term is used in the Flammable Fabrics Act.

The Commission retained under advisement the question relating to scarfs, and on September 13, 1954 issued its opinion that scarfs are "articles of wearing apparel" as that term is used in the Flammable Fabrics Act.

Mat Milstein, director-counsel of the House Dress Institute, which is a national trade association of the dress manufacturers, was called as a witness on behalf of the respondents. He has been associated

with the Institute since it was formed in 1941. When asked if he occupied some position on the committee related to the Flammable Fabrics Act, he testified:

Yes. Soon after the Act was passed the Federal Trade Commission appointed an advisory commission to set up proposed rules and regulations under the Act. They invited representatives of retailers, textile people, all along the line from the mills up to the makers, and my impression is that I was the only apparel manufacturer representative on the committee.

We worked throughout the last half of 1953 and at least the first quarter or more of 1954 in setting up the proposed rules and regulations which, with some modifications, eventually became the rules of the Commission. I met with that committee every time it met.

When asked about the gist of the aforementioned interpretation by the Commission, he replied:

Basically, it exempted from the Act, the provisions of the Act, handkerchiefs which were below twenty-four inches in length and width by eliminating them from the definition of articles of wear and apparel. That is the view.

Then he went on to say:

I can tell you what our opinion was as experts in the field, mine and other executives in the apparel field. We met from time to time to discuss these things.

Our impression was that having exempted handkerchiefs below that size, without exception, that this meant that there was no question but that the current practice, which we had a right to believe the Commission was aware of, of selling dresses with handkerchief accessories, was perfectly legal under the statute and rules.

We based this upon several legal factors:

Number one: The awareness of the Commission, that this practice was going on.

Number two: Following that, the failure of the Commission to make an exception as, for example — and I am sure you are aware of it — that the Act and the regulations, when it excepted certain items as hats, footwear and gloves, said, "Except when they are affixed to and become an integral part of the garment.

Had the Commission intended to deny the right, or if that had been the interpretation of the law which could have been challenged, handkerchiefs looped around belts and so on were to be exceptions to this exception, they could have said so.

They had the example right before them; they did not. Therefore, our impression was that this practice was therefore approved.

Furthermore, we leaned very heavily, and have through the years, upon the opinion that all through the Act and the regulations, the regulations apply to fabrics contained in articles of wear and apparel, and in our opinion, and in my opinion today, a handkerchief looped around a belt is not a fabric "contained in," and that is the only word used throughout the statute.

The facts as hereinbefore found are in the main not in dispute and the question presented is whether, under the related circumstances, a

handkerchief is an "article of wearing apparel" or a "fabric" within the meaning of the Flammable Fabrics Act. In answer to such question, the pertinent parts of the Act read:

Sec. 2. DEFINITIONS.

Sec. 2. As used in this Act—

* * * * * * *

(d) The term "article of wearing apparel" means any costume or article of clothing worn or intended to be worn by individuals except hats, gloves, and footwear: *Provided, however,* That such hats do not constitute or form part of a covering for the neck, face, or shoulders when worn by individuals: *Provided further,* That such gloves are not more than fourteen inches in length and are not affixed to or do not form an integral part of another garment: *And provided further,* That such footwear does not consist of hosiery in whole or in part and is not affixed to or does not form an integral part of another garment.

(e) The term "fabric" means any material (other than fiber, filament, or yarn) woven, knitted, felted, or otherwise produced from or in combination with any natural or synthetic fiber, film, or substitute therefor which is intended or sold for use in wearing apparel except that interlining fabrics when intended or sold for use in wearing apparel shall not be subject to this Act.

* * * * * * *

Sec. 3. PROHIBITED TRANSACTIONS.

Sec. 3.(a) The manufacture for sale, the sale * * * of any article of wearing apparel which under the provisions of section 4 of this Act is so highly flammable as to be dangerous when worn by individuals, shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act.

(b) The sale * * * of any fabric which under the provisions of section 4 of this Act is so highly flammable as to be dangerous when worn by individuals, shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act.

The Flammable Fabrics Act became law on June 30, 1953, and under the provisions thereof became effective July 1, 1954. The Act was amended on August 23, 1954, by adding what is subparagraph (c) of Section 4 with respect to standards of flammability in the case of certain textiles. The bill that resulted in the amendment originated in the Senate (S. 3379). The bill as reported out by the Senate Committee on Interstate and Foreign Commerce and passed by the Senate contained two amendments to the Act. The first amendment would exclude "scarfs made of plain surface fabrics" from the definition of wearing apparel, and the second dealt with conditions under which fabrics or articles of wearing apparel would be tested. The report of the Senate Committee (Report No. 1323) seems to throw some light on the subject matter with which we are concerned in this proceeding. With reference to scarfs, it said:

The first of the proposed amendments would exclude "scarfs made of plain surface fabrics" from the definition of wearing apparel in the act. Thus scarfs, whether popularly called a scarf or some other similar name, as a square, stole, or mantilla, would be excluded absolutely from the act, as hats, gloves, and footwear are excluded under certain conditions in the present act. There is no valid reason why scarfs, mantillas, squares, or stoles should be included in the act, as they can be more quickly removed from the person than most hats, gloves, and footwear. A claim could be made that they are not included under the present law, because they are not wearing apparel but merely an accessory, but committee counsel has advised your committee that some of the legislative history might be considered to compel an interpretation that they are included. As the Federal Trade Commission and the Department of Commerce agree that scarfs, squares, or stoles should be excluded specifically, provided they are made of plain surface fabrics, this amendment is recommended by your committee. This amendment is intended to permit the continued sale of conventional sheer materials, especially sheer silk, net and lace, quite commonly used for scarfs or mantillas, but not to exclude those having a fuzzy surface which may be liable to flash burning.

The Committee report further stated:

Some of the communications received by your committee from businessmen pointed out that a considerable amount of sheer silk from Japan and of other domestic and imported sheer conventional fabrics are used in the manufacture of flags and handkerchiefs. Some of the correspondents requested that they be exempted from the application of the Flammable Fabrics Act. Obviously, flags cannot by any stretch of the imagination be considered articles of wearing apparel and are not contained within the scope of the act. Committee counsel has advised your committee that a handkerchief is a mere accessory and cannot reasonably be considered as an article of wearing apparel within section 2 (d) of the act. A handkerchief can easily be discarded or dropped if it is ignited. It was not intended at the time of the enactment of the act to include handkerchiefs as an "article of wearing apparel" or "clothing worn or intended to be worn by individuals." Obviously, one does not normally wear a handkerchief, but simply carries it as an accessory either in one's hand or in a pocket. Under usual circumstances, it may be quickly removed when ignited and does not constitute the type of unusual hazard which the act was intended to ban. Accordingly, your committee believes that this doubt on the part of industry can easily be disposed of through administrative regulations.

The House Committee on Interstate and Foreign Commerce to whom was referred the bill (S. 3379) amended the Senate measure by striking out all after the enacting clause and inserting the language which is now subsection (c) of Section 4 of the Flammable Fabrics Act. The report of the House Committee had this to say:

Your committee is convinced that scarfs should be subject to the provisions of the law just as any other item of wearing apparel. They can be as much a danger to human safety as any other improperly protected garments. Scarfs are worn around the head or neck and tied on with a knot which may not be easily removable. Once ignited, the danger of the hair catching on fire is very great. The scarfs cannot be readily discarded under such circumstances.

* * * * * * *

Handkerchiefs up to 24 inches square, according to an administrative ruling of the Federal Trade Commission, are not "articles of wearing apparel" within the meaning of the Flammable Fabrics Act, and are, therefore, exempted from the provisions of this law.

A reading of the language employed in the Act, together with interpretations placed thereon by the Federal Trade Commission and the Committees of Congress, leads to the conclusion that the handkerchief, which is the subject of the controversy herein, is not an "article of wearing apparel" or "fabric" within the meaning of the Flammable Fabrics Act.

Paragraph 4 of the complaint reads:

PARAGRAPH FOUR: Respondents have furnished their customers with a guaranty with respect to the articles of wearing apparel mentioned in Paragraphs Two and Three hereof, to the effect that reasonable and representative tests made under the procedures provided in Section 4 of the Flammable Fabrics Act, as amended, and the Rules and Regulations promulgated thereunder, show that said articles of wearing apparel are not, in the form delivered by respondents, so highly flammable as to be dangerous when worn by individuals. There was reason for respondents to believe that the articles of wearing apparel covered by such guaranty might be introduced, sold, or transported in commerce.

Said guaranty was false in that with respect to some of said articles of wearing apparel, respondents have not made reasonable and representative tests.

The record shows that a Continuing Guaranty, dated June 30, 1960, was filed with the Commission by respondent corporation and the invoices of Paintset Fashions, Inc., carry the following printed state ment: "CONTINUING GUARANTY UNDER THE FLAMMABLE FABRICS ACT AND THE TEXTILE FIBER PRODUCTS ACT FILED WITH THE FEDERAL TRADE COMMISSION." The respondent corporation did not make any tests of fabrics, but relied on guaranties which it received from suppliers of fabrics that it used in its garments. Garment manufacturers receiving such a guaranty may rely thereon in good faith and, in turn, may issue similar guaranties to their customers. However, the respondent corporation did not ask for or receive a guaranty from the supplier of the handkerchief for the reason that it was of the opinion that such an item was not covered by the Act. The guaranty filed by the respondent corporation with the Commission would only be considered false if the handkerchiefs in question are regarded as wearing apparel.

If the hearing examiner had concluded that the respondents had violated provisions of the Flammable Fabrics Act, he would dismiss the complaint on the grounds that the respondents had abandoned and discontinued the acts charged in the complaint.

Charles T. Rose, an investigator of the Commission working out of its New York office, testified "that we, the government, were in the process of investigating a number of firms for compliance with the Flammable Fabrics Act, a number of firms that were using silk squares as decorations upon their dresses." In connection with such assignment, he called on the respondents on May 31, 1961, at their business address in New York City to get some "background information" which was supplied to him. At that time in speaking of the silk squares, he told respondent Herbert Smolowe: "I would say that most chances are that these things are dangerously flammable and it would be advisable not to use them." The question was then asked Mr. Rose, "Did he tell you what he was going to do with it in that connection?", to which he replied: "I think they said they were not going to use them any longer."

Mr. Herbert Smolowe in this connection testified:

Q. He told you at that time in his opinion the handkerchief did not meet the requirements of the Flammable Fabrics Act?

A. That is correct.

Q. Was it your intention to violate the Flammable Fabrics Act?

A. Never.

Q. When this was called to your attention, what did you do?

A. Well, at that time Mr. Louis Smolowe directed the factories, via teletype message, to discontinue the use of the handkerchief immediately and to take them off the garments that we had in stock.

Q. Now, that message was sent when? The same day that Mr. Rose was there?

A. The same day that Mr. Rose was there.

Q. They were instructed not to ship out any garments with handkerchiefs?

A. That is correct.

Q. They were instructed to remove the handkerchiefs from all garments in stock?

A. That is correct.

Q. When the handkerchiefs were taken off the garments in stock, were the garments sold without the handkerchief?

A. Yes, they were.

Mr. Herbert Smolowe testified further:

Q. Subsequent to the visit of Mr. Rose, did you purchase any more handkerchiefs?

A. No, we didn't.

Q. Did you produce any more garments with handkerchiefs?

A. No, we did not.

Q. Did you sell any more garments with handkerchiefs?

A. Not with handkerchiefs, no.

Q. Until Mr. Rose came were you aware of any interpretation on the part of the Commission that a handkerchief accompanying a dress was subject to the provisions of the Flammable Fabrics Act?

A. No, I did not.

Q. Do you know of any such existing interpretation?

A. No, I do not.

Mr. Richard Smolowe, who succeeded his deceased father, Louis Smolowe, as president of the respondent corporation, testified:

Q. Now, Mr. Smolowe, do you recall the occasion when Mr. Rose appeared at your firm's office at approximately about May of last year?

A. I didn't have the pleasure of meeting Mr. Rose, but I knew when he appeared immediately after his visit. We discussed fully what his visit was about.

Q. You discussed that with whom?

A. Mr. Louis Smolowe called us in — called me in.

Q. Did you receive certain instructions?

A. Yes, sir.

Q. What were those instructions?

A. The instructions were that we were never to use any of these type handkerchiefs, any of this type accessory again, and that the lots that were in work were to have the handkerchiefs removed, were not to be put on prior to being shipped — not to be attached prior to shipment — and the accounts to whom they were sold but not yet shipped were to be notified immediately that they were to be shipped without this handkerchief.

Q. Were such instructions issued?

A. The factory was notified immediately; the accounts were notified within a day.

Q. And the factory, did it carry out those instructions?

A. Yes, sir.

Q. As a result of those instructions, the handkerchiefs were removed from all of your garments then in stock or in work?

A. Yes, sir; on all garments that we had physical possession of, they were removed.

Q. And all shipments from that time on were without handkerchiefs?

A. Yes, sir.

Q. Since May 31st of last year have you made or sold any of your garments with handkerchiefs of this type?

A. No, sir.

Q. As a matter of fact, have you made any handkerchiefs of any type?

A. No, sir.

Q. Are you now making or selling any garments with these handkerchiefs?

A. No.

Q. And do you propose to at any time in the future, to sell garments with this type of handkerchief?

A. Very definitely not.

* * * * * * *

Q. Mr. Smolowe, are you in sympathy with the purposes of this hearing before the Federal Trade Commission?

A. Yes, sir.

Q. Do you desire to conform to all of the requirements of the Flammable Fabrics Act?

A. Yes.

Q. Has that always been your desire and practice?

A. It has always been our desire and has always been the policy of the company.

Complaint counsel and counsel representing respondents stipulated:

10. Except for certain consent settlement matters (Warshauer & Franck, et al, C-58; Advance Juniors, Inc., et al, C-133; SGL Manufacturing Company, et al., C-134) involving complaints containing charges similar to those in Docket 8468, the instant matter, the Federal Trade Commission has not made any formal announcement or interpretation respecting the application of the Flammable Fabrics Act to ornamentations or decorations on wearing apparel, or silk handkerchiefs or silk squares on or with dresses.

11. Other than the complaint issued in the instant matter, Docket No. 8468, no complaint has issued against Paintset Fashions, Inc., by the Federal Trade Commission.

12. As of May 29, 1962, there is no evidence with the Federal Trade Commission that Paintset Fashions, Inc., continued to sell silk squares or silk handkerchiefs with or affixed to a dress after the visit of Commission Investigator, Charles T. Rose, on May 31, 1961.

Under the state of the record, it should be convincing that the respondents have abandoned and discontinued the acts which are the basis of the complaint herein, and it is the opinion of the Hearing Examiner that a resumption of the acts by the respondents is not likely.

For the reasons hereinbefore stated,

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

Order Denying Exceptions to the Initial Decision and Dismissing Complaint

This matter having been heard upon complaint counsel's exceptions to the initial decision and brief in support thereof, respondents' opposing brief, and upon oral argument, and the Commission having considered said exceptions and opposition; and

It appearing that the complaint herein, as amended, charges respondents with violating the Flammable Fabrics Act in connection with their manufacture and distribution of certain dresses which contain fabric decorations consisting of silk squares flammable under said Act, and with furnishing false guarantees with respect to such items in violation of said Act; and

It further appearing that the hearing examiner ruled that the aforesaid silk squares are handkerchiefs of a size of less than twenty-four inches square and are exempted from the provisions of the Flammable Fabrics Act by reason of the Commission's interpretive opinion of May 18, 1954 (19 Federal Register 2985), that "handkerchiefs up

to a finished size of twenty-four (24) inches square are not 'articles of wearing apparel' as that term is used in the Flammable Fabrics Act"; and

It further appearing that the hearing examiner also ruled that the alleged practices have been abandoned by respondents and are not likely to be resumed; and

The Commission, having determined that the Commission's aforesaid opinion of May 18, 1954, was subject to the interpretation placed upon it by the respondents and, furthermore, that the industry as a whole had apparently placed a similar interpretation on said opinion; and

The Commission having recently clarified the responsibilities of garment manufacturers with respect to silk squares affixed to garments by promulgation of the following amendment to Rule 6 of the Rules and Regulations under the Flammable Fabrics Act (16 C.F.R. 302.6; 28 Federal Register 6535, June 26, 1963, effective July 26, 1963), thereby resolving the problem presented herein on an industry-wide basis:

> (c) Except as provided in paragraph (d) of this section, handkerchiefs not exceeding a finished size of twenty-four (24) inches on any side or not exceeding five hundred seventy-six (576) square inches in area are not deemed "articles of wearing apparel" as that term is used in the Act.
>
> (d) Handkerchiefs or other articles affixed to, incorporated in, or sold as a part of articles of wearing apparel as decoration, trimming, or for any other purpose, are considered an integral part of such articles of wearing apparel, and the articles of wearing apparel and all parts thereof are subject to the provisions of the Act. Handkerchiefs or other articles intended or sold to be affixed to, incorporated in, or sold as a part of articles of wearing apparel as aforesaid constitute "fabric" as that term is defined in Section 2(e) of the Act and are subject to the provisions of the Act where such handkerchiefs or other articles constitute textile fabrics as the term "textile fabric" is defined in paragraph (a)(6) of § 302.1.

and

The Commission, without passing on the validity of the hearing examiner's rulings, believing that the public interest will best be served by dismissing the complaint herein and allowing the respondents voluntarily to conform their practices to the new Rule 6 set forth above:

It is ordered, That the exceptions to the initial decision filed by counsel supporting the complaint be, and they hereby are, disallowed.

It is further ordered, That the hearing examiner's initial decision be, and it hereby is, vacated and that the complaint herein be, and it hereby is, dismissed without prejudice, however, to the right of the Commission to issue a new complaint or to take such further or other action against the respondents at any time in the future as may be warranted by the then existing circumstances.

IN THE MATTER OF

SUNNYVALE, INC., ET AL.

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

Docket 8515. Complaint, June 28, 1962—Decision, Sept. 17, 1963

Order dismissing complaint charging New York City wholesalers of dresses with violation of the Flammable Fabrics Act, for the reason that the articles concerned were handkerchiefs less than 24 inches square not subject to the Act on the date complaint issued.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Sunnyvale, Inc., a corporation, and Jerome Aron and Mac Kaplan, individually and as officers of said corporation, and Sunnyvale of Pennsylvania, Inc., a corporation, and Abraham Meyers and Stanley Samber, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and the Rules and Regulations promulgated under the Flammable Fabrics Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Sunnyvale, Inc., is a corporation duly organized, existing and doing business under and by virtue of the laws of the State of New York. Respondents Jerome Aron and Mac Kaplan are president and vice president, respectively, of Sunnyvale, Inc. The individual respondents formulate, direct and control the policies, acts and practices of the said corporate respondent. The aforesaid respondents are wholesalers of articles of wearing apparel,

including dresses, with office and principal place of business at 1350 Broadway, New York, New York.

Respondent Sunnyvale of Pennsylvania, Inc., is a corporation duly organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania. Respondents Abraham Meyers and Stanley Samber are president and secretary, respectively, of Sunnyvale of Pennsylvania, Inc. The aforesaid respondents are manufacturers of wearing apparel, including dresses, with office and principal place of business at 3 South Webster Avenue, Scranton, Pennsylvania.

PAR. 2. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have manufactured for sale, sold and offered for sale, in commerce; have imported into the United States; and have introduced, delivered for introduction, transported and caused to be transported, in commerce; and have transported and caused to be transported for the purpose of sale or delivery after sale in commerce; as "commerce" is defined in the Flammable Fabrics Act, articles of wearing apparel, as the term "article of wearing apparel" is defined therein, which articles of wearing apparel were, under Section 4 of the Flammable Fabrics Act, as amended, so highly flammable as to be dangerous when worn by individuals.

Among the articles of wearing apparel mentioned above were dresses.

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

Among the articles of wearing apparel mentioned above were dresses.

PAR 4. Respondents, subsequent to July 1, 1954, have furnished their customers with a guaranty with respect to the articles of wearing apparel mentioned in Paragraphs 2 and 3 hereof, to the effect that reasonable and representative tests made under the procedure provided in Section 4 of the Flammable Fabrics Act, as amended, and the Rules and Regulations promulgated thereunder, show that such articles of wearing apparel are not, in the form delivered by respondents, so highly flammable under the provisions of the Flammable Fabrics Act as to be dangerous when worn by individuals. There was reason for respondents to believe that the articles of wearing apparel covered by such guaranty might be introduced, sold or transported in commerce.

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

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

Mr. Thomas J. Anderson and *Mr. Edward B. Finch* for the Commission.

Golenbock and Barell, by *Mr. Justin M. Golenbock* and *Mr. Melvin Michaelson* of New York, N.Y., with *Mr. Erwin Feldman*, New York, N.Y., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

This complaint was issued June 28, 1962, alleging, in substance, that respondents violated the Flammable Fabrics Act [hereinafter called the Act],[1] by manufacturing and selling in interstate commerce women's dresses which were so highly flammable and were made of a fabric which was so highly flammable, as to be dangerous when worn by individuals. The complaint also charges respondents with furnishing their customers a false guaranty under the Act.

Although the complaint charges respondents with manufacturing and selling dresses made from flammable fabrics, in violation of the Act, evidence offered in support of the complaint was limited to attempting to prove only that respondents' act of placing a flammable decorative handkerchief in the right-hand skirt pocket of only one of respondents' dresses, Style No. 466, violated the Act. The false guaranty charge also rests solely upon the flammability of the handkerchief inserted in the skirt pocket.

This proceeding involves substantially the same issues as Docket No. 8468, *Paintset Fashions, Inc., et al.*, in which a dismissal order was entered on September 4, 1962, and which is presently on appeal to the Federal Trade Commission. Another proceeding involving this same situation is *Murray Perlstein*, Docket No. 8522, presently pending before the examiner. The introduction of evidence has been completed in Docket 8522.

The Flammable Fabrics Act was signed into law on June 30, 1953, and became effective July 1, 1954. On April 30, 1954, the Commission

[1] Pertinent Sections of the Flammable Fabrics Act are reproduced in Appendix A [Appendix A. omitted in printing]. The Rules and Regulations thereunder can be found in 16 CFR 302.

published in the Federal Register a notice of public hearings for the purpose of interpreting the term "article of wearing apparel" as used in that Act. On May 18, 1954, after such hearings, the Commission issued its ruling "that handkerchiefs up to a finished size of 24 inches square are not 'articles of wearing apparel' as that term is used in the Flammable Fabrics Act." (File 205–2.) In the same year, 1954, after the Commission's ruling had exempted handkerchiefs from the Act, Congress amended the Act by adding to it what is now subsection 4(c). While this amendment was being considered by the House Committee on Interstate and Foreign Commerce, the committee issued its report on S. 3379 which ultimately became subsection 4(c), and in that report, *inter alia*, stated:

> Your committee is convinced that scarfs should be subject to the provisions of the law just as any other item of wearing apparel. They can be as much a danger to human safety as any other improperly protected garments. Scarfs are worn around the head or neck and tied on with a knot which may not be easily removable. Once ignited, the danger of the hair catching on fire is very great. The scarfs cannot be readily discarded under such circumstances.
>
> * * * * * * *
>
> Handkerchiefs up to 24 inches square, according to an administrative ruling of the Federal Trade Commission, are not "articles of wearing apparel" within the meaning of the Flammable Fabrics Act, and are, therefore, exempted from the provisions of this law.

A reading of the language employed in the Act, together with interpretations placed thereon by the Federal Trade Commission and the Committee of Congress, leads to the conclusion that the handkerchief, which is the subject of the controversy herein, is not an "article of wearing apparel" or "fabric" within the meaning of the Flammable Fabrics Act.

The entire industry has relied and acted upon the May 18, 1954, ruling of the Commission that handkerchiefs up to a finished size of 24 inches square are not articles of wearing apparel as that term is used in the Flammable Fabrics Act. Insofar as this examiner is able to ascertain, that ruling has not been challanged, vacated, modified, or set aside during the eight years since its issuance.

In a speech on October 11, 1962, at a meeting of the Home Safety Conference of the Fairfax County Safety Council, Harold S. Blackman, Chief of the Commission's Division of Regulation, stated:

> The Commission had excepted handkerchiefs up to 24 inches square from the provisions of the Act holding they did not constitute articles of wearing apparel, and would be relatively safe or easily discarded in time of emergency. However, there have been instances *in the past year and a half* where a dress maker will buy small silk squares and attach them to a pocket or belt of a woman's dress by stitching, tying or pinning the square to the dress. It thus

acts as a fuse to help ignite the fabric of the dress. The Commission has taken action in a number of such cases to prevent the sale of such products. (Emphasis supplied.)

This speech, of course, does not necessarily reflect the views of the Commission, but is a recent public reiteration of the universally accepted ruling that handkerchiefs up to 24 inches square had been exempted by the Commission from the provisions of the Flammable Fabrics Act. The issue in this proceeding would appear, therefore, to be: Did respondents' mere act of inserting in the skirt pocket of a dress an easily removable flammable handkerchief render both of the articles, otherwise exempt, subject to the Act?

A prehearing conference was conducted on October 5, 1962, at which complaint counsel agreed that the issue here involves a determination of the legal consequences, if any, flowing from respondents' act in placing in the pocket of one of their dress styles a flammable silk square. Hearings were conducted and the record was closed on October 17, 1962. Proposed findings, conclusions and briefs have been filed. Based upon the entire record, including the pleadings, testimony and exhibits, the examiner makes the findings and conclusions hereinafter set forth. Any finding proposed by the parties which is not hereinafter made in the form proposed, or in substantially that form, hereby is rejected. All motions which have not previously been ruled upon, and which are not herein specifically ruled upon, are hereby denied.

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

FINDINGS OF FACT

1. Respondent, Sunnyvale, Inc., is a New York corporation whose principal office is at 1350 Broadway, New York, N.Y. Respondent, Sunnyvale of Pennsylvania, Inc., is a Pennsylvania corporation whose principal office is at 3 South Webster Avenue, Scranton, Pennsylvania; it manufactures dresses exclusively for Sunnyvale, Inc., and in 1961 manufactured 1,500,000 such dresses. Both corporate respondents manufacture dresses for resale at retail. Respondents Jerome Aron and Mac Kaplan each own 50 percent of the outstanding and issued stock of these two corporations; they manage, control and direct the policies and practices of both corporations. Aron is in charge of manufacturing and Kaplan of sales. Respondents Abraham Meyers and Stanley Samber are president and secretary, respectively, of Sunnyvale of Pennsylvania, Inc. They do not exercise sufficient control over the policies and practices of that corporation to be bound by any cease and desist order which may be entered against

either of the corporate respondents. The complaint should be dismissed as to Abraham Meyers and Stanley Samber. The corporate respondents own factories in Scranton, Pennsylvania, Flemington, New Jersey; Greenville, Simpsonville, and New Ellington, South Carolina. They also control the production of about seven contractors and directly or indirectly employ approximately 1,200 people. In addition to its principal place of business at 1350 Broadway, New York, N.Y., Sunnyvale, Inc., maintains an office at 29 West 35th Street, New York City, which is a "consolidating point" where a variety of items for the factories are consolidated for shipment.

2. In the course and conduct of their business the corporate respondents transport their dresses from the various places where they are manufactured across state lines to purchasers located in various other States of the United States. The corporate respondents are engaged in commerce, as "commerce" is defined in § 2(b) of the Flammable Fabrics Act. The Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding.

3. In the course and conduct of their business in commerce the corporate respondents are in substantial competition with other individuals, firms and corporations engaged in the manufacture and interstate sale of women's dresses.

4. In the year 1961 the business enterprises owned and controlled by Aron and Kaplan manufactured and sold approximately three million dresses. These dresses are known in the industry as "Day Time" dresses, and ordinarily retail at prices ranging from $5.98 to $12.98.

5. The dresses which respondents sold in interstate commerce for resale at retail during 1961 included Style 466, of which RX–1 is a photographic likeness. This dress was made from a fine combed cotton striped chambray weighing more than two ounces per square yard and was fully washable. It was a plain surface fabric [2] and not a flammable fabric within the intent and meaning of the Act. It was a "three-quarter step-in dress, a little touch of shoulder, sheer, self-belt" with pockets on each side of the skirt. A fully-finished handrolled-edged handkerchief, approximately 18 inches square, lilac, gold, blue or red in color, was placed in the right-hand skirt pocket for colorful decoration. Respondents purchased the decorative silk handkerchiefs from Murray Perlstein, 265 West 40th Street,

[2] See Rules and Regulations under Flammable Fabrics Act, 16 CFR 302.1(a)(7)(8).

"(7) The term 'plain surface textile fabric' means any textile fabric which does not have an intentionally raised fibre or yarn surface such as a pile, nap or tuft, but shall include those fabrics having fancy woven, knitted or flock printed surfaces.

"(8) The term 'raised surface textile fabric' means any textile fabric which has an intentionally raised fibre or yard surface such as a pile, nap, or tufting."

New York, N.Y., at an average cost of about ten cents per handkerchief, according to the Perlstein invoices in evidence.

6. The price charged by respondents for dress Style 466 and the price charged by the retailers were not affected in any way by the handkerchief in the skirt pocket (Tr. 46). The handkerchiefs were inserted by either the shipping or the finishing department; sometimes they were pinned in with a safety pin (RX–2) and sometimes they were just stuck in depending upon how busy the operation was at the time. Sometimes the handkerchief was omitted altogether if the manufacturing and shipping schedule was crowded. The handkerchiefs were never sewn or otherwise permanently attached to the dress and were therefore not an integral part of dress Style 466. These silken squares were designated as "hankies" on Meyer Perlstein's invoices to respondents and characterized as handkerchiefs by the witnessess Jerome Aron, Mac Kaplan, Abraham Meyer, Charles H. Reynolds, Jr., and Max Milstein. The preponderance of the reliable, probative and substantial evidence in this record supports no finding other than that the silken squares placed in the right-hand skirt pocket of dress Style 466 were colored handkerchiefs, 18 inches square, or less. Counsel supporting the complaint did not place in this record (nor did he appear to have)[3] a specimen or sample of such colored handkerchief. Absent such sample, the handkerchief's characteristics had to be reconstructed from secondary evidence, *i.e.*, the Perlstein invoices describing them and what the various witnesses recollected about them.

7. At respondents' 35th Street office, salesmen's samples are repressed, pinned up and made to look "pretty" before being shipped out to the salesmen. This address is also a consolidating point for "findings," "trim," buttons, belts, single bolts of fabric, "little odd bits of things" that have to be shipped to respondents' manufacturing facilities. Its trim buyers purchase buttons, belts, laces, ribbons, certain types of interlinings, handkerchiefs, decorative pins, "all the do-dads and accessories that go onto a dress, even the thread in some cases."

8. Respondents' fabric purchasing setup is a completely different office from its trim-buying office and is staffed by a principal fabric buyer and seven assistants. Aron testified:

* * * We purchase about twelve million yards of fabric a year. This is a highly complicated and professionalized office, and an extremely sophisticated

[3] See the hearing examiner's citation of authorities in Docket No. 7812, *Kenton Leather Products, Inc.* [61 F.T.C. 1150, 1152], (dismissed without opinion by the Commission on November 13, 1962) to the effect that there is a recognized legal presumption that a party will produce evidence which is favorable to him if such evidence exists and is available.

setup in connection with understanding fabrics, understanding the market, understanding the rules and regulations of the government in connection with the purchase of fabric.

When the Flammable Fabrics Act was passed, these people were set up with a procedure to comply with the law as they were as to other laws. We have a very complicated procedure in connection with the Fiber Identification Act. We use literally thousands of different types of fabric a year and every one of these has to be identified on the garment according to the law. All of those procedures are very carefully followed. In connection with our trim buyers, we have no procedures of that sort since we know of no laws that I believed they were subject to.

9. Respondents manufactured and sold approximately 168 dozen of dress Style 466. They began to cut the dress in December 1960, and by the end of January 1961, all of the dresses had been cut and within sixty days thereafter they had been sold. A specimen of dress Style 466 is not in evidence. (See Footnote 3, *supra*, re complaint counsel's failure to put in evidence a specimen of the handkerchief.)

10. The record will not support a finding that CX–19, the remnant of the white handkerchief given to Investigator Rose by Charles H. Reynolds, Jr., is in fact a specimen of the colored handkerchiefs placed in the skirt pocket of dress Style 466. Perlstein's invoices to Sunnyvale show that the "hankies" sold for use in Style 466 were either lilac, gold, blue or red. RX–19 is off-white. Commission's witnesses Rose and Lipnik testified that CX–19 was off-white when they received it. Charles H. Reynolds, Jr.'s "SPEED LETTER" (RX–17) of April 10, 1961, written when Rose obtained CX–19, in its whole condition recites:

Dear Mr. Rose: On March 9, 1961 we received Style 466 from Sunnyvale, Inc., which had attached to it by a safety pin the scarf you are taking. The invoice number was 29692.

Sunnyvale, Inc.
1350 Bway N.Y.C.
Sincerely yours,
Charles H. Reynolds, Jr.

Reynolds testified (Tr. 67) after examining CX–17 (his letter) and CX–19 (the remnant): "We furnished him with a silk scarf which was taken from a dress, but I don't really remember whether it was a print scarf, or colored scarf or white. All I know is that we gave him a scarf, and *whether this* [CX–19] *is the same one I don't know.*" (Underscoring supplied.) On cross-examination, Mr. Reynolds further testified (Tr. 68): "Q. Let me call your attention to dress style 466 of Sunnyvale. Do you recall what the dress looked like? A. No I do not." The witness Reynolds further testified that an examination of the photograph of the dress, in evidence, RX–1, would not help him recall what Style 466 looked like. He was not

the buyer for the dress department. He remembered that a "handkerchief" was inserted in the skirt pocket of Style 466, but could not testify as to the size or the color of the "handkerchief" (Tr. 69). Other witnesses recalled definitely that the handkerchiefs were colored, that none of them were the same color as CX–19, that they had hand-rolled edges, and were approximately 18 inches square.

11. Mr. Reynolds also testified there were numerous cases in his nine years' experience in which dresses were sold at retail in his department store with handkerchiefs as decorations or ornamentations, but that there would be no additional difficulty in selling Style 466 if the handkerchief were removed. It had no utility value as far as the use of the dress was concerned (Tr. 75).

12. The mere inclusion of a handkerchief or a scarf as an ornamentation to a dress does not change its basic nature or value. In Style 466 the handkerchief was included solely for decoration or ornamentation.

13. The one handkerchief upon which complaint counsel rests his entire case (CX–19) was practically destroyed by being cut up into pieces for the flammability tests conducted upon it. The only evidence that CX–19 came from a Sunnyvale dress is hearsay. On the other hand, CX–1 to CX–10, inclusive, contradict this hearsay evidence because these exhibits, the Perlstein invoices for the handkerchiefs, made out at the time they were purchased, show that no off-white (the color of CX–19) handkerchiefs were sold for use by respondents with Style 466 but only lilac, gold, blue or red handkerchiefs. Counsel supporting the complaint has not proven by a preponderance of reliable, probative and substantial evidence that the handkerchief handed to Investigator Rose by Mr. Reynolds, the ragged remnant of which is in evidence as CX–19, is in fact a handkerchief from dress Style 466, or the remnant of such a handkerchief.

14. Max Milstein, a member of the New York bar who was a witness in *Paintset*, *supra*, testified in the instant case that he had been connected with the apparel industry ever since he had started to practice law in 1935. He had been associate counsel to several apparel trade associations and was at the time of his testimony and for 5 years prior "director counsel" for the House Dress Institute, a national association of dress manufacturers, and had about 20 years' connection with apparel associations in the men's and women's wear fields. He had been a member of an advisory committee appointed by the Federal Trade Commission to assist in establishing guides for enforcement of the Flammable Fabrics Act. He testified (Tr. 119, *et seq.*):

Q. Mr. Milstein, are you aware of a 1954 ruling of the Commission relating to handkerchiefs?

A. Yes.

Q. Will you tell us your interpretation of this ruling?

A. In that ruling the Federal Trade Commission held that handkerchiefs which were 24 x 24 inches or less in size were not articles of wearing apparel under the provisions of the Flammable Fabrics Act and were therefore exempt therefrom.

Q. What do you understand this exemption to mean?

A. Well, I think the exemption is quite simple, as plain as could be; a handkerchief of that dimension was not an article of wearing apparel.

Q. Is there any question in your mind as to whether the handkerchief could be a fabric?

A. There is no question in my mind but what it could not be a fabric. A fabric is an unsewn textile intended for incorporation into a garment. The Act itself, and the rules when speaking of fabrics, speak of fabrics intended for use in or contained in an article of wearing apparel. Obviously a handkerchief is not such a thing.

Q. Are you familiar, generally, with the legislative history of the Act itself?

HEARING EXAMINER GROSS: You mean the Flammable Fabrics Act?

MR. MICHAELSON: Yes, sir.

A. Fairly familiar. I know there was a series of very unfortunate accidents throughout the country which necessitated action of this kind. I don't know of any group there may have been who opposed any such action. And the Act was passed as a necessity.

Q. As you would interpret the Flammable Fabrics Act, is there any provision under the Act as it is now written and as it has been in force since 1954 which would include a handkerchief, whether it were attached to a dress or not?

A. My opinion would be definitely no, that such a handkerchief could not be regarded as being covered by the Flammable Fabrics Act. I might say that I, and other trade association executives, were strengthened in their opinion, aside from the clear-cut language of the ruling exempting handkerchiefs, by the fact that the Commission did not even add to that ruling in 1954 any language limiting their opinion and their exemption of handkerchiefs.

I am further bolstered in my belief by the fact that they very well knew that the Congress, when it exempted certain articles of wearing apparel from the Act, specifically added words of limitation, so that following upon that, following upon the fact that the Commission did not choose to use any such words of limitation, following upon the fact that the use of handkerchiefs in connection with dresses has been a practice that goes back many, many, many years, I am firmly convinced that these handkerchiefs are not covered by the Act.

Q. Has it been a practice for many years in the dress industry to attach handkerchiefs in various ways, such as pinning them with a safety pin or knotting them around the loop of a belt?

A. It has been a practice for many, many years, and it has been a practice for many, many years of women doing this on their own.

I think the manufacturers originally got the idea from women, not the other way around, and handkerchiefs for many, many years have been pinned to one side of a dress, tied in a buckle, stuck in a pocket, attached to the hip, almost any place you could mention.

Q. Let me show you Commission Exhibit 19. What you have here, of course, is simply a remnant of an article that was used in testing by the

Commission. Now, if this were to be a finished handkerchief of the approximate dimensions that you can visualize from seeing this thing, is there any doubt in your mind that this thing would be a handkerchief, and nothing more?

A. There is no doubt in my mind.

HEARING EXAMINER GROSS: Well, what is your conviction?

THE WITNESS: There is no doubt in my mind that it is a handkerchief.

15. Webster's "New World Dictionary of the American Language" defines a handkerchief as a "small piece of cloth, cotton, silk, linen, etc., usually rectangular, for wiping the nose, eyes, or face, or carried or worn for adornment." *The Language of Fashion*, by Mary Brooks Picken (Funk and Wagnalls, 1939) defines a handkerchief as a "piece of cloth of cotton, linen, silk, etc., usually square, varying in size and fabric according to purpose; often decorated with lace, embroidery, monogram, border, etc. * * * worn or carried for usefulness or as costume accessory." The word "hanky" is a common abbreviation for the word "handkerchief"; and "hanky" sometimes commonly denotes a small or dainty handkerchief. In the industry a handkerchief is an article made of fabric with a finished edge, not exceeding 24 inches square in its finished size, which may have a utilitarian function or may be used or worn for decorative purposes. Any disinterested observer must conclude that the silk remnant in evidence as CX–19 does not constitute reliable, probative and substantial evidence, which in a strict sense would prove that the original really was, but Investigator Rose, who first obtained CX–19, Mrs. Lipnik, the chemist to whom CX–19 was sent for testing, and Charles H. Reynolds, Jr., who gave CX–19 to Investigator Rose, all remembered the original as being a piece of silk approximately 18 inches square with handrolled edges. The examiner finds that CX–19, in its original condition, was a handkerchief. Elsewhere in this opinion the examiner has pointed out the failure of proof that the original of CX–19 was in fact a specimen of the type of handkerchief which was in the right-hand skirt pocket of Dress Style 466.

16. The failure of proof that the original of CX–19 was in fact a specimen of the type of handkerchief in the pocket of the dress cautions this examiner against a finding that the handkerchiefs in the pockets of Style 466 were in fact flammable and such finding is hereby rejected.

17. Dress Style 466 could have been worn, and was sold, without the handkerchief in the pocket. The inclusion of the handkerchief was not considered significant either by respondents or their customers. Handkerchiefs of the kind and character used by respondents in Style 466 are standard commercial items and they may be separately purchased in retail stores, to be used solely as handkerchiefs, or as ornamentation for dresses as they were used by respondents.

18. For many years manufacturers have been selling dresses with handkerchiefs either tucked in the pocket, or pinned, looped or tied to the dress. These handkerchiefs are easily removable so that they can, if the owner so desires, be readily replaced by another handkerchief, or other accessory, to provide color and variety to the costume. Respondents and other dress manufacturers generally have used handkerchiefs with dresses in this way since the Commission's 1954 ruling that a handkerchief is not an article of wearing apparel within the meaning of the Flammable Fabrics Act. For many years women have customarily used handkerchiefs, and have purchased them separately, for ornamental purposes and as accessories for their costumes and have applied them by tucking them in a pocket, in a sleeve, looping them through a buttonhole or belt or by pinning or tying them to their costume.

19. In 1961 Sunnyvale, Inc., filed with the Commission a continuing guaranty under § 8 of the Flammable Fabrics Act and under the rules and regulations issued pursuant to said Act (16 CFR § 302.9(b)). This recites:

> The undersigned, Sunnyvale, Inc., a corporation residing in the United States and having principal office and place of business at 1350 Broadway, New York 18, New York, and engaged in the marketing of or handling of [articles of wearing apparel] subject to the Flammable Fabrics Act and Regulations thereunder HEREBY GUARANTEES that reasonable and representative tests as provided in the Rules and Regulations made according to the procedures prescribed in Section 4(a) of the Flammable Fabrics Act, show or will show that all of the following described [fabrics used or contained in articles of wearing apparel] hereafter marketed or handled by it are not, in the form delivered or to be delivered by the undersigned, so highly flammable under the provisions of the Flammable Fabrics Act as to be dangerous when worn by individuals * * *.

The invoices with which Sunnyvale, Inc., billed their customers who purchased dress Style 466 had imprinted at the bottom:

> Based upon guarantees received we hereby guarantee that reasonable and representative tests made according to the procedures prescribed in Sec. 4(a) of the Flammable Fabrics Act show that fabrics used or contained in the articles of wearing apparel and fabrics otherwise subject to said Act, covered by and in the form delivered under this document, are not, under the provisions of said Act, so highly flammable as to be dangerous when worn by individuals.

Sunnyvale, Inc., had not asked for nor obtained a guarantee from the supplier of the handkerchief because its officers and employees believed and in good faith relied upon the 1954 ruling of the Commission that handkerchiefs were not within the purview of the Flammable Fabrics Act. The officers of Sunnyvale, Inc., and its employees, therefore, reasonably and in good faith believed that the

guarantee given by Sunnyvale, Inc., to its customers did not apply to handkerchiefs. The examiner finds the guarantee given by Sunnyvale, Inc., to its customers was not false because it was not intended to nor did it apply to handkerchiefs.

20. After the Commission investigator obtained the original of CX–19, he transmitted it to the Washington, D.C. laboratories of the Commission where, on May 5, 1961, it was tested by the Commission's chemist, Judith Berman, now Mrs. Judith Berman Lipnick, in accordance with Commercial Standard 191–53 for "compliance with the Flammable Fabrics Act." Ten pieces were cut from the handkerchief and burned in an automatic clocking device in a machine specially designed for such tests. The burning time for the ten pieces was: (CX–18)

(1) 3.8 seconds	(6) 3.3 seconds
(2) 3.1 seconds	(7) 3.4 seconds
(3) 3.1 seconds	(8) 3.7 seconds
(4) 3.3 seconds	(9) 3.0 seconds
(5) 3.2 seconds	(10) 3.0 seconds

21. After Mr. Rose received the result of the test in May 1961, he called at the offices of Sunnyvale, Inc., in New York. Mr. Aron was on vacation and Mr. Rose talked with Mr. Kaplan, concerning dress Style 466. Prior to that time respondents had no idea that there was any objection to the handkerchiefs. Kaplan called in the office manager and trimming buyer and told them to extend every cooperation to Mr. Rose. Between the time that Rose called upon Sunnyvale in May 1961, and the time of the service of the complaint, Kaplan had heard only indirectly about the incident when a reporter from Women's Wear, a nationwide publication for the women's apparel business, called Kaplan and read him the official press release of the Commission concerning these proceedings dated July 3, 1962, which is in evidence as RX–3.

22. Both Jerome Aron and Abraham Meyers testified, and the hearing examiner finds that since Investigator Rose's visit to the office of Sunnyvale in the spring of 1961, respondents have discontinued and abandoned using handkerchiefs in any way in manufacturing dresses whether such handkerchiefs are attached or unattached. Respondents have "discontinued using a handkerchief in any shape or form" (Tr. 181). Mr. Meyers testified, "I really think it could be made of concrete and we wouldn't use it because the law was laid down at the onset of this. Nobody would buy anything that resembles a handkerchief in our company."

23. After Mr. Aron returned from his vacation and as soon as he learned of Mr. Rose's call, he issued orders to everyone connected

with the firm that under no circumstances were handkerchiefs ever to be used as adornment or ornamentation for any more dresses manufactured by Sunnyvale, and none have since been used. Abraham Meyers, production manager for the Pennsylvania corporation, testified (and is uncontradicted in this record) that as soon as he heard from Aron about the question of the flammability of handkerchiefs he gave away to charitable institutions all the remaining silk handkerchiefs they had on hand. Aron's uncontradicted testimony was to the effect that as soon as he heard of Rose's call he and Kaplan decided that "never again would we purchase a handkerchief and insert it in a dress, because of the possible—ramifications of what might come of it seemed to be completely out of proportion to their worth, which was negligible to us." He testified that respondents have no intention of using handkerchiefs again; they have issued orders to buyers under no circumstances to purchase handkerchiefs, to their designers not to use them, and to their factory people to reject them if they receive them.

24. Even though the use of the silk handkerchief in Style 466 in the manner described in this decision did and does not constitute a violation of the Flammable Fabrics Act, respondents have nevertheless completely abandoned the use of handkerchiefs as ornamentation or decoration for their dresses. There is no likelihood that they will resume the use of handkerchiefs as ornamentation for the dresses they manufacture unless the Federal Trade Commission in this, and in *Paintset*, Docket No. 8468, and in *Murray Perlstein*, Docket No. 8522, specifically sanctions such practice.[4]

Applying the hereinabove found facts to the pertinent legal precedents, the examiner makes the following:

CONCLUSIONS

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

2. Corporate respondents Sunnyvale, Inc., a New York corporation, and Sunnyvale, Inc., of Pennsylvania, a Pennsylvania corporation, are engaged in commerce as "commerce" is defined in the Flammable Fabrics Act.

3. Individual respondents Jerome Aron and Mac Kaplan own all of the issued and outstanding stock of the corporate respondents. They

[4] *Argus Cameras, Inc.*, 51 F.T.C. 405 (1954); *Dietzgen Co.* v. *FTC*, 142 F. 2d 321 (C.A. 7, 1944); *Firestone Tire & Rubber Co.*, Docket No. 7020; *Wildroot Co.*, 49 F.T.C. 1578 (1953); *Bell & Howell Co.*, Docket No. 6729, C.C.H. Tr. Reg. Rept. ¶26,626 (Transfer Binder 1957–1958); *United States* v. *W. T. Grant Co.*, 345 U. S. 629 (1953); *Chas. Pfizer & Co.*, Docket No. 7486, Comm. Opinion of May 23, 1960, affirming examiners dismissal of complaint.

are officers and directors of the corporate respondents, and manage, direct and control the policies and practices of the corporate respondents.

4. Individual respondents Abraham Meyers and Stanley Samber, although officers of one of the corporate respondents, do not exercise such degree of control over, and direction of, the policies and practices of the corporate respondents as to be included in any cease and desist order which might be entered against the corporate respondents. The complaint should be dismissed against them.

5. In the course and conduct of their business in commerce, the corporate respondents are in substantial competition with other individuals, firms and corporations engaged in the manufacture and interstate sale of women's dresses.

6. CX–19, the only fabric in evidence, has not been proven by a preponderance of the reliable, probative and substantial evidence in this record to have been, in its original state, a specimen of the allegedly flammable handkerchief inserted in the skirt pocket of dress Style 466 manufactured and sold by respondents. This failure of proof in itself requires dismissal of this proceeding.

7. The lilac, blue, gold or red handkerchief in the pocket of dress Style 466 was not an integral part of the dress. Although CX–19 has not proven to be a specimen of such handkerchief, it is, nevertheless, a "handkerchief" within the exemption of the May 18, 1954, ruling of the Federal Trade Commission. It was and is, therefore, exempt from the Flammable Fabrics Act and the rules and regulations issued thereunder.

8. However, even if the failure of proof enunciated in Conclusion 6, and the immunity given the handkerchiefs by the Federal Trade Commission ruling set forth in Conclusion 7 were cast aside, the preponderance of the reliable, probative and substantial evidence justifies the conclusion and the examiner hereby concludes that the corporate respondents and respondents Jerome Aron and Mac Kaplan have completely abandoned the practice of using handkerchiefs of any kind or character as a decoration or ornamentation for their dresses as was done in connection with Style 466, and the use of handkerchiefs in any connection with the manufacture of their dresses will not be resumed under any circumstances by respondents unless and until such use is specifically sanctioned by the Federal Trade Commission.

9. The handkerchief which was pinned into or merely stuck into the skirt pocket of Style 466 was not an integral part of the garment, and did not constitute a flammable fabric as defined in the Flammable Fabrics Act and the rules and regulations issued thereunder.

10. Dress Style 466 as described herein was not and has not been challenged as a flammable fabric and is hereby found not to have been a flammable fabric under the Flammable Fabrics Act and the rules and regulations thereunder. Now therefore,

It is ordered, That this complaint and the proceedings thereunder be and hereby are dismissed as to each and all of the respondents jointly and severally.

ORDER DENYING PETITION FOR REVIEW AND DISMISSING COMPLAINT

This matter having come on to be heard by the Commission upon a petition for review of the initial decision filed by counsel supporting the complaint and upon respondents' answer wherein they contend, *inter alia*, that said petition was not timely filed; and

It appearing that this case involves the issue of whether or not "handkerchiefs" of a size of less than twenty-four (24) inches square when affixed to dresses for the purpose of decoration or ornamentation are exempted from the provisions of the Flammable Fabrics Act by reason of the Commission's interpretive opinion of May 18, 1954 (19 Federal Register 2985), that "handkerchiefs up to a finished size of twenty-four (24) inches square are not 'articles of wearing apparel' as that term is used in the Flammable Fabrics Act"; and

The Commission having rendered its decision *In the Matter of Paintset Fashions, Inc., et al.*, Docket No. 8468 [p. 691 herein], wherein it determined that the Commission's aforesaid opinion of May 18, 1954, was subject to the interpretation that such "handkerchiefs" were not subject to the Act and that the recent amendment to Rule 6 of the Commission's Rules and Regulations under the Flammable Fabrics Act, 16 CFR 302.6(c) and (d) (28 Federal Register 6535, June 26, 1963; effective date July 26, 1963) clarifies the matter by expressly providing that handkerchiefs sold as a part of articles of wearing apparel are subject to the Act; and

The Commission, without passing on the validity of the hearing examiner's rulings or on respondents' contention that the petition for review was not timely filed, believing that the public interest will best be served by dismissing the complaint herein and allowing the respondents voluntarily to conform their practices to the new Rule 6 referred to above:

It is ordered, That the aforesaid petition for review of the initial decision be, and it hereby is, denied.

It is further ordered, That the hearing examiner's initial decision be, and it hereby is, vacated and that the complaint herein be, and it hereby is, dismissed without prejudice, however, to the right of the

Commission to issue a new complaint or to take such further or other action against the respondents at any time in the future as may be warranted by the then existing circumstances.

IN THE MATTER OF

MURRAY PERLSTEIN TRADING AS MURRAY PERLSTEIN

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

Docket 8522. Complaint, July 24, 1962—Decision, Sept. 17, 1963

Order vacating initial decision and dismissing—following the July 26, 1963 clarifying amendment to Rule 6 under the Flammable Fabrics Act making subject to its provisions handkerchiefs intended to be a part of wearing apparel—complaint charging a New York City importer with selling in commerce handkerchiefs less than 24 inches square, intended to be a part of wearing apparel, which were so flammable as to be dangerous when worn.

COMPLAINT

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

PARAGRAPH 1. Murray Perlstein is an individual trading as Murray Perlstein, with his office and place of business located at 265 West 40th Street, New York, New York. Respondent is a jobber of notions, accessories and fabrics used in the manufacture of articles of wearing apparel.

PAR. 2. Respondent, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, has sold and offered for sale in commerce; has imported into the United States; and has introduced, delivered for introduction, transported, and caused to be transported, in commerce; and has transported and caused to be transported for the purpose of sale or delivery after sale in commerce; as "commerce" is defined in the Flammable Fabrics Act, fabric, as that term is defined therein, which fabric was, under Section 4 of the Flammable

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

PAR. 3. The acts and practices of respondent herein alleged were and are in violation of the Flammable Fabrics Act and of the Rules and Regulations promulgated thereunder and as such constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

Mr. Thomas C. Marshall and *Mr. Edward B. Finch* for the Commission.

Golenbock and Barell, New York, N.Y., by *Mr. Melvin Michaelson;* and *Mr. Erwin Feldman*, New York, N.Y., for respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

1. The Commission's complaint in this matter charges the respondent, Murray Perlstein, an individual trading under that name, with violation of the Flammable Fabrics Act and the Federal Trade Commission Act. After the filing of respondent's answer hearings were held at which evidence was introduced both in support of and in opposition to the complaint. Proposed findings and conclusions have been submitted by the parties, together with supporting memoranda, and the case is now before the hearing examiner for final consideration. Any proposed findings or conclusions not included herein have been rejected as not material or as not warranted by the evidence or the applicable law.

2. The proceeding involves a sale by respondent to a dress manufacturer, Sunnyvale, Inc., of 84/10/12 dozen handkerchiefs. The handkerchiefs apparently were part of a shipment which had been imported from Japan into the United States in November 1959 by Brochers Trading Corp., 108 West 39th Street, New York, New York. In January 1960 the handkerchiefs were sold by Brochers to Continental Scarf & Novelty Co. at the same address.

3. In January 1961 respondent, in response to a purchase order from Sunnyvale, purchased 84/10/12 dozen of the handkerchiefs from Continental and immediately resold them to Sunnyvale. Respondent's only place of business is located at 265 West 40th St., New York, New York, and Sunnyvale's principal office is also located in New York City. Respondent went to the place of business of Continental, picked up the handkerchiefs, and immediately delivered them to Sunnyvale's receiving department in New York City.

4. Subsequently, Sunnyvale shipped the handkerchiefs to its manufacturing plant in Scranton, Pennsylvania, where they were used in connection with a dress known as Style No. 466. The skirt of this

dress had two pockets, and a handkerchief was inserted in the right-hand pocket of the skirt. The purpose of the handkerchief was to add a bit of color to the dress and thereby possibly make it more attractive to prospective purchasers.

In some instances the handkerchiefs were merely inserted in the skirt pocket and left loose; in other instances the handkerchiefs were pinned inside the pocket by means of a very small safety pin. In both cases part of the handkerchief was left hanging outside the pocket so as to be seen by prospective purchasers.

The handkerchiefs were made of a silken fabric, had hand-rolled hems, and were approximately 18 inches square. All were of a solid color, being either lilac or gold.

5. Some of the dresses were sold by Sunnyvale to Reynolds Department Store in Perth Amboy, New Jersey, and were shipped to that store from Sunnyvale's plant in Scranton, Pennsylvania.

6. A handkerchief purporting to have been taken from one of the dresses sold to Reynolds Department Store by Sunnyvale was subjected by one of the Commission's chemists to the test prescribed by the Flammable Fabrics Act and was found to be flammable within the meaning of that Act. The remaining remnant of the handkerchief was received in evidence as Commission's Exhibit 3. The color of the remnant can best be described as off-white.

(The same remnant had previously been received in evidence in Docket 8515, *Sunnyvale, Inc., et al.*, as Commission's Exhibit 19 and will be found in the record in that case.)

7. The principal defense interposed by respondent to the present proceeding is that the handkerchiefs were not within the purview of the Flammable Fabrics Act. Other defenses are:

(a) Jurisdiction. Respondent contends that insofar as he was concerned the transaction involving the handkerchiefs was purely local or intrastate and therefore not covered by the Act.

(b) The identity of the handkerchief found to be flammable. Respondent urges that the handkerchief tested by the Commission's chemist could not have been one of those sold by him to Sunnyvale, because all of the latter were either lilac or gold in color, whereas the handkerchief tested was an off-white.

(c) Abandonment. Respondent is engaged almost exclusively in the sale of buttons. The sale of handkerchiefs has never accounted for more than a very small fraction of his business, and he testified that he had no intention of dealing in handkerchiefs in the future.

8. In view of the conclusion reached by the hearing examiner on respondent's principal defense—that the handkerchiefs sold by him

were not within the scope of the Flammable Fabrics Act—it is considered unnecessary to deal with the other defenses.

9. As pointed out by hearing examiners Walter R. Johnson and Leon R. Gross in their initial decisions in Docket 8468, *Paintset Fashions, Inc.*, and Docket 8515, *Sunnyvale, Inc.*, respectively, the Commission has determined that handkerchiefs are not "articles of wearing apparel" within the meaning of the Flammable Fabrics Act.

10. Commission counsel urge that while under the Commission's holding handkerchiefs are not articles of wearing apparel, nevertheless they may properly be considered "fabrics" within the meaning of the Act.

This contention is rejected. Handkerchiefs, of course, are made from fabric, but they are not themselves fabrics within any ordinary or reasonable use of the term.

11. Counsel also urge that respondent's handkerchiefs, by reason of being inserted in the dress pockets, and particularly when pinned in the pockets, loss their identity as handkerchiefs and became an integral part of the dresses.

Whatever validity this argument might have as to Sunnyvale (on which point the examiner expresses no opinion), it is without merit as to respondent. Respondent had nothing whatever to do with inserting or pinning the handkerchiefs in the dress pockets. He simply sold and delivered the handkerchiefs as such. He knew that Sunnyvale was a dress manufacturer, but he is not shown to have had any knowledge whatever as to the use to which the handkerchiefs were to be put.

To hold respondent liable for the use made of the handkerchiefs by Sunnyvale clearly would be unwarranted and violative of elementary considerations of equity and fairness. Certainly the Flammable Fabrics Act was not intended to have any such effect.

12. In summary, it is concluded that the handkerchiefs here involved, at least insofar as respondent is concerned, were not subject to the Flammable Fabrics Act, and that the complaint therefore has not been sustained.

ORDER

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

ORDER DENYING PETITION FOR REVIEW AND DISMISSING COMPLAINT

This matter having come on to be heard by the Commission upon a petition for review of the initial decision filed by counsel supporting the complaint and upon respondent's answer in opposition thereto; and

It appearing that this case involves the issue of whether or not "handkerchiefs" of a size of less than twenty-four (24) inches square when sold and intended for use as decoration on dresses are exempted from the provisions of the Flammable Fabrics Act by reason of the Commission's interpretive opinion of May 18, 1954 (19 Federal Register 2985), that "handkerchiefs up to a finished size of twenty-four (24) inches square are not 'articles of wearing apparel' as that term is used in the Flammable Fabrics Act"; and

The Commission having rendered its decision *In the Matter of Paintset Fashions, Inc., et al.*, Docket No 8468 [p. 691 herein], wherein it determined that the Commission's aforesaid opinion of May 18, 1954, was subject to the interpretation that such "handkerchiefs" were not subject to the Act and that the recent amendment to Rule 6 of the Commission's Rules and Regulations under the Flammable Fabrics Act, 16 CFR 302.6(c) and (d) (28 Federal Register 6535, June 26, 1963; effective date July 26, 1963), clarifies the matter by providing that handkerchiefs intended or sold to be a part of wearing apparel are subject to the provisions of the Act; and

The Commission, without passing on the validity of the hearing examiner's rulings, believing that the public interest will best be served by dismissing the complaint herein and allowing the respondent voluntarily to conform his practice to the new Rule 6 referred to above:

It is ordered, That the aforesaid petition for review of the initial decision be, and it hereby is, denied.

It is further ordered, That the hearing examiner's initial decision be, and it hereby is, vacated and that the complaint herein be, and it hereby is, dismissed without prejudice, however, to the right of the Commission to issue a new complaint or to take such further or other action against the respondent at any time in the future as may be warranted by the then existing circumstances.

IN THE MATTER OF

MAJESTIC UTILITIES CORPORATION ET AL.

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

Docket C-588. Complaint, Sept. 17, 1963—Decision, Sept. 17, 1963

Consent order requiring Denver sellers of furniture, appliances, magazines and dictionaries through door-to-door salesmen, to cease representing falsely that a copy of "Webster's Home University Dictionary" would be given

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free or as a gift with the purchase of a 5-year subscription to "Look" magazine; and to cease using the registered trade name "Educators Institute", with its deceptive implication that their commercial enterprise was an institution of higher learning.

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 Majestic Utilities Corporation, a corporation, and Phillip Winn and Jack Darby, 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 Majestic Utilities Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal office and place of business located at 1514 Arapaho Street, Denver, Colorado.

Respondents Phillip Winn and Jack Darby are officers of said corporation. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and have been for more than one year last past, engaged in the sale and distribution of furniture, appliances, magazines and dictionaries to the public.

PAR. 3. In the course and conduct of their business, respondents did cause their said merchandise, when sold, to be shipped from their place of business in the State of Colorado and a branch store in the State of Nebraska to purchasers in various other States of the United States, and 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.

PAR. 4. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of merchandise of the same general kind and nature as that sold by respondents.

PAR. 5. Respondents' method of selling magazines and dictionaries is by door-to-door salesmen who, in the course of the presentation, have stated or represented, directly or by implication, among other things, that a copy of "Webster's Home University Dictionary" would be given free or as a gift with the purchase of a 5-year subscription to "Look" magazine.

PAR 6. In truth and in fact, the dictionary is not given free or as a gift with the purchase of the subscription, but on the contrary, the price of the dictionary is included in the total purchase price of the combination offer.

Therefore, the statements and representations set forth in Paragraph 5 are false, misleading and deceptive.

PAR. 7. In the course and conduct of their business, the respondents use the registered trade name of "Educators Institute", thereby representing, directly or by implication, that they are conducting an institution of higher learning with a staff of competent, experienced and qualified educators offering instruction in the arts, sciences and subjects of higher learning.

PAR. 8. In truth and in fact, respondents' business is not an "Institute" as described in Paragraph 7, but on the contrary, is a commercial enterprise engaged in selling magazine subscriptions and dictionaries for a profit.

Therefore, the statements and representations set forth in Paragraph 7 are false, misleading and deceptive.

PAR 9. The use by the 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' magazine subscriptions and dictionaries.

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

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; 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 aforesaid

draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having reason to believe that the respondents have violated the Federal Trade Commission Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent Majestic Utilities Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at 1514 Arapaho Street, in the city of Denver, State of Colorado.

Respondents Phillip Winn and Jack Darby 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, Majestic Utilities Corporation, a corporation and its officers, and Phillip Winn and Jack Darby, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of magazine subscriptions or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that dictionaries or other items of value sold in conjunction with magazine subscriptions or other merchandise are given to a customer or purchaser "free" or as a gift;

2. Using the words "Institute" or "Educators Institute" either singly or together or in conjunction with any other word or words of similar import and meaning, or any abbreviation or simulation thereof, as part of respondents' trade or corporate name or using said word or words in any other manner to designate, describe or refer to respondents' business, or otherwise misrepresenting the nature of their business in any manner.

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

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

By the Commission, Commissioner MacIntyre not participating.

IN THE MATTER OF

LEON YOUNGER ET AL. TRADING AS YOUNGER'S

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

Docket C-589. Complaint, Sept. 17, 1963—Decision, Sept. 17, 1963

Consent order requiring Louisville, Ky., retail furriers, to cease violating the Fur Products Labeling Act by failing, on labels and invoices and in advertising, to show the true name of the animal producing a fur; to show the country of origin of imported products on tags and invoices, to use the word "natural" for unbleached furs in labeling and advertising; to show when furs were artificially colored and to disclose the country of origin of imported furs on labels; by invoicing and advertising fur products deceptively as to the animals that produced the fur; by representing prices of fur products falsely as reduced from so-called regular prices that were fictitious; by failing to maintain adequate records as a basis for pricing claims; 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 Leon Younger and Alvin Younger, individuals and copartners trading as Younger's, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Leon Younger and Alvin Younger are individuals and copartners trading as Younger's with their office and principal place of business located at 659 South Fourth Street, Louisville, Kentucky. Respondents are engaged in the retail sale of 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 sale, advertising, and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products; and have sold, advertised,

offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

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

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

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

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

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 into commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce.

4. To show the country of origin of the imported furs used in the fur product.

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

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

(b) The term natural was not set forth to describe fur products when such fur products were not pointed, bleached, dyed, tip-dyed or otherwise artificially colored in violation of Rule 19(g) of said Rules and Regulations.

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

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

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

was not set forth separately on labels 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.

(f) 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 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 imported furs used in the fur product.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced with respect to the name or names of the animal or animals that produced the fur from which said fur products had been manufactured, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products invoiced as "Broadtail", thereby implying that the furs contained in such fur products were entitled to the designation "Broadtail Lamb" when in truth and fact the furs contained therein were from a lamb processed to resemble the broadtail lamb.

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 "Broadtail Lamb" was not set forth on invoices in the manner required, in violation of Rule 8 of said Rules and Regulations.

(c) The term "Dyed Broadtail-processed Lamb" was not set forth on invoices in the manner required, in violation of Rule 10 of said Rules and Regulations.

(d) The term natural was not used 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. 8. Certain of said 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 Courier-Journal, a newspaper published in the city of Louisville, State of Kentucky.

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

PAR. 9. Respondents by means of the advertisements referred to in Paragraph 8 hereof and others of similar import and meaning not specifically referred to herein falsely and deceptively advertised fur products with respect to the name or names of the animal or animals that produced the fur from which said fur products had been manufactured, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

Among such falsely and deceptively advertised fur products, but not limited thereto, were fur products advertised as "Broadtail" thereby implying that the furs contained in such fur products were entitled to the designation "Broadtail Lamb" when in truth and fact the furs contained therein were from a lamb processed to resemble the broadtail lamb.

PAR 10. By means of the aforesaid advertisements and other advertisements of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products in that said advertisements represented that the prices of fur products were reduced from regular or usual retail prices and that the amount of such price reductions afforded savings to the purchasers of respondents' products, when the so-called regular or usual retail 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 and the represented savings were not thereby afforded to the purchasers, in violation of Section 5(a)(5) of the Fur Products

Labeling Act and Rule 44(a) of the Rules and Regulations promulgated under the said Act.

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

PAR 12. Respondents by the means herein before 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) Failed to set forth the term "Dyed Broadtail-processed Lamb" in the manner required, in violation of Rule 10 of said Rules and Regulations.

(b) 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. 13. 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 comerce 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. Respondents, Leon Younger and Alvin Younger are individuals and copartners trading as Younger's with their office and principal place of business located at 659 South Fourth Street, in the city of Louisville, State of Kentucky.

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 Leon Younger and Alvin Younger individually and as copartners trading as Younger's or under any other trade name and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation, or distribution, in commerce, of 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. 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.

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

D. Failing to set forth on labels the item number or mark assigned to fur products.

E. Failing to set forth separately on labels attached to fur products composed of two or more sections containing different animal furs the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder with respect to the fur comprising each section.

F. 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. Falsely or deceptively invoicing any such product as to the name or designation of the animal or animals that produced the fur from which the fur product was manufactured.

C. Failing to set forth the term "Broadtail Lamb" in the manner required where an election is made to use that term in lieu of the word "Lamb".

D. Failing to set forth the term "Dyed Broadtail-processed Lamb" on invoices in the manner required where an election is made to use that term in lieu of the term "Dyed Lamb".

E. 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.

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

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. Contains any form of misrepresentation or deception, directly or by implication, as to the name or designation of the animal or animals that produced the fur from which the fur product was manufactured.

C. Fails to set forth the term "Dyed Broadtail-processed Lamb" in the manner required where an election is made to use that term in lieu of the term "Dyed Lamb".

D. Represents 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.

E. Misrepresents directly or by implication that savings are available to purchasers of respondents' fur products.

F. 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

THE KRAMER FUR CO., INC., TRADING AS KRAMER'S

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

Docket C-590. Complaint, Sept. 17, 1963—Decision, Sept. 17, 1963

Consent order requiring New Haven, Conn., retail furriers to cease violating the Fur Products Labeling Act by failing, in invoicing and newspaper advertising, to show the true animal name of fur, to disclose when fur was artificially colored, and to use the terms "Natural" and "Persian Lamb" as required; to identify the person issuing an invoice and to show, on invoices, the country of origin of imported furs; and 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 The Kramer Fur Co., Inc., a corporation, trading as Kramer's, hereinafter referred to as respondent has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent The Kramer Fur Co., Inc., doing business as Kramer's is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut.

Respondent is a retailer of fur products with its office and principal place of business located at 191 Orange Street, New Haven, Connecticut.

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

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

Among such falsely and deceptively invoiced 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 contained in the fur product was bleached, dyed, or otherwise artificially colored, when such was the fact.

3. To show the name and address of the person issuing such invoice.

4. To show the country of origin of imported furs used in fur products.

PAR. 4. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they

were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

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

(b) The term "Persian Lamb" was not set forth on invoices in the manner required by law, in violation of Rule 8 of said Rules and Regulations.

(c) The term "Dyed Broadtail-processed Lamb" was not set forth on invoices in the manner required by law, in violation of Rule 10 of said Rules and Regulations.

(d) The term "natural" was not used on invoices 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.

(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. 5. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that certain advertisements intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of such fur products were not in accordance with the provisions of Section 5(a) of the said Act.

Among and included in the aforesaid advertisements but not limited thereto, were advertisements of respondent which appeared in issues of the New Haven Register, a newspaper published in the city of New Haven, State of Connecticut.

Among such false and deceptive advertisements, but not limited thereto, were advertisements which failed:

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

2. To show that the fur contained in the fur product was bleached, dyed, or otherwise artificially colored, when such was the fact.

PAR. 6. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondent falsely and deceptively advertised fur products in violation of the Fur Products Labeling Act in that the said fur products were

not advertised in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) The term "Persian Lamb" was not set forth in the manner required, in violation of Rule 8 of the said Rules and Regulations.

(b) The term "natural" was not used to describe fur products which were not pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Rule 19(g) of the said Rules and Regulations.

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

DECISION AND ORDER

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

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

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

1. Respondent The Kramer Fur Co., Inc., doing business as Kramer's is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 191 Orange Street, New Haven, Connecticut.

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 The Kramer Fur Co., Inc., a corporation, trading as Kramer's, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of 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 the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Falsely or deceptively invoicing fur products by:

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

2. 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. Failing to set forth the term "Persian Lamb" in the manner required where an election is made to use that term instead of the word "Lamb".

4. Failing to set forth the term "Dyed Broadtail-processed Lamb" in the manner required where an election is made to use that term instead of the words "Dyed Lamb".

5. Failing to set forth the term "Natural" as part of the information required to be disclosed on invoices under the Fur Products Labeling Act and Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

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

B. 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 any fur product, and which:

1. 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.

2. Fails to set forth the term "Persian Lamb" in the manner required where an election is made to use that term instead of the word "Lamb".

3. Fails to set forth the term "Natural" as part of the information required to be disclosed in advertisements under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

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

IN THE MATTER OF

LABOR DIGEST, INC., ET AL.

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

Docket C-591. Complaint, Sept. 17, 1963—Decision, Sept. 17, 1963

Consent order requiring New York City publishers of a magazine known as "Labor Digest", deriving a large part of their income from the sale of advertising space therein, to cease representing falsely to prospective advertisers that their said publication was endorsed by, affiliated with, or the official publication of, the AFL–CIO or other labor unions; intimidating business concerns by threats that if they did not purchase advertising space, their products would receive unfavorable treatment by labor union members; and placing advertisements of various concerns in their magazine without authorization and then seeking to exact payment therefor.

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 Labor Digest, Inc., a corporation, Ernest J. Modarelli and Harry B. Simon, individually

and as officers of said corporation, and Alex Adler, Charles Cole and Ralph J. De Meo, individuals, 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 Labor Digest, 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 225 West 57th Street, New York 19, New York.

Respondents Ernest J. Modarelli and Harry B. Simon are individuals and officers of said corporation. Respondent Alex Adler is an individual and office manager of said corporation, and Charles Cole is an individual and the editor of Labor Digest magazine. The individual respondents 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.

Respondent Ralph J. De Meo is an individual and former officer of Labor Digest, Inc., and participated in the formulation, direction and control of the acts and practices of corporate respondent including the acts and practices hereinafter set forth. His address is 187 Front Street, New York 7, New York.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the publication of a magazine known as Labor Digest. Said magazine is published periodically and is caused by respondents to be circulated from its point of publication in one State to subscribers and purchasers located in various other States of the United States.

Further, respondents in the course and conduct of their business engage in extensive transactions involving the transmission of letters, advertising proofs, checks and other business instrumentalities and extensive transactions by long distance telephone, all between and among various States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said publication in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. A large part of respondents' income is derived from the sale of advertising space in Labor Digest to business concerns. Respondents and their duly authorized agents and representatives contact said business concerns by telephone and other means and seek to induce them to purchase advertising space in said publication. In

the course of said solicitations, respondents and their agents and representatives represent, and have represented, directly or by implication, to prospective advertisers that said publication is endorsed by, affiliated with or the official publication of the AFL-CIO or other labor unions.

PAR. 4. In truth and in fact, Labor Digest is not endorsed by, affiliated with, or the official publication of the AFL-CIO or any other labor union, but is independently organized and operated.

Therefore, the statements and representations referred to in Paragraph 3 hereof are false, misleading and deceptive.

PAR. 5. In addition, in order to induce the purchase of advertising space in Labor Digest, respondents threaten, and have threatened, directly or by implication, that if business concerns did not purchase such space, their products would receive unfavorable treatment by labor union members. This practice now has, and has had, the tendency and capacity to intimidate and coerce, and does intimidate and coerce business concerns, unfairly, to purchase advertising space in the aforesaid publication.

PAR. 6. Further, in the course and conduct of their business, respondents have also engaged in the unfair and deceptive practice of placing advertisements of various concerns in their magazine without having received authorization therefor and then seeking to exact payment for said advertisements from said concerns.

PAR. 7. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals likewise engaged in the publication of newspapers and other periodicals and in the selling of advertising to be inserted therein and particularly with the publishers of newspapers and other periodicals published or endorsed by labor unions.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead prospective advertisers into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of advertising space by reason of said erroneous and mistaken belief. The unfair and deceptive practice engaged in by respondents of publishing unordered or unauthorized advertisements has subjected firms and individuals to harassment and unlawful demands for payment of nonexistent debts.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public

and of respondents' competitors and constituted, and now constitute, unfair 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 folowing order:

1. Respondent Labor Digest, 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 225 West 57th Street, New York 19, New York.

Respondents Ernest J. Modarelli and Harry B. Simon are individuals and officers of said corporation. Alex Adler is an individual and officer manager of said corporation, and Charles Cole is an individual and the editor of Labor Digest Magazine. The respondents' address is the same as that of said corporation.

Respondent Ralph J. De Meo is an individual and former officer of Labor Digest, Inc., and his address is 187 Front Street, New York 7, New York.

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 Labor Digest, Inc., a corporation, and its officers, and Ernest J. Modarelli and Harry B. Simon, indi-

vidually and as officers of said corporation, and Alex Adler, Charles Cole and Ralph J. De Meo, individually, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the soliciting, offering for sale or sale in commerce of advertising space in the magazine now designated as Labor Digest, or any other publication, whether published under that name, or any other name, and in connection with the offering for sale, sale or distribution of said magazine, or any other publication, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that said magazine is endorsed by, affiliated with, or an official publication of, or otherwise connected with a labor union.

2. Inducing or seeking to induce any business concern to purchase advertising space in or contribute to respondents' publication by means of expressed or implied threats that such business concern will or may be subjected to unfavorable treatment at the hands of representatives or purported representatives of labor should it refuse to make such purchase or contribution.

3. Placing, printing or publishing any advertisement on behalf of any person or firm in said paper without a prior order or agreement to purchase said advertisement.

4. Sending bills, letters or notices to any person or firm with regard to an advertisement which has been or is to be printed, inserted or published on behalf of said person or firm, or in any other manner seeking to exact payment for any such advertisement, without a bona fide order or agreement to purchase said advertisement.

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

LIBBEY-OWENS-FORD GLASS COMPANY AND GENERAL MOTORS CORPORATION

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

Docket 7643. Complaint, Oct. 30, 1959—Decision, Sept. 20, 1963

Order requiring a Detroit manufacturer of glass products for the automotive industry and a leading manufacturer of motor vehicles, to cease representing falsely that the safety plate glass used in the side windows of General Motors automobiles was of the same grade and quality as that in the windshields, while the safety sheet glass used in competitors' cars was the same as sheet glass in home windows; and falsely comparing the grade and quality of their automobile safety plate glass with the safety glass of their competitors by such practices as using deceptive photographic techniques in television depictions which exaggerated the distortion inherent in the safety sheet glass used in competitors' automobiles and minimized the distortion inherent in the safety plate glass used in General Motors Cars.

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 Libbey-Owens-Ford Glass Company, a corporation and General Motors Corporation, a corporation, hereinafter referred to as respondents, have violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Libbey-Owens-Ford Glass Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 608 Madison Avenue, Toledo, Ohio.

Respondent General Motors Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its main office and place of business at 3044 Grand Boulevard, Detroit, Michigan.

PAR. 2. Respondent Libbey-Owens-Ford Glass Company is now, and for some time last past, has been engaged in the manufacture, advertising, offering for sale, sale and distribution of glass products to the automotive industry for installation in automobiles, and to wholesalers, distributors and retailers for resale to the public.

Respondent General Motors Corporation is now, and for some time last past, has been engaged in the manufacture, advertising, and offering for sale, sale and distribution of motor vehicles and automotive parts to distributors 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 places of business and factories in various States of the United States to purchasers in other States of the United States and the District of Columbia, and do now maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent Libbey-Owens-Ford Glass Company, at all times mentioned herein has been, and is now, in substantial competition, in commerce, with individuals, firms and corporations in the sale and distribution of glass products, including those used by the automotive industry for installation in automobiles and respondent General Motors Corporation, at all times mentioned herein has been, and is now, in substantial competition, in commerce, with individuals, firms and corporations in the sale and distribution of automobiles.

PAR. 5. In the course and conduct of its business respondent Libbey-Owens-Ford Glass Company, for the purpose of inducing the purchase of its glass products and particularly its automobile safety plate glass, and respondent General Motors Corporation, for the purpose of inducing the sale of its motor vehicles in which said safety plate glass is installed, have advertised their products by means of advertisements in magazines of national circulation and radio and television commercials, broadcast over nation-wide networks. The television commercials, which are accompanied by audible statements, are pictures of various scenes, taken from within automobiles, and in studio demonstrations, for the purpose of comparing views as seen through automobile safety plate glass produced by respondent Libbey-Owens-Ford Glass Company and used in the automobiles produced by respondent General Motors Corporation with automobile safety sheet glass produced by competitors of respondent Libbey-Owens-Ford Glass Company and used in automobiles produced by competitors of respondent General Motors Corporation.

PAR. 6. Respondents by means of the aforesaid advertisements have represented directly or by implication that:

1. The said automobile safety plate glass, used in the side windows of General Motors automobiles, is the same grade and quality as that used in the windshields of General Motors automobiles.

2. The said automobile safety plate glass, (as produced by the respondent Libbey-Owens-Ford Glass Company) used in the side windows of General Motors automobiles, is free from all optical distortion.

3. The automobile safety sheet glass, used in the side windows of automobiles, other than General Motors automobiles, has a high degree of perceptible optical distortion, when properly installed and under ordinary conditions of use.

4. The automobile safety sheet glass, used in the side windows of automobiles, other than General Motors automobiles, is of the same grade and quality as the sheet glass used in home windows.

5. The pictures, used in connection with said advertising matter are accurate demonstrations of the perceptible disparity between the optical distortion of automobile safety plate glass and automobile safety sheet glass under ordinary conditions of use.

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

1. The automobile safety plate glass, used in the side windows of General Motors automobiles is of a lower grade and quality than that used in its windshields.

2. The automobile safety plate glass, as produced by Libbey-Owens-Ford Glass Company, and used in the side windows of General Motors automobiles, is not free from all optical distortion.

3. The automobile safety sheet glass, used in automobiles, other than General Motors automobiles, under ordinary conditions of use does not have the excessively high degree of perceptible distortion, as represented by respondents.

4. The automobile safety sheet glass, used in the side windows of automobiles, other than General Motors automobiles, is of a higher grade and quality than the sheet glass, used in home windows.

5. The pictures and depictions, displayed in the aforesaid representations, are not accurate demonstrations of perceptible disparity, between the optical distortion of automobile safety plate glass and automobile safety sheet glass under ordinary conditions of use, because the photographic techniques and devices, used in making such pictures were designed to exaggerate the distortion inherent in automobile safety sheet glass and minimize the distortion inherent in automobile safety plate glass. As for example, in one sequence of pictures, represented as showing the disparity between the optical distortion of safety sheet glass and safety plate glass, different camera lenses were used, resulting in an inaccurate demonstration of such comparative distortion and in another sequence of pictures, the

picture, purportedly taken through an automobile safety plate glass window, was actually taken through an open window, i.e., with the automobile window rolled down.

PAR. 8. The use by the respondents of the aforesaid false, misleading and deceptive representations and statements has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true, and into the purchase of substantial quantities of respondents' products, because of such erroneous and mistaken belief. As a result thereof, trade has been unfairly diverted to respondents from their competitors and injury thereby has been done to competition in commerce.

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

Mr. Edward F. Downs and *Mr. Anthony J. Kennedy, Jr.*, for the Commission.

Mr. Aloysius F. Power, Mr. William Simon and *Mr. John Bodner, Jr.*, for respondent General Motors Corporation, with *Mr. Frazer F. Hilder*, Detroit, Mich., and *Howrey, Simon, Baker and Murchison*, Washington, D. C., of counsel.

Mr. Joseph J. Smith, Jr., and *Mr. George W. Wise*, Washington, D. C., and *Mr. Julian M. Kaplin*, Toledo, Ohio, for respondent Libbey-Owens-Ford Glass Company.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

JULY 17, 1962

This proceeding is brought under Section 5 of the Federal Trade Commission Act, charging that the two respondents (hereinafter referred to as LOF and GM) violated that law by advertising the following allegedly false and deceptive statements and representations: (1) That the safety plate glass used in the side windows of GM automobiles was the same grade and quality as that used in windshields of GM automobiles; (2) That the safety plate glass used in the side windows of GM automobiles is free from all optical distortion; (3) That the safety sheet glass used in the side windows of automobiles other than GM automobiles has a high degree of perceptible optical

distortion when properly installed and under ordinary conditions of use; (4) That the safety sheet glass used in the side windows of automobiles other than GM automobiles is of the same grade and quality as the sheet glass used in home windows; and (5) That the pictures used in connection with the said advertising matter are accurate demonstrations of the perceptible disparity between the optical distortion of automobile safety plate glass and automobile safety sheet glass under ordinary conditions of use.

Counsel supporting the complaint defined certain of the terms used therein for the purposes of this proceeding, including the following: (1) Distortion: a distorting; a twisting motion or twisted or misshapen condition; (2) Optical distortion: a twisting motion or misshapen condition relating to the optics or vision of which a viewer may or may not be consciously aware; (3) Perceptible optical distortion: a twisting motion or misshapen condition relating to the optics or vision which is perceived or discerned by the viewer; and (4) Perceptible distortion: the same as "perceptible optical distortion."

Extensive evidence was presented in this proceeding by counsel in support of the complaint and the two respondents. Much of this evidence is technical and complex, relating to the qualities and manufacturing techniques in glass and photographic procedures involved in television. Hearings were held in many cities over an extended period of time. Proposed findings and briefs have been submitted by all parties. To the extent that such proposed findings are inconsistent with the findings made herein, they are deemed rejected.

FINDINGS OF FACT

1. Respondent Libbey-Owens-Ford Glass Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 608 Madison Avenue, Toledo, Ohio.

2. Respondent General Motors Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its main office and place of business located at 3044 Grand Boulevard, Detroit Michigan.

3. Respondent Libbey-Owens-Ford Glass Company is now, and for some time last past has been, engaged in the manufacture, advertising, offering for sale, sale, and distribution of glass products to the automotive industry for installation in automobiles, and to wholesalers and distributors for resale to the public.

4. Respondent General Motors Corporation is now, and for some time last past has been, engaged in the manufacture, advertising, and

offering for sale, sale, and distribution of motor vehicles and automotive parts to distributors for resale to the public.

5. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products when sold to be shipped from their places of business and factories in various States of the United States to purchasers in other States of the United States and the District of Columbia, and do now 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.

6. Respondent Libbey-Owens-Ford Glass Company at all times mentioned herein has been, and is now, in substantial competition in commerce with individuals, firms and corporations in the sale and distribution of glass products, including those used by the automotive industry for installation in automobiles. Respondent General Motors Corporation at all times mentioned herein has been, and is now, in substantial competition in commerce with individuals, firms and corporations in the sale and distribution of automobiles.

7. The complaint and evidence in this proceeding relate to certain advertising of LOF and GM involving safety plate glass which was disseminated in 1957 and 1958.

Libbey-Owens-Ford Glass Company Advertising

8. For many years, including 1957 and 1958, GM has purchased its requirements of automobile glass from LOF. Since before 1957, GM has used safety plate glass in every window of every GM passenger car made in the United States.

9. Because safety plate glass is more expensive than safety sheet glass, GM has from time to time considered a change in its policy of using safety plate glass in every window of every automobile. In 1957 it came to the attention of LOF that GM was contemplating a change from safety plate to safety sheet glass for its 1958 model automobiles. It was estimated that GM would save approximately $3.3 million for its 1958 model cars by such substitution.

10. In June 1957, LOF informed GM that it was willing to invest some $3.3 million in a safety plate glass advertising campaign, approved by GM, if GM's car divisions would gear their own advertising to the same objective. This advertising campaign was intended to promote the continued use of safety plate glass by GM as well as by other automobile manufacturers.

11. Thereafter, on June 12, 1957, GM decided to continue the use of safety plate glass in its 1958 cars in consideration of LOF's offer

to spend $3.3 million in advertising the advantages of safety plate glass. There was, however, no formal contractual arrangement or other agreement obligating LOF to advertise if GM bought its glass, nor obligating GM to buy the glass if LOF advertised. LOF's promise to advertise, however, was one of the factors considered by GM in continuing to use safety plate glass.

12. In September 1957, LOF notified GM that it had gone ahead with the advertising program. At that time it noted "the enthusiastic approval of the GM divisions." This, however, was explained to mean that GM seemed to be pleased with the program. There is nothing in the record to indicate that LOF's decision to advertise, or not to advertise, depended upon GM. On the contrary, both respondents denied such obligation. On the other hand, it is clear that, without the cooperation of GM, LOF would not have embarked upon this program, since it originally considered the cost of the program much too expensive and went ahead only after it had secured GM's approval.

13. The LOF advertising program consisted primarily of 22 television commercials broadcast in 1957 and 1958. In general, these commercials dealt with the advantages of safety plate glass over safety sheet glass with respect to visibility.

14. The commercials began and terminated with "billboards" which orally and pictorially stated that LOF was the sponsor of the programs. In the commercials themselves, however, there were numerous shots of GM automobiles. In the audio portion of the commercials, GM was the only corporation mentioned in connection with the use of safety plate glass in its car windows.

15. In these LOF commercials, the GM cars used in the so-called "beauty scenes" (attractive picturizations) were obtained from GM. It is customary practice to borrow products for background use in making television commercials, and for manufacturers to lend their products to commercial makers, such behavior being considered good business advertising.

16. LOF and GM agreed that the principals of the television show were to use GM cars only. GM gave permission for the use of its name and supplied pictures of its cars for use in the advertisements. When the 1958 model cars came out, 1958 pictures were substituted for the 1957 pictures.

17. In addition, LOF prepared and GM approved certain "sales aids" for general distribution. These sales aids were small brochures, or cards, which advertised the TV programs referred to above.

18. Storyboards for the TV advertising program containing slides and crayon drawings, but none of the photographs or films which

were actually used in the program, were shown to the GM officials before the public showing of the TV programs.

19. When the Chrysler Corporation questioned LOF about the accuracy of the advertising, the LOF official went to GM where he conferred with some GM officials. At this conference the president of GM inquired whether GM's divisions were "cooperating effectively with this splendid campaign."

20. In March 1958, the president of LOF wrote GM that LOF had accomplished

> * * * what with the approval and endorsement of General Motor's principal officers, we aimed to do. You will recall it was our joint purpose to make your investment in plate glass a more effective sales tool than it has been in years past.

Nevertheless, LOF's purpose in advertising was to sell more safety plate glass for use in all automobiles; GM's objective with the same advertising was to sell more GM cars.

21. The LOF television commercials were broadcast by the National Broadcasting Company in conjunction with the NCAA football television programs, sponsored in part by LOF, beginning September 21, 1957, and ending December 31, 1957; and by the Columbia Broadcasting System with the Perry Mason television shows, sponsored in part by LOF from September 28, 1957, to June 21, 1958. These television commercials consisted of short motion picture films which contained both visual and oral representations. There were a total of 22 separate commercials in all, varying in length from a half minute to a minute and a half. Four or five of these commercials were shown on each of the nine football games broadcast, and two or three of the commercials were shown on each of the 20 Perry Mason shows.

22. The material portions of several typical LOF television commercials were as follows:

A.

ACTION	SOUND
1. Two pieces of glass which are cut identically in the shape of an automobile sidelight are set up side by side, with the announcer standing between them.	*Announcer:* Two pieces of safety glass for the windows of a car. They look alike
2. A close-up of the two pieces of glass.	but they don't "see through" alike and you should know about the difference.
3. Two children seated in the back seat of a moving car.	Especially if children ride in your car.

ACTION—Continued	SOUND—Continued
4. Scenery along the road side and a sign "Entering Fairlawn" which show perceptible distortion are seen through the side window of a moving car and the words "ORDINARY SAFETY GLASS" are superimposed on the screen.	This is ordinary safety glass made of window glass. It puts a wiggle in the things you watch.
5. Scenery along the road side and a sign "Entering Fairlawn" which show no perceptible distortion are seen through the side window of a moving car and an LOF etch mark "SAFETY LOF *PLATE*" is superimposed on the screen.	This is safety plate glass. It takes the wiggle out of what you watch.
6. A view of a car moving down a road.	Because it gives the driver better vision, laminated safety plate glass is required by law in windshields
7. Different views of passing scenery seen from interior of a moving car.	but only cars with Body by Fisher use safety plate glass in every window of every car as standard equipment. It doesn't cost you a cent extra.
8. Close-up of exterior of moving car with two children in the back seat.	At first glance your family may not notice the difference, but their eyes will.
9. Close-up of the corner of a side window with an LOF etch mark "SAFETY LOF *PLATE*" visible in the corner. The word "PLATE" zooms up to full screen size and then shrinks back to its place in the etch mark.	Make sure the word "Plate" is etched on every window of the next car you buy.
10. A boy and a girl seated in the back seat of a moving car. The words "FOR GOOD *LOOKING*" are superimposed in full screen size.	For good looking * * *
11. Same as No. 10, above, except that the additional words and the LOF etch mark "LOOK THROUGH— SAFETY LOF *PLATE*" are superimposed in full screen size.	look through safety plate * * *

ACTION—Continued	SOUND—Continued
12. Same as No. 11 above, except that the superimposed words and etch mark have been changed to read: "SAFETY LOF *PLATE* in CHEVROLET" END	in Chevrolet.

B.

ACTION	SOUND
1. A television screen showing a picture of a boy and girl seated in the back seat of a moving car.	*Announcer:* If children ride in the back seat of your car, here's something important you should know
2. Man and woman seated in living room watching the television program.	about the quality of glass used in car windows. *Man Watching TV:* Commercials! Everybody knows all cars use safety glass today.
3. Announcer on TV screen holds up card with an LOF etch mark "SAFETY LOF PLATE" on it.	*Announcer:* But they don't all use safety plate glass.
4. Close-up of man and woman watching TV set.	*Man Watching TV:* Ah, what's the difference?
5. Announcer with two pieces of glass which are cut identically in the shape of an automobile sidelight. The pieces of glass are mounted on each side of the announcer and in front of zebra boards, i.e., square boards with parallel black and white lines running diagionally across the surface of the boards.	*Announcer:* There's a big difference.
6. Close-up of the glass on the announcer's right as he rotates it so that it is at an acute angle to the zebra board behind it. The lines of the zebra board seen through the glass show perceptible distortion.	Watch the lines wiggle through ordinary safety glass * * *
7. The announcer rotates the glass on his right back to its original position.	Distortion. That means tired eyes.

ACTION—Continued	SOUND—Continued
8. Close-up of the glass on the announcer's left as he rotates it so that it is at an acute angle to the zebra board behind it. The lines of the zebra board seen through the glass show no perceptible distortion.	Safety plate glass takes the wiggle out of watching.
9. The announcer rotates the glass on his left back to its original position.	Lets you ride relaxed.
10. Scenery and a billboard which show perceptible distortion are seen through the side window of a moving car.	Just watch this billboard through ordinary safety glass made of window glass. It shimmies and wavers
11. Scenery and a billboard which show no perceptible distortion are seen through the side window of a moving car and an LOF etch mark "SAFETY LOF *PLATE*" is superimposed on the scene in large letters.	but through safety plate glass you get clear vision.
12. Flag poles which show perceptible distortion are seen through the side window of a moving car.	Flag poles?
13. Flag poles which show no perceptible distortion are seen through the side window of a moving car.	Well, now they are.
14. Close-up of exterior of a moving car with girl in the back seat.	It's easy to get used to distortion. That's why you may not notice the difference but your family's eyes do.
15. Head-on view of an approaching car.	Because it gives the driver better vision, laminated safety plate glass is required by law in windshields,
16. Side view of a moving car.	but General Motors is the only manufacturer
17. An LOF etch mark "SAFETY LOF *PLATE*" is superimposed in full screen size on Number 16 above.	to give you safety plate glass
18. Same as No. 17 above, with the addition of a line circling the car windows.	in every window

ACTION—Continued	SOUND—Continued
19. The superimposed etch mark and line circling the car windows vanish.	of every car as standard equipment. It doesn't cost you a cent extra.
20. Close-up of a side window with an LOF etch mark "SAFETY LOF *PLATE*" visible and with the word "PLATE" zooming up to full screen size and shrinking back to its place in the etch.	If the word "Plate" isn't etched on every window of your car, make sure it is on every window of the next car you buy.
21. A boy and girl seated in the back seat of a moving car. The words "FOR GOOD *LOOKING*" are superimposed in full screen size.	For good looking * * *
22. Same as No. 17 above, except that the additional words and the LOF etch mark "LOOK THROUGH— SAFETY LOF *PLATE*" are superimposed in full screen size.	look through safety plate * * *
23. Same as No. 17 above, except that the superimposed words and etch mark have been changed to read: "SAFETY LOF *PLATE* in BUICK"	in Buick.

END

C. Although most of the commercials in the sound portions thereof stated "laminated safety plate glass is required by law in windshields but only General Motors cars use safety plate glass in the windows all the way around," some of the commercials used this language:

Because it gives so much better vision, the law requires laminated safety plate glass for all windshields. But as I said, only General Motors puts *it* in every window of every car they make. (Emphasis added.)

To give me better vision when I drive, the law says safety plate glass has to be put in the windshield * * * They're [GM] the only car manufacturer to use that *same* safety plate glass in every window of every car they make * * *. (Emphasis added.)

23. In all the LOF advertisements, the visual demonstrations consisted of still and motion pictures of zebra boards or eye charts taken

through pieces of glass cut in the shape of automobile side lights. The comparison also was accomplished in part by pictures of scenery taken from the side windows of moving cars. Such demonstrations show no perceptible distortion when the objects are viewed through safety plate glass and show perceptible distortion when the objects are viewed through safety sheet glass. In addition, there are written or oral statements which represent that no perceptible distortion is seen through safety plate glass, but that safety sheet glass shows perceptible distortion in automotive use. Typical of such statements are:

Through ordinary safety glass made of window glass everything begins to wiggle.
Safety plate glass takes the wiggle out of watching.
Through safety plate glass you get clear vision.
Only plate glass gives clear, undistorted vision.

24. Although most of the commercials and advertising referred to above simply make it quite clear to the observer that the GM cars have windows made of safety plate which makes them free from perceptible distortion, some of the television commercials could and would lead some observers into thinking that the identical glass was used for the side windows and for the windshields. Thus, in the two illustrations quoted above, reference was made to laminated safety plate glass in the windshields, followed by the statement that *it* was used in every window. Similarly, another commercial stated that the *same* safety plate glass found in the windshield was used in every window.

25. Only laminated plate glass is used in the windshields of American automobiles. Laminated plate glass consists of two lights of glass held together by an interlayer of transparent plastic. The side windows, which must be safety glass, may be made of laminated glass or of tempered glass. In practice, however, these side windows are usually made of tempered glass. Tempered glass is glass which has been treated to give it greater breakage resistance. This type of safety glass, however, has a greater tendency to splinter and is not permitted in car windshields. There is some difference of opinion as to whether tempered glass is as safe as laminated glass. Industry usage and standards clearly allow both types of glass to be represented as safety glass, although one type might be considered safer for certain accidents than the other. Windows made of tempered plate glass are very much unlike laminated plate glass in breakage potentials and characteristics.

26. Industry specifications permit lower quality grades of plate glass in the side windows than in the windshields, and such lower

grades are so generally used. The flaws rendering such glass inferior in grade do not necessarily affect the visibility of such glass and are not usually detectable except by experts.

27. Sheet glass is made from molten glass which has been drawn into a ribbon and allowed to cool. Inherent in the process is the creation of waves or irregularities in the surface of the glass. Plate glass, however, is made from blanks which have been ground and polished so as to have removed, for all practical purposes, the surface irregularities characteristic of sheet glass. In the sizes used for automotive purposes, flat plate glass provides an undistorted view. In larger sizes, however, such as store windows, plate glass made in the conventional manner, which involves the grinding and polishing of each surface separately, may, and often does, have some perceptible distortion.

28. In a film called "The Perfect Parallel," produced and distributed by LOF, store windows of conventionally-made plate glass were shown to have perceptible optical distortion when the camera making the view through the glass was positioned some twenty feet from the glass. The distortion, however, became imperceptible, and for all practical purposes vanished, when the camera made the same view through the glass from a distance of some three feet. In automobiles, the passenger is usually but a few feet from the window through which he looks. Under such circumstances the optical distortion perceptible in plate glass will not manifest itself.

29. Plate glass may be subject to optical deviation or double vision caused by nonparallel surfaces of glass. When that condition exists, two images of an object will be seen through the glass instead of one image. The deviated or secondary image is not twisted or misshapen, but is true as to form and very dim, being usually observable only at night. Optical deviation is not synonymous with or included in the definition of optical distortion.

30. Sheet glass which is characterized by the presence of surface waves may have such waves running with, perpendicularly to or diagonally to, the draw. During the time period here involved, safety sheet glass was not necessarily cut so that the predominant wave would be horizontal. A Commission witness testifying contrarily was convincingly contradicted by the introduction into evidence of a light of glass made by his company having waves in both directions, with the vertical wave more dominant than the horizontal wave.

31. Although some of the Commission witnesses testified that some of LOF's advertisements used sheet glass with the predominant wave in a vertical position, thus exaggerating the distortion present, this

evidence was not persuasive. In one instance the witness made no attempt to examine the glass, but only a photograph of it. In the other instance the witness also failed to examine the glass itself and moreover had but limited experience in this scientific area.

32. LOF's advertisements showing perceptible distortion in safety sheet glass were made by cameras positioned within the car at a point where a passenger seated in the rear seat of that car, on the right side thereof, would look through the right front window glass. This position was approximately 38 inches from the glass, at an angle of not more than 20 degrees.

33. The degree of perceptible distortion in sheet glass increases as the angle of view becomes more acute. Thus, more distortion is apparent in sheet glass having waviness when the view is at 20 degrees than at 40 degrees.

34. Automobile passengers seated in the front seat of a car generally look through the side windows of the front doors where the angle of view would be approximately 90 degrees. Passengers in the rear seat of the car will usually look through the rear windows of a car where the angle will be about 45 degrees. If the view is through the front window only, a passenger in the right rear would have a 20 degree angle of view, as would the passenger in the left rear looking through the left front window. In a test ride taken by the examiner, however, the view through the front window was seldom used by him as he sat in the right rear seat, due to the presence of various obstructions, such as the door post and the ventilator window frames.

35. The LOF commercials showing the distorted view through sheet glass at an angle of 20 degrees, was not the usual experience of a car passenger but an unusual one, and to that extent, exaggerated the experience of a passenger with respect to perceptible optical distortion.

36. Sheet glass is commercially referred to and known as window glass. The terms are synonymous and used interchangeably in the industry. In common use, however, among the less informed, as well as the general public, window glass is often taken to mean home window glass. Although home window glass and glass used to make automotive safety sheet glass are manufactured by the same processes and cut from the same ribbon, automotive sheet glass is of a superior grade and quality with respect to distortion. Both types of glass may have distortion perceptible at angles of view less than 45 degrees, but automotive sheet glass, unlike home window glass, must not have perceptible distortion at 45 to 90 degrees.

37. In some of the scenes photographed, the plate glass scene was photographed through a normal camera lens. The safety sheet glass

scene was photographed through a telephoto lens which had the effect of showing less of the view but in larger image size. In this process of magnification the perceptible distortion was magnified, as was everything else shown. Although the degree of distortion remained unchanged with either lens, the effect of the magnification made the comparison unfair and improper.

38. In five of the comparison sequences of the television commercials, the safety plate glass scenes were photographed through an open window instead of through safety plate glass. The photographer did this to save time, confident that the end result was the same in either event, *i.e.*, that the scene through the open window was identical with the scene that would have been shown through the plate glass. No one, not even the glass or camera experts, was able, by looking at the scene, to detect in which instances the scenes were shot through the open window rather than through the plate glass.

39. In one of the zebra board comparison shots, the safety sheet glass was turned to a sharper angle than was the safety plate glass. Since distortion is more apparent in sheet glass as the angle of view becomes more acute, an unfair and improper comparison was thus made between the two lights of glass.

40. In one comparison sequence, the safety sheet glass scene was photographed through the right front window and the safety plate glass scene through the right rear window. Here, too, the effect was to create a sharper angle of view for the sheet glass which could have the result of making the distortion more preceptible. The comparison was therefore unfair and improper.

41. All of the LOF advertisements in question were prepared by the LOF advertising agency, Fuller & Smith & Ross (hereinafter referred to as FS&R). FS&R arranged for LOF's sponsorship of the 1957 NCAA football game of the week and the Perry Mason show, and LOF approved the TV schedules. FS&R had the responsibility for preparing the television commercials which it usually submitted to LOF for review in storyboard form. LOF gave detailed instructions to FS&R with respect to the production of the comparison scenes in the television commercials, including instructions as to obtaining cars from rental agencies, placing the camera in the approximate position of a passenger seated in the right rear seat, making comparable photographs through safety plate glass and safety sheet glass, and employing no trickery in the photographs. FS&R, in turn, passed these instructions along to Television Graphics, a New York firm engaged in the production of films for television which FS&R employed to make motion pictures for the LOF commercials.

42. Television Graphics made the motion picture films used in the LOF TV commercials. It procured the GM and non-GM cars used and, together with FS&R, edited the films.

43. The advertising campaign ended in June of 1958. Prior thereto LOF had decided to discontinue the comparison advertising with respect to plate versus sheet glass. This type of advertising has not been resumed to date.

General Motors Advertising

44. From September 1957 to May 1958, GM sponsored a national television network series called "Wide Wide World." There were approximately thirty separate commercials for the entire series and some of the individual commercials were shown two, three or four times during the series.

45. Of the thirty commercials for the series, one involved glass. This was a 2½-minute commercial and was used twice during the series. The pertinent video and audio portions were as follows:

VIDEO	AUDIO
9. DROP IN WINDSHIELD HEAVILY OUTLINED	every automobile has safety plate glass in the windshield.
10. DROP IN OTHER WINDOWS	But only General Motors has gone to the extra care and trouble of protecting your vision by putting safety plate glass all the way around in all its cars. Windshield * * * doors * * * and in the rear.
11. HORIZONTAL ANIMATION VERY TIGHT CU OF PROFILE OF ORDINARY WINDOW GLASS SHOWING IMPERFECTIONS AND MARKED "Ordinary Glass"	What's the difference? Ordinary window glass has small bubbles and imperfections that mar your vision.
12. MOVE UP AND DISSOLVE IN PLATE GLASS SHOWING FLAT PLANES AND MARKED "PLATE"	But plate glass is ground and polished on both sides with jeweler's rouge to give you the safest, most restful viewing glass known.
13. WIDE SHOT OF WINDOW	Try this test in your own house. Look through a pane of window glass at the extreme edge, move your head back and forth a few inches.
14. CU SHOWING DISTORTION	And this is the kind of distortion you'll see. Straight lines become curved, distances distorted.

15. REPLACE WITH CLEAR SCENE	But with plate glass, this is what you see—everything sharp and clear.
16. REPEAT #10	That's why General Motors feels it's important to give you this sharper, clearer vision in every window of your automobile.

46. GM employed the advertising agency of MacManus, John and Adams to make all the commercials for the series. It was the decision of both GM and the advertisting agency to run one commercial of safety plate glass. In addition, GM agreed to the general outline for the commercial but delegated the responsibility for production to the agency.

47. The advertising agency chose Klaeger Film Productions, Inc., to make the films for the commercial. GM did not participate in this selection. Klaeger and the advertising agency jointly decided to make a commercial comparing safety plate glass with home window glass.

48. In making the film, a single piece of glass installed in the window in a wooden frame was used. Although there is no positive evidence whether the glass was sheet or plate glass, it was reasonably inferable that it was sheet, judging from price paid for it.

49. The same scene was shot through the glass twice, in one instance purportedly showing the scene through plate glass and in the other showing the same scene through home window glass. In the plate glass shot, the camera was in a stationary position. In the home window shot, the glass was streaked with vaseline and the camera was panned from side to side as though the viewer were walking past the window. The film thus created showed an undistorted view for the plate glass shot, but a distorted view for the home window glass shot. The distorted view for the home window shot, however, was not an exaggerated one compared to the experience of witnesses viewing other window glass under similar circumstances.

50. GM was not aware of the use of a single light of glass for both shots nor of the use of vaseline for the home window shots nor of the use of the moving camera technique, nor did the advertising agency have such knowledge at the time.

51. GM has not used any advertising comparing safety plate glass with safety sheet glass since the above-mentioned commercial was last used in May 1958, nor does it intend to use such advertising in the future.

52. Although the GM commercial referred to above compares the GM safety plate glass with home window glass specifically, it addi-

tionally states that only GM puts plate glass in all its car windows. The inference is plain that non-GM cars used something other than plate glass in their side windows. The immediate comparison that follows between the GM plate glass and home window glass would unavoidably cause some viewers to associate the home window glass with the glass used in non-GM cars. This association must obviously be intended inasmuch as GM would have no purpose for comparing home window glass with its plate glass unless the visual effects of home window glass were to be found in non-GM cars.

DISCUSSION

The LOF commercials which were prepared by FS&R and Television Graphics, as well as the printed material prepared by LOF for use by GM, were received in evidence as to respondent LOF and were offered in evidence by counsel supporting the complaint as to respondent GM as well. The basis for such offer, as stated by counsel supporting the complaint, was:

> The exhibits here in question are the acts of one "joint adventurer" and they are therefore applicable and binding on both.

Complaint counsel urges that the evidence proves the joint venture and that both respondents "took an equal part herein and certainly both benefited therefrom."

To understand the problem it is first necessary to arrive at an accurate definition of the term. Although Commission counsel cites a definition of joint adventure to the effect that it is a legal relation generally described as an association of persons to carry out a single business venture for profit, the courts have been much more specific in their definition. Thus, American Jurisprudence summarizes this attitude as follows:

> A joint venture [the modern preference for the older technical term "joint adventure"] is an association of persons with intent, by way of contract, express or implied, to engage in and carry out a single business adventure for joint profit, for which purpose they combine their efforts, property, money, skill, and knowledge, but without creating a partnership in the legal or technical sense of the term, or a corporation, and they agree that there shall be a community of interest among them as to the purpose of the undertaking, and that each coadventurer shall stand in the relation of principal, as well as agent, as to each of the other coadventurers, with an equal right of control of the means employed to carry out the common purpose of the adventure. 30 Am., Jur., *Joint Adventures* § 2 (1958) (footnotes omitted).

It is therefore apparent that there are several essential components in a joint venture: first, an agreement or contract whether express or implied; second, a combining of efforts or properties or abilities;

third, a community of interest as to the purpose of the undertaking; fourth, an equal right of control of the means employed to carry out the purpose of the common adventure.

1. *The contract.* I have considerable doubt that the behavior of the parties constituted a contract, express or implied. A contract entails the assumption of duties as well as rights. There is some doubt in my mind that GM assumed any material obligation with respect to the advertising campaign. It has been said that the contract is a *sine qua nom* of a joint venture which is a status not imposed by law. *Carboneau* v. *Peterson*, 95 P. 2d 1043 (*Wash.* 1939).

2. *A combining of efforts or properties or abilities.* There was no combining of efforts, properties or abilities as between the respondents to carry out LOF's advertising program. At most there was an agreement that each respondent would further its own advertising campaign.

3. *A community of interest as to the purpose of the undertaking.* Even if I assume that criteria one and two above were met in this situation, I find it impossible to satisfy the third criterion or the fourth, below. A community of interest as applied to the relation of joint venture has been defined as an interest common to both parties, that is, a mixture or identity of interest in a venture in which each or all are reciprocally concerned. For instance, two parties may be engaged in the performance of a purpose or objective which may be for the sole interest or advantage of one and from which the other is to derive no benefit whatever, or the interest of the one may be different and distinct from that of the other; in either of such cases there would not be a joint adventure. *Carboneau* v. *Peterson*, *supra*. That case cites the example of two boys undertaking a ride together for the purpose of visiting each party's home in order to obtain the key which each boy had forgotten. Although the joint ride was for their mutual benefit, *viz*, for each to get his own key, the purpose of that undertaking was separate and individual for each of them and not common to both of them, rendering it not a joint venture. So, here the advertising campaign was for the mutual benefit of both respondents, but the purpose was separate and independent as to each of them and not common to both. In the case of GM, the purpose was to sell more safety plate glass not merely to GM but to other car manufacturers and the public generally.

4. *An equal right of control of the means employed to carry out the purpose of the common adventure.* Of greatest significance in this matter, however, is the element of joint control. This factor has been of considerable interest to the courts. Cases are numerous in which

the lack of a joint control or a mutual right to control destroyed the alleged joint venture. In *Carboneau* v. *Peterson, supra*, the court held that the relationship must have equal rights to a voice in the manner of performance of the enterprise; more specifically, that each party may equally govern how, where, and when the agreement will be performed. In *Chisholm* v. *Gilmer*, 81 F. 2d 120 (4th Cir. 1936) the court held that each must have a voice in management. In *Van Hook* v. *U.S.*, 108 F. Supp. 32 (N.D., Ill., 1951), the Court referred to it as "a mutual right to control." Thus in *Cross* v. *Pasley*, 270 F. 2d 88 (8th Cir. 1959), where defendant embarked on oil discovery and production and hired a salesman to sell interests in oil rights, and the holder of interests, although having the right to enter the premises to view the progress of drilling, had nothing to do with its supervision, there was no joint venture. In a similar vein, see *Potter* v. *Florida Motor Lines, Inc.*, 57 F. 2d 313 (S.D., Florida, 1932); *Balestrieri and Co.* v. *Commissioner of Internal Revenue*, 177 F. 2d 867 (9th Cir. 1949); and *Arline* v. *Brown*, 190 F. 2d 180 (5th Cir. 1951).

The television program was arranged by the advertising agency of respondent LOF; it was paid for by LOF; it was constantly reviewed by officials of LOF; it was undertaken by LOF and discontinued by LOF. Even if GM approved the program, this is not tantamount to a clear and equivalent right to control that program with the same authority as LOF.

Commission counsel puts great emphasis on the undisputed fact that both respondents shared the benefits of the advertising campaign which indeed they did. The decisions are numerous, however, in the holding that the showing of benefits alone will not make a joint venture. *Pemberton* v. *Windsor Leasing Co.*, 58 N.Y.S. 2d, 292 (1945); *Brenner* v. *Plitt*, 34 A. 2d 853 (Md. 1943). Thus, in *Detachable Bit Co.* v. *Timken Roller Bearing Co.*, 133 F. 2d 632 (6th Cir. 1943) there was no joint venture in the absence of joint property or joint profits in the undertaking, nor any showing of the right of one to incur a debt obligating the other. Even where two parties reserve certain negative powers of control in an undertaking to one of the parties, the court found no joint venture in view of the party's lack of a proprietory interest in the properties. *U.S.* v. *Westmoreland Mangenese Corp.*, 134 F. Supp. 898 (E.D. Ark. 1955), *affirmed* 246 F. 2d 351 (8th Cir. 1957). See also *Hyman* v. *Regenstein*, 258 F. 2d 502 (5th Cir. 1958) *cert. denied* 359 U.S. 913 (1959):

*** * * an agreement to furnish the finances for a scheme or project does not necessarily constitute the transaction a joint venture, even though the profits may be divided * * *. The parties must intend that there be a joint proprietary interest and a right of mutual control * * *.**

The conclusion is inescapable that the admission of the subject exhibits as to respondent GM cannot be justified on the theory of joint venture between GM and LOF.

The same conclusion is achieved if we consider the situation under the doctrine of joint tort. In the recent decision *In the Matter of Colgate-Palmolive Company, et al.*, FTC Docket No. 7736, December 29, 1961 [59 F.T.C. 1452, 1471], the Commission cited *Federal Trade Commission* v. *Standard Education Society*, 86 F. 2d 692 (2d Cir. 1936) to the effect that to establish individual liability on a corporate officer for an unfair trade practice it must be shown that such officer "had such connection with the wrong as would have made him an accomplice were it a crime, or a tortfeasor, were the corporation an individual."

To hold GM responsible for the corporate acts of LOF requires at least as much culpability on GM's part as a corporate officer's responsibility for the corporate act.

A superficial examination of the decisions concerning joint tortfeasor is sufficient to discredit the applicability of that doctrine here. Thus, in *Allis Chalmers Manufacturing Co.* v. *Board*, 118 SW 2d 996 (Texas 1938) the court said, "To be guilty as a tortfeasor one must be guilty of some wrongful or negligent conduct." This attitude has been exemplified in two landmark cases. In *Wert* v. *Potts*, 41 NW 374 (Iowa, 1889), several people were engaged in making a lawful arrest. One of them committed an unlawful act without the concurrence of the others. The others were held not liable for the unlawful act even though it was done in the furtherance of a purpose common to all. Similarly, in *Richardson* v. *Emerson*, 3 Wis. 319, 62 Am. Dec. 694 (1854), several people were engaged in the removal of a dam. Some of them did so under improper and unlawful circumstances. The court held the others not liable:

Where several persons are engaged in the accomplishment of a lawful object, if one or more shall become a tortfeasor, even with a view to aid such purpose, the others, who neither direct nor countenance such tortious acts, are not liable.

Assuming that respondent LOF committed a tort in the alleged deceptive advertising, it nowhere appears that respondent GM concurred, countenanced, or directed such tort. GM did countenance and concur in an advertising campaign designed to sell more safety plate glass and more GM cars. None of this was allegedly improper. Assuming that there was a deceptive practice employed by respondent LOF in the furtherance of the purpose of selling glass and cars, there can be no liability attached to respondent GM for LOF's activities.

Accordingly, the motion of cousel supporting the complaint that the LOF commorcials be received in evidence as to respondent GM is hereby denied.

We turn next to the liability of each respondent for the advertising disseminated by or through it separately.

LOF argues that its advertising did not represent that the safety plate glass used in the side windows was the same grade and quality as that used in the windshields. It points to the fact that in every instance the attention of the viewer was directed to the clarity of vision and that for such purpose the windshield and side window glass was the same. It is true that for many, if not most, of the commercials the only comparison between the two windows was a comparison of clarity of vision. In some commercials (see Findings 22 and 24, above), however, such as CX 51, there was a representation that laminated safety plate glass was put in every window of the car. Similarly, in CX 53 there is the statement that safety plate glass is put in windshields and the *same* safety plate glass is in every window. Had the statement been simply that safety plate glass is in every window, it might have been unobjectionable, but by using the expression "the same safety plate glass" there was a clear representation that the safety plate glass of the side window was identical to the safety plate glass of the windshield. The record makes it quite clear that the laminated plate glass of the windshield is not always found in the side windows where tempered plate glass may be and is often used. This even goes beyond a representation of grade and quality, it is a representation of the identical product and as such is patently untrue. It is untrue without reference to whether or not the side window plate glass is as good, better, or worse in performance than windshield glass. It is enough that it is different in material respects and has been represented to be the same. Moreover, since (as found earlier) a lower grade of plate glass is permissible and generally used in the side windows than in the windshield, it is inaccurate to represent that the side windows of plate glass are of the same grade and quality as the windshield.

The complaint further charges that LOF in its commercials represented that its automotive safety plate glass was free from *all* optical distortion when admittedly all glass, even safety plate glass, has some distortion, perhaps only discernible with scientific instruments. I do not find, however, that the respondent made such a representation in its commercials. In all of its commercials the absence of distortion referred to is perceptible distortion; that is, distortion that can be seen by the car passenger. The fact that there may be and probably

is some distortion in plate glass which is instrumentally observable does not render the representation which was made false. There was no such representation of instrument-observable distortion made or inferable from these commercials. As was said in *International Parts Corporation* v. *Federal Trade Commission*, 133 F. 2d 883 (7th Cir. 1943), the Commission may not inject novel meanings into advertising which expand the claims beyond their intended scope and then strike down the advertisement because the expanded claims cannot be supported. There is nothing in the record here to justify a conclusion that anyone would have taken the commercials to represent that the distortion is such as cannot be detected even with the use of scientific instruments. The commercials make it quite clear that the distortion is such as cannot be detected by the eye.

The LOF film "The Perfect Parallel" does not alter this result. That film merely proved that perceptible distortion is present in large panes of plate glass when viewed from a substantial distance. Such distortion is not apparent in glass panes of automobile window size, nor even in larger panes when viewed from a short distance of about three feet.

The complaint further charges that LOF falsely represented an excessive amount of perceptible distortion in automotive safety sheet glass. This charge must be distinguished from the later charge concerning deceptive camera techniques to exaggerate distortion. Assuming for the moment that there were no deceptive camera techniques employed, the complaint in effect charges the respondent with having shown more perceptible distortion in sheet glass than occurs. To support this charge it was incumbent upon Commission counsel to prove the normal amount of perceptible distortion in sheet glass and compare that with the amount of distortion shown in the commercials. The only record evidence pertaining to the normal amount of perceptible distortion in automotive sheet glass is the testimony of one witness to the effect that in his opinion the commercials exaggerated the amount of distortion perceptible in automotive sheet glass made by his company. No physical samples of such sheet glass were offered by the witness. In fact, the witness showed considerable confusion when on cross-examination he was confronted with a pane of his own sheet glass which differed in many material respects from the description previously made by him. I cannot attach much significance to the testimony offered in this connection and conclude that the Commission has not sustained its burden of proof with respect to the charge that LOF has exaggerated the perceptible distortion in automotive sheet glass.

The fourth charge in the complaint alleges that both respondents have falsely represented that automobile safety sheet glass is of the same grade and quality as home window glass. The LOF commercials at no point make specific reference to home windows. Instead, the language usually employed referred to "ordinary safety glass made of window glass." Since the industry uses sheet glass synonymously with window glass, LOF contends there was no misrepresentation in their commercials in this respect.

The meaning to be given an advertisement cannot be limited to the meaning within the industry. Instead, it is the meaning that the casual unsuspecting reader or viewer or listener will attach to the language employed that is the criterion in false advertising. *Charles of the Ritz* v. *Federal Trade Commission*, 143 F. 2d 676 (2d Cir. 1944); *Ward Laboratories* v. *Federal Trade Commission*, 276 F. 2d 952 (2d Cir. 1960), *cert. denied* 364 U.S. 827 (1960). Statements susceptible of both a misleading and a truthful interpretation will be construed against the advertiser. *United States* v. *95 Barrels of Vinegar*, 265 U.S. 438 (1924). In this instance, some viewers or listeners subjected to a statement with respect to window glass are more likely than not to think automatically of home windows, which cannot be a "novel meaning." (*cf. International Parts Corp., supra*) Home windows, however, are of an inferior grade and quality when compared with automotive windows even though both types are made from the same ribbon of glass. The representation, therefore, that non-GM cars use ordinary window glass is false and deceptive in conveying the impression that such windows are made of home window glass.

This misrepresentation is even more clearly demonstrated in the case of the "Wide Wide World" commercial of GM. In that film, comparison is made between the plate glass of the GM car with an ordinary home window. The point of the commercial is that the GM window is superior to the home window. Coupled with this representation is the statement that only GM has plate glass, "the most restful viewing glass known." The viewer necessarily associates the home window glass with the glass used by non-GM cars. Since, however, home window glass is of an inferior grade and quality compared to automotive sheet glass, the comparison is unfair and deceptive.

The fifth and final charge of the complaint relates to the accuracy of the representations made by the respondents in the commercials. As found above, certain photographic techniques were used by both respondents which made the comparison shots deceptive. The use of a camera shot from the rear seat of a car through the front window resulted in a sharper angle of vision with attendant greater percepti-

ble distortion than a passenger would ordinarily experience since he would probably be looking through the rear window. The use of telephoto lens for the distortion shot, while not increasing the degree of distortion, had the effect of magnification of such distortion making a proper comparison between it and the plate glass shot difficult, if not impossible. The picture of a zebra board taken through the sheet glass turned to an angle which was more acute than the angle of the plate glass picture was similarly an unfair and deceptive comparison, in that the sharper angled sheet glass would ordinarily tend to show greater distortion. Likewise, the photographing of a scene through the right front window for the sheet glass shot and through the right rear window for the plate glass shot had the similar result of creating a sharper angle of view for the former. which accentuated any distortion present.

In all these instances, the principle is essentially the same. A comparison should be as comparable as possible. Disparity should be eliminated, particularly if the disparity has the tendency to exaggerate the comparative differences claimed. Otherwise, the viewer is apt to be misinformed. In this respect the principle is the same as the enunciated *In the Matter of Colgate-Palmolive Company, supra.* In that decision the Commission found that the advertised product could not shave sandpaper as claimed in the advertisement. The decision, however, went on to rule that even if the product could do what was claimed of it, the advertisement was deceptive in not showing it shaving sandpaper, but shaving plexiglass.

*** * * the commercials would be deceptive, within the meaning of the statute, in the manner in which they deliberately misinform the viewer that what he sees being shaved is genuine "tough, dry sandpaper" rather than a plexiglass mock-up.**

The camera techniques described above cannot be said to have resulted in a portrayal which the viewer could depend upon as a fair comparison, even though what was claimed of the product may have been, and in many instances was, actually true. It is necessary, in addition, that the demonstration of what may be actually true be fair, representative, and accurate. Where a sharper angle of view accentuates perceptible distortion, the use of such an angle for one piece of glass but not for another with which it is being compared, misinforms the viewer. This deception is obviously illustrated in those instances where the plate glass shot was taken through a rolled down window. The public was told to observe for itself the clarity of the glass when in fact there was no glass. Even if the view through the glass would have been the same as without a glass, the public was entitled to make that decision and judgment for itself and not have the matter prejudged by the advertiser.

Similarly, in the GM commercial where vaseline was streaked across some sheet glass to emphasize the distortion in the glass, even if the distortion thus shown was no greater than that usually found in sheet glass, the public was entitled to make its own judgment in the issue or, in the alternative, to be told that vaseline had been used to accentuate the distortion.

Both respondents raise a number of additional legal defenses to the action.

Both respondents ask for a dismissal of the complaint because the deceptions were committed by a photographer employed by a film company, in turn hired by an advertising agency which was retained by the respondent and given full authority over the preparation and production of the film. The relationship of the advertising agency to each respondent is said to be that of individual contractor, making the respondents not responsible for the wrongs of the entity. Although this decision absolves the respondent GM from liability for the tortious acts of respondent LOF, this same approach is not proper with respect to each respondent and its own advertising agency. GM did not direct, countenance or concur in the tort of LOF, nor did it employ LOF. It did, however, direct or have the right to direct the work of the advertising agency which it did employ. The deception practiced by the advertising agencies was within the direct scope of their employment even as independent contractors, and the fact of employment is sufficient to bind the employer.

Both respondents urge that the complaint be dismissed because the issues have become moot. They point to the fact that the advertisements involved were the product of a single campaign of fixed duration and that they had been voluntarily discontinued even before the institution of the Government investigation. In addition, a GM officer testified that there was no intention to resume the type of advertising involved. All of these factors must be considered to determine whether the public interest requires the issuance of a cease and desist order. It is noted, however, that the objectionable advertising was not discontinued because of a realization of the impropriety of the advertising. In fact, such impropriety is still not conceded by either respondent. There has been no assurance of the specific steps that would be taken by either respondent to assure the nonrecurrence of such deceptive advertising. The expression of the Commission in the *Colgate-Palmolive* case, *supra*, is most pertinent:

> Another factor militating against dismissal of this complaint on the grounds of abandonment is respondent's continued insistence that its advertising is not false. In our view, this attitude on the part of the respondent has a definite bearing on whether there is any likelihood of a resumption of the practice either for competitive or for other reasons.

See, also, *C. Howard Hunt Pen Co.*, v. *Federal Trade Comm.*, 197 F. 2d 273 (3d Cir. 1952); *Galter* v. *Federal Trade Comm.*, 186 F. 2d 810 (7th Cir. 1951).

Finally, counsel supporting the complaint has proposed an order in this proceeding which prohibits the false representations made regarding the automobile glass. In addition, however, Commission counsel proposes that the order be applicable to "any other merchandise" of these respondents. In this suggestion I cannot concur. General Motors Corporation, a giant among the manufacturing giants of this country, manufactures many products—as counsel states, "from locomotives to washing machines." This proceeding concerns only one of its products, automobiles, and only one of the many component parts of such a product, the glass. There is no suggestion of any irregularities elsewhere or otherwise. Similarly, although to a lesser degree, the Libbey-Owens-Ford Glass Company is involved here in only one of its many lines. An order broad enough to cover all of the products of these respondents is unwarranted unless the advertising operations of these respondents provide a common denominator for all of them. This has not been shown and is quite unlikely.

CONCLUSIONS

1. Respondent LOF has falsely represented that the safety plate glass used in the side windows of GM automobiles is of the same grade and quality as that used in the windshields of GM cars.

2. Respondent LOF and respondent GM have falsely represented that the automobile safety sheet glass used in the side windows of automobiles other than GM automobiles is of the same grade and quality as the sheet glass used in home windows.

3. Respondent LOF and respondent GM have falsely represented that the pictures used in connection with its advertising are accurate demonstrations of the perceptible disparity between the optical distortion of automobile safety plate glass and automobile safety sheet glass under ordinary conditions of use.

4. The use by the respondents of the aforesaid false and deceptive representations has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true, and into the purchase of substantial quantities of respondents' products because of such erroneous and mistaken belief. As a result thereof, trade has been unfairly diverted to respondents from their competitors and injury thereto has been done to competition in commerce.

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5. The aforesaid acts and practices of the respondents were to the prejudice and injury of the public and of respondents' competitors, and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That Libbey-Owens-Ford Glass Company, a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with advertising, offering for sale, sale, and distribution of its automotive glass 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, that:

(a) The automobile safety plate glass used in the side windows of General Motors automobiles is of the same grade and quality as that used in the windshields;

(b) The automobile safety sheet glass used in automobiles other than General Motors automobiles is of the same grade and quality as the sheet glass used in home windows.

2. Representing, directly or by implication, in describing, explaining, or purporting to prove the quality or merits of any such products or the superiority of any such products over competing products, that pictures, depictions, or demonstrations, either alone or accompanied by oral or written statements, are genuine or accurate representations, depictions, or demonstrations of, or prove the quality or merits of any such products, or the superiority of any such products over competing products, when such pictures, depictions or demonstrations are not in fact genuine or accurate representations, depictions, or demonstrations of, or do not prove the quality or merits of any such products or the superiority of any such products over competing products.

It is further ordered, That General Motors Corporation, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, and distribution of automobiles and automotive parts in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that the automobile safety sheet glass used in automobiles other than General Motors automobiles is of the same grade and quality as the sheet glass used in home windows.

2. Representing, directly or by implication, in describing, explaining, or purporting to prove the quality or merits of any such products or the superiority of any such products over competing products, that pictures, depictions, or demonstrations, either alone or accompanied by oral or written statements, are genuine or accurate representations, depictions, or demonstrations of, or prove the quality or merits of any such products, or the superiority of any such products over competing products, when such pictures, depictions or demonstrations are not in fact genuine or accurate representations, depictions, or demonstrations of, or do not prove the quality or merits of any such products or the superiority of any such products over competing products.

OPINION OF THE COMMISSION

JULY 16, 1963

By MACINTYRE, *Commissioner:*

In this matter the respondents, Libbey-Owens-Ford Glass Company (LOF) and General Motors Corporation (GM), are charged with violating the Federal Trade Commission Act by the use of false and deceptive advertising statements and representations as to safety glass used in automobiles. The hearing examiner found that some of the charges were sustained and entered a cease and desist order as to such practices against the respondents. While he found respondent GM in violation of law for practices individually engaged in, he declined to hold this respondent also responsible with LOF for the alleged acts of LOF.

All parties have appealed. The exceptions of counsel supporting the complaint are taken to specific findings and rulings of the examiner adverse to the allegations in the complaint. One of their exceptions is to the refusal of the examiner to receive LOF commercials and other evidence in the record against respondent GM and to find GM jointly responsible with LOF for such commercials. Complaint counsel also except to the form of the order. Respondents GM and LOF, in separate briefs, have filed exceptions to most of the basic findings and conclusions holding each individually in violation of law and to the examiner's order to cease and desist.

The examiner has succinctly outlined the facts which gave rise to this litigation. It does not appear that there are any substantial differences between respondents and complaint counsel as to these facts, although there is disagreement as to their interpretation.

Respondents are well-known concerns in their respective fields. They are Libbey-Owens-Ford Glass Company, an Ohio corporation

which manufactures and sells glass products to the automobile industry for installation in automobiles and to other distributors for resale to the public, and General Motors Corporation, a Michigan corporation which makes and sells many products, including motor vehicles and automobile parts. Both corporations are engaged in business in interstate commerce.

The LOF advertising challenged by the complaint developed out of the circumstances which will be described below. GM, which had been purchasing its requirements of automotive glass from LOF for many years, considered, in 1957, a change from safety plate glass (a superior product made by grinding and polishing) to safety sheet glass (not a ground glass) for the side windows of its automobiles at an estimated savings of $3.3 million for the 1958 model cars. In June 1957, LOF informed GM that it was willing to invest some $3.3 million in a safety plate glass advertising campaign approved by GM if GM's car division would gear their own advertising to the same objective. LOF's advertising campaign was to be a general promotion of safety plate glass.

Thereafter, on June 12, 1957, GM decided to continue the use of safety plate glass in its 1958 cars in consideration for LOF's offer to spend $3.3 million in advertising safety plate glass. The examiner found that there was no formal contractual arrangement or other agreement obligating LOF to advertise if GM bought its glass nor obligating GM to buy the glass if LOF advertised. But he further found that LOF's promise to advertise was one of the factors considered by GM in continuing to use safety plate glass.

The LOF advertising program consisted primarily of twenty-two television commercials used in 1957 and 1958. These commercials were broadcast by the National Broadcasting Company in conjunction with the NCAA (National Collegiate Athletic Association) football television programs, sponsored in part by LOF, beginning September 21, 1957, and ending December 7, 1957; and by the Columbia Broadcasting System with the Perry Mason television shows, sponsored in part by LOF from September 28, 1957, to June 21, 1958. In general these commercials dealt with the advantages of safety plate glass over safety sheet glass with respect to perceptible distortion.[1] They represented by visual demonstrations and written and oral statements that, in automotive use, no perceptible distortion was seen through safety plate glass, but that it was seen through safety sheet glass. The viewer was advised in these advertisements that LOF was the sponsor of the

[1] Perceptible distortion is defined in the initial decision as follows: a twisting motion or misshapen condition relating to the optics of vision which is perceived or discerned by the viewer.

program. In the commercials themselves there were numerous shots of GM automobiles and in the audio portion GM was the only corporation mentioned in connection with the use of safety plate glass in car windows. The advertisements were prepared by an advertising agency, Fuller & Smith & Ross, which employed Television Graphics, a film-producing firm, to make the motion picture films for the commercials.

Libbey-Owens-Ford Advertising

The LOF television commercials as above indicated purport to show the relative merits of safety plate glass and safety sheet glass and in particular the lack of distortion in safety plate compared with the presence of distortion in safety sheet glass. Thus, in one the action shows two pieces of glass which are cut identically in the shape of an automobile side light set up side by side with the announcer standing between them. The announcer states, "Two pieces of safety glass for the windows of a car. They look alike but they don't 'see through' alike and you should know about the difference." Subsequently the action moves to scenery along the roadside and a sign reading "Entering Fairlawn" which show perceptible distortion seen through the side window of a moving car. The words "ORDINARY SAFETY GLASS" are superimposed on the screen. The announcer at this point states: "This is ordinary safety glass made of window glass. It puts a wiggle in the things you watch." The next scene shows scenery along the roadside and a sign reading "Entering Fairlawn," which show no perceptible distortion seen through the side window of a moving car. An LOF etch mark, "SAFETY LOF *PLATE*," is superimposed on the screen. The announcer here states, "This is safety plate glass. It takes the wiggle out of what you watch." The announcer additionally makes other statements in this commercial, such as follows: "Because it gives the driver better vision, laminated safety plate glass is required by law in windshields * * * but only cars with Body by Fisher use safety plate glass in every window of every car as standard equipment. It doesn't cost you a cent extra."

In another commercial the action at one point shows the announcer with two pieces of glass which are cut identically in the shape of an automobile side light. The pieces of glass are mounted on each side of the announcer and in front of zebra boards, *i.e.*, square boards with parallel black and white lines running diagonally across the surface of the boards. The action next shows a close-up of the glass on the announcer's right as he rotates it so that it is at an acute angle to the zebra board behind it. The lines of the zebra board seen through

the glass show perceptible distortion. The announcer states: "Watch the lines wiggle through ordinary safety glass * * *." Subsequently the action shows a close-up of the glass on the announcer's left as he rotates it so that it is at an acute angle to the zebra board behind it. The lines of the zebra board seen through the glass show no perceptible distortion. The announcer then states: "Safety glass takes the wiggle out of watching."

The above descriptions refer only to portions of the respective commercials. The examiner found that a number of the comparisons were untrue and improper because they exaggerated or tended to exaggerate any distortion found in the sheet glass. Such findings are fully supported by the record.

In one sequence the use of the camera shot from the rear seat of an automobile through the front window resulted in a sharper angle of vision and greater distortion than a passenger would ordinarily experience. Here the challenge is not necessarily to the degree of distortion shown, which may be the distortion which would be observed from the angle used. The deception is in the fact that the angle at which the pictures were taken is not a normal viewing angle for the occupant of a car. The examiner so found in Finding 34 of the initial decision. The commercial, by using an extreme and unusual angle, unfairly exaggerated the distortion present in the sheet glass. The deception in the commercial resulted from a partial or half-truth, a form of misrepresentation condemned in *P. Lorillard Co.* v. *Federal Trade Commission*, 186 F. 2d 52 (4th Cir. 1950).

In one of the commercials, the comparison sequence uses films taken through different windows of the car. The sheet glass shot was made through the right front window and the plate glass shot was made through the right rear. The testimony indicates that the scene through the sheet glass was taken at a sharper angle than that through the plate glass. The examiner found that this camera technique accentuated any distortion present. Such finding is amply supported by the record, including the testimony of Mr. Alexander of LOF and Mr. Shaneyfelt, a special FBI agent.

In another comparison sequence the plate glass scene was photographed through a normal lens whereas the sheet glass scene was shot through a telephoto lens. The examiner found that this had the effect of magnifying the distortion in the sheet glass scene. Evidence of record such as the testimony of Mr. Shaneyfelt supports such finding. In the commercial using the zebra boards, the sheet glass shot was at an angle more acute than that for the plate glass. This was a deceptive comparison since, as the examiner found and the record

shows, the more acute angle would tend to show greater distortion in the sheet glass.

Finally, comparison sequences were made in which the picture of the safety plate glass was made through an open window instead of through an actual piece of safety plate glass. In the latter case, the examiner found that witnesses, including experts, by looking at the scene, were unable to detect in which instances scenes were shot through open windows rather than through plate glass. The film producer testified that the open window shots were taken because of a shortness of time and bad weather conditions which curtailed shooting. No contention is made that it was necessary to use the open window substitution for real glass or the other "techniques" above mentioned because of any technical limitations in the television medium.

General Motors' Advertising

From September 1957 to May 1958 General Motors Corporation sponsored a national television series called "Wide Wide World." The series included approximately thirty separate commercials, one of which involved glass. The glass commercial was used twice in the series. GM employed advertising agency MacManus, John & Adams, Bloomfield Hills, Michigan, to make the commercials for this program. Klaeger Film Productions, Inc., of New York made the films for the glass commercial. Pertinent video and audio portions were as follows:

VIDEO	AUDIO
9. DROP IN WINDSHIELD, HEAVILY OUTLINED	* * * every automobile has safety plate glass in the windshield.
10. DROP IN OTHER WINDOWS	But only General Motors has gone to the extra care and trouble of protecting your vision by putting safety plate glass all the way around in all its cars. Windshield * * * doors * * * and in the rear.
11. HORIZONTAL ANIMATION VERY TIGHT CLOSE-UP OF PROFILE OF ORDINARY WINDOW GLASS SHOWING IMPERFECTIONS AND MARKED "Ordinary Glass"	What's the difference? Ordinary window glass has small bubbles and imperfections that mar your vision.
12. MOVE UP AND DISSOLVE IN PLATE GLASS SHOWING FLAT PLANES AND MARKED "PLATE"	But plate glass is ground and polished on both sides with jeweler's rouge to give you the safest, most restful viewing glass known.

VIDEO—Continued	AUDIO—Continued
13. WIDE SHOT OF WINDOW	Try this test in your own house. Look through a pane of window glass at the extreme edge, move your head back and forth a few inches.
14. CLOSE-UP SHOWING DISTORTION	And this is the kind of distortion you'll see. Straight lines become curved, distances distorted.
15. REPLACE WITH CLEAR SCENE	But with plate glass, this is what you see—everything sharp and clear.
16. REPEAT NO. 10	That's why General Motors feels it's important to give you this sharper, clearer vision in *every* window of your automobile.

In making the comparison scenes in this commercial, a single piece of glass was installed in a wooden frame in the studio. Background scenery was arranged to simulate an outdoor scene. The glass used apparently was sheet glass. The same scene was shot through the glass twice. First, photographs were made through the glass as purchased, purporting to show the scene through safety plate glass. Thereafter, other photographs were made through the glass with streaks of vaseline applied to it, purporting to show the scene through home window glass. In the plate glass shot, the camera was in a stationary position. In the home window shot, the camera was panned from side to side as though the viewer were walking past the window. The film thus created showed an undistorted view for the "plate glass" shot, but a distorted view for the "home window glass" shot. The examiner found that the distorted view for the home window shot was not an exaggerated one compared to the experiences of witnesses viewing other window glass under similar circumstances. No contention is made that technical limitations in the television medium required the use of the faked demonstration above described.

While the demonstration purported to compare plate glass with home window glass, the advertisement may reasonably be construed as comparing the safety plate glass in the side and rear windows in GM cars with the glass in such windows in other makes of automobiles. As found by the examiner, the association with the glass in non-GM cars was obviously intended, for there would be no purpose in comparing home window glass with the plate glass in GM cars unless the claim was that the visual effects of home window glass were to be found in other makes of cars.

The Issue of GM Liability for LOF Commercials

The hearing examiner ruled that he would not receive the LOF commercials and certain other documents in evidence as against respondent GM. He in effect held that no basis was established for finding GM liable for the representations contained in the LOF commercials. He came to this conclusion in spite of his findings that GM continued the use of safety plate glass in 1958 automobiles in consideration of LOF's offer to spend $3.3 million in advertising safety plate glass and that LOF embarked on such a program "only after it had secured GM's approval." The examiner found that the undertaking could not be considered a "joint venture" and that there could be no liability under the "doctrine of joint tort." Since we find, as will be further discussed below, that respondent GM separately and independently engaged in practices similar to those of LOF, which were found to be unlawful, there appears to be no necessity for consideration of the question of whether GM may also be liable for the representations in the LOF commercials. Accordingly, the examiner's ruling denying complaint counsel's motion to receive the LOF commercials and other evidence as against GM will be sustained, but his specific findings on this issue will not be adopted.

Respondents' Individual Representations

The first allegation in the complaint charges that respondents falsely represented that automobile safety plate glass used in the side windows of GM cars is the same grade and quality as that used by GM in the windshields of its cars. The examiner found this charge sustained as to LOF but not as to GM. In this he erred. GM advertised that every automobile has safety plate glass in the windshield but that only GM has "safety plate glass all the way around in all cars. Windshield * * * doors * * * and in the rear." The advertising contains the clear inference that all the windows are equal in quality to the windshield. This is not true. The record clearly shows that GM used different types of safety plate glass in different windows of its cars and that the plate glass in the windshields generally was of a higher quality than that in the side windows. This is disclosed by the material specification for glass in GM cars, received in the record as Commission Exhibit 69 A–S, and other evidence. The initial decision will be modified to incorporate appropriate findings and conclusions sustaining the charge on this point as to GM.

The primary issue in this case concerns the use of demonstrations on television which are fake or at least partly rigged performances but

which give to the viewer of the television screen the impression that an actual experiment or an actual demonstration is taking place. For example, what appears to be, in one commercial, a real comparison in distortion characteristics between plate glass and sheet glass is not that at all; it is actually a comparison between empty space and sheet glass. In other instances, the substitution of material or the use of photographic techniques makes the comparisons fictitious. The viewer of the television screen is led to believe that he is seeing a real comparison which has previously been filmed and which is now shown to him as it actually happened. But what he is led to believe is not true.

These spurious or fake demonstrations contravene the Federal Trade Commission Act in two ways. The first concerns the accuracy or the truth of the representation or claim which is being made. The commercials convey the impression that sheet glass shows more distortion than is true in ordinary use, a claim which is a misrepresentation of comparative quality between products and a false disparagement of competing products. See the Commission's opinion in *Carter Products, Inc., et al.*, Docket No. 7943 (April 25, 1962) [60 F.T.C. 782, 792].

In the LOF commercials the representation is that a comparison between safety plate glass and safety sheet glass will show no perceptible distortion in safety plate but a degree of distortion (the distortion actually shown and observed in the commercials) in safety sheet. The demonstration and comparison of the two products on the television screen is supposed to prove this point. The fact is, and the record shows, that the distortion in the sheet glass under ordinary conditions of use would not be as great as that represented. The means by which the distortion in sheet glass was exaggerated have been noted above, that is, by the use of different camera angles and different lenses and other photographic techniques. The result was a misrepresentation in comparative quality between the two products and a false disparagement of the quality of safety sheet glass.

The GM commercial contains a similar quality misrepresentation and a disparagement of competing products. Therein the claim is made that every automobile has safety plate glass in the windshields but only GM has it all the way around, and a comparison is made with home window quality glass. The home window shot (which, by inference, is the side and rear window glass found in cars other than GM's) was made by smearing ordinary sheet glass with vaseline. In using such a mockup for demonstration, GM was, in effect, saying to the viewer, "See the distortion in home window glass which is like

the distortion you will see in the side and rear windows of other cars." But the home window glass distortion, since such glass as established by the record is inferior to that used in automobiles, is not the distortion found in automobile sheet glass. The assertion of GM that the distortion was greater in the side windows in other cars than it actually is, *i.e.*, equivalent to that in home window glass, was a false representation as to the comparative quality of the glass products and disparaging of the glass in other cars. It was also a false disparagement of other cars.

The representations made by the respondents in their respective commercials are violations of the Federal Trade Commission Act in yet another way. The fake or spurious demonstrations were unfair methods of competition in that they purported to prove the merits or qualities of products but did not do so.[2] This is aside from the question of whether an actual demonstration would give the same results. The Commission discussed this kind of practice in its recent decision in *Colgate-Palmolive Company*, Docket No. 7736 (February 18, 1963) [62 F.T.C. 1269, 1274]. There we said in part:

> * * * If, relying on falsehoods told them by a seller, consumers have been persuaded to buy his product, they may perhaps not be deceived or hurt in a strict pecuniary sense if the falsehoods did not relate to the quality or merits of the product. But such "deception" of purchasers is by no means essential to a finding of unfair competition. Regardless whether consumers are "injured" when they are induced to buy through false advertising claims, honest competitors are injured—because some or many of such sales have been made at their expense. And the Federal Trade Commission Act has enacted into law the fundamental concept that businessmen may not, in competing with each other for the consumer's dollar, resort to "unfair methods of competition in commerce and unfair * * * acts or practices in commerce." Even apart from any moral or ethical considerations, Congress considered that such methods and practices must be outlawed in a competitive system where sellers should have fair and equal access to markets and where success should be the reward of the most efficient rather than the least scrupulous.

We concluded in *Colgate* that if people are led by misrepresentation to buy an advertised product, in preference to an honest competitor's, it is *not sufficient justification to say that the product actually possesses the claimed quality or merits.* These same considerations discussed in *Colgate* apply with equal force in this proceeding.

Both respondents raise the question of discontinuance or abandonment of the unfair practices. It seems that this argument is based on the assertion that the particular commercials were used for a

[2] The LOF commercials contained false demonstrations purporting to prove the superiority of safety plate glass over safety sheet glass. The GM commercial had a false demonstration purporting to prove the superiority in plate glass over sheet glass and superiority in GM cars over other makes of cars.

specific advertising campaign and will not be used again. This does not by any means establish conclusively that similar practices will not again be engaged in. We believe that it is clear that the public interest in this proceeding is substantial and that an order to cease and desist is warranted.

Respondent LOF makes a further argument that it is not responsible for the acts of what it terms an "independent contractor." There is no question in our view that the relationship between respondent LOF and the advertising company was one of agency and that LOF was responsible for the acts of its agent.

Exceptions have been taken to the scope and form of the order in the initial decision by each of the parties. We believe that some changes in the order are justified. These include limiting the General Motors Corporation order to automotive glass products sold either as a part of the automobile or a separate item. The order against GM, on the other hand, should include a prohibition against misrepresenting the quality of the glass in the side windows of its automobiles and other closely related practices. A clear prohibition against the use of false disparagement of competing products should be included against both respondents. These and other changes for clarification and for coverage of closely related practices will be incorporated in the proposed order to be issued herewith.

Complaint counsel except in particular to the examiner's holding on page 769 of the initial decision to the effect that complaint counsel have not sustained their burden of proof with respect to the charge that LOF has exaggerated the perceptible distortion in automotive sheet glass. This holding concerns only the third allegation under Paragraphs 6 and 7 of the complaint. The examiner distinguished this charge from "the later charge concerning the deceptive camera techniques to exaggerate distortion." Thus, the holding in this instance is not inconsistent with his other findings and conclusions. As limited to the particular charge, we will sustain the holding.

Exceptions taken by the parties not covered by the discussion above have all been noted and they are rejected. The exceptions of complaint counsel are sustained to the extent above indicated and otherwise rejected. The exceptions of respondent GM are sustained to the extent of limiting the order to automotive glass products and otherwise rejected. The exceptions of respondent LOF are rejected. The initial decision will be modified in accordance with the views expressed in this opinion and as modified will be adopted as the decision of the Commission. An appropriate order will be entered.

FINAL ORDER

SEPTEMBER 20, 1963

Pursuant to Section 4.22(c) of the Commission's Rules of Practice, published May 16, 1962, 27 Fed. Reg. 4609, 4621 (superseded August 1, 1963), respondents were served with the Commission's decision on appeal and afforded the opportunity to file exceptions to the form of the order which the Commission contemplates entering; and

Respondents, having timely filed separate exceptions to the order proposed, which exceptions were opposed by respective replies thereto filed by counsel supporting the complaint, and the Commission, upon review of these pleadings, having determined that the exceptions filed by both respondents should be disallowed and that the order as proposed should be entered as the final order of the Commission:

It is ordered, That the FINDINGS OF FACT in the initial decision be, and they hereby are, modified by adding at the end of such findings on page 764 the following new finding:

> 53. GM advertised that every automobile has safety plate glass in the windshield but that only GM has "safety plate glass all the way around in all cars. Windshield * * * doors * * * and in the rear." This statement represents by inference, contrary to fact, that the side windows in GM cars are made of safety plate glass of the same grade and quality as that in the windshields of GM cars.

It is further ordered, That paragraph 1 of the CONCLUSIONS contained in the initial decision be, and it hereby is, modified to read as follows:

> Respondent LOF and respondent GM have falsely represented that the safety plate glass used in the side windows of GM automobiles is of the same grade and quality as that used in the windshields of GM cars.

It is further ordered, That the paragraphs in the initial decision beginning with the first paragraph under the heading DISCUSSION on page 764 and ending with the first paragraph on page 768, inclusive, be, and they hereby are, stricken, and that the following be substituted therefor:

> The LOF commercials which were prepared by FS&R and Television Graphics, as well as the printed material prepared by LOF for use by GM were received in evidence as to respondent LOF and were offered in evidence by counsel supporting the complaint as to respondent GM as well. In view of the showing hereafter discussed as to the individual and separate liability of

each respondent for acts and practices alleged to be unlawful by the complaint, it becomes unnecessary to consider the possible liability of GM for the LOF commercials. The motion of counsel supporting the complaint that the LOF commercials be received in evidence as to respondent GM is hereby denied.

It is further ordered, That the findings, conclusions and order contained in the initial decision, as modified herein, be, and they hereby are, adopted as the findings and conclusions and order of the Commission.

It is further ordered, That Libbey-Owens-Ford Glass Company, a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of its automotive glass 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, that:

(a) The automobile safety plate glass used in the side windows of General Motors Corporation automobiles is of the same grade and quality as that used in windshields of such automobiles or otherwise misrepresenting the grade or quality of glass used in any window.

(b) The automobile safety sheet glass used in automobiles other than General Motors Corporation automobiles is of the same grade and quality as the sheet glass used in home windows.

2. Using in advertising any picture, demonstration, experiment or comparison, either alone or accompanied by oral or written statements, to prove the quality or merits of any such products, or the superiority of any such products over competing products, when such picture, demonstration, experiment or comparison is not in fact genuine or accurate and does not constitute actual proof of the claim because of the undisclosed use and substitution of a mock-up or prop instead of the product, article, or substance represented to be used therein.

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

4. Misrepresenting in any manner the quality or merits of any such products, or the superiority of any such products over competing products.

It is further ordered, That General Motors Corporation, a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of its automotive glass products, sold either as part of an automobile or separately, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that:

(a) The automobile safety plate glass used in the side windows of its automobiles is of the same grade and quality as that used in windshields of such automobiles or otherwise misrepresenting the grade or quality of glass used in any window.

(b) The automobile safety sheet glass used in automobiles other than General Motors Corporation automobiles is of the same grade and quality as the sheet glass used in home windows.

2. Using in advertising any picture, demonstration, experiment or comparison, either alone or accompanied by oral or written statements, to prove the quality or merits of any such products, or the superiority of any such products over competing products, when such picture, demonstration, experiment or comparison is not in fact genuine or accurate and does not constitute actual proof of the claim because of the undisclosed use and substitution of a mock-up or prop instead of the product, article, or substance represented to be used therein.

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

4. Misrepresenting in any manner the quality or merits of any such products, or the superiority of any such products over competing products.

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