IN THE MATTER OF

RELIABLE MANUFACTURING COMPANY ET AL.

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

Docket C-776. Complaint, June 30, 1964—Decision, June 30, 1964

Consent order requiring Franklin Park, Ill., manufacturers of electric cooker-fryers which they sold to wholesalers, stamp redemption firms, catalog and mail order firms, wholesale discounters and retailers for resale, to cease their practice of supplying to their customers catalog sheets, circulars and cartons bearing representations such as "$19.95 Suggested List Price Guaranteed For 2 Years", when such "suggested price" appreciably exceeded the highest price at which substantial sales were made in their trade area and the purported "2 year guarantee" was subject to undisclosed conditions.

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 Reliable Manufacturing Company a corporation, and Charles W. Leigh, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Reliable Manufacturing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 9201 King Street, Franklin Park, Illinois.

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacturing, advertising, offering for sale, sale and distribution of electric cooker-fryers to wholesalers, stamp redemption firms, catalogue and mail order firms, wholesale discounters and retailers for resale to the public and in the production of metal stampings for various customers.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Illinois to purchasers thereof located in various other States of the

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

PAR. 4. Respondents, for the purpose of inducing the purchase of their electric cooker-fryers have engaged in the practice of causing to be printed and supplying to their customers catalogue sheets, circulars and cartons bearing representations such as, "$19.95 Suggested List Price Guaranteed For 2 Years."

PAR. 5. Through the use of the foregoing representations and others of similar import and meaning not expressly set out herein, respondents represent, directly or by implication, that:

A. Said "suggested retail price" is respondents' bona fide estimate of the actual retail price of said product and that said price amount does not appreciably exceed the highest price at which substantial sales are made in respondents' trade area.

B. Said product is unconditionally guaranteed for a period of two years without further conditions or limitations.

PAR. 6. In truth and in fact:

A. Said "suggested retail price" is not respondents' bona fide estimate of the actual retail price of said product and said price amount appreciably exceeds the highest price at which substantial sales are made in respondents' trade area.

B. Said product is not unconditionally guaranteed for a period of two years without further conditions or limitations. Respondents fail to set forth in their guarantee statement the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform.

Therefore the statements and representations in Paragraphs Four and Five were and are false, misleading and deceptive.

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

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' merchandise by reason of said erroneous and mistaken belief.

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 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 Reliable Manufacturing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 9201 King Street, Franklin Park, Illinois.

Respondent Charles W. Leigh is an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Reliable Manufacturing Company, a corporation, and its officers, and Charles W. Leigh, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of electric cooker-fryers or other products, in commerce, as "commerce"

is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising, disseminating or distributing any list, preticketed or suggested retail price that is not established in good faith as an honest estimate of the actual retail price or that appreciably exceeds the highest price at which substantial sales are made in respondents' trade area.

2. Representing that their merchandise is guaranteed unless the nature, extent and conditions of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly set forth in conjunction with the representation of guarantee.

3. Furnishing any distributor, dealer or retailer with any means whereby to deceive the purchasing public in the manner forbidden by the above provisions of this order.

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

WALTER J. BLACK, INC.

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

Docket C-777. Complaint, June 30, 1964—Decision, June 30, 1964

Consent order requiring a Roslyn, N.Y., seller to the general public of publications, books and other merchandise under its own name and under the names "The Classics Club", "Black's Readers Service Company" and "The Detective Book Club", to cease representing falsely in letters and other materials sent to purportedly delinquent customers that, if payment was not made, customer's name would be transmitted to a credit reporting agency and his credit rating adversely affected; and, by use of letterheads of the fictitious "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC", and "John J. Murphy, Attorney at Law", that accounts would be or had been turned over to a bona fide collection agency or an outside attorney for collection or legal proceedings.

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 Walter J. Black, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Walter J. Black, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at Northern Boulevard, in the city of Roslyn, State of New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of publications, books, and other merchandise to the general public. Respondent sells the aforesaid publications, books and other merchandise under its own name and under the names "The Classics Club", "Black's Readers Service Company" and "The Detective Book Club". The aforesaid publications, books and merchandise are advertised, sold and payment made therefor through the United States Mails.

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

PAR. 4. In the course and conduct of its business and for the purpose of inducing the payment of purportedly delinquent accounts, respondent has made certain statements and representations in letters and materials sent through the United States Mails to purportedly delinquent customers who have purchased respondent's publications, books, or other merchandise.

Typical, but not all inclusive of said statements and representations, are the following:

a. On respondent's letterheads:

> Is there any reason * * * WHY PAYMENT OF THIS PAST DUE ACCOUNT HAS BEEN WITHHELD?
>
> MEMO FROM: TREASURER'S OFFICE PLEASE NOTE:
>
> It is with regret that we send you the attached notice. However, we have been instructed to do so by our Auditor because of the delinquent condition of your account.

FINAL NOTICE:
On date mentioned above your account will be placed with THE MAIL ORDER CREDIT REPORTING ASSN. INC., 15 West 38th Street, New York 18, N.Y.
Our firm is a subscriber to the Mail Order Credit Reporting Association, 15 West 38th Street, New York, N.Y. Like all other subscribers, we are entitled to check any names against their master file of mail order non-payers. Under the terms of our subscription, we are also required to make available to the Association the names of persons who have ordered and received books from us, and who have failed to settle their account with us after repeated notifications over a period of time * * *.

b. On the letterhead:

THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC.
Credit Reports * * * Collections
New York 18, N.Y.
Case No. 72–C

Claim of THE CLASSICS CLUB

ATTENTION PLEASE!

The Classics Club has requested us to write you in the hope that we can help bring about a *friendly settlement of your long over due account.*

TAKE NOTICE THAT:

We have been authorized by THE CLASSICS CLUB to collect the amount you owe them for books they delivered to you at your specific instance and request.

You may or may not know that there are legal means open to our client of enforcing payment of a debt of this kind. Whether or not they must employ such measures in your case is entirely up to you.

Prompt payment will clear the slate without any unpleasantness * * *

FINAL NOTICE!

Your failure to settle your account leaves our client no choice but to take immediate action against you.
If, within *fifteen days* from date of attached invoice, settlement in full is not in the hands of The Classics Club, our client has stated that they will unconditionally turn your account over to their legal representative with instructions to proceed with the necessary steps to enforce collection.
You realize, of course, that such action may result in court costs payable by you in addition to the amount due.

c. On the letterhead:

John J. Murphy, Attorney at Law, 15 West 38th St., New York 18, N.Y.
Re: THE CLASSICS CLUB

TAKE NOTICE THAT:

I have been consulted by my client in connection with their claim against you for goods sold and delivered, in the amount shown on the enclosed statement.

> **My client advises that this claim arises out of books ordered by you, shipped to you but not paid for despite several demands by my client.**
>
> **I have been requested to write you to offer one final opportunity to pay this small bill * * ***

PAR. 5. By and through the use of the aforesaid statements, representations and practices and others of similar import not specifically set out herein, respondent has represented that:

(a) If payment is not made, the delinquent customer's name is transmitted to a bona fide credit reporting agency.

(b) If payment is not made, the customer's general or public credit rating will be adversely affected.

(c) If payment is not made, respondent is required to refer the information of such delinquency to "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC.".

(d) "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC." is a separate bona fide collection and credit report agency located in New York City.

(e) Respondent has turned over to "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC." the delinquent account of the customer for collection and other purposes.

(f) If payment is not made, the delinquent customer's account will be transferred to an outside attorney with instructions to institute suit or take other legal steps to collect the outstanding amount due.

(g) "Mr. John J. Murphy" is an outside attorney at law, located in New York City, to whom the delinquent customer's account has been transferred for institution of suit or other legal steps.

(h) Letters and notices on the letterheads of the said "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC." and "John J. Murphy, Attorney at Law" have been prepared and mailed by said organization or named attorney.

PAR. 6. In truth and in fact:

(a) If payment is not made, the delinquent customer's name is not transmitted to a bona fide credit reporting agency.

(b) If payment is not made, the customer's general or public credit rating is not adversely affected.

(c) If payment is not made, respondent is not required to refer the information of such delinquency to "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC.", or any other organization or agency.

(d) "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC." is not a separate, bona fide collection or credit reporting agency. Said organization is a fictitious name utilized by respondent and others for purposes of disseminating collection letters.

(e) Respondent has not turned over to "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC." the delinquent account of the customer for collection or any other purposes.

(f) If payment is not made, the delinquent customer's account is not transferred to an outside attorney with instructions to institute suit or other legal steps to collect the outstanding amount due.

(g) The delinquent customer's account has not been transferred to "Mr. John J. Murphy" for institution of suit or other legal steps.

(h) The letters and notices on the letterheads of "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC." and "John J. Murphy, Attorney at Law" have not been prepared and mailed by said organization or named attorney. Said letters and notices have been prepared and mailed or caused to be mailed by respondent. Replies and responses to said letters and notices are forwarded unopened to respondent.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. The use by respondent of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the payment of substantial sums of money to respondent by reason of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

plaint, 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 Walter J. Black, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at Northern Boulevard, in the city of Roslyn, State of New York.

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

ORDER

It is ordered, That respondent Walter J. Black, Inc., a corporation and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of publications, books or other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication that:

1. a. A customer's name will be or has been turned over to a bona fide credit reporting agency unless respondent establishes that where payment is not received, the information of said delinquency is referred to a separate, bona fide credit reporting agency;

b. A customer's general or public credit rating will be adversely affected unless respondent establishes that where payment is not received, the information of said delinquency is referred to a separate, bona fide credit reporting agency or other business organizations;

2. a. Respondent is required to refer information of a customer's delinquency to "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC.";

b. Respondent is required to refer information of a customer's delinquency to any other agency or bureau, unless respondent establishes that such is the fact;

3. Delinquent accounts wil be or have been turned over to a bona fide, separate collection agency or attorney for collection unless respondent in fact turns such accounts over to such agencies or attorneys;

4. Delinquent accounts have been or will be turned over to "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC." for collection or any other purpose;

5. "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC.", any fictitious name, or any trade name owned in whole or in part by respondent or over which respondent exercises operating control, is an independent, bona fide collection or credit reporting agency;

6. "John J. Murphy" or any other person or firm is an outside, independent attorney at law or firm of attorneys representing respondent for collection of past due accounts, unless respondent establishes that a bona fide attorney-client relationship exists between respondent and said attorney or attorneys, for purposes of collecting such accounts;

7. Delinquent accounts have been or will be turned over to "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC." with instructions to institute suit or other legal action to collect amounts purportedly due; or that any accounts have been or will be turned over to any organization, attorney, or firm of attorneys, or persons with instructions to institute suit or other legal action unless respondent establishes that such is the fact;

8. Letters, notices or other communications in connection with the collection of respondent's accounts which have been prepared or originated by respondent have been prepared or originated by any other person, firm or corporation.

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

ROBERT M. SPELLMAN TRADING AS BOB SPELLMAN FURS, ETC.

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

Docket C-778. Complaint, June 30, 1964—Decision, June 30, 1964

Consent order requiring a retail furrier in Los Angeles to cease violating the Fur Products Labeling Act by failing to use the term "natural" for furs that were not artificially colored, in advertising, invoicing and labeling; failing to set forth the term "Dyed Broadtail-processed Lamb" on labels as

required; failing to show the true animal name of fur and the country of origin of imported furs in invoicing; failing to maintain adequate records as a basis for pricing claims; substituting non-conforming labels for those originally affixed to fur products and failing to preserve the records required; 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 Robert M. Spellman, individually and trading as Bob Spellman Furs, Furs by Bob Spellman, and Mordell 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 Robert M. Spellman is an individual trading as Bob Spellman Furs, Furs by Bob Spellman, and Mordell Furs who formulates the acts, practices and policies of said business.

Respondent is a retailer of fur products with his office and principal place of business located at 3710 Wilshire Boulevard, Los Angeles 5, California.

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 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 "Dyed Broadtail-processed Lamb" was not set forth on labels in the manner required by law, in violation of Rule 10 of said Rules and Regulations.

2. 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.

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3. 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.

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

PAR. 4. Certain of said fur products were falsely and deceptively invoiced by 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 the country of origin of imported furs used in fur products.

PAR. 5. 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 "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.

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

PAR. 6. 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 Los Angeles Times, a newspaper published in the City of Los Angeles, State of California.

PAR. 7. 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 term "natural" was not used to describe fur products which were not pointed, bleached, dyed,

tip-dyed or otherwise artifically colored, in violation of Rule 19(g) of the said Rules and Regulations.

PAR. 8. 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. 9. Respondent in introducing, selling, advertising, and offering for sale, in commerce, and in processing for commerce, fur products; and in selling, advertising, offering for sale and processing fur products which have been shipped and received in commerce, has misbranded such fur products by substituting thereon, labels which did not conform to the requirements of Section 4 of the Fur Products Labeling Act, for the labels affixed to said fur products by the manufacturer or distributor pursuant to Section 4 of said Act, in violation of Section 3(e) of said Act.

PAR. 10. Respondent in substituting labels as provided for in Section 3(e) of the Fur Products Labeling Act, has failed to keep and preserve the records required, in violation of said Section 3(e) and Rule 41 of the Rules and Regulations promulgated under the said Act.

PAR. 11. 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 Robert M. Spellman is an individual trading as Bob Spellman Furs, Furs by Bob Spellman, and Mordell Furs, with his office and principal place of business located at 3710 Wilshire Boulevard, in the city of Los Angeles, State of California.

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

ORDER

It is ordered, That respondent Robert M. Spellman, individually and trading as Bob Spellman Furs, Furs by Bob Spellman, and Mordell Furs 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 "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 set forth the term "Dyed Broadtail-processed Lamb" on labels in the manner required where an election is made to use that term in lieu of the term "Dyed Lamb".

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 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.

4. 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 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 "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.

4. 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 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.

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

It is further ordered, That respondent Robert M. Spellman, individually and trading as Bob Spellman Furs, Furs by Bob Spellman, and Mordell Furs and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, sale, advertising or offering for sale, in commerce, or the processing for commerce, of fur products; or in connection with the selling, advertising, offering for sale, or processing of fur products which have been shipped and received in commerce, do forthwith cease and desist from:

A. Misbranding fur products by substituting for the labels affixed to such fur products pursuant to Section 4 of the Fur Products Labeling Act labels which do not conform to the requirements

of the aforesaid Act and the Rules and Regulations promulgated thereunder.

B. Failing to keep and preserve the records required by the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in substituting labels as permitted by Section 3(e) of the said Act.

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

DOUBLEDAY & COMPANY, INC., ET AL.

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

Docket C–779. Complaint, June 30, 1964—Decision, June 30, 1964

Consent order requiring a book seller and its two subsidiaries in Garden City, N.Y., to cease representing falsely, in letters and notices to purportedly delinquent customers, that, if payment was not made, the delinquent's name would be transmitted to a credit reporting agency and his rating adversely affected; and by use of letterheads of the fictitious "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC." and "Mr. John J. Murphy, Attorney at Law", that accounts had been, or would be, turned over to a bona fide collection agency or an outside attorney for collection or legal proceedings.

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 Doubleday & Company, Inc., Nelson Doubleday, Inc., and The Literary Guild of America, Inc., corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Paragraph 1. Respondents Doubleday & Company, Inc., Nelson Doubleday, Inc., and The Literary Guild of America, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York with their principal offices and places of business located at Garden City in the State of New York.

Respondents Nelson Doubleday, Inc., and The Literary Guild of America, Inc., are wholly owned subsidiaries of respondent Doubleday & Company, Inc.

PAR. 2. Repondents are now, and for some time last past have been, engaged in the advertising, offering for sale and sale of books, publications and other merchandise to the general public by and through the United States mails.

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

PAR. 4. In the course and conduct of their business, respondents offer for sale certain books, publications and other merchandise through the United States mails. Said books, publications and other merchandise are distributed and payment made therefor through the United States mails.

For the purpose of inducing the payment of purportedly delinquent accounts that have arisen from the aforesaid transactions, respondents have made certain statements and representations in letters and notices disseminated through the United States mails to purportedly delinquent customers.

Typical, but not all inclusive of said statements and representations are the following:

a. On respondents' letterheads:

> We notice with sincere regret that you have not settled your account which is long past due.
>
> We say "sincere regret" because no other words so well express our feelings. There is nothing in connection with our business that we value so highly as the friendship and good will of our members, and we try to maintain this cordial relationship with each and every member.
>
> You will agree, we are sure, that we have been fair and courteous in the handling of your account—we have been patient and have given you every opportunity to pay. Now it appears that we must resort to other means of collection. * * *
>
> Since you have made no move toward settling your long past-due account, we are now considering referring it to a collection agency for professional handling. * * *
>
> Perhaps you are waiting * * * waiting to see what we will do next about your delinquent account.

Because we have been so patient * * * you may think that we are simply going to forget about it. We assure you we're not!

There are means available to us to enforce payment. We are prepared to resort to these measures if you compel us to do so. * * *

b. On the following letterhead:

THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC.
CREDIT REPORTS COLLECTIONS
NEW YORK 18, N.Y.

ATTENTION PLEASE!

Our client has asked us to write you in the hope that we can help bring about a friendly settlement of your long over-due account. * * *

IMMEDIATE ACTION IMPERATIVE!

Again we bring up the matter of your past-due account. We are still hopeful that this matter can be settled on a friendly basis for our client would sincerely regret having to institute further proceedings.

Which will it be? The answer is entirely up to you. * * *

URGENT!

Your failure to settle your account leaves our client no choice but to take immediate action against you.

If, within fifteen days from this date, settlement in full is not in our hands, our client has stated that they will unconditionally turn your account over to their attorneys with instructions to proceed with the necessary steps to enforce collection.

You realize, of course, that such action may result in court costs payable by you in addition to the amount due. * * *

c. On the following letterhead:

John J. Murphy, Attorney at Law
15 West 38th St., New York 18, N.Y.

TAKE NOTICE THAT

I have been consulted by my client in connection with their claim against you for goods sold and delivered, in the amount shown on the enclosed statement.

* * * * * * *

I have been requested to write you to offer one final opportunity to pay this bill. May I strongly urge you to pay this outstanding obligation immediately. Requests for an extension of time cannot be considered. * * *

PAR. 5. By and through the use of the aforesaid statements, representations and practices, and others of similar import not specifically set out herein, respondents have represented that:

a. If payment is not made, the delinquent customer's name is transmitted to a bona fide credit reporting agency.

b. If payment is not made, the customer's general or public credit rating will be adversely affected.

c. "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC.", is a separate, bona fide collection and credit reporting agency located in New York City.

d. Respondents have turned over to "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC." the delinquent account of the customer for collection and other purposes.

e. If payment is not made, the delinquent customer's account will be transferred to an outside attorney with instructions to institute suit or take other legal steps to collect the outstanding amount due.

f. "Mr. John J. Murphy" is an outside Attorney at Law, located in New York City, to whom the delinquent customer's account has been transferred for institution of suit or other legal steps.

g. The letters and notices on the letterheads of "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC." and "John J. Murphy, Attorney at Law" have been prepared and mailed by said organization or named attorney.

PAR. 6. In truth and in fact:

a. If payment is not made, the delinquent customer's name is not transmitted to a bona fide credit reporting agency.

b. If payment is not made, the customer's general or public credit rating is not adversely affected.

c. "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC." is not a separate, bona fide collection or credit reporting agency. Said organization is a fictitious name utilized by respondents and others for the purpose of disseminating collection letters.

d. Respondents have not turned over to "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC." the delinquent account of the customer for collection or any other purpose.

e. If payment is not made, the delinquent customer's account is not transferred to an outside attorney with instructions to institute suit or other legal steps to collect the outstanding amount due.

f. The delinquent customer's account has not been transferred to "Mr. John J. Murphy" for institution of suit or other legal steps.

g. The letters and notices on the letterheads of "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC." and "John J. Murphy, Attorney at Law" have not been prepared and mailed by said organization or named attorney. Said letters and notices have been prepared and mailed or caused to be mailed by respondents. Replies in response to said letters and notices are forwarded unopened to respondents.

Therefore, the statements and representations as set forth in Paragraphs four and five hereof were and are false, misleading and deceptive.

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

ments and representations were and are true and into the payment of substantial sums of money to respondents by reason of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair and deceptive acts and practices in commerce, 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. Doubleday & Company, Inc., Nelson Doubleday, Inc., and The Literary Guild of America, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their principal offices and place of business located at Garden City, in the State of New York. Nelson Doubleday, Inc., and The Literary Guild of America, Inc., are wholly owned subsidiaries of Doubleday & Company, 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 Doubleday & Company, Inc., Nelson Doubleday, Inc., and the Literary Guild of America, Inc., corporations,

and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of books, publications or other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication that:

1. (a) A customer's name will be or has been turned over to a bona fide credit reporting agency unless respondents establish that where payment is not received, the information of said delinquency is referred to a separate, bona fide credit reporting agency;

(b) A customer's general or public credit rating will be adversely affected unless respondents establish that where payment is not received, the information of said delinquency is referred to a separate, bona fide credit reporting agency or other business organizations;

2. Delinquent accounts will be or have been turned over to a bona fide, separate, independent collection agency or attorney for collection unless respondents in fact turn such accounts over to such agencies, or attorney;

3. Delinquent accounts will be turned over to an attorney to institute suit or other legal action where payment is not made, unless respondents establish that such is the fact;

4. Delinquent accounts have been or will be turned over to "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC." for collection or any other purpose;

5. "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC.", any fictitious name, or any trade name owned in whole or in part by respondents or over which respondents exercise operating control is an independent, bona fide collection or credit reporting agency;

6. "John J. Murphy" or any other person or firm is an outside, independent attorney at law or firm of attorneys representing respondents for collection of past due accounts unless respondents establish that a bona fide attorney client relationship exists between respondents and said attorney or attorneys, for purposes of collecting such amounts;

7. Letters, notices or other communications in connection with the collection of respondents' accounts which have been prepared or originated by respondents have been prepared or originated by any other person, firm or corporation.

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

GLASGO LIMITED, 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-780. Complaint, June 30, 1964—Decision, June 30, 1964

Consent order requiring Lansdale, Pa., manufacturers and importers of wool products to cease violating the Wool Products Labeling Act by such practices as labeling as containing "50% mohair, 43% wool, 7% nylon", sweaters which contained substantially different amounts of fibers than so represented; failing to disclose on labels affixed to certain sweaters the percentage of the total weight of different fibers contained therein; furnishing false guaranties that certain of their wool products were not misbranded; and using the word "mohair" in lieu of the word "wool" on labels without giving the correct percentage of the mohair.

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 Glasgo Limited, Inc., a corporation, and Samuel Glass, Benjamin Greber, Irving Muchnick, and Arthur Goldman, individually and as officers of said corporation, 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. Respondent Glasgo Limited, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania.

Individual respondents Samuel Glass, Benjamin Greber, Irving Muchnick and Arthur Goldman are officers of said corporation and cooperate in formulating, directing and controlling the acts, policies and practices of the corporate respondent including the acts and practices hereinafter referred to.

Respondents are manufacturers and importers of wool products with their office and principal place of business located at Line and Penn Streets, Lansdale, Pennsylvania.

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, shipped 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 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 sweaters stamped, tagged, labeled or otherwise identified as containing 50% mohair, 43% wool, 7% nylon, whereas in truth and in fact, said sweaters contained substantially different amounts of 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 sweaters with labels on or affixed thereto which failed to disclose the percentage of the total fiber weight of the wool product, exclusive of ornamentation, not exceeding 5 percentum of said total fiber weight of: (1) woolen fibers; (2) each fiber other than wool if said percentages by weight of such fiber is 5 percentum or more; (3) the aggregate of all other fibers.

PAR. 5. Respondents furnished false guaranties that certain of their wool products were not misbranded when respondents in furnishing such guaranties had reason to believe that wool products so falsely guarantied would be introduced, sold, transported or distributed in commerce in violation of Section 9(b) of the Wool Products Labeling Act of 1939.

PAR. 6. Certain of said wool products were misbranded in violation of the Wool Products Labeling Act of 1939, in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder, in that the term "mohair" was used in lieu of the word "wool" in setting forth the required fiber content information on labels affixed to wool products without setting forth the correct percentage of the mohair, in violation of Rule 19 of the Rules and Regulations under the Wool Products Labeling Act of 1939.

PAR. 7. The acts and practices of the respondents as set forth above were, and are in violation of the Wool Products Labeling Act of 1939

and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

Decision and Order

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

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

1. Respondent Glasgo Limited, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business at Line and Penn Streets, in the city of Lansdale, State of Pennsylvania.

Respondents Samuel Glass, Benjamin Greber, Irving Muchnick, and Arthur Goldman 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 Glasgo Limited, Inc., a corporation, and its officers, and Samuel Glass, Benjamin Greber, Irving Muchnick, and Arthur Goldman, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, distribution or delivery for

shipment in commerce, of sweaters or other wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from:

Misbranding such products by:

1. Falsely and deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of 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. Using the term "mohair" in lieu of the word "wool" in setting forth the required fiber content information on labels affixed to wool products without setting forth the correct percentage of the mohair present.

It is further ordered, That respondents Glasgo Limited, Inc., a corporation, and its officers, and Samuel Glass, Benjamin Greber, Irving Muchnick and Arthur Goldman, individually and as officers of said corporation and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any wool product is not misbranded when the respondents have reason to believe that such wool product may be introduced, sold, transported, or distributed in commerce.

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

IN THE MATTER OF

BECKMAN BROS., INC., ET AL.

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

Docket C-781. Complaint, June 30, 1964—Decision, June 30, 1964

Consent order requiring Great Falls, Mont., retail furriers to cease violating the Fur Products Labeling Act by failing, in invoicing and labeling fur products, to show the true animal name of the fur used and when the product contained cheap or waste fur; failing to show on invoices when fur was artificially colored and the country of origin of imported furs; failing to use the terms

"Dyed Mouton Lamb" and "natural" as and where required on invoices, and using the term "blended" improperly thereon; failing to maintain adequate records as a basis for pricing claims; substituting non-conforming labels for those originally affixed to fur products; 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 Beckman Bros., Inc., a corporation, and Alben Hoen, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said 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 Beckman Bros., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Montana.

Respondent Alben Hoen is an officer of the corporate respondent and formulates, directs and controls the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are retailers of fur products with their office and principal place of business located at 309–311 Central Avenue, Great Falls, Montana.

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 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 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.

(a) 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.

(b) 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.

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

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

PAR. 6. Certain of said fur products were falsely and deceptively invoiced by the respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated under such Act.

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

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

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(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.

PAR. 7. In advertising fur products for sale, respondents 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. Respondents 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. 8. Respondents in introducing, selling, advertising, and offering for sale, in commerce, and in processing for commerce, fur products; and in selling, advertising, offering for sale and processing fur products which have been shipped and received in commerce, have misbranded such fur products by substituting thereon, labels which did not conform to the requirements of Section 4 of the Fur Products Labeling Act, for the labels affixed to said fur products by the manufacturer or distributor pursuant to Section 4 of said Act, in violation of Section 3(e) of said Act.

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

DECISION AND ORDER

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

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

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement,

makes the following jurisdictional findings, and enters the following order:

1. Respondent Beckman Bros., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Montana, with its office and principal place of business located at 309–311 Central Avenue, Great Falls, Montana.

Respondent Alben Hoen is an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondent Beckman Bros., Inc., a corporation, and its officers, and Alben Hoen, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of 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. 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.

3. 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.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices as the term "invoice" is defined in the Fur Products Labeling Act showing in words and figures plainly legible all the information required to be dis-

closed 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 "Dyed Mouton Lamb" in the manner required where an election is made to use that term instead of the words "Dyed Lamb."

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

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 artifically colored.

C. 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 Beckman Bros., Inc., a corporation, and its officers and Alben Hoen, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device in connection with the introduction, sale, advertising or offering for sale, in commerce, or the processing for commerce, of fur products; or in connection with the selling, advertising, offering for sale, or processing of fur products which have been shipped and received in commerce, do forthwith cease and desist from misbranding fur products by substituting for the labels affixed to such fur products pursuant to Section 4 of the Fur Products Labeling Act labels which do not conform to the requirements of the aforesaid Act and the Rules and Regulations promulgated thereunder.

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

METROPOLITAN GOLF BALL, INC., ET AL.

Docket 8528. Order, April 3, 1964

Order remanding proceeding to hearing examiner for consideration of additional evidence on interstate sales of respondent's golf balls.

ORDER VACATING INITIAL DECISION AND REMANDING CASE TO HEARING EXAMINER

This matter has come on to be heard by the Commission upon the motion of counsel supporting the complaint, filed March 3, 1964, requesting that this proceeding be remanded for the reception of further evidence. Respondents have filed an answer in opposition to said motion and counsel supporting the complaint filed a motion on March 18, 1964, requesting leave to file a reply brief submitted with said motion.

The hearing examiner, in his initial decision filed May 3, 1963, concluded that the record as presently constituted does not provide an adequate basis for an informed determination on the issue of whether respondents' rebuilt or re-covered golf balls have the appearance of new golf balls and are understood to be and are readily acceptable by the public as new balls. He further concluded that in these circumstances, the complaint may be dismissed or the proceeding may be reopened for the reception of further evidence. As grounds for his determination that the complaint should be dismissed, the hearing examiner stated that:

> 5. There is no assurance that respondent will not continue to produce the same type of white balls under other brand names of its own or under private brands of its customers. In view, however, of respondent's very limited total production of such golf balls, its even more limited interstate sales of such balls, and its avowed intention to discontinue marketing the Scottsdale balls, it is concluded that the public interest which now appears to be present in continuing this proceeding is not sufficient to warrant its being reopened for the reception of further evidence.

In the motion presently before us, counsel, supporting the complaint states that since the filing of the initial decision herein, newly discovered evidence discloses that the corporate respondent has been, and currently is, selling re-covered golf balls in commerce which golf balls are resold to retail stores. In an affidavit accompanying complaint counsel's motion, it is stated that these are white plastic covered golf balls of the same type but sold under a brand name different from the

Scottsdale brand considered by the examiner in reaching his above-quoted conclusion.

The Commission has fully reviewed this matter and has determined that the grounds advanced by counsel supporting the complaint in support of his motion are sufficient to warrant remand of this case to the hearing examiner for the purpose of receiving any additional evidence which the parties may offer relevant to the issue of the substantiality of respondents' sales of white re-covered golf balls in commerce. The Commission has further determined that if the additional evidence establishes significant interstate sales by respondents of such golf balls without a disclosure that they are rebuilt or re-covered, the hearing examiner should rule on the issue of whether or not the failure to disclose this fact violates Section 5 of the Federal Trade Commission Act.

The Commission is of the opinion that a reply brief is not warranted and complaint counsel's request for leave to file said brief is denied.

Accordingly, *it is ordered*, That the initial decision be, and it hereby is, vacated and set aside.

It is further ordered, That this proceeding be, and it hereby is, remanded to the hearing examiner for the purpose of receiving such additional evidence as the parties may offer relevant to the substantiality of respondents' interstate sales of rebuilt or re-covered golf balls ordinarily used by the public in playing golf.

It is further ordered, That if the aforementioned additional evidence establishes significant interstate sales by respondents of these golf balls, such further evidence be received as the parties may offer relevant to the appearance of respondents' rebuilt or re-covered golf balls packaged in the manner in which they are sold to the public; and relevant to whether or not, in the absence of adequate disclosure to the contrary, such balls are understood to be and are readily acceptable by the public as new balls.

AMERICAN MUSIC GUILD, INC., ET AL.

Docket 8550. Order, April 6, 1964

Order remanding proceeding to hearing examiner for further consideration.

ORDER REMANDING PROCEEDING TO THE HEARING EXAMINER

The complaint in the instant proceeding, issued January 22, 1963, charged each of the respondents with violations of Sec. 5(a)(1) of the Federal Trade Commission Act, 66 Stat. 631, 15 U.S.C. 45(a)(1), through certain promotional and advertising practices. The hearing examiner has certified to the Commission for appropriate action a motion to dismiss the complaint against two of the respondents, and a

motion for acceptance of a consent agreement with the remaining respondents, with his recommendations that both motions be granted. Rules of Practice, Sec. 3.6(a) (August 1, 1963), 28 Fed. Reg. 7080 (July 11, 1963). He has entered no initial decision and has made no findings of fact or conclusions of law.

The facts supplied by the examiner in his certification order are as follows: After the complaint issued, respondents filed an answer thereto which in substance denied all allegations set forth in the complaint. On June 25, 1963, the corporate respondents, American Music Guild, Inc., and Space-Tone Electronics Corporation, were adjudged bankrupts. On that basis, counsel supporting the complaint moved that the complaint be dismissed as to said corporate respondents. On February 25, 1964, the remaining respondents, Philip R. Conner, Jr., Neil J. Cantor, and Ernest R. Brewington, all of whom are parties to the complaint in their capacities both as officers of the aforesaid corporate respondents and as individuals, filed a motion for acceptance of a consent agreement and termination of the proceeding. On February 28, 1964, the answer originally filed in the proceedings was withdrawn.

1. We decline to rule on the motion to dismiss the complaint against the corporate respondents adjudged bankrupts. Such a motion for dismissal is properly before the hearing examiner and within his powers to decide. Rules of Practice, *supra*, Sec. 3.6(e). In any event, the facts supplied by the examiner in his certification order do not provide us with sufficient information upon which to predicate a decision, since we are totally uninformed of the current status of said corporate respondents.

2. The Commission does not concur in the examiner's recommendation that the motion for acceptance of the consent agreement should be granted. The procedure for acceptance of a consent order set forth in Part 2 of our rules of practice is not available to a respondent after the complaint has issued. Rules of Practice, *supra*, Sec. 2.4(d); see *Meyers Development Corporation*, Docket No. 8536, Order Remanding Agreement for Consent Order (February 6, 1963); *Lehn & Fink Products Corporation*, Docket No. 8506, Order Remanding Agreement for Consent Order (June 11, 1963); *White Laboratories, Inc.*, Docket No. 8500, Order Denying Motion (June 28, 1963). Any order issued in the instant case must, therefore, be predicated upon findings and conclusions. The "Agreement Containing Consent Order to Cease and Desist" filed by respondents herein on February 26, 1964, contains no admissions or stipulations of fact upon which findings and conclusions could be made and thus does not provide a sufficient basis for entry of an appropriate cease and desist order. The motion for acceptance of a consent order and termination of the proceedings must, therefore, be

denied and the matter remanded to the examiner for further proceedings. Accordingly,

It is ordered, That this matter be, and it hereby is, remanded to the hearing examiner for further proceedings in the light of this order.

STANDARD MOTOR PRODUCTS, INC.

Docket 5721. Order, April 9, 1964

Order denying respondent's request to subpoena certain records in regard to the issue of cost justification.

Order Ruling on Respondent's Request for Subpoenas

Respondent, in this investigational hearing to determine compliance with the Commission's outstanding cease and desist order, requested the hearing examiner to issue certain subpoenas. Without expressing any view on the merits of this request, the examiner certified it to the Commission. By order of December 20, 1963, the Commission remanded the matter to the examiner directing that he reconsider and recertify respondent's request with his recommendations and reasons therefor. On March 17, 1964, the examiner, in accordance with the Commission's directions, again certified respondent's request for subpoenas to the Commission, this time with his recommendations and reasons in support thereof.

Respondent's first request is for a subpoena *ad testificandum* directed to an accountant employed by the Commission directing him to testify with respect to certain cost-justification information submitted by respondent. The examiner recommends rejection of this request on the ground that respondent by this subpoena is simply seeking a legal opinion on its cost-justification defense, which the accountant is not qualified to give.

Respondent next requests a subpoena *duces tecum* directing the Commission's Secretary to produce certain portions of a compliance report submitted by respondent and portions of another compliance report submitted by another company. In addition, respondent requests copies of all reports of compliance filed by a number of other respondents in matters before the Commission. As for respondent's own compliance report, the examiner recommends rejection of the request on the ground that respondent admittedly already has in its possession all the information sought. With respect to the request for compliance reports of other respondents, many of them customers of the present respondent, the examiner recommends rejection of respondent's request on the ground of irrelevancy. Respondent seeks these documents in order to demonstrate that the Commission has been inconsistent in its

treatment of the cost-justification defense. The examiner points out, however, that such inconsistency would not affect the question of whether respondent is in compliance with the Commission's order against it. The examiner's recommendations are within his discretion. Accordingly,

It is ordered, That respondent's request for subpoenas be, and it hereby is, denied.

THE BORDEN COMPANY

Docket 7474. Order, April 10, 1964

Order denying petition for reconsideration of desist order issued Feb. 7, 1964, 64 F.T.C. 534, prohibiting price discrimination in violation of Sec. 2(a) of the Clayton Act in the sale of fluid milk which argued (1) that said order was not issued with the concurrence of three of the Commission's five members and was therefore beyond the Commission's authority, and (2) that the statement of reasons and findings of fact accompanying the final order were those of only one commissioner since the other commissioner who approved the order only "concurred in the result".

ORDER DENYING RESPONDENT'S PETITION FOR RECONSIDERATION

This matter has come on to be heard by the Commission upon respondent's petition, filed March 13, 1964, for reconsideration of the Commission's decision issued herein on February 7, 1964 [64 F.T.C. 534], and upon the answer of counsel supporting the complaint in opposition thereto.

The first ground set forth by respondent in support of its petition is that the final order of the Commission was not issued with the concurrence of three of the Commission's five members and is therefore beyond the authority conferred upon the Commission by Congress. This argument must be rejected. Three of the five members of the Commission participated in the decision which consists of an opinion and final order. In the absence of statutory provision, these three members constituted a quorum for the transaction of business, in accordance with the Commission's rules. *Drath* v. *Federal Trade Commission*, 239 F.2d 452 (D.C. Cir. 1956). Two of the three members participating concurred in the decision. The Commission being an administrative body, a majority of a quorum is sufficient to sustain the validity of a final order. *Frischer* v. *Bakelite Corp.*, C.C.P.A. (Patents), 39 F.2d 247 (1930), *cert. denied*, 282 U.S. 852.

As a second ground in support of its petition, respondent contends that the Commission has not made the necessary findings of fact or statement of reasons in support of the final order as required by Section 8(b) of the Administrative Procedure Act and by well-established

rules of administrative law. In substance, respondent argues that the statement of reasons and findings of fact which accompany the final order are those of only one Commissioner since the other Commissioner who approved the order only "concurred in the result."

Respondent is in error in its interpretation of the action of the concurring Commissioner. While the action of this Commissioner in concurring in the result indicates that he may not assent to all of the comments or observations made in the findings and conclusions set forth in the decision, he is sufficiently in accord with the rationale thereof to approve issuance of an order based thereon. *Chicago, B & Q R. Co.* v. *United States*, 60 F. Supp. 580 (E.D. Ky. 1945). It is the Commission's conclusion that the rationale of the findings of fact and basis therefor is readily understandable and that by the action of one Commissioner in concurring in the result, these findings and reasons are those of a majority of the quorum, in conformance with the requirements of Section 8(b) of the Administrative Procedure Act. Respondent's argument on this point is likewise rejected.

Accordingly: *It is ordered*, That respondent's petition for reconsideration of the Commission's decision be, and it hereby is, denied.

Commissioner MacIntyre not participating.

UNITED BISCUIT COMPANY OF AMERICA

Docket 7817. Order, April 10, 1964

Order denying motion for reconsideration and stay of order of Feb. 7, 1964, 64 F.T.C. 586, prohibiting price discrimination, until determination has been made as to whether respondent biscuit manufacturer's competitors are in compliance with similar desist orders previously issued against them.

ORDER DENYING MOTION FOR RECONSIDERATION AND STAY OF ORDER

Respondent on March 24, 1964, filed a motion requesting that the Commission reconsider its order issued February 7, 1964 [64 F.T.C. 586], respecting Count I of the complaint, and that it withdraw entry and stay re-entry of such order until a determination has been made as to whether the respondents in *National Biscuit Company*, Docket No. 5013, and *Sunshine Biscuits, Inc.*, Docket No. 6191, are in compliance with the respective cease and desist orders issued previously by the Commission against these companies. Respondent claims that it will be disadvantaged competitively if its request is not granted. Complaint counsel has filed an answer opposing this motion.

Respondent, with the issuance of the price discrimination order against it, is now more nearly on a par with its major competitors who have been operating under prohibitions of this nature for some time.

We fail to see any inequity in this. If there is a compliance question in connection with an order against any competitor, this is a matter to be separately considered on its own merits. Moreover, we do not believe that respondent has shown that by conforming its practices to the requirements of the order it will necessarily be at a competitive disadvantage. It has failed to demonstrate that there are no alternative methods for competing which would be in compliance with the order.

In any event, the mere fact that respondent's business may be adversely affected, if that indeed is true, by the requirement to cease and desist its unlawful conduct is not sufficient reason to hold the order in indefinite abeyance, since, if this were the policy, Commission orders would be forever pending and the unlawful practices rarely, if ever, corrected. *C. E. Niehoff & Co.*, 51 F.T.C. 1114, 1153, *affirmance directed*, *Moog Industries, Inc.* v. *F.T.C.* and *F.T.C.* v. *C. E. Niehoff & Co.*, 355 U.S. 411 (1958).

It is ordered, That respondent's motion for reconsideration and stay of order be, and it hereby is, denied.

JOHN SURREY, LTD., ET AL.

Docket 8605. Order, April 24, 1964

Order denying respondent's motion to disqualify hearing examiner and to adjourn hearing date.

Order Denying Motion To Disqualify and Motion To Adjourn Hearing Date

On April 13, 1964, respondents, acting pursuant to Section 3.15(g) of the Commission's Rules of Practice and Procedure, filed a motion to disqualify the hearing examiner for prejudice. Respondents also attempt to appeal from the examiner's direction that the hearing commence on April 20, 1964. On April 15, 1964, the examiner filed an answer to respondents' motion. Upon consideration of the motion and answer, and it appearing that respondents have entirely failed to suggest any reasonable basis for their belief that the examiner may be unable to preside and render a decision in an impartial manner,

It is ordered, That respondents' motion to disqualify be, and it hereby is, denied.

It further appearing that the examiner has cancelled the hearing scheduled to commence on April 20, 1964, because of the pendency of the motion to disqualify, that the examiner has stated that, in setting a new hearing date, he will give consideration to the reasons advanced by respondents' counsel in the motion of April 13, 1964, for requiring additional time, and that respondents' "Motion to Adjourn Hearing

Date" therefore involves a matter within the province of the examiner,

It is ordered, That respondents' "Motion to Adjourn Hearing Date" be, and it hereby is, denied.

ART NATIONAL MANUFACTURERS DISTRIBUTING CO., INC., ET AL.

Docket 7286. Order, May 8, 1964

Order denying petition to modify desist order of May 10, 1961, 58 F.T.C. 719, in the light of the Commission's Guides Against Deceptive Pricing, but noting that separate advice was being furnished respondents in response to their alternative request, as to whether a proposed course of action would constitute compliance with the order.

Order Denying Petition To Modify Order and Decision

Respondents, by petition filed with the Commission March 26, 1964 [58 F.T.C. 719], have requested that the deceptive pricing provisions of the order entered against them on May 10, 1961, be altered, modified, or set aside or, in the alternative, have requested advice from the Commission on whether particular practices constitute compliance with the order to cease and desist. The sections of the order placed in issue by this petition are those which prohibited respondents from:

(b) Representing by means of prices on tickets attached to or accompanying merchandise, or by any other means, that any price is the retail price of merchandise when it is in excess of the price at which said merchandise is usually and customarily sold at retail.

(c) Furnishing means and instrumentalities to dealers or others by and through which they may misrepresent the usual and customary retail prices of respondents' merchandise.

The entire order was affirmed and ordered enforced in *Art National Manufacturers Distributing Co., et al.* v. *Federal Trade Commission*, 298 F.2d 476 (2d Cir. 1962).

The petition for modification of the above quoted provisions of the order to cease and desist is predicated upon Guide III of the Commission's Guides Against Deceptive Pricing (effective January 8, 1964), which states in pertinent part:

* * * Typically, a list price [which includes a pre-ticketed price] is a price at which articles are sold, if not everywhere, then at least in the principal retail outlets which do not conduct their business on a discount basis. It will not be deemed fictitious if it is the price at which substantial (that is, not isolated or insignificant) sales are made in the advertiser's trade area (the area in which he does business). Conversely, if the list price is significantly in excess of the highest price at which substantial sales in the trade area are made, there is a clear and serious danger of the consumer being misled by an advertised reduction from this price.

* * * * * * *

* * * a manufacturer or other distributor who does business on a large regional or national scale cannot be required to police or investigate in detail the prevailing prices of his articles throughout so large a trade area. If he advertises or disseminates a list or pre-ticketed price in good faith (i.e., as an honest estimate of the actual retail price) which does not appreciably exceed the highest price at which substantial sales are made in his trade area, he will not be chargeable with having engaged in a deceptive practice.

Respondents assert that a review of the decision in this case reveals that "substantial sales" of their merchandise were made at the "list" price and that had the current Guides been in effect at the time the case was pending before the Commission, the deceptive pricing portions of the charge would have been dismissed. As a result, they now request that the Commission review the evidence in the light of the new guides and alter, modify, or set aside those portions of the order prohibiting deceptive pricing practices.

The standards set forth in the Guides Against Deceptive Pricing are intended to be prospective in their application rather than retrospective. In a case such as this, where the Commission's order has become final and has been affirmed by a United States Court of Appeals, the Commission is of the opinion that it should not review the evidence to determine whether it would support a finding of violation under the new standard. The public interest would not be served if, in the light of every new policy announcement, the Commission were required to undertake the time-consuming task of attempting to review the records of all past cases which might be affected by the policy change. However, the Commission has directed that all outstanding orders involving deceptive pricing shall be interpreted, and thus *pro tanto* modified, so as to impose on those subject to such orders no greater or otherwise different obligations than are set forth in the Commission's newly revised Guides Against Deceptive Pricing. *Clinton Watch Company et al.*, Docket No. 7434, Order on Petition to Reopen Proceeding (February 17, 1964) [64 F.T.C. 1443]. The separate advice being furnished respondents, in response to their alternative request, as to whether a proposed course of action, if pursued by them, will constitute compliance with the order, reflects an application of this policy to the order in this case.

It is ordered, That respondents' petition for modification of the order entered against them on May 10, 1961, be, and it hereby is, denied.

Commissioner MacIntyre does not concur for the reasons set forth in his statements accompanying the Commission's orders in *The Regina Corporation*, Docket No. 8323 (April 7, 1964) [65 F.T.C. 246], and *Clinton Watch Company et al.*, Docket No. 7434 (February 17, 1964) [64 F.T.C. 1443].

KNOLL ASSOCIATES, INC.

Docket 8549. Order and Opinions, May 11, 1964

Interlocutory order denying motion to suppress evidence offered by complaint counsel consisting of 46 documents allegedly removed from respondent's files unlawfully, and modifying demands of subpoena duces tecum outstanding against respondent's treasurer.

ORDER DENYING APPLICATION TO FILE INTERLOCUTORY APPEAL

This matter is before the Commission upon the application of respondent, Knoll Associates, Inc., for leave to file an interlocutory appeal from the ruling of the hearing examiner entered on March 24, 1964. The principal ground for respondent's application is the hearing examiner's denial of its motion to suppress evidence offered by complaint counsel consisting of some forty-six documents (marked for identification as Commission Exhibits 1914 to 1959), which respondent claims were taken from the files in its showroom in Birmingham, Michigan, in violation of its rights under the Fourth Amendment to the United States Constitution. Subsidiary alleged errors are the hearing examiner's refusal to require complaint counsel to produce certain documents and to permit respondent to reargue a motion to quash a subpoena duces tecum served on respondent's treasurer, Donald R. Jomo.

Complaint counsel has opposed respondent's application, pleading that respondent has failed to show the existence of the necessary conditions prescribed by § 3.20 of the Commission's Rules of Practice, wherein it is provided that "Permission [to file interlocutory appeal] will not be granted except in extraordinary circumstances where an immediate decision by the Commission is clearly necessary to prevent detriment to the public interest."

It is the Commission's decision that the public interest will not be harmed by deferring final decision on the issues raised until this matter is before it for final decision on the merits. The trial of this matter is now all but completed and the *res* of this controversy, that is, the forty-six documents, constitute but a small part of a very large record. There is no certainty at this stage that the documents will ever be placed in evidence or, if received, utilized by complaint counsel in their proposed findings or by the hearing examiner in his findings of fact. Nor will respondent be prejudiced by the Commission's deferral of decision on these points, for its allegations of error may be resubmitted to the Commission when the proceeding comes before us for final review on the merits.

With respect to the subpoena duces tecum outstanding against re-

spondent's treasurer, it appears to the Commission to be unnecessarily broad in its demands.

It is ordered, That the subpoena duces tecum served upon Donald R. Jomo January 30, 1964, be modified by limiting the demands of Specification 1 to the years 1960 through 1962 and by striking Specification 2 in its entirety.

It is further ordered, That these hearings be brought to a speedy conclusion without additional hearings excepting as necessary to effect return on the outstanding subpoena and to permit respondent to present additional argument against the admission of Commission Exhibits, for identification, 1914 to 1959.

It is further ordered, That respondent's request to file an interlocutory appeal be, and it hereby is, denied.

Commissioner Elman dissenting.

Opinion of the Commission

This matter is before the Commission pursuant to the petition of the respondent, Knoll Associates, Inc., to file an interlocutory appeal from a ruling of the hearing examiner entered March 24, 1964. Complaint counsel have filed elective opposition thereto.

The subject of this controversy is a group of documents which have been tentatively marked for identification as Commission Exhibits 1914 to 1959. These documents were sent to complaint counsel Bernard Turiel by one Herbert Prosser on or about January 4, 1964. Mr. Prosser was, until about January 1, 1964, an employee of Joseph Dworski, the operator of a Knoll furniture agency and showroom located in Birmingham, Michigan. Mr. Prosser testified that he took the documents in question from his employer's premises at various periods up to December 19, 1963. Some of the documents were removed after December 9, 1963, on which date he had a telephone conversation of undetermined content with complaint counsel Turiel.

When the documents were served upon respondent's counsel by complaint counsel with a request for admissions as to their authenticity, he responded with a series of motions and affidavits, including a motion to stay the request for admissions as to authenticity; a motion to reargue a previously denied motion to quash a subpoena duces tecum issued to respondent's treasurer, Jomo; a motion for an order granting permission to inspect and copy memoranda, letters, communications and documents of any nature in the Commission's files pertaining to Herbert Prosser. Respondent's attorneys' affidavits supporting the motions charged, *inter alia*, "* * * I am convinced that Mr. Prosser stole these documents from the Detroit showroom; that this theft occurred on or about the same date that Mr. Prosser had a telephone

conversation with Bernard Turiel, Esq., counsel supporting the complaint; * * *" The affidavit further states "* * * I have also been informed by Mr. Joseph Dworski who was the agent for the respondent and who operated the Knoll showroom until December 31, 1963 that although Mr. Prosser had access to these documents, he had no right or authority to take the documents from the files or to deliver them to anyone at the Federal Trade Commission * * *." The motion to reargue the previously denied motion to quash the subpoena duces tecum was founded upon respondent's counsel's belief that complaint counsel first learned of the documents which the subpoena directs be produced from the documents transmitted to him by Prosser.

The hearing examiner heard extensive argument from the parties on the motions and at respondent's request convened a special hearing in Detroit, Michigan, on March 17, 1964, to permit respondent to call witnesses and introduce evidence in support of his contention that the documents in question were illegally secured by complaint counsel. Respondent called several witnesses, including Herbert Prosser, and its employee Gary A. Beals, the current manager of respondent's Birmingham, Michigan, showroom. Mr. Prosser was not questioned concerning the content of his telephone conversations with Commission counsel. He did testify that "* * * sometime during the early part of March * * *" he transmitted a written statement to Mr. Turiel which contained a "* * * recapitulation of my entire connection with this matter * * *." Respondent immediately asked for the production of this document and was refused. The witness Beals testified that Mr. Prosser had the right to use the papers in connection with his employment as a sales representative "* * * and for that purpose he could take them out of the files and take them home in the evening or study the papers or take them with him to a job or have them with him when he calls on somebody."

On March 24, 1964, the hearing examiner entered an order denying "each and all" of respondent's motions and directing that Commission Exhibits for identification 1914 through 1959 be incorporated into the record "* * * unless respondent shall, not later than April 6, 1964 file objections to said exhibits, other than those objections which have been made up to this time and are disposed of in this ruling."

Respondent's application for leave to file an interlocutory appeal, filed March 31, 1964, pleads that the hearing examiner erred in (1) refusing to order the documents suppressed; (2) refusing to order complaint counsel to produce all papers involving Herbert Prosser; and (3) refusing respondent permission to reargue its previously denied motion to quash the subpoena issued to respondent's treasurer, Jomo.

The Commission's Rules of Practice, § 3.20, provide "* * * Permission [to file an interlocutory appeal] will not be granted except in extraordinary circumstances where an immediate decision by the Commission is clearly necessary to prevent detriment to the public interest." The Commission's policy with respect to interlocutory appeals is similar to that of all reviewing courts and bodies and is designed to discourage piecemeal appeals. The denial of a request to file interlocutory appeal is not and should not be construed as a judgment upon the merits of the issues presented by the application, such judgment being reserved until the issues are presented anew when the case comes forward for final determination.

It is our decision that the respondent here has not presented sufficient grounds to justify an immediate decision as to the correctness of the hearing examiner's rulings. The reception of testimony in this proceeding has been completed and the matter is almost ready for initial decision. Moreover, there is no certainty at this stage that the documents in question will, in fact, be placed into evidence or utilized by the hearing examiner in making his findings of fact. Thus, the entire question raised by the application to file interlocutory appeal may be mooted before this proceeding is presented to the Commission for its final decision.

With respect to the subpoena outstanding against respondent's treasurer, Jomo, it is the Commission's belief that the specifications therefor call for more information than is absolutely required. Specification 1(a) calls for certain statistics for the period 1958 through 1962. This specification should be limited to the years 1960 through 1962. Specification 2 of the subpoena calls for records showing sales to respondent's customers throughout the entire country during the years 1958 through 1962. At this stage of the proceeding, after the completion of defense and rebuttal hearings, such a sweeping request should only be granted upon a showing of the most unusual circumstances. Complaint counsel has not shown the existence of such circumstances and this specification of the subpoena will be quashed in its entirety.

An appropriate order will issue.

Commissioner Elman dissented.

Dissenting Opinion

By Elman, *Commissioner:*

Respondent's motion to exclude certain documentary evidence on the ground that it was illegally obtained was denied by the examiner, and respondent has requested leave to file an interlocutory appeal. It appears the documents were filched from respondent's files by one

Prosser, a former employee, for the purpose of turning them over to Commission counsel. Respondent contends that there was "intimate and continued association, connection and cooperation between them [*i.e.*, Prosser and Commission counsel] before and after the papers were stolen."

Agencies and officials of the United States Government have an overriding duty to deal honorably with its citizens. Unless and until we satisfy ourselves that no Commission employee had anything to do with the theft, we should not allow papers stolen from a respondent to be used in evidence. I think Commission counsel should be directed to file an affidavit setting forth in full detail how he got these papers. He should also be required to take the stand, and be available for cross-examination.

Some basic questions remain unanswered here. What was the substance of the conversations between Commission counsel and Prosser before the latter removed the documents from respondent's files? Did Commission counsel know beforehand, or have reason to suspect, that Prosser would filch them? If Prosser told Commission counsel that respondent had these incriminating documents in its files, why did Commission counsel not attempt to subpoena them or obtain them by other lawful means? We should get the answers to these and other pertinent questions before we allow documents stolen from respondent's files to be received in evidence.

BAKERS OF WASHINGTON, INC., ET AL.

Docket 8309. Order and Opinion, May 21, 1964

Order reopening proceeding and remanding case to hearing examiner to permit respondent an opportunity "to show the contrary" of facts officially noticed in the opinion of Feb. 28, 1964 (64 F.T.C. 1079).

ORDER REOPENING PROCEEDING AND REMANDING CASE TO HEARING EXAMINER

The Commission having considered respondent Continental Baking Company's petition of April 27, 1964, for reconsideration or, in the alternative, for reopening to permit respondent "to show the contrary" of the facts officially noticed in the Commission's decision of February 28, 1964 [64 F.T.C. 1079], and having determined that the petition for reopening should be granted to the extent set forth in the accompanying opinion, and that determination of the petition for reconsideration should be reserved until the hearings on remand have been completed:

It is ordered, That the proceeding be, and it hereby is, reopened for the limited purpose set forth in the accompanying opinion.

It is further ordered, That the matter be, and it hereby is, remanded to Hearing Examiner Raymond J. Lynch for such further proceedings in accordance with the accompanying opinion.

It is further ordered, That the hearing examiner, upon completion of the said hearings, shall certify the record and his recommendations to the Commission for final disposition of the proceeding.

It is further ordered, That the petition for reconsideration be, and it hereby is, reserved pending completion of the hearings on remand.

Commissioner Elman not concurring, and Commissioner Reilly not participating.

OPINION ON PETITION FOR RECONSIDERATION OR REOPENING

By DIXON, *Commissioner:*

The Commission issued its decision and order in this matter on February 28, 1964, directing respondents to cease and desist fixing bread prices. One of the issues determined there was whether the unlawful acts and practices had occurred in interstate commerce. Resolving that question in the affirmative, the Commission took official notice of certain facts concerning the nature of respondent Continental Baking Company's business that had been developed in another and earlier proceeding before this agency, *In the Matter of Continental Baking Company*, Dkt. 7630 (1963) [63 F.T.C. 2071].

As we noted in our earlier opinion in the instant case, the facts noticed from the record of the prior proceeding appeared to have been undisputed: "They were taken from another record involving the same party; they were presented there through the party's own officers, employees, and written records; they were adduced there for the same purpose as here (to show interstate commerce); and cross-examination and opportunity to present rebuttal evidence were afforded. These facts were then found by the examiner and set forth with great particularity in his initial decision in that case (Dkt. 7630, initial decision filed March 8, 1963, particularly pp. 11–21) [63 F.T.C. 2071, 2084–2092]. On its appeal to the Commission, Continental challenged the examiner's legal conclusion that those facts evidenced interstate commerce, but made no effort to dispute any of the factual findings themselves. We could, of course, remand the instant case for the taking of this same evidence a second time. And on a proper showing of the necessity therefor, we would do so. But until such a showing has been made, we are guided by the principle that 'the intelligent functioning of the administrative process demands that the Commission [ICC] be not required to indulge in lengthy evidentiary recapitulations of

matters just decided in a companion case.' *Crichton* v. *United States*, *supra*, 56 F. Supp. at 880." *Bakers of Washington, Inc., et al.*, Dkt. 8309 (February 28, 1964), at 14–15, n. 10 [64 F.T.C. 1079, 1118].

Section 7(d) of the Administrative Procedure Act provides: "Where any agency decision rests on official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded an opportunity to show the contrary." In accordance with this provision, we said in our earlier opinion in this matter: "Section 3.25 of our Rules of Practice authorizes the filing of a 'petition for reconsideration' of any Commission decision. Should Continental desire to challenge any of these noticed facts, it will thus have an opportunity to do so in such a petition for reconsideration, specifying those particular factual statements it wishes to dispute, and setting forth, preferably by affidavits of knowledgeable persons, the true facts in those particulars." *Id.*, at 14, n. 10 [64 F.T.C. 1118].

On April 27, 1964, respondent Continental filed a "Petition for Reconsideration or Reopening," accompanied by a 2½ page "Memorandum in Support of Petition for Reconsideration [1] or Reopening." The latter declares that "many of the facts which the Commission has lifted from another record are inaccurate when applied to Continental's participation in the Seattle market." Then follows a conclusory recitation of the things that its Seattle plant does or is responsible for. None of them appear to be inconsistent with the facts officially noticed by the Commission. None of the facts officially noticed by the Commission are specifically challenged. Respondent has not seen fit to accept our invitation to tell us succinctly, "by affidavits of knowledgeable persons, the true facts in those particulars."

In these circumstances, we think it would not be unreasonable to conclude that respondent Continental has been afforded, but has declined to accept, its "opportunity," under Section 7(d) of the APA, "to show the contrary" of the officially noticed facts. We do not understand this provision as meaning that, in every case of official notice, "the opportunity to show the contrary" contemplates a hearing; as we understand the requirements here, the type of rebuttal opportunity to be afforded may be, and in fact should be, tailored in accordance with the nature of the facts officially noticed. "The cardinal principle of fair hearing is * * * that parties should have opportunity to meet in the

[1] In support of its petition for reconsideration, respondent challenges our right to take official notice at all. This argument was fully answered in our prior opinion. Secondly, respondent contends the complaint should be dismissed because we allegedly "relied upon testimony stricken from the record by the Examiner and not admissible against Continental * * *," citing pages 30–31 and 33 of our prior opinion. Those three pages contain 19 separate references to the trial record; we are not told which of those 19 citations refer to stricken evidence. We have re-examined each of them, however, and have been unable to find any instance in which any of the evidence relied upon in our opinion had been stricken by the hearing examiner.

appropriate fashion all facts that influence the disposition of the case. What is the appropriate fashion depends upon three main variables—how far the facts are from the center of the controversy between the parties, the extent to which the facts are adjudicative facts about the parties or legislative facts of a general character, and the degree of certainty or doubt about the facts. Nothing short of bringing the facts into the record, so that an unabridged opportunity is allowed for cross-examination and for presentation of rebuttal evidence, will suffice for disputed adjudicative facts at the center of the controversy. Debatable and critical legislative facts probably need not always be brought into the record, but such facts should be subject to challenge through briefs and arguments, and the tribunal should have a discretionary power to determine whether cross-examination is appropriate in the circumstances." Davis, 2 *Administrative Law Treatise* 400, 432 (1958). See also Davis, "On Official Notice," Proceedings of the Federal Hearing Examiners' First Annual Seminar 13, 21–22 (September 23–25, 1963). The facts officially noticed in this case—dealing largely with the routine, internal management procedures of the corporation, and already developed on another adjudicative record through the testimony of respondent's own officials—would see, at first blush, to be capable of prompt resolution on affidavits alone.

However, we are mindful of the fact that the taking of official notice of such facts is a relatively novel procedure. While we are anxious to expedite our proceedings as much as possible, we think it appropriate to err here, if error it be, on the side of excessive fairness.

Respondent Continental will be permitted an opportunity to "show the contrary" of any or all of the facts officially noticed in our opinion of February 28, 1964. For this purpose, and for the purpose of permitting counsel supporting the complaint to rebut any of the evidence adduced by respondent,[2] the proceeding will be reopened with directions to the hearing examiner to hold, as expeditiously as possible, such further hearings as may be necessary to fully determine the accuracy of the facts heretofore noticed. At the conclusion of such hearings, the record and the examiner's recommendations shall be certified to the Commission for final disposition of the matter. The effective date of the Commission's order of February 28, 1964, will be stayed pending such final determination by the Commission.

Commissioner Elman did not concur, and Commissioner Reilly did not participate.

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[2] Respondent has requested a further hearing in Seattle only. Since counsel for respondent, in the original proceeding in this case, questioned whether its Seattle plant manager "was competent to testify as to what goes on internally in Rye, New York," Dkt. 8309, tr. 424–425, counsel supporting the complaint must have an opportunity to rebut respondent's evidence on remand, if necessary, by calling respondent's regional and headquarters officials, in California and New York, respectively.

IN THE MATTER OF

UNITED STATES RUBBER COMPANY

Docket 8586. Order, May 28, 1964

Remanding of initial decision to hearing examiner for ruling on respondent's motion to correct transcript.

ORDER REMANDING PROCEEDINGS

On March 24, 1964, the presiding examiner filed his initial decision in the above case. Subsequently, on May 19, 1964, the examiner received a motion by respondent, addressed to him, to correct the transcript of the proceedings in numerous respects. Since Section 3.21 (d) (2) of the Commission's Rules of Practice provides that "except for the correction of clerical errors, the jurisdiction of the hearing examiner is terminated upon the filing of his initial decision," the examiner has referred respondent's motion to the Commission. Upon consideration of respondent's motion by the Commission,

It is ordered, That the proceedings be, and they hereby are, remanded to the examiner for the sole and limited purpose of ruling on respondent's motion to correct transcript.

O. K. RUBBER WELDERS, INC., ET AL.

Docket 8571. Order, June 4, 1964

Order granting leave to reopen consent order negotiations and present results to Commission by June 11, 1964.

ORDER GRANTING LEAVE TO REOPEN CONSENT ORDER NEGOTIATIONS

On June 1, 1964, respondents in the above-entitled case filed with the Commission a motion for leave to reopen consent order negotiations. Hearings are now scheduled to commence on June 16, 1964, and respondents request that they be postponed pending the further negotiations. Respondents state that the Commission's recent acceptance of a consent order in *Kaiser Jeep Corporation*, Docket No. C–739 [65 F.T.C. 562] and the Seventh Circuit's affirmance of the Commission orders in *Goodyear Tire and Rubber Company* v. *F.T.C.*, Docket Nos. 13339 and 13340, constitute changed circumstances in the light of which consent negotiations can again be profitably undertaken. Complaint counsel, on June 1, 1964, filed an answer stating that they do not oppose the motion for leave to reopen the consent negotiations but that they do oppose any postponement of the presently fixed hearing date. Complaint counsel urge that respondents' motion be granted only on the condition that the result of any such negotiations be presented to

the Commission on or before June 8, 1964. Upon consideration of respondents' motion and the reply thereto,

It is ordered, That the parties be, and they hereby are, granted leave to reopen consent order negotiations, *provided that*, any agreement resulting from such negotiations shall be presented to the Commission on or before June 11, 1964.

FRITO-LAY, INC.

Docket 8606. Order, June 4, 1964

Order denying respondent's motion to dismiss complaint.

ORDER DENYING PERMISSION TO FILE INTERLOCUTORY APPEAL

Upon consideration of the request filed by respondent on March 5, 1964, pursuant to Section 3.20 of the Commission's Procedures and Rules of Practice, for permission to file an interlocutory appeal from the order of the hearing examiner denying respondent's motion to dismiss the complaint, and of complaint counsel's statement in opposition to said request, filed on March 11, 1964,

And the Commission being of the opinion that the jurisdictional issues involved in this proceeding can best be determined upon a full record relating to all aspects of the case and that respondent has made no showing that an immediate decision of the jurisdictional issues is clearly necessary to prevent detriment to the public interest as required by Section 3.20,

It is ordered, That permission to file an interlocutory appeal be, and it hereby is, denied.

STANDARD MOTOR PRODUCTS, INC.

Docket 5721. Order, June 17, 1964

Order denying reconsideration of prior denial of access to competitor's compliance reports.

ORDER DENYING PETITION FOR RECONSIDERATION AND AMENDING ORDER OF FEBRUARY 1, 1963

By order of February 1, 1963, the Commission instituted formal investigational hearings to determine whether respondent Standard Motor Products, Inc., is in compliance with the order to cease and desist previously issued in Docket No. 5721 [54 F.T.C. 814]. By order of April 9, 1964, the Commission denied respondent's request that subpoenas duces tecum be issued to certain Commission staff members, in effect requiring them to give respondent access to the reports of com-

pliance filed by a number of other respondents in other Commission proceedings.

Respondent has now filed a petition for reconsideration of that April 9 order. On May 7, 1964, complaint counsel filed an answer in opposition to the petition for reconsideration. In rearguing the relevance of the compliance report filed by Guaranteed Parts Company, respondent in Docket No. 6987, the petition suggests no consideration that was not fully weighed by the Commission at the time it issued the April 9 order. As to this, therefore, respondent's petition should be denied.

The Commission finds it unnecessary to consider respondent's remaining arguments to the effect that the April 9 order was based upon a misunderstanding of the claimed relevance of the compliance reports filed by the six so-called "reorganized buying groups". Since the issuance of that order, the Commission has determined that, in order to deal most effectively with problems of industrywide dimension, priority should be accorded to a direct inquiry into the current organization and operation of the buying groups. In view of this, the Commission concludes that no purpose would now be served by continuing the compliance investigation insofar as it has been concerned with respondent's sales to the buying groups. This action involves no determination of whether or not respondent has complied with the order in its classification of the buying groups, and it is without prejudice to any future action that the Commission may take.

Accordingly, it is ordered by the Commission that the order of February 1, 1963, in this proceeding be, and it hereby is, amended to provide that the investigation to ascertain whether and to what extent respondent has violated the outstanding cease and desist order shall not encompass the question of whether respondent has improperly and unlawfully classified certain purchasers or groups of purchasers as warehouse distributors. To the extent that respondent's petition for reconsideration has not been mooted,

It is further ordered, By the Commission that the petition be, and it hereby is, denied.

Commissioner MacIntyre not concurring.

BRITE MANUFACTURING CO. ET AL.

Docket 8325. Order, June 17, 1964

Order denying application of Manco Watch Strap Co. to intervene in this proceeding.

Order Denying Application To Intervene

Counsel for Manco Watch Strap Co., Inc., having made application dated May 5, 1964, for leave to intervene in this proceeding; and

It appearing that this case is now before the Commission for decision and that petitioner's application for leave to intervene is, therefore, inappropriate:

It is ordered, That the application for leave to intervene in this proceeding be, and it hereby is, denied.

GIANT FOOD INC.

Docket 7773. Order, June 23, 1964

Order reopening and proposing modification of desist order of July 31, 1962, 61 F.T.C. 326, by changing the wording of paragraph 2 of the order in accordance with the Revised Guides Against Deceptive Pricing of January 8, 1964.

ORDER REOPENING PROCEEDING AND PROPOSING MODIFICATION OF ORDER TO CEASE AND DESIST

On April 27, 1964, respondent Giant Food Inc. filed a petition to reopen the proceeding for the purpose of setting aside the order heretofore entered by the Commission and affirmed by the United States Court of Appeals for the District of Columbia Circuit,[1] or, in the alternative, of modifying the order in certain respects. Complaint counsel have filed an answer in opposition to the petition, and respondent has filed a reply. Upon consideration of the foregoing, the Commission concludes that good cause has not been shown for setting aside the order in its entirety or for permitting respondent to introduce additional evidence in an effort to show that no order would be justified under the standards of the Revised Guides Against Deceptive Pricing. *Art National Manufacturers Distributing Co.*, Docket No. 7286, order issued May 8, 1964 [p. 1302 herein].

In considering respondent's alternative request that the order be modified, the Commission is aware that it has previously informed respondent by letter that it would modify paragraph 2 of the order to remove one possible ambiguity, and that, further, it would make "such modifications in the order as are necessary to make the order conform to the newly Revised Guides Against Deceptive Pricing of January 8, 1964". After receipt of this letter respondent withdrew its petition for certiorari with respect to the Court of Appeals' decision that had affirmed the Commission order. Although the Commission has heretofore indicated that all existing pricing orders are to be construed in the light of the Revised Guides and that therefore explicit modification of such orders will not ordinarily be necessary, the unique circumstances of this case justify an exception. Pursuant to Section 5(b) of the Federal Trade Commission Act this proceeding should be reopened for the limited purpose of modifying the provisions of

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[1] *Giant Food Inc.* v. *F.T.C.*, 322 F. 2d 977.

the order to conform with the Revised Guides Against Deceptive Pricing.

The Commission hereby gives notice of its intention to so modify the order that was heretofore entered in this proceeding and that has become final upon affirmance by the Court of Appeals. The following is the order that the Commission now believes should be entered:

It is ordered, That respondent GIANT FOOD INC., a Delaware corporation, and its officers, directors, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of household electrical appliances, kitchen utensils, or any other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "regular price" or words of similar import to refer to any amount which is in excess of the price at which such merchandise has been sold or offered for sale in good faith by the respondent for a reasonably substantial period of time in the recent regular course of its business; or otherwise misrepresenting the price at which such merchandise has been sold or offered for sale by the respondent.

2. Using the words "manufacturer's list price," "suggested list price," "factory suggested retail price," or words of similar import, unless the merchandise so described is regularly offered for sale at this or a higher price by a substantial number of the principal retail outlets in the trade area; provided, however, that this order shall not apply to point-of-sale offering and display of merchandise which is preticketed by the manufacturer or distributor thereof and the obliteration or removal of which preticketed price is impossible or impractical.

3. Representing in any manner that by purchasing any of its merchandise, customers are afforded savings amounting to the difference between respondent's stated price and any other price used for comparison with that price, unless a substantial number of the principal retail outlets in the trade area regularly offer the merchandise for sale at the compared price or some higher price or unless respondent has offered such merchandise for sale at the compared price in good faith for a reasonably substantial period of time in the regular recent course of its business.

Respondent may submit its comments or statement of views on these proposed modifications, if any, within 15 days of service of this order.

Commissioner MacIntyre does not concur with the action of the Commission in this instance. His views on the issues raised by respon-

dent's motion, which have been fully set forth in his statements of nonconcurrence in *Clinton Watch Company, et al.* (Docket 7434, Order On Petition to Reopen Proceeding, February 17, 1964) [64 F.T.C. 1443], *The Regina Corporation* (Docket 8323, Order Reopening Proceeding and Modifying Cease and Desist Order, April 7, 1964) [65 F.T.C. 246] and his statement on the issuance of the *Revised Guides Against Deceptive Pricing* issued January 8, 1964, need no repetition here.

LLOYD A. FRY ROOFING CO. ET AL.

Docket 7908. Order and Memorandum, June 30, 1964

Order dismissing as moot the respondent's motion to disqualify the Chairman from participating in the adjudication of this case.

MEMORANDUM OF CHAIRMAN DIXON IN REGARD TO RESPONDENT'S MOTION THAT HE BE DISQUALIFIED

By motion supported by an affidavit of respondent Lloyd A. Fry, Sr., respondents have requested that I be disqualified from participating in the agency's adjudication of this matter. It is alleged, in substance, that by reason of my prior position and duties as Counsel and Staff Director of the Antitrust and Monopoly Subcommittee, Committee on the Judiciary of the United States Senate, I have prejudged certain issues of fact involved in the instant case and am therefore barred by Sections 5(c) and 7(a) of the Administrative Procedure Act, 5 U.S.C. 1004(c) and 1006(a), and by the due process requirements of the Constitution, from participating in the Commission's decision herein.

During March 1958, the Subcommittee held hearings for the purpose of "examining the pricing practices and policies of the asphalt roofing industry." As Counsel and Staff Director of the Subcommittee, I participated in those hearings, personally questioning on the record various members of the industry, including respondent Lloyd A. Fry., Sr., and certain others who testified that they were being injured by the discriminatory low prices of the major roofing companies, including respondent Lloyd A. Fry Roofing Company. I also participated in the drafting of the Subcommittee's majority report on that inquiry.

These prior activities do not, *per se*, establish the kind of "personal" bias or prejudice that disqualifies. *Campbell Taggart Associated Bakeries, Inc.*, Dkt. 7938 (May 7, 1963) [62 F.T.C. 1494, 1498].[1] Hearings before Congressional committees are *ex parte* inquiries, not adversary proceedings; staff counsel is not an "advocate" engaged in the "prose-

[1] "Memorandum of Chairman Dixon in Regard to Respondent's Motion That He Be Disqualified."

cution" of a "case" against a specific party, but an agent of the legislature charged with the duty of developing all of the facts needed to determine whether additional legislation is called for, not with presenting only one side of the matter for the purpose of proving a violation of existing law. Further, legislative hearings of this sort are commonly industrywide inquiries, involving many or even all of the member firms, thereby diffusing the subcommittee's attention over an entire class of persons and producing, at most, an impersonal notion or suspicion of the activities of the class as a whole, not a "personal" animosity directed at some particular member of the group. *Federal Trade Commission* v. *Cement Institute*, 333 U.S. 683, 700–703 (1948), affirming *Marquette Cement Mfg. Co.* v. *Federal Trade Commission*, 147 F. 2d 589 (7th Cir. 1945); *Eisler* v. *United States*, 170 F. 2d 273, 277–278 (D.C. Cir. 1948), removed from docket, 338 U.S. 189 (1949).

Further, mere "prejudgment," as such, does not appear to be sufficient basis for disqualification of an administrative adjudicator. *Marquette Cement, supra.* The administrative process, in providing that the same body of supposed "experts" shall cause an investigation to be made, examine the "extra-record" evidence gathered in that *ex parte* investigation to determine if there is "reason to believe" a violation of law has occurred, and then sit to determine the fact of whether those charges are sustained by the record, assumes that the administrator does not come to his adjudicative task with a mind that is wholly free from any factual information on the issues to be determined. As the Supreme Court held in *Cement Institute, supra*, the hearing has been a fair one if the charges are sustained on the adjudicative record and if the respondent is there given a chance to rebut those charges and thus to overcome any preconceived notions the administrators might have on the subject:

> In the first place, the fact that the Commission had entertained such views as the result of its prior *ex parte* investigations did not necessarily mean that the minds of its members were irrevocably closed on the subject of the respondents' basing point practices. Here, in contrast to the Commission's investigations, members of the cement industry were legally authorized participants in the hearings. They produced evidence—volumes of it. They were free to point out to the Commission by testimony, by cross-examination of witnesses, and by arguments, conditions of the trade practices under attack which they thought kept these practices within the range of legally permissible business activities. 333 U.S. at 701.

The issue in such cases, therefore, as the Supreme Court has thus framed it, is whether "the minds of its [Federal Trade Commission's] members [are] *irrevocably closed* on the subject" of the particular

respondent's alleged practices (emphasis added). The state of a man's mind, as I pointed out in another case involving a similar charge of prejudice,[2] "is by the nature of things known only to him and to his Maker." Whatever handicaps a man may labor under when he essays to search his own mind for prejudices,[3] I know to a moral certainty that my mind is not "irrevocably closed" on the issues involved in this proceeding.

However, as I pointed out in *Campbell Taggart, supra*, I am not insensitive to the "appearances" of the matter: "In common with most men, I desire not only to *be* fair, but to have my fairness made so obvious that the most superficial of critics will see and appreciate it. Hence, I am not indifferent to this respondent's suggestion that the 'appearance' of fairness, if not the law, requires me to disqualify myself." I am also mindful of the danger that too slavish a concern for appearances alone can cause the administrator to be "overly tempted to 'lean over backwards' to be fair and consequently to employ self-disqualification too readily."[4] Weighing these factors in the light of the facts in the instant case, I concluded several weeks ago, prior to the motions of these respondents, that I would disqualify myself here. Fry Roofing, by far the largest company in the asphalt roofing industry,[5] stood out rather clearly from the other and much smaller firms represented at the Subcommittee's hearings, and I do have some independent recollection of its business methods, as contrasted with those of its smaller competitors. While I do not think, as noted, that this amounts to bias, whether of a disqualifying, "personal" nature or otherwise, *Cement Institute, supra*, I am persuaded that, under the peculiar facts of this case, whatever public interest there may be in my participation in this proceeding[6] is outweighed by the principle that it is "of fundamental importance that justice should, not only be done, but manifestly and undoubtedly be seen to be done."[7]

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[2] *American Cyanamid Co.*, Dkt. 7211 ("Memorandum of Chairman Dixon in Regard to Respondents' Motions That He Be Disqualified") (1962) [60 F.T.C. 1881].

[3] Comment, "Prejudice and the Administrative Process," 59 *Northwestern University Law Review* 216, 232–235 (May–June 1964).

[4] *Id.*, at 234, n. 65.

[5] Fry "has almost twice as many plants as the next largest producer." "Administered Prices Asphalt Roofing," Report Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary, United States Senate, S. Res. 231, 85th Cong., 2d Sess. (December 15, 1958), p. 38.

[6] "[E]very adjudicator has a positive duty to fulfill his adjudicative functions unless actually disqualified, and both the individual parties to a controversy and the public at large have a vested interest in such an administrator's participation in the case involved. Consequently, while an administrator should scrupulously search his conscience to test his impartiality, it is almost as great a fault to employ self-disqualification too readily as too sparingly." Comment, *supra*, note 3, at 233–234.

[7] *Rex* v. *Sussex Justices*, 93 L.J.K.B. 129, 131 (1924), quoted in comment, *supra*, note 3, at 225.

I shall not participate in the Commission's deliberations or decisions in this proceeding.

ORDER DISMISSING MOTION TO DISQUALIFY

Respondents having filed on June 18, 1964, a motion to disqualify Chairman Paul Rand Dixon from participation in the adjudication of this proceeding; and

Chairman Dixon having previously determined *sua sponte* to disqualify himself therefrom:

It is ordered, That respondents' motion be, and it hereby is, dismissed as moot.

Commissioner Dixon not participating.

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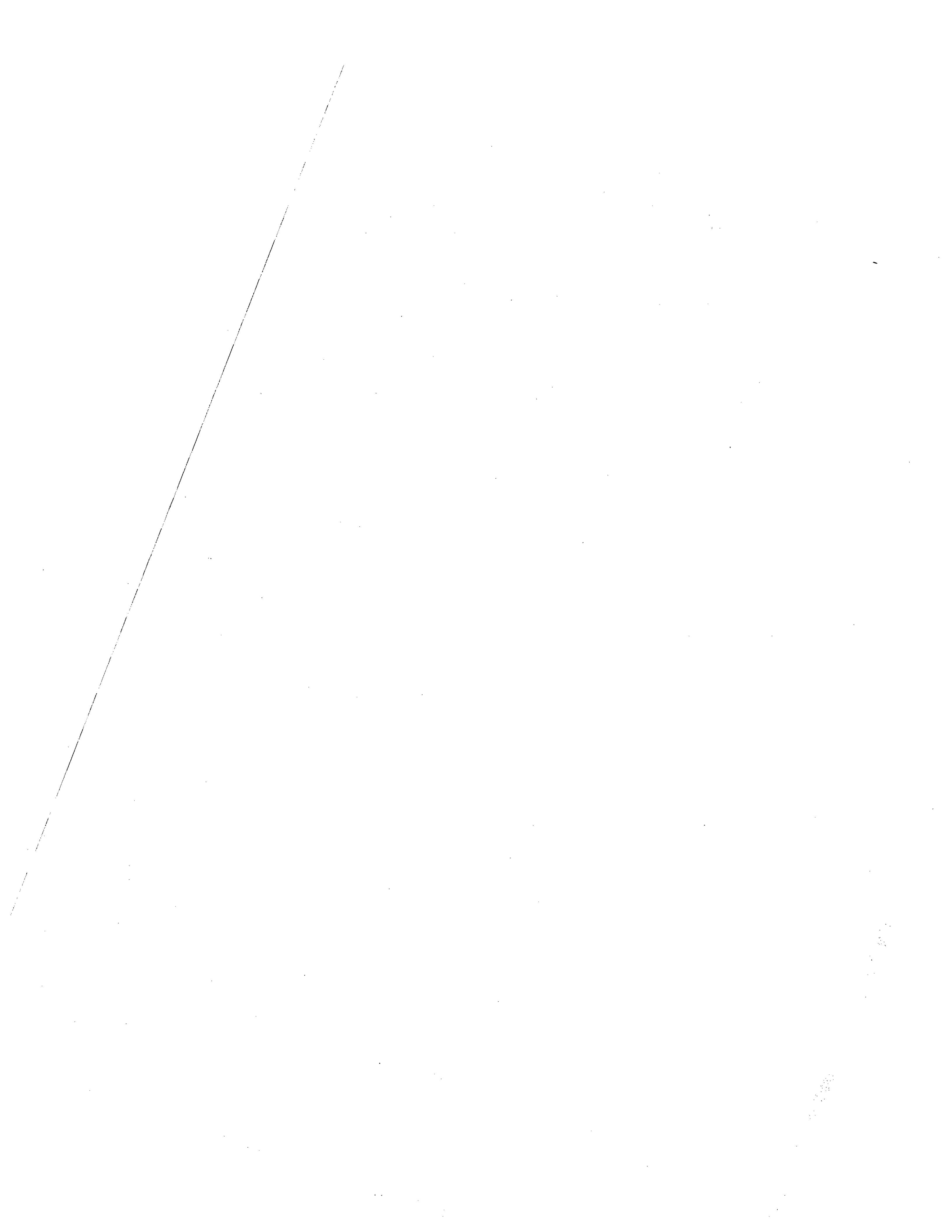

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