Complaint

IN THE MATTER OF

TELEVISION SERVICE ASSOCIATION OF DELAWARE VALLEY ET AL.

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

Docket 8623. Complaint, May 13, 1964—Decision, Feb. 19, 1965

Order requiring a trade association of television and radio repairmen and its members, of Philadelphia, Pa., engaged in the repair service of television sets, radios, and other electronic devices, to cease entering into and carrying out any planned course of action to coerce, intimidate, or boycott wholesalers or distributors of electronic equipment or component parts who also sell such products at retail, to refrain from interfering with the practices in which such wholesalers conduct their business, and to cease using a policy to "black list" wholesalers or distributors who sell such products at retail and to "white list" wholesalers or distributors who refuse to sell such products at retail.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. Sec. 41, et seq.), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the parties hereinafter referred to as respondents have violated the provisions of Section 5 of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Television Service Association of Delaware Valley, a corporation, sometimes hereinafter referred to as TSA of Delaware Valley, is a non-profit trade association, organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, with offices and its principal place of business at 4710 Old York Road, Philadelphia, Pennsylvania. Respondent TSA of Delaware Valley was organized and is maintained ostensibly to promote the welfare and mutual interest of the radio-television and electronic industry. The membership of said respondent constitutes a class so numerous and changing as to make it impracticable to name individually each and every member as a respondent herein. Accordingly, the following members of respondent TSA of Delaware Valley are herein named as respondents in their individual capacities, as members of respondent TSA of Delaware Valley, as past or present officers, directors or in other official capacities of said corpo-

rate respondent, and as fairly representative of all members thereof, as a class, all of whom are made respondents herein:

Herman Shore, 1218 W. Girard Avenue, Philadelphia, Pennsylvania, served as director of respondent TSA of Delaware Valley from 1959 to 1960, as vice president from 1960 to 1961 and as president from 1961 to 1962.

Raymond Fink, 7819 Rugby Street, Philadelphia, Pennsylvania, served as recording secretary of respondent TSA of Delaware Valley from 1959 to 1960 and served as a director of said respondent from 1960 to 1961 and from 1961 to 1962.

PAR. 2. Meetings are held by members of respondent trade association for the purpose of transacting the business of the association. These meetings are held periodically, generally once a month, within the community wherein the trade association has its principal place of business.

PAR. 3. All or virtually all of the members of respondent trade association are individuals or corporate or other organizations engaged in the business, among others, of repairing and servicing electronic devices and equipment including those designed and employed for the reception of radio and television broadcast signals. In the course and conduct of the business of so repairing and servicing such devices and equipment, various supplies are required by members of respondent association including different component parts thereof such as radio and television tubes. Such component parts are sold and shipped by the manufacturers thereof to wholesalers or distributors in states other than the states of manufacture or other than the states where shipment originated. Those wholesalers or distributors in turn resell them to members of the corporate respondent and also to ultimate consumers. Some of the sales so made by such wholesalers or distributors are or have been made to members of respondent trade association, or to others who are non-members, but who are similarly engaged in repairing and servicing television, radio or electronic devices and equipment, or to ultimate consumers, with places of business or residences in States other than those wherein the places of business of such wholesalers and distributors are located.

PAR. 4. Respondent TSA of Delaware Valley for some years last past has published a monthly magazine called "TSA NEWS" which it has distributed to its members and to others in the radio, television and electronic industry both within the Commonwealth of Pennsylvania and in States other than the one wherein it or its members maintain their principal places of business. Members of respondent trade association, or some of them, in order to further carry out,

engage in, pursue or implement the acts, practices, methods of competition, combination, agreement, conspiracy, or planned common course of conduct, as hereinafter more particularly described and alleged to be unfair, in derogation of the public interest and in violation of law, have themselves traversed boundaries separating one state from another state or states, or have from points in one state or states employed channels of communication such as the United States mail or telephone lines extending to points in another state or states, or both. Respondent trade association and all of its members who are responsible for the acts and practices of said association, either actively participating and collaborating or tacitly acquiescing therein, are engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Members of respondent trade association and others similarly engaged have been, and are now, in competition with wholesalers or distributors from whom they purchase component parts for use in their business of repairing and servicing television, radio or electronic equipment or devices for the business of the ultimate consumer of such parts or devices except to the extent competition between them may have been prevented, eliminated, injured or impaired as a result of various unfair acts, practices or methods of competition engaged in, followed, pursued or adopted by or through the corporate respondent and by the members thereof as hereinafter more particularly alleged. Included among and illustrative of such acts, practices or methods of competition so engaged in, followed, pursued or adopted were the following:

At least as early as 1959, the impact of competition for the business of the ultimate consumer with wholesalers of television, radio and electronic devices and parts therefor became a matter of concern to members of respondent TSA of Delaware Valley. In March of that year said members, or some of them, caused respondent TSA of Delaware Valley to commence publication of articles and editorials in "TSA NEWS" denouncing and criticizing such wholesalers for selling at retail to the ultimate consumer and claiming such consumer was or should be the exclusive customer of individuals or organizations engaged in repairing and servicing such television, radio and electronic devices. Through the vehicle of "TSA NEWS" members of respondent TSA of Delaware Valley, or some of them, no later than September of 1959 caused it to commence publication of editorials or articles exhorting individuals or organizations engaged in repairing or servicing television, radio or electronic devices to unite and combine against such wholesalers of such devices or component

parts thereof, and to employ the threat of the combined and collective withdrawal of their purchases therefrom as a device to force such wholesalers to refrain from selling to the retail trade in competition with such members or others engaged in repairing or servicing such devices.

PAR. 6. Respondents, as hereinbefore named and described, in or about February 1960 combined, conspired, agreed or reached a common understanding with each other and others not named as parties hereto, including Television Service Dealers Association of Delaware County, Television Service Dealers Association of Delaware, Allied Electronic Technicians Association, Inc., and Radio Servicemen's Association of Trenton, N.J., Incorporated and their members, or some of them, to act in concert and collaboration to hinder and suppress the sale and distribution by wholesalers of television, radio or electronic devices, equipment or component parts thereof. Such combination, conspiracy, agreement or common understanding was entered into, or reached by and between said respondents and others, and has been pursued, followed, furthered implemented in interstate commerce and through utilization of the channels thereof. More particularly, the purposes sought to be accomplished by respondents through such combination, conspiracy, agreement or common understanding was the restriction and limitation of the channels of distribution employed in the marketing of television, radio and electronic devices, equipment or component parts by the elimination or diminution of sales thereof by wholesale distributors to the ultimate consumer. Illustrative of and included among the acts and practices designed to accomplish such purposes which were engaged in and pursued by respondents, or some of them, with the approval or acquiescence of all others, were the following:

(a) Communicated to such wholesale distributors threats of concerted withdrawal of patronage therefrom by television, radio and electronic equipment, service and repairmen;

(b) Combined and united to boycott such wholesale distributors to coerce them to discontinue selling television, radio and electronic devices or component parts thereof at retail to the ultimate consumer in competition with individuals or organizations engaged in the servicing and repair of such devices;

(c) Dictated or attempted to dictate practices to be followed or eschewed or discontinued, by such wholesalers in the conduct of their business involving such matters as hours of operation, display windows, and advertising;

(d) Caused publication to be made of a "white" list or lists of wholesalers who cooperated with respondents in refusing to sell at retail to the ultimate consumer;

(e) Policed sales made by wholesale distributors of television, radio and electronic devices or component parts thereof by employing individuals or committees for the purpose of shopping at the business establishments of distributors;

(f) Advocated, urged and preached, by way of published slogan, exhortation and appeal, that independent servicemen, both members of respondent association and non-members, should discontinue purchasing from wholesale distributors thereof who sold television, radio and electronic devices or component parts thereof, at retail to the ultimate consumer.

PAR. 7. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondents, and the combination, conspiracy, agreement or common understanding entered into or reached between and among them or others not parties hereto, and the acts and practices engaged in and followed pursuant thereto and in furtherance and implementation thereof by respondents as hereinbefore alleged, constitute unfair acts, practices and methods of competition, the effect of which has been, is now or may be to injure, impair, frustrate, eliminate, or prevent competition between respondents and others engaged in the distribution of radio, television, or other electronic equipment, or devices or component parts thereof, or to tend to create a monopoly in respondents in the distribution of such equipment, devices or parts, or to unduly obstruct, hamper or impede the current of commerce in such equipment, devices or parts between and among the several states, or to deprive members of the public who have purchased, do purchase or may purchase such devices, equipment or parts of the advantage and opportunity to so purchase from vendors engaged in active and *bona fide* competition unimpeded by artificially imposed restraints, or to curtail the breadth of choice of vendors from which such members of the purchasing public may buy, all in derogation of the public interest and in violation of Section 5 of the Federal Trade Commission Act.

Mr. Richard E. Ely and *Mr. Bruce E. Lovett* for the Commission.
Mr. Sidney H. Black of Philadelphia, Pa., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER
JANUARY 5, 1965

On May 13, 1964, the Federal Trade Commission issued its complaint against Television Service Association of Delaware Valley, a

corporation (hereinafter called TSA), and its members, and Herman Shore and Raymond Fink, individually, as members, officers or directors, and as representative members of the entire membership of TSA, charging them with a conspiracy to boycott in violation of Section 5 of the Federal Trade Commission Act (hereinafter called the Act), 15 U.S.C. 41, *et seq.* Copies of said complaint together with a notice of hearing were duly served on respondents. The complaint alleges in substance that respondents entered into a conspiracy to boycott, *i.e.*, refuse to purchase from or deal with, those wholesale distributors who sold at retail in comeptition with respondent servicemen.

Respondents appeared by counsel and filed answer admitting the corporate and certain other factual allegations of the complaint but denying the commerce allegations and the alleged violation. Pursuant to notice, a prehearing conference and hearings were held before the undersigned hearing examiner duly designated by the Commission to hear this proceeding.

Both parties were represented by counsel, participated in the hearings and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to argue orally upon the record and to file proposed findings of fact, conclusions of law and orders, together with reasons in support thereof. Counsel for respondents did not so file. All of the findings of fact and conclusions of law proposed by counsel supporting the complaint not hereinafter specifically found or concluded are herewith specifically rejected.[1]

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following findings of fact, conclusions and order.

Findings of Fact

I. *The Business of Respondents, Other Co-Conspirators, and Their Suppliers*

TSA is a nonprofit corporation, a trade association organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, with its offices and principal place of business at 4710 Old York Road, Philadelphia, Pennsylvania. It was organized and is maintained to promote the welfare and mutual interests of the radio, television and electronic service industry and to improve the financial stability and professional standing of its members. Its membership is limited to servicemen, *i.e.*, service dealers, actively engaged

[1] 5 U.S.C. 1007(b).

in the repair and servicing of television, radio or electronic devices in the Delaware Valley. Other persons may become associate members, but they have no voting privilege (Answer; CX 2 A–B; CX 4 J, p. 1).[2]

The number of members of TSA varied from 30 to 50, all servicemen. As of June 1961 there were 35 members listed on its roster plus an additional eight who were dropped as of February 23, 1960 for nonpayment of dues, and one dropped in April 1959 because he had gone out of business. From time to time new members are elected (CX 3 A–C; CX 2 A; CX 4 C, p. 10; RX 108, p. 19; Tr. 738).

The geographical area with which this case is concerned is known as the Delaware Valley. As found above, and as the name of TSA connotes, it accepted as members any servicemen located in the Delaware Valley. The Delaware Valley has no fixed or legally delineated boundaries, such as an incorporated municipality, county or other legal territory, but it is a term in common usage and well known both to the public and in this industry, particularly in the Philadelphia area. In general, it comprises the tri-state area of the valley surrounding the Delaware River, extending from, and including, Trenton, New Jersey on the north, to and including Wilmington, Delaware on the south, and encompassing Philadelphia, its suburbs, Chester, Pennsylvania, and Camden, New Jersey (CX 4 I, p. 3; CX 4 J, p. 1; RX, 108 pp. 14–15; RX 107 G, p. 2; Tr. 662–3).

Respondent Herman Shore, a Philadelphia serviceman and member of TSA served as a director of TSA in 1959, 1960 and 1961, its vice president in 1960, and its president in 1961. Respondent Raymond Fink, a Philadelphia serviceman and member of TSA, served as a director of TSA in 1959, 1960 and 1961, its secretary in 1959, and as editor of its official publication, TSA News, in 1959, 1960 and 1961 (Answer; CX 4 A–4 Z(4)). Because the membership of TSA is a class too numerous and changing to make it practical to name each member individually as a respondent, in accordance with well established principles and practice,[3] the complaint named respondents Shore and Fink not only as individuals, members and officers of TSA but also as representative of all members of TSA as a class as respondents.

TSA publishes, and during 1959 through 1961 published, a monthly magazine or trade journal called TSA News. TSA News is the official

[2] The following abbreviations are used throughout this decision: CX (Commission exhibit); RX (Respondents' exhibit); Tr. (Transcript); and P. Tr. (Prehearing transcript).

[3] *Chamber of Commerce of Minneapolis* v. *F.T.C.*, 13 F. 2d 673 (8th Cir. 1926); *Advertising Specialty National Ass'n* v. *F.T.C.*, 238 F. 2d 108 (1st Cir. 1956); *National Macaroni Mfrs. Ass'n.* 65 F.T.C. 583, Docket No. 8524 (1964).

publication of TSA. TSA distributes the News by United States mail to its members and thousands of others, primarily servicemen but including wholesale distributors, both in the State of Pennsylvania and in other States. Approximately 2,000 copies of TSA News are thus distributed, free of charge (Answer; CX 4 A–Z(6); CX 4 S, p. 3; RX 107 A–L; RX 108, p. 49; Tr. 129, 491, 698, 753).

In addition to the above respondents, the complaint named others as co-conspirators but not respondents, namely: Television Service Dealers Association of Delaware County (Pennsylvania), (hereinafter called the Chester Association); Television Service Dealers Association of Delaware (hereinafter called the Wilmington Association); Allied Electronic Technicians Association, Inc. (hereinafter called the Camden Association); Radio Servicemen's Association of Trenton, New Jersey, Inc. (hereinafter called the Trenton Association); and their members or some of them. Said associations, like TSA, are comprised of electronic industry servicemen as members and are trade associations organized for the same general purposes as TSA (CX 41 A–B; CX 42 A; CX 56 A–B; CX 60 A; CX 72 B, E, F).

The above four associations comprise the membership of a joint group known as the Tri-State Council. During 1960, the president of the Tri-State Council was the president of the Wilmington Association, the vice president of the Council was the secretary of the Camden Association, and the secretary of the Council was the secretary of the Chester Association. During 1960, the Tri-State Council's official publication was a monthly trade journal called The Vanguard, edited by Tony De Franco, vice president of the Camden Association, and distributed free of charge (CX 36; CX 37, pp. 1–2; CX 45; CX 101, p. 2; Tr. 129, 491).

Approximately 50 wholesale distributors of television, radio, and electronic equipment and parts supplied the servicemen throughout the Delaware Valley (CX 4 J, p. 2). Said wholesale distributors were in direct and substantial competition with servicemen in the Delaware Valley, including respondents and their alleged co-conspirators, in the sale of television, radio and electronic parts at retail to the ultimate consumer, except to the extent that such competition may have been impaired or eliminated as a result of the conspiracy to boycott hereinafter found (CX 4 N, p. 1; CX 4 O, p. 1; Tr. 263).

II. *Interstate Commerce*

As previously found, the servicemen purchased their needed television, radio and electronic parts from the wholesale distributors in

the Delaware Valley. Except as otherwise indicated, all of the distributors hereinafter named were located in Philadelphia or its suburbs. Mr. John Stern wholly owned the Radio Electric Service Co. of Philadelphia and Wilmington, and owned a one-third interest in the Radio Electric Service Co. of New Jersey. Almo Radio had branch stores in Wilmington, Camden, and Trenton; Allied Parts had a branch store in Trenton; and Radio Electric Co. had branch stores in North Philadelphia and West Philadelphia (CX 22 A; CX 24 E; CX 4 G, p. 6; CX 95; Tr. 266–7). In addition, Wholesale Electronics, a distributor in Wilmington, sold parts in Maryland and Pennsylvania as well as Delaware; Raymond Rosen & Co. sold parts in New Jersey, Delaware, and Pennsylvania; and Radio Electric Service Co. of Philadelphia frequently exchanged parts in short supply with Radio Electric Service Co. of Wilmington (Tr. 125–8, 266–7, 588).

The wholesale distributors purchased their television, radio, and electronic parts and equipment from various manufacturers, most of whom were located in States other than Pennsylvania. Approximately 80% to 99% of all such parts and equipment were purchased outside the State of Pennsylvania and shipped to such distributors. A substantial majority, approximately 85% to 95%, of such products were resold to servicemen in the manufacturers' original cartons or packages, normally, of course, in smaller quantities than purchased from the manufacturers by said distributors (Tr. 91, 123–5, 263–5, 339–41, 464–5, 477–8, 569–72).

It is concluded and found that such distributors were engaged in interstate commerce and that the sale of parts by them to servicemen was in interstate commerce.[4]

Assuming *arguendo* that such sales by distributors, or purchases by servicemen, were not in interstate commerce, nevertheless the alleged conspiracy was among persons of diverse citizenship, *i.e.*, the associations and their members in the States of Pennsylvania, New Jersey and Delaware; and as such was an "unfair method of competition in commerce," as specified in Section 5 of the Act. As the court observed in the *Salt Producers* case:

> The production of salt is a local transaction, but an *agreement* between many producers, of diverse citizenship, to limit their respective productions is an unfair method of competition *in* interstate commerce.[5]

Even if the servicemen were not engaged in interstate commerce, the alleged conspiracy to boycott the distributors was a direct re-

[4] *Standard Oil Co.* v. *F.T.C.*, 340 U.S. 231 (1951).
[5] *Salt Producers Ass'n* v. *F.T.C.*, 134 F. 2d 354 (7th Cir. 1943).

straint on their sales in commerce. The Supreme Court has found upon substantially similar facts that such sales were in interstate commerce, and that such a conspiracy to boycott, by refusing to deal with wholesalers, was a direct restraint of trade in violation of the Sherman Act. The Court held:

> The trade of the wholesalers involved covers a number of States, and there is no question but that the supplying of lumber to the large number of retailers in these associations in different states is interstate trade * * * .[6]

It is, of course, well settled that violations of the Sherman Act constitute violations of Section 5 of the Act.[7]

Furthermore, the means and instrumentalities used to effectuate and carry out the alleged boycott, as more fully found hereinafter, were in commerce. The TSA News was mailed to servicemen and others in many States, and was the principal vehicle by which the conspiracy was organized and carried out. In addition, The Vanguard, correspondence and notices in furtherance of the conspiracy were sent through the mails to various States; and a number of meetings were held in the three States comprising the tri-state area and attended by representative servicemen from all of the associations.

Finally, the alleged conspiracy to boycott was ultimately joined by certain distributors who agreed to abide by the demands of the servicemen, as more fully found hereinafter, and thus was made up of some persons allegedly not engaged in commerce, *i.e.*, the servicemen, and others, *i.e.*, the distributors, obviously engaged in commerce. The Supreme Court in the *Cement Institute* case held that the Commission has jurisdiction over all parties to such a conspiracy, including those over whom it would not otherwise have jurisdiction.[8]

For all of the foregoing reasons, it is concluded and found that the alleged unfair method of competition was "in commerce", as commerce is defined in the Act.

III. *The Unfair Practices*

A. The Issue

The basic issue in this matter is whether respondents and certain alleged co-conspirators, all television servicemen and their trade associations, entered into a conspiracy or agreement to boycott, *i.e.*, refuse to purchase from, certain wholesale distributors to cause them to cease selling electronic parts at retail to the ultimate con-

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[6] *Eastern States Retail Lumber Dealers' Ass'n* v. *U.S.*, 234 U.S. 600 (1914).

[7] *F.T.C.* v. *Cement Institute*, 333 U.S. 683 (1948); *F.T.C.* v. *Motion Picture Advtg. Service Co.*, 344 U.S. 392 (1953).

[8] Note 7, *supra*.

sumer in competition with such servicemen.[9] Fundamentally, the objection of the servicemen was to retail sales by the distributors, their suppliers, at wholesale prices. The relevant period of time encompassed by the issues is from 1959 through 1961.

B. The Conspiracy to Boycott

1. Identification of Specific Individuals

For the purpose of clarity, the following finding identifies certain officers and officials of TSA and the four alleged co-conspirator trade associations, and certain distributors, all of whom played a more or less active part in the events hereinafter found.

TSA

Herman Shore, director, 1959–61; vice president, 1960; president, 1961.

Raymond Fink, director, 1959–61; secretary, 1959; editor, TSA News, 1959–61.

Louis Smith (deceased), director, 1959–61; corresponding secretary, 1959; president, 1960; associate editor, TSA News, 1959–61. (Respondents stipulated that Messrs. Shore and Fink believed that Mr. Smith used the pen name Allen Roberts in TSA News.)

Tony D'Annibale, director, 1959–61; vice president, 1959.

Dave Krantz, director, 1959–61.

Charles Sonnenberg, director, 1960; corresponding secretary, 1960.

John McCloy, Jr., director, 1959–61; treasurer, 1960.

(CX 4 A–4 Z(4))

Chester Association

Peter Rapagnani, vice president, 1959; president, 1960–61.

William Jordan, president, 1959.

William Boyd, vice president, 1960–61.

Leon Skalish, secretary, 1959–60; advisory board, 1961.

(CX 73)

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[9] Most of the testimony of the witnesses, primarily representatives of wholesale distributors, called by counsel supporting the complaint, was corroborated by the testimony of other persons present at the events, the written admissions of respondents and co-conspirators, such as TSA News, The Vanguard, correspondence and notices, and the testimonial admissions of servicemen called by both sides, or was unrebutted. To the limited extent that such testimony was rebutted and uncorroborated, the undersigned credits the testimony of said wholesale distributor representatives based upon his observation of them.

Wilmington Association

James Mayhart, president, 1960.
Ralph Brinton, vice president, 1960.
(CX 47)

Camden Association

Joseph Papovich, director and secretary, 1959–61.
Tony De Franco, director, 1959–61; vice president, 1960; president, 1961.
(CX 57 B)

Trenton Association

H. F. Leverence, director, 1959–61; vice president, 1959; president, 1960–61.
Lewis Edwards, director, 1959–61; chairman of program and public relations committee, 1959–61.
(CX 61 B; CX 64)

Distributors

A. G. Radio, Amil Gumula; Albert Steinberg & Company, Albert Steinberg; Almo Radio, Morris Green; Allied Parts, Frank Zuschlag; A. C. Radio, Joseph Branca; Lee Electronics, Eli Goldstein; Radio Electric Service Co. (Philadelphia), Harry Fallon and James Foti; Radio Electric Service Co. (New Jersey), Joseph Berman; Radio Electric Service Co. (Wilmington), Sol Furman; Kass Electronics, Albert Kass; and Raymond Rosen & Co., Titus Yonker (Tr. 90, 93, 122, 262–3, 277, 475, 480, 488, 577).

2. The Inception of the Conspiracy

In January 1959, TSA began a campaign in its official publication, TSA News, against the distributors' practice of retail selling to the ultimate consumer at wholesale prices in competition with their customer servicemen, urging servicemen not to buy from distributors who did so. A first page editorial in the January issue of TSA News advocated collective action by servicemen against distributors who did not "cooperate" with them. After pointing out the formidable power collective action gave the servicemen, the editorial stated, *inter alia:*

Industry-wide the annual service business purchasing power mushrooms out to a fabulous $1,140,000,000 at the retail level. Collectively, this huge purchasing power places a potent economic weapon in your hand. *Buy from the jobber who cooperates with you, * * * Rest assured that a serious drop of business resulting from your buying elsewhere,* coupled with hundreds of outspoken

letters, *will force a policy shift to your favor.* (Emphasis added.) (CX 4 A, p. 1).

In the same issue appeared this statement by "Allen Roberts":

* * * some * * * Parts Distributors spend a great deal of money for newspaper and radio advertising directed to the public. Why must they compete with their Dealer customers?

Succeeding issues of TSA News during 1959 made ever more clear TSA's program to have its members and all servicemen not buy from distributors who sold at retail and instead engage in "selective buying" from those distributors who "cooperated," *i.e.*, did not sell at retail in competition with servicemen. Ultimately, "start selective buying" became an increasingly reiterated slogan. In the February issue, Allen Roberts stated:

Each month I have been receiving many letters asking why I haven't had more to say about our local Parts Distributors' practice of selling wholesale to anyone who can drag himself to their counter with a buck held between his teeth.

In the same column appears a quote from a letter to Mr. Roberts.

"* * * I believe that now is the time for the Service Shop Owners to get together and try to get our Distributors to clean up their practice of selling wholesale to one and all."

And later:

* * * His [Marty Fox] biggest gripe is about the Parts Distributors, who recklessly sell without discrimination to anyone at trade discounts. He would like to see something done to get these Parts Distributors selling only to those with established places of business. He suggested that if they will not cooperate, then the service shop owners should use selective buying.

Mr. Roberts further reported that another seriveman had said that "he has been facing the same problems most of us have and that is wholesale selling of electronic parts and equipment to the retail trade." In the same issue of TSA News, a cartoon depicted the distributors as picking the pockets of servicemen by "sales to retail" (CX 4 B, pp. 6, 7, 12).

In the September TSA News it was stated:

* * * Practice Selective Buying in YOUR purchases of tubes and parts. * * * No manufacturer or distributor, in light of their recent statements, has any right to expect you to continue to buy parts or tubes from him if he is also competing with you for your customers. (CX 4 I, p. 2).

In October, the feature editorial of TSA News was entitled "LOOSE DISTRIBUTION DESERVES JUST RETRIBUTION." The editorial stated, *inter alia:*

There are SOME VERY CO-OPERATIVE DISTRIBUTORS in Philadelphia. I don't mean the ones who co-operate with YOUR CUSTOMERS AND MINE. I do mean the distributors who REFUSE TO SELL "WHOLESALE" to individuals.

* * * We suggest it is rather foolish to buy from those who OPENLY SELL TO YOUR CUSTOMERS.

The time has come. WE NO LONGER HAVE TO WORK WITH THEM.

THEREFORE, let us FORGET the distributor who VALUES RETAIL CUSTOMERS SINGLE TUBE SALES. LET HIM HAVE HIS "RETAIL" CUSTOMERS. LET HIM SELL ONE TUBE AT A TIME. LET HIM SELL, AND INSTALL THE BATTERIES IN THE RADIO.

The next time you WAIT IN LINE BEHIND THE RETAIL CUSTOMERS REMEMBER THESE WORDS—YOU NO LONGER HAVE TO—*THERE ARE OTHER DISTRIBUTORS.*

(CX 4 J, pp. 1-2).

On December 5, 1959, Leon Skalish, as secretary of the Chester Association, called and wrote Harry Fallon of Radio Electric complaining of a Philadelphia newspaper advertisement by the latter offering hi-fi equipment for sale because the advertisement included Radio Electric's address, and thus retail customers would be advised of an outlet where parts could be purchased wholesale. He advised Fallon that 100 copies of the advertisement were being circulated to dealers, distributors and members of the Chester Association in Delaware County (Tr. 271-2; CX 82 A-B; CX 83 A-B).

On December 29 and 30, 1959, respectively, Skalish, as secretary of the Chester Association, wrote to Morris Green of Almo Radio and to Joseph Branca of A. C. Radio as president of the National Electronic Distributors Association (NEDA), complaining of and requesting corrective action with respect to distributors' advertisements to servicemen's customers setting forth television parts, net wholesale prices and store locations, and advising that the advertisements had been called to the attention of the other servicemen's associations in Philadelphia, Wilmington, Trenton, and Camden (Tr. 449; CX 84, 85). As a matter of fact, Skalish, although not a member, went to a TSA meeting to call this activity to the attention of its members, who were equally disturbed by it (Tr. 455).

The January 1960 TSA News reported the above activity by the Chester Association, pointed out that TSA had been trying to get its local distributors to cease such "unethical" quoting of "net" (wholesale) prices, and noted that "future action on the matter will soon be forthcoming" (CX 4 M, p. 4). The TSA News editorial in the same issue, in reviewing the accomplishments of 1959, observed:

We have seen closer cooperation between various service associations, and we have found a key to some of our problems in what might become the battle cry of the organized service industry, "Stop Your Crying—Start Selective Buying." (CX 4 M, p. 2).

In a Chester Association special-meeting notice dated January 16, 1960, Skalish as secretary reported that one member had lost a regular customer because of lower prices from a local distributor. The notice further stated:

You can not serve two masters. It's about time the distributors should be made aware that if they want the retail trade they can have it, but at a loss of there [sic] wholesale customers. (Tr. 435; CX 87).

The progress of the "Selective Buying" campaign was reported by Allen Roberts in the February issue of TSA News:

"As you sow, so shall you reap" is an old proverb which we now have seen come true. Last month a group of independent service dealers in this city, who were fed up to the ears with the under-handed business methods as practiced by the major electronic parts distributors in this city, decided to take positive action as individuals against these flagrant violators of good business practices. Through the concerted efforts of certain independent service dealers, the word quickly spread throughout the city like wildfire, that they have embarked on a program of Selective Buying from small parts distributors who have assured them of selling to the trade only. Furthermore, their places of business would not be open in the evening to supply part timers and hobbyists. This wave of resistance flowed over the boundaries of Metropolitan Philadelphia into surrounding counties and into the states of New Jersey and Delaware. Service dealers in many of the surrounding areas supplied by the branches of these major distributors were quick in lending support to this movement.

Subsequently, in the same column, Roberts in effect admitted that "Selective Buying" was synonymous with boycott. He quoted a distributor as having said: "Selective buying is un-American," when the distributor in fact had said "Boycott is un-American," as conceded elsewhere in the same issue of TSA News (CX 4 N, p. 5, 2d column, 2d para.; CX 4 N, p. 3).

Perhaps the clearest admission of a conspiracy to boycott the distributors and clarion call to all servicemen in the Delaware Valley to join the boycott is found in the first page editorial of the February 1960 TSA News entitled "WHOLESALE OR RETAIL." It stated, *inter alia:*

One of the thorns in the side of the independent service industry has been the wholesale selling to retail customers by electronic parts distributors. This unfair competition * * * precipitated a selective buying campaign by a large number of independent service dealers * * * The service dealers * * * have taken a stand. They are making use of the one course available to them—SELECTIVE BUYING. All those engaged in electronic service work are urged

to BUY FROM THOSE DISTRIBUTORS WHO SELL TO THE TRADE ONLY. * * * You will have to support this issue to survive. * * * United we stand—divided, we fall. * * * SELECTIVE BUYING IS YOUR ONLY ASSURANCE OF SURVIVAL.

3. The First Joint Meeting of Servicemen and Distributors

On February 8, 1960, a meeting was held at the Drake Hotel in Philadelphia between many local distributors and servicemen from all of the associations. The meeting was called by the servicemen and attended by numerous distributors because of their concern about the selective buying program. Louis Smith, president of TSA, presided as chairman. Other servicemen present were: Shore, Fink, Krantz, Skalish, Papovich, Mayhart, Rapagnani and De Franco. It will be noted that all five servicemen associations had representatives present. Representatives of the distributors in attendance included Gumula, Steinberg, Fallon, Foti, Branca, Berman, Green, Kass and Zuschlag (Tr. 92–3, 103, 276–8, 478–81).

Skalish, by agreement with Smith, had prepared a mimeographed list of the servicemen's complaints against the distributors. This was read by Smith at the meeting and copies were distributed. The list contained 12 specific complaints, summed up at the end as three main points.

1. Selling retail openly and highly promoted.
2. Quoting net prices on the telephone.
3. Quoting net prices in mailings.
4. Opening on Saturday and evenings.
5. Windows not blacked out, actually heavily displayed.
6. Signs reading "for the trade only" instead of "wholesale only."
7. Selling wholesale to individuals who have no tax no.
8. Discount cards circulated.
9. Large yellow page directory ads.
10. Misuse of cooperative advertising money.
11. Disposition of the buying status of the ham, audiofile [sic] and the holder of a citizen band license.
12. Listing of branch stores in Hi-fi ads.

To sum it up it adds up to the following three statements—

1. THE DISTRIBUTORS ARE WHOLESALERS AND RETAILERS.
2. THEY ARE SELLING TO US AND TO THE PUBLIC.
3. THEY ARE IN COMPETITION WITH US.

(CX 33; Tr. 103, 278–80, 440–1).

After the list had been read, Smith, Shore and Fink spoke criticizing the distributors' practices vehemently. The general atmosphere at the meeting between the servicemen and the distributors was hostile rather than friendly. The term "boycott" was used five or six times. Whenever this happened, Smith, Shore or Krantz said:

"We told you not to use that word. The word is selective buying." (Tr. 102–3, 280–1, 483–4.)

Ultimately several of the distributors spoke. Gumula stated that he could "live with" some of the 12 demands but not all of them. Steinberg's reaction to all of the demands was negative. Other distributors were disturbed by them. Fallon said he would not agree to the three major demands, which he identified as numbers one, four and seven (Tr. 102, 289–90, 483). Fallon, because he felt the servicemen were stating they would not buy from the distributors unless they met the 12 demands and would try to influence others to cease buying, stated: "Boycott is un-American. You association men are using this to hold a club over our heads." Thereupon Fink said: "We are not talking about boycott, we prefer the words selective buying." (Tr. 280–1.) The meeting terminated by the distributors advising the servicemen they would take the 12 demands under consideration and report back later. The servicemen agreed they would report the details of the meeting to their respective associations. Members of TSA and the Camden, Chester, Trenton, and Wilmington Associations in attendance did so report (CX 4 N, p. 3; 48 B; 58; 67 A; 75 A–B).

The February 1960 issue of TSA News, published about March 1st, contained a full report of the above meeting, including a quotation of Fallon's accusation of boycott. After stating that the "meeting was held * * * to discuss the selective buying campaign instituted by the individual servicemen," the report characterized the purpose of the meeting as follows:

> The primary purpose of this meeting was to discuss the complaints of the Independent Servicemen on the selling of Wholesale by WHOLESALE DISTRIBUTORS TO RETAIL TRADE. (CX 4 N, p. 3.)

The same issue of TSA News carried a block notice in large print listing four "cooperating" distributors who had been "found" to be selling "wholesale to the trade" only. Roberts' column also stated:

> I have been informed that a *retail* shopping service has disclosed that they have been unable to buy wholesale from Jem * * * , Lee * * * and Otter. [Three of the four companies listed in the block notice.] Further reports on the shopping service will be forthcoming.

In addition, the same issue carried a ⅓ page notice in large print stating:

> Stop Your Crying—Start Selective Buying—Protect Your Business—Buy From Those Distributors Who Cooperate With You. (CX 4 N, pp. 3, 5, 14; CX 88.)

4. Subsequent Events—Individual Threats

Shortly after the first joint meeting on February 8, 1960, Keen TV in Philadelphia, one of Radio Electric's servicemen accounts, advised Fallon that Keen would not buy from Radio Electric until the 12 demands were met. Fallon had noted a substantial decline in Keen's purchases. The owner of Keen was not a member of TSA. Fallon told him of the Drake meeting, but the owner said the complaints had not been answered and he was not going to buy from Radio Electric until he "got the word." The owner was a brother-in-law of D'Annibale, a director of TSA, and regularly received TSA News (Tr. 282–4, 704–7).

Shortly thereafter, Herbert Goldstein, a serviceman and member of TSA, advised Fallon and Foti of Radio Electric that he wanted to continue buying from them but did not want other members of TSA to know it. Although Goldstein had purchased over $1,000 in parts from Radio Electric from January 1960 to February 4, 1960, he purchased nothing from February 4 to March 10, 1960 (Tr. 418, 783–6, 791–5, 795–800; RX 116 A–D).

Fallon also was told by another customer, Marvin Levy, not a member of TSA, that he had heard of the trouble, thought the servicemen were right, and wanted to know what Radio Electric was going to do about it. Fallon told him they could not meet all 12 demands but had answered some of the major objections. Fallon also was called by another serviceman not a member of TSA, Henry Perzan, who said he had been called by a person he refused to identify and told to stop buying from Radio Electric, but that he did not intend to do so (Tr. 293–7).

Albert Steinberg & Company's records of daily reports by salesmen revealed that during February and March some servicemen customers, both members and nonmembers of TSA, stated they would not buy from Steinberg because of TSA, others did not buy, others reduced their purchases, and some bought even though told not to do so by others (CX 38 A–R; Tr. 491–4, 496–7). Sonnenberg, a TSA director, discussed with Steinberg at length the decision of TSA not to buy from distributors who would not accede to the demands and the fact that he, Sonnenberg, would not be able to purchase from Steinberg until such differences were resolved (Tr. 478–9, 497–9; CX 38 I).

A few days after the Drake meeting, Gumula was told by three servicemen separately, Al Obenland, John Gross, and William H. Brown, that he would be boycotted. Only Brown was a member of TSA. He admitted that he had complained to Gumula about his

selling wholesale to retail customers. Brown further said he quit TSA because he did not agree with its plan of action with respect to such sales by distributors (Tr. 105, 108–9, 178–80; CX 3 C; Tr. 808–16).

Sometime between January and March 1960, Melvin Katin, a Philadelphia distributor, received several calls from Shore, advising Katin that he had been "shopped" and complaining about his selling to retail customers without a Pennsylvania sales tax number. Katin and his partner agreed with Shore to do some of the things he desired, including blacking out the store windows and not selling to retail customers. As a result that store lost "street" business, which was a contributing factor in its subsequent closing (Tr. 467–73).

5. The Distributor Meeting and Counterproposals

As previously found, some distributors agreed to the demands of respondents and their co-conspirators, resulting in such distributors being publicized in a TSA News white list as "co-operating" dealers (CX 4 N, p. 3). Although the distributors originally had planned not to answer the demands presented at the first joint meeting, the subsequent pressure created by the concerted refusals to buy, threats of adverse publicity in the TSA News, and the white list caused them to reconsider (Tr. 282, 292–9, 334–5, 511, 519). Patently the agreement by some distributors not to sell retail customers exerted additional pressure on the other distributors, who could expect to (and did) lose many servicemen customers to such "cooperating" distributors as a result of the boycott (CX 35; CX 94 A).

As a result, the distributors held a meeting at the Drake Hotel in March 1960, about four to six weeks after the first joint meeting, to formulate answers or counterproposals to the demands of the servicemen presented at the first meeting. Among those present were Fallon, Foti, Green, Steinberg, Branca, Gumula, Berman, Eli Goldstein, and Zuschlag. The distributors discussed the 12 demands of the servicemen, formulated a reply to each demand, and the majority agreed to a counterproposal of some six items, which were:

1. The distributors will discourage sales to retail trade. Any such sales will be made at the retail price and the distributor will credit the difference between such sale price and the dealer's price to the service located nearest the purchaser's home address.

2. All cash purchase slips will contain name and address of purchaser.

3. All "part-timers" will be urged to sign and use tax-exemption forms and obtain sales tax number, pursuant to the sales tax law.

4. Hi-Fi users shall pay retail price for replacement parts and supplies.

5. All literature mailed to dealers will be in closed envelopes.

6. Ads will be eliminated in classified telephone directory excepting for "bold-type" listings.

Fallon and Gumula would not agree to credit the difference between sales made at the retail price and the wholesale price to the nearest serviceman (Tr. 166, 219, 291–2, 303–4, 311–3; CX 39 A–B; CX 40; CX 4 O, pp. 1, 9; CX 36, pp. 1, 5).

6. The Second Joint Meeting—Accord—Publicity

In late March 1960, a committee of the Philadelphia distributors met at the Drake Hotel with a committee of the servicemen. Distributors present included Fallon, Branca, Steinberg, and possibly Zuschlag. Other distributors were present including one from Trenton named Dragon. Servicemen present included Shore, Fink, Skalish, Mayhart, Papovich, and some from the Trenton Association (Tr. 299–301; CX 90; 91 A). After apologizing for the delay, the distributors presented their answers and the six counterproposals. The servicemen contended that such proposals did not go far enough, but the distributors said it was the best they could do, and the meeting ended on that note (Tr. 301–4).

After this meeting, respondents and their co-conspirators gave extensive publicity to the "accord" brought about by their selective buying campaign. Such publicity necessarily had the effect of causing other distributors to join the "accord" and other servicemen to join the concerted selective buying program. The March TSA News carried a lead editorial entitled "Service and Distributors Reach Accord." It stated, *inter alia:*

A selective buying program was instituted by a large group of independent service dealers against the local wholesale electronic parts distributors. They protested the abuse exercised by these same distributors in selling wholesale to the retail trade. They protested against the deviation from the basic concepts of wholesale distribution. It is the belief of the independent electronic service industry that their suppliers or parts distributors should not be in competition with them. They deplore the selling by the parts distributors to their (the service industry's) potential customers, while at the same time soliciting business from the service dealer. The independent service industry believes a tacit agreement occurs when a supplier comes in to sell them; that the supplier would not and should not compete with the service dealer for the retail business.

The editorial then listed the above found six counterproposals as the program agreed to by the distributors. The same six-point accord was publicized in the May 1960 Vanguard (CX 4 O, pp. 1, 9; CX 36, pp. 1, 5; CX 4 O, p. 8; CX 4 P, p. 9).

On March 15, 1960, Skalish, as secretary, sent a letter on the Chester Association letterhead to all Delaware County servicemen, which stated, *inter alia:*

"Most servicemen are aware of the slogan "STOP CRYING—START SELECTIVE BUYING." Selective buying has become an actual fact at least, in the Philadelphia, New Jersey, Delaware, and Delaware Co. areas.

There are electronic parts wholesalers in the Delaware Valley area who are not selling to your customers. This type of distribution improves your earning power because receiving tubes, picture tubes and other parts are then sold by you to the ultimate consumer YOUR CUSTOMER.

* * * * * * *

For you to help yourself in this matter, that concerns the entire TV service industry, each of you should take an active part by cooperating with the manufacturers parts distributors who are interested in serving you with the same spirit of respect we show our valued customers.

If you wish more information, we would welcome your calling the nearest association member as listed on the yellow pages of the Delaware Co. telephone book * * *.

On April 15, 1960, Krantz, chairman of TSA's Industry Relations Committee, wrote identical letters to the executive secretary of the National Alliance of Television and Electronic Service Associations in Chicago and the editor of its trade publication in Detroit, enclosing a copy of the March TSA News, calling attention to TSA's successful campaign against the distributors and suggesting many of NATESA's members would be interested in the results (CX 4 O; CX 5 E; CX 7; CX 8; Tr. 768).

7. The Effect of the Boycott

Although effect is not essential as a matter of law to the proof of an illegal conspiracy to boycott, proof of the effect in this record not only tended to corroborate the existence of such a conspiracy, but also showed clearly why some distributors were forced into "cooperating," and why the distributors as a group agreed to some of the demands of the servicemen. For example, the sales of Radio Electric to certain previously good customers who were members of TSA or participating in the concerted refusal to deal declined drastically during February and March 1960, roughly the period between the first joint meeting at which the demands were made and the second joint meeting at which the "accord" was reached. Keen TV, which as found above had advised Radio Electric it would not buy until the demands were met, purchased $6 and $14 in parts in February and March, respectively, as against an average of about $1,000 a month in the three preceding months, and $500 a month in the two succeeding months (Tr. 286–8; CX 105 B–G).

Other normally regular accounts of Radio Electric also substantially ceased purchasing, as follows:

Alert TV—Jan. 21, 1960 to April 13, 1960—nothing;

Leon Skalish, trading as Leon's TV—Jan. 29, 1960 to April 7, 1960—$2.25;

Stewart Electric—Jan. 21, 1960 to April 6, 1960—nothing (Tr. 332; CX 96 C; 97 B; 100 A; 106).

Herbert Goldstein, who had purchased between $500 and $1,000 in preceding months, purchased nothing from February 4, 1960 to March 10, 1960, and $358 from March 10 to March 25, 1960 (Tr. 418, 783; RX 116 A-D).

Albert Steinberg & Co.'s records showed the following declines, *inter alia*, in purchases in 1960 as compared to prior and subsequent purchases:

Alert TV (D'Annibale) from an average of about $190 a month to nothing in March, and $17 in April; Fink, from an average of about $215 a month to $120 in February, $11 in March, and $115 in April; Apartment TV (Sonnenberg) from an average of about $285 a month to $4 in March (Tr. 497, 507-8, 684; CX 3; CX 107).

8. Policing of the Accord

In order to ascertain whether the distributors were living up to the six counterproposals agreed to at the second joint meeting, TSA and its members "shopped" the distributors' stores to see if sales were being made contrary to the agreement, e.g., retail sales at wholesale prices. This was done by having some person unknown to the distributor attempt to so buy without identification. At another joint meeting in June 1960 attended by officers of TSA and a number of the distributors, the latter were accused of not living up to the agreement, told they had been shopped, and presented with cash sales slips claimed to represent retail sales at wholesale prices to unidentified customers in violation of the agreement (Tr. 119-20, 317-24, 339-43, 500-3, 642, 650-1; CX 3 A-C, 10 A, 24 I). Much the same sort of meeting, including the presentation of sales slips from such shopping, occurred between the Wilmington Association and their distributors (Tr. 584-6).

9. The Wilmington Meetings

On March 16, 1960, various servicemen members of the Wilmington Association held a joint meeting in Wilmington with their distributors. The Association had issued a written notice of the meeting to all Wilmington distributors stating:

There will be a meeting between this Association and the local Electronic Distributors on Wednesday, March 16, 1960 at 7 PM at the Town House Restaurant, 913 Shipley Street, Wilmington, Delaware. This Association wants to do business with the local electronic distributors as customers, not competitors. We believe selective buying hurts us as much as it hurts you.

We would like a settlement at the meeting on the following subjects:

1. Yellow Page Advertising
2. Newspaper Advertising
3. Net Prices in all mailings
4. New Discount Identification Card System
5. Close 5:30 PM weekdays and all day Saturday and Sundays. (CX 34)

Distributors represented at the meeting included Radio Electric, Wholesale Electronics, Delaware Electronics, and Almo Radio. Mayhart and other officers of the Wilmington Association were present. The topics specified in the notice, plus the blacking out of distributor store windows, were discussed, with the servicemen requesting agreement by the distributors. As at the TSA meetings, the principal objective was the cessation of sales by the distributors at wholesale prices to nonservicemen. One distributor refused to discuss it and walked out. Another refused to attend the meeting upon advice of counsel (Tr. 136, 576–80).

In the following month or two, two more joint meetings were held in Wilmington, resulting in an agreement to use a discount card system under which cards of different colors were issued by the Association to various customers of the distributors, designating the discount from list price which the customer was to be given, and if the customer had no card, requiring he be charged the full list price. As found above, the Wilmington Association also policed compliance by shopping the distributors (Tr. 581–7).

10. The Chester Meeting

Sometime in early April 1960, a joint meeting was held in Chester between members of the Chester Association, including Skalish, Jordan, Boyd, and Rapagnani, and substantially the same distributors who had attended the first joint meeting at the Drake Hotel in Philadelphia. In fact, Fallon of Radio Electric suggested this Chester meeting because he believed the members of the Chester Association, who were very good customers of Radio Electric, had not been correctly informed by Skalish of the six counterproposals the distributors had offered at the second joint meeting at the Drake. As found above, Skalish had been very active in support of the selective buying campaign, sending out the letters of December 5, 29 and 30, 1959 and the notice of January 16, 1960 found above in Part III–B 2,

and the notice of March 15, 1960 (Part III B 6), as well as appearing at a TSA meeting (Part III B 2). The distributors again presented their six proposals and pointed out why they could not agree to all of the 12 demands presented at the first joint meeting. On April 12, 1960, the Chester Association passed a motion that letters be sent to the distributors accepting their six-point proposal. This motion was then modified to read:

> The members of our Association appreciate your program as presented. The electronic parts distributors are to be complimented for their expressed spirit of cooperation concerning our mutual problems.

The next day Skalish, as secretary, wrote such a letter to Kass, a distributor, and also requested notice in the future if the program was altered in any way (Tr. 305–9; CX 76 A, B; CX 102).

11. The Trenton Meeting

Sometime in May 1960, joint meeting was held between distributors and members of the Trenton Association. Among the distributors present were Radio Electric, Allied Parts, and several New Jersey distributors including Dragon. Much the same discussion concerning selective buying, the demands of the servicemen and the six-point agreement of the distributors took place as occurred at the Chester meeting. In response to an objection by one distributor, Zuschlag, to a certain demand, a serviceman replied: "You're going to do what we tell you or else." The parties agreed to meet every six to eight weeks thereafter (Tr. 314–7).

12. The Mt. Ephraim, New Jersey Meeting

On October 6, 1960, a joint meeting was held in Mt. Ephraim, New Jersey between distributors and servicemen from TSA and the Chester, Wilmington, and Camden Associations, including Shore, Smith, Krantz, Rapagnani, Papovich, De Franco, Mayhart, and Skalish. Distributors attending included Zuschlag, Green, Fallon, Steinberg, Branca, Gumula, and Kass. Selective buying was discussed as well as a review of the servicemen's demands and what the distributors were doing in that respect. Radio Electric, while agreeing not to sell at wholesale prices to unidentified customers, continued to refuse to rebate the difference in price between retail and wholesale to the nearest serviceman. A report of the meeting was published in The Vanguard of November 1960 (Tr. 114–8, 321–2, 325–30, 505–6; CX 37, p. 1).

Between October 17 and 22, 1960, Smith as president of TSA wrote letters to various distributors complaining of their failure to live up to their promises and the accord. Smith concluded by stating:

There is a growing wave of discontent, and steadily mounting undercurrent of bitterness against the distributors and it may soon get out of hand. We inform you of this situation since we feel we will not be able to control our members, and others, if the policies of the distributors remain unchanged and events go on unabated. This may result in unfavorable publicity.

Such letters were received by Gumula, Kass, Steinberg, and Yonker (Tr. 120–1, 131–3, 507; CX 30; CX 95).

13. Respondents' Contentions

In addition to their contentions with respect to commerce, previously considered, respondents also contend that the Commission has no jurisdiction over TSA because it is a "nonprofit" corporation, and as such is exempt under the provisions of Section 4 of the Act, which states, *inter alia:*

"Corporation" shall be deemed to include any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, which is organized to carry on business for its own profit or that of its members, and has shares of capital or capital stock or certificates of interest, and any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, without shares of capital or capital stock or certificates of interest, except partnerships, which is organized to carry on business for its own profit or that of its members.

At the conclusion of the case-in-chief, respondents' motion to dismiss for the above reason was taken under advisement. All of the members of TSA were engaged in business for profit. Patently, evasion of the antitrust laws could be accomplished with the utmost simplicity if a conspiracy effectuated through a nonprofit association made up of members engaged in business for profit were exempt from the Commission's jurisdiction. In the *Chamber of Commerce of Minneapolis* case,[10] the court ruled upon the same contention.

The first ground is that the Chamber is not organized for profit. This is true. But it is a legal entity which can and does act and it is legally responsible for its acts and entirely amenable to lawful control. It is capable of entering into a combination or conspiracy or of being an effective instrumentality to execute the purpose of a combination or conspiracy formed by others (p. 684).

In the *Associated Press* case, a conspiracy to boycott, the Supreme Court stated:

It is further said we reach our conclusion by application of the "public utility" concept to the newspaper business. This is not correct. We merely hold that *arrangements or combinations designed to stifle competition cannot*

[10] Note 3, *supra.*

be immunized by adopting a membership device accomplishing that purpose.[11]

In addition, there is no question but that the members of TSA and other parties to the conspiracy were engaged in business for profit. In the *Cement Institute* case,[12] the Supreme Court held that the Commission has jurisdiction over all parties to a conspiracy engaged in by some over whom it has jurisdiction and others over whom it would not otherwise have jurisdiction. Accordingly, respondents' motion is denied.

Respondents also urge that there is no liability on the part of the individual members of TSA for its acts, including the items published in TSA News. That TSA together with TSA News was the principal vehicle used to effectuate the conspiracy is well established in the record. It seems clear that the members of TSA must be responsible for its acts, much as a principal is for those of his agent. The active participation of many members has been detailed above. With respect to other members, TSA News was regularly distributed to all members and they were fully aware of TSA's selective buying program, as found above. To permit them to escape responsibility for the acts of their association would be an exercise in futility. The Commission recently held with respect to a similar contention:

> As to the other members, including those that were present but unidentified at these various incidents and the rest that could not have failed to know about them, "the issue is reduced to whether a member who knows or should know that his association is engaged in an unlawful enterprise and continues his membership without protest may be charged with complicity as a confederate. We believe he may. Granted that mere membership does not authorize unlawful conduct by the association, once he is chargeable with knowledge that his fellows are acting unlawfully his failure to dissociate himself from them is a ratification of what they are doing. He becomes one of the principals in the enterprise and cannot disclaim joint responsibility for the illegal uses to which the association is put." *Phelps Dodge Refining Corp.* v. *Federal Trade Commission*, 139 F. 2d 393, 396 (2d Cir. 1943).[13]

14. Conclusions

It is of course Hornbook law that a conspiracy in restraint of trade may be proved by circumstantial evidence and that direct evidence of an express agreement is not required.[14] While not required, this record contains an abundance of direct evidence of a conspiracy to boycott in the form of admissions by the various parties. In

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[11] *Associated Press* v. *U.S.*, 326 U.S. 1 (1945). *Cf. Eastern States Lumber Dealers Ass'n* v. *U.S.*, 234 U.S. 600 (1914); *Fashion Originators Guild* v. *F.T.C.*, 312 U.S. 457 (1941); and *National Harness Mfrs. Ass'n* v. *F.T.C.*, 268 F. 705 (6th Cir. 1920).

[12] Note 7, *supra*.

[13] *Washington Crab Ass'n, et al.*, 66 F.T.C. 45, Docket No. 7859 (1964).

[14] *Interstate Circuit, Inc.* v. *U.S.*, 306 U.S. 208 (1938); *Theatre Enterprises, Inc.* v. *Paramount*, 346 U.S. 537 (1954).

addition, there is a wealth of circumstantial evidence which leads inevitably to the conclusion that a conspiracy to boycott by refusing to deal was both organized and carried out. It must now be considered well settled that a conspiracy to boycott is illegal *per se*, a violation of the Sherman Act, and a violation of Section 5 of the Act. The Supreme Court has so held upon numerous occasions.[15]

In many respects this record presents a picture of a classic conspiracy to boycott much like that struck down by the Supreme Court in *Eastern States Retail Lumber Dealers Ass'n.*[16] There, as here, retail dealers through their associations conspired to boycott, *i.e.*, refuse to buy from, those wholesalers who sold directly to consumers in competition with the retailers. There, black lists were used; here, white lists accomplished the same result. There, as might equally well apply here, the Court observed:

> * * * [H]e is blind indeed who does not see the purpose in the predetermined and periodical circulation of this report to put the ban upon wholesale dealers whose names appear in the list of unfair dealers trying by methods obnoxious to the retail dealers to supply the trade which they regard as their own. * * *

A preponderance of the reliable, probative and substantial evidence in the entire record convinces the undersigned, and accordingly it is found, that respondents and the other alleged co-conspirators, *i.e.*, the Chester, Wilmington, Camden, and Trenton Associations and some or all of their members, have entered into a combination, conspiracy, agreement or common understanding to boycott, *i.e.*, not purchase from, those distributors who sold at retail in competition with servicemen, in violation of Section 5 of the Act.

Conclusions of Law

1. The acts and practices of respondents hereinabove found are all to the prejudice and injury of the public and competition, are *per se* illegal under the Sherman Act, and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of the Act.

2. This proceeding is in the public interest and an order to cease and desist the above-found acts and practices should issue against respondents.

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[15] *Eastern States Retail Lumber Dealers Ass'n* v. *U.S.*, 234 U.S. 600; *Binderup* v. *Pathe Exchange, Inc.*, 263 U.S. 291; *Fashion Originators' Guild* v. *F.T.C.*, 213 U.S. 457; *Kiefer-Stewart Co.* v. *Seagrams*, 340 U.S. 211; *Times-Picayune Publg. Co.* v. *U.S.*, 345 U.S. 594; *Northern Pacific R. Co.* v. *U.S.*, 356 U.S. 1; *Klor's, Inc.* v. *Broadway-Hale Stores, Inc.*, 359 U.S. 207; *White Motor Co.* v. *U.S.* 372 U.S. 253; and *Silver* v. *New York Stock Exchange*, 373 U.S. 341.

[16] Note 15, *supra*.

ORDER

It is ordered, That respondent Television Service Association of Delaware Valley, a corporation, its officers, directors, representatives, agents, employees, members, successors, and assigns, and respondents Herman Shore and Raymond Fink, individually and as officers, directors or members of respondent Television Service Association of Delaware Valley, directly or through any corporate or other device, in or in connection with the purchase or sale, or with or in connection with the offer to purchase or sell, or in connection with the distribution of television, radio or electronic devices, equipment or parts or kindred merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, cooperating in, carrying out, or continuing in a planned common course of action, understanding, agreement, combination or conspiracy, between or among any two or more of said respondents or among or between any one or more of said respondents and another or others not parties hereto, to do or perform any of the following acts, practices or things:

(1) Coercing or intimidating in any manner or by any means, including boycott or threat of boycott, any wholesale or other distributor of television, radio or electronic devices or equipment or component parts thereof from doing business with, or soliciting business from, any customer or class of customers; or

(2) Coercing or intimidating in any manner or by any means, including boycott or threat of boycott, any wholesale or other distributor to engage in, cease to engage in, or refrain from engaging in, any acts or practices relating to the conduct of the latter's business including hours of operation, window displays or advertising; or

(3) Adopting any policy or program to black list any wholesale or other distributor of television, radio or electronic devices, equipment or component parts thereof, who has sold, sells, or offers to sell such products to any customer or class of customers, or adopting any policy or program to white list any wholesale or other distributor of television, radio or electronic devices, equipment or component parts thereof, who refuses, has refused, or does not offer to sell such products to any customer or class of customers.

FINAL ORDER

No appeal from the initial decision of the hearing examiner having been perfected under Section 3.22 of the Commission's Rules of Practice (effective August 1, 1963); and the Commission on February

12, 1965, having ordered that the effective date of the initial decision be stayed until further order of the Commission; and the Commission now having determined that the case should not be placed on its own docket for review, and that pursuant to Section 3.21 of the Rules of Practice the initial decision should be adopted and issued as the decision of the Commission:

It is ordered, That the initial decision of the hearing examiner shall, on the 19th day of February, 1965, become the decision of the Commission.

It is further ordered, That Television Service Association of Delaware Valley, a corporation, and Herman Shore and Raymond Fink, individually and as members, officers or directors of said corporation, shall, within sixty (60) days of the service of this order upon them, file with the Commission a report in writing, signed by each respondent named in this order, setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF

TELEVISION SERVICE DEALERS ASSOCIATION OF DELAWARE COUNTY ET AL.

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

Docket C-881. Complaint, Feb. 19, 1965—Decision, Feb. 19, 1965

Consent order requiring four trade associations of radio and television repairmen and its members, engaged in repairing and servicing electronic devices, to cease carrying out any planned common course of action to hinder and suppress competition in the sale and distribution of electronic equipment and component parts by coercing, intimidating, and boycotting wholesalers or distributors who sell such products at retail in competition with repairmen; by interfering in distributor's business practices, including hours of operation, display windows, and advertising; and by adopting a policy to "black list" any wholesaler or distributor who sells such products at retail and to "white list" any wholesaler or distributor who refuses to sell such products at retail.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C., Sec. 41, et seq.), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the parties hereinafter referred to as respondents have

violated the provisions of Section 5 of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Television Service Dealers Association of Delaware County, a corporation, sometimes hereinafter referred to as TSDA of Delaware County, is a non-profit trade association, organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, with offices and its principal place of business at 1626 Providence Avenue, Chester, Pennsylvania. Respondent TSDA of Delaware County was organized and is maintained ostensibly for the mutual interest of television service dealers and the betterment of the television service profession. The membership of said respondent constitutes a class so numerous and changing as to make it impracticable to name individually each and every member as a respondent herein. Accordingly, the following members of respondent TSDA of Delaware County are herein named as respondents in their individual capacities, as members of respondent TSDA of Delaware County, as past or present officers, directors or in other official capacities of said corporate respondent, and as fairly representative of all members thereof, as a class, all of whom are made respondents herein:

Peter Rapagnani, 1626 Providence Avenue, Chester, Pennsylvania, served as vice president of respondent TSDA of Delaware County from 1958 to 1959 and as president from 1960 to 1961.

Leon Skalish, 101 S. MacDade Boulevard, Glenolden, Pennsylvania, served as secretary of respondent TSDA of Delaware County from 1958 to 1960 and as Advisory Board Member in 1961.

PAR. 2. Respondent Television Service Dealers Association of Delaware, a corporation, sometimes hereinafter referred to as TSDA of Delaware, is a non-profit trade association, organized and existing under and by virtue of the laws of the State of Delaware with offices and its principal place of business at 403 Philadelphia Pike, Wilmington, Delaware. Respondent TSDA of Delaware was organized and is maintained for the ostensible purpose of promoting, fostering and advancing the interests of the members as television service dealers and to educate its members toward the elimination of illegal practices and unfair methods of competition, and other abuses. The membership constitutes a class so numerous and changing as to make it impracticable to name individually each and every member as a respondent herein. Accordingly, the following members

of respondent TSDA of Delaware are herein named as respondents in their individual capacities, as members of respondent TSDA of Delaware, as past or present officers, directors or in other official capacities of said corporate respondent, and as fairly representative of all members thereof, as a class, all of whom are made respondents herein:

Henry Dale, 403 Philadelphia Pike, Wilmington, Delaware, served as secretary of respondent TSDA of Delaware from 1958 to 1960 and as President in 1961.

James A. Mayhart, 213 Prospect Drive, Wilmington, Delaware, served as president of respondent TSDA of Delaware from 1958 to 1960 and as vice president in 1961.

PAR. 3. Respondent Allied Electronic Technicians Association, Inc., sometimes hereinafter referred to as AETA, is a non-profit trade association, organized and existing as a corporation under and by virtue of the laws of the State of New Jersey with its offices and principal place of business located in the county of Camden, New Jersey. The registered agent of said corporate respondent is Thomas N. Bantivoglio, 518 Market Street, Camden 1, New Jersey. Respondent AETA was organized and is maintained ostensibly for the purpose of representing, fostering and protecting the interests of its members and of the electronic service business in the State of New Jersey. The membership constitutes a class so numerous and changing as to make it impracticable to name individually each and every member as a respondent herein. Accordingly, the following members of respondent AETA are herein named as respondents in their individual capacities, as members of respondent AETA, as past or present officers, directors, or in other official capacities of said corporate respondent and as fairly representative of all members thereof, as a class, all of whom are made respondents herein:

Joseph J. Papovich, 216 Broadway, Westville, New Jersey, served as president of respondent AETA in 1959, as secretary in 1960 and 1961, and as a member of the board of directors from 1959 through 1961.

Anthony J. DeFranco, 4620 Westfield Avenue, Pennsauken, New Jersey, served as vice president of respondent AETA in 1960, as president in 1961 and as a member of the board of directors from 1959 through 1961.

PAR. 4. Respondent Radio Servicemen's Association of Trenton, N.J., Incorporated, a corporation, sometimes hereinafter referred to as RSA, is a non-profit trade association organized and existing

under and by virtue of the laws of the State of New Jersey, with offices and its principal place of business at 343 Williams Street, Trenton, New Jersey. Said respondent was organized and is maintained ostensibly for the purpose of extending the knowledge of radio and television and promoting goodwill among its members. The membership constitutes a class so numerous and changing as to make it impracticable to name individually each and every member of respondent RSA as a respondent herein. Accordingly, the following members of respondent RSA are herein named as respondents in their individual capacities, as members of respondent RSA, as past or present officers, directors or in other official capacities of said corporate respondent, and as fairly representative of all members thereof, as a class, all of whom are made respondents herein:

Michael E. Toth, 343 Williams Street, Trenton, New Jersey, served as secretary of respondent RSA from 1958 through 1961.

Henry F. Leverence, 2238 Nottingham Way, Trenton, New Jersey, served as vice president of respondent RSA from 1958 to 1959 and as president in 1960 and 1961.

Frank C. Guest, Fenton Lane, Bordentown, New Jersey, served as treasurer of respondent RSA in 1959 and as vice president in 1960 and 1961.

Lewis M. Edwards, 1451 Hamilton Avenue, Trenton, New Jersey, served as chairman of the Publicity and Public Relations Committee of respondent RSA from 1958 through 1961.

PAR. 5. Meetings are held by members of each of respondent trade associations for the purpose of transacting the business of the respective associations. These meetings are held periodically, generally once a month, at places within the respective communities wherein each trade association has its principal place of business.

PAR. 6. All or virtually all of the members of respondent trade associations are individuals or corporate or other organizations engaged in the business, among others, of repairing and servicing electronic devices and equipment including those designed and employed for the reception of radio and television broadcast signals. In the course and conduct of the business of so repairing and servicing such devices and equipment, various supplies are required by members of respondent associations including different component parts thereof such as radio and television tubes. Such component parts are sold and shipped by the manufacturers thereof to wholesalers or distributors in states other than the states of manufacture or other than the states where shipment originated. Those wholesalers or distributors in turn resell them to members of the corporate re-

spondents and also to ultimate consumers. Some of the sales so made by such wholesalers or distributors are or have been made to members of respondent trade associations, or to others who are nonmembers, but who are similarly engaged in repairing and servicing television, radio or electronic devices and equipment, or to ultimate consumers, with places of business or residences in states other than those wherein the places of business of such wholesaler and distributors are located.

PAR. 7. At or about the commencement of 1960 the respondent trade associations banded together in an unincorporated organization designated as the Tri-State Council. This Council adopted as its official publication "The Vanguard," a monthly trade bulletin which has been published by respondent trade associations or in the publication of which they have participated. "The Vanguard" has been distributed by or through the Tri-State Council to members of respondent trade associations responsible for its organization, and to others in the radio, television and electronic industry. Such distribution has been effected by the Council in states other than those wherein such places of business are so maintained. Members of each of respondent trade associations, or some of them, in order to further, carry out, engage in, pursue or implement the acts, practices, methods of competition, combination, agreement, conspiracy, or planned common course of conduct, as hereinafter more particularly described and alleged to be unfair, in derogation of the public interest and in violation of law, have themselves traversed boundaries separating one state from another state or states, or have from points in one state or states employed channels of communication such as the United States mail or telephone lines extending to points in another state or states, or both. All of respondent trade associations and all of their members who are responsible for the acts and practices of said associations, either actively participating and collaborating or tacitly acquiescing therein, are engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 8. Members of respondent trade associations and others similarly engaged have been, and are now, in competition with wholesalers or distributors from whom they purchase component parts for use in their business of repairing and servicing television, radio or electronic equipment or devices for the business of the ultimate consumer of such parts or devices except to the extent competition between them may have been prevented, eliminated, injured or impaired as a result of various unfair acts, practices or methods of competition engaged in, followed, pursued or adopted by or through the

various corporate respondents and by the members thereof as hereinafter more particularly alleged. Included among and illustrative of such acts, practices or methods of competition so engaged in, followed, pursued or adopted were the following:

Members of each of respondent trade associations, or some of them, acting in collaboration through the Tri-State Council at least as early as 1960 caused it to commence publication of "The Vanguard" in which there were issued to television, radio and electronic repairmen, proclamations, among others, upon the "evils" of sales by wholesalers to consumers, the efficacy of selective buying as a weapon to control or eradicate such practices, and exhortations to eliminate the wholesaler as a competitor for the business of the ultimate consumer through use of their collective and combined purchasing power to limit and control the channels of distribution of television, radio and electronic equipment and component parts.

PAR. 9. Respondents, as hereinbefore named and described, in or about February 1960 combined, conspired, agreed or reached a common understanding with each other and others not named as parties hereto including Television Service Association of Delaware Valley of Philadelphia, Pennsylvania and its members, or some of them, to act in concert and collaboration to hinder and suppress the sale and distribution by wholesalers of television, radio or electronic devices, equipment or component parts thereof. Such combination, conspiracy, agreement or common understanding was entered into, or reached by and between said respondents and others, and has been pursued, followed, furthered or implemented in interstate commerce and through utilization of the channels thereof. More particularly, the purposes sought to be accomplished by respondents through such combination, conspiracy, agreement or common understanding was the restriction and limitation of the channels of distribution employed in the marketing of television, radio and electronic devices, equipment or component parts by the elimination or diminution of sales thereof by wholesale distributors to the ultimate consumer. Illustrative of and included among the acts and practices designed to accomplish such purposes which were engaged in and pursued by respondents, or some of them, with the approval or acquiescence of all others, were the following:

(a) Communicated to such wholesale distributors threats of concerted withdrawal of patronage therefrom by television, radio and electronic equipment, service and repairmen;

(b) Combined and united to boycott such wholesale distributors to coerce them to discontinue selling television, radio and electronic

devices or component parts thereof at retail to the ultimate consumer in competition with individuals or organizations engaged in the servicing and repair of such devices;

(c) Dictated or attempted to dictate practices to be followed or eschewed or discontinued, by such wholesalers in the conduct of their business involving such matters as hours of operation, display windows, and advertising;

(d) Caused publication to be made of a "white" list or lists of wholesalers who cooperated with respondents in refusing to sell at retail to the ultimate consumer;

(e) Policed sales made by wholesale distributors of television, radio and electronic devices or component parts thereof by employing individuals or committees for the purpose of shopping at the business establishments of distributors;

(f) Advocated, urged and preached, by way of published slogan, exhortation and appeal, that independent servicemen, both members of respondent associations and non-members, should discontinue purchasing from wholesale distributors thereof who sold television, radio and electronic devices or component parts thereof, at retail to the ultimate consumer.

PAR. 10. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondents, and the combination, conspiracy, agreement or common understanding entered into or reached between and among them or others not parties hereto, and the acts and practices engaged in and followed pursuant thereto and in furtherance and implementation thereof by respondents as hereinbefore alleged, constitute unfair acts, practices and methods of competition, the effect of which has been, is now or may be to injure, impair, frustrate, eliminate, or prevent competition between respondents and others engaged in the distribution of radio, television, or other electronic equipment, or devices or component parts thereof, or to tend to create a monopoly in respondents in the distribution of such equipment, devices or parts, or to unduly obstruct, hamper or impede the current of commerce in such equipment, devices or parts between and among the several states, or to deprive members of the public who have purchased, do purchase or may purchase such devices, equipment or parts of the advantage and opportunity to so purchase from vendors engaged in active and *bona fide* competition unimpeded by artificially imposed restraints, or to curtail the breadth of choice of vendors from which such members of the purchasing public may buy, all in derogation of the public interest and in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The respondents named in the caption hereof and counsel for the Commission having, pursuant to Part 2 of the Commission's rules, 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 having heretofore issued its order accepting the agreement and deferring, as contemplated by such agreement, service of the decision and order of the Commission in disposition of this proceeding until issuance by the Commission of its decision and order In the Matter of *Television Service Association of Delaware Valley, et al.*, Docket No. 8623 [p. 195 herein], and the Commission having determined that such condition is met inasmuch as decision in disposition of that matter is issuing simultaneously with the Commission's action herein;

Now, therefore, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Television Service Dealers Association of Delaware County, a corporation, is a non-profit trade association, organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, with offices and its principal place of business at 1626 Providence Avenue, Chester, Pennsylvania.

Respondents Peter Rapagnani, whose address is 1626 Providence Avenue, Chester, Pennsylvania, and Leon Skalish, whose address is 101 S. MacDade Boulevard, Glenolden, Pennsylvania, are members of, and are or were officers of, and are representative members of the entire membership of respondent Television Service Dealers Association of Delaware County.

Respondent Television Service Dealers Association of Delaware, a corporation, is a non-profit trade association, organized and existing under and by virtue of the laws of the State of Delaware with offices and its principal place of business at 403 Philadelphia Pike, Wilmington, Delaware.

Respondents Henry Dale, whose address is 403 Philadelphia Pike, Wilmington, Delaware, and James A. Mayhart, whose address is 213 Prospect Drive, Wilmington, Delaware, are members of, and are or

were officers of, and are representative members of the entire membership of respondent Television Service Dealers Association of Delaware.

Respondent Allied Electronic Technicians Association, Inc., is a non-profit trade association, organized and existing as a corporation under and by virtue of the laws of the State of New Jersey with its offices and principal place of business located in the county of Camden, New Jersey.

Respondents Joseph J. Papovich, whose address is 216 Broadway, Westville, New Jersey, and Anthony J. DeFranco, whose address is 4620 Westfield Avenue, Pennsauken, New Jersey, are members of, and are or were officers of, and are representative members of the entire membership of respondent Allied Electronic Technicians Association, Inc.

Respondent Radio Servicemen's Association of Trenton, N.J., Incorporated, a corporation, is a non-profit trade association organized and existing under and by virtue of the laws of the State of New Jersey, with offices and its principal place of business at 343 Williams Street, Trenton, New Jersey.

Respondents Michael E. Toth, whose address is 343 Williams Street, Trenton, New Jersey, Henry F. Leverence, whose address is 2238 Nottingham Way, Trenton, New Jersey, and Frank C. Guest, whose address is Fenton Lane, Bordentown, New Jersey, are members of, and are or were officers of, and are representative members of the entire membership of respondent Radio Servicemen's Association of Trenton, N.J., Incorporated. Respondent Lewis M. Edwards, whose address is 1451 Hamilton Avenue, Trenton, New Jersey, is a member of, and from 1958 through 1961 was an official of, and is a representative member of the entire membership of respondent Radio Servicemen's Association of Trenton, N.J., Incorporated.

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 Television Service Dealers Association of Delaware County, a corporation, its officers, representatives, agents, employees, members, successors and assigns; respondents Peter Rapagnani and Leon Skalish, individually and as officers, directors or members of respondent Television Service Dealers Association of Delaware County; respondent Television Service Dealers Association of Delaware, a corporation, its officers, representatives,

agents, employees, members, successors and assigns; respondents Henry Dale and James A. Mayhart, individually and as officers, directors or members of respondent Television Service Dealers Association of Delaware; respondent Allied Electronic Technicians Association, Inc., a corporation, its officers, representatives, agents, employees, members, successors and assigns; respondents Joseph J. Papovich and Anthony J. DeFranco, individually and as officers, directors or members of respondent Allied Electronic Technicians Association, Inc.; respondent Radio Servicemen's Association of Trenton, New Jersey, Incorporated, a corporation, its officers, representatives, agents, employees, members, successors and assigns; respondents Michael E. Toth, Henry F. Leverence, Frank C. Guest, and Lewis M. Edwards, individually and as officers, directors or members of respondent Radio Servicemen's Association of Trenton, New Jersey, Incorporated, directly or through any corporate or other device, in or in connection with the purchase or sale or with or in connection with, the offer to purchase or sell, or in connection with the distribution of television, radio or electronic devices, equipment or parts, or kindred merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, cooperating in, carrying out, or continuing in a planned common course of action, understanding, agreement or conspiracy, between or among any two or more of said respondents or among or between any one or more of said respondents and another or others not parties hereto, to do or perform any of the following acts, practices or things:

(1) Coercing or intimidating in any manner or by any means, including boycott or threat of boycott, any wholesale or other distributor of television, radio or electronic devices or equipment or component parts thereof from doing business with or soliciting business from, any customer or class of customers; or

(2) Coercing or intimidating in any manner or by any means, including boycott or threat of boycott, any wholesale or other distributor to engage in, cease to engage in, or refrain from engaging in, any acts or practices relating to the conduct of the latter's business including hours of operation, window displays or advertising; or

(3) Adopting any policy or program to black list any wholesale or other distributor of television, radio and electronic devices or component parts thereof, who has sold, sells, or offers to sell such products to any customer or class of customers, or adopting any policy or program to white list any wholesale or other dis-

tributor of television, radio and electronic devices or component parts thereof, who refuses, has refused, or does not offer, to sell such products to any customer or class of customers.

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

IN THE MATTER OF

THE KRAMER COMPANY

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

Docket C-882. Complaint, Feb. 23, 1965—Decision, Feb. 23, 1965 [1]

Consent order requiring a New York City manufacturer of wearing apparel to cease violating Sec. 2(d) of the Clayton Act by paying advertising and promotional allowances to certain favored customers for promoting the sale of its wearing apparel products, while not making such payments available, on proportionally equal terms, to all its customers competing with favored customers in the sale of its products, and postponing effective date of the order until further order of the Commission.

COMPLAINT

The Federal Trade Commission, having reason to believe the respondent named in the caption hereof has violated and is now violating the provisions of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C., Title 15, Sec. 13), and it appearing to the Commission that a proceeding by it in respect thereto is in the interest of the public, the Commission hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. The respondent is a corporation engaged in commerce, as "commerce" is defined in the amended Clayton Act, and sells and distributes its wearing apparel products from one state to customers located in other states of the United States. The sales of respondent in commerce are substantial.

PAR. 2. The respondent in the course and conduct of its business in commerce paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation

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[1] This order was made effective on Aug. 9, 1965, see *Abby Kent Co., Inc., et al.*, Docket No. C-328, et al., Aug. 9, 1965, 68 F.T.C. 393.

or in consideration for services and facilities furnished by or through such customers in connection with their sale or offering for sale of wearing apparel products sold to them by respondent, and such payments were not made available on proportionally equal terms to all other customers competing with favored customers in the sale and distribution of respondent's wearing apparel products.

PAR. 3. Included among, but not limited to, the practices alleged herein, respondent has granted substantial promotional payments or allowances for the promoting and advertising of its wearing apparel products to certain department stores and others who purchase respondent's said products for resale. These aforesaid promotional payments or allowances were not offered and made available on proportionally equal terms to all other customers of respondent who compete with said favored customers in the sale of respondent's wearing apparel products.

PAR. 4. The acts and practices alleged in Paragraphs One through three are all in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and subsequently having determined that complaint should issue, and the respondent having entered into an agreement containing an order to cease and desist from the practices being investigated and having been furnished a copy of a draft of complaint to issue herein charging it with violation of subsection (d) of Section 2 of the Clayton Act, as amended, and

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

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

1. Respondent The Kramer Company is a corporation organized and existing under the laws of the State of Delaware, with its office

and principal place of business located at 1405 Broadway, New York, New York.

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

ORDER

It is ordered, That respondent The Kramer Company, a corporation, its officers, directors, agents and representatives and employees, directly or through any corporate or other device, in the course of its business in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

(1) Paying or contracting for the payment of anything of value to, or for the benefit of, any customer of the respondent as compensation or in consideration for advertising or promotional services, or any other service or facility, furnished by or through such customer in connection with the handling, sale or offering for sale of wearing apparel products manufactured, sold or offered for sale by respondent, unless such payment or consideration is made available on proportionally equal terms to all other customers competing with such favored customer in the distribution or resale of such products.

It is further ordered, That the effective date of this order to cease and desist be and it hereby is postponed until further Order of the Commission.

IN THE MATTER OF

SYLVANIA ELECTRIC PRODUCTS, INC.

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

Docket 8501. Complaint, June 13, 1962—Decision, Feb. 24, 1965

Order vacating an earlier consent order dated February 28, 1964, 64 F.T.C. 1273, and dismissing the complaint which charged a Waltham, Mass., manufacturer of photographic lighting products with making discriminatory promotional allowances to certain favored customers, such dismissal being based on respondent's affidavit that the objectionable practices have been discontinued.

CONCURRING OPINION

BY MACINTYRE, *Commissioner:*

Commissioner MacIntyre concurs in the result. As the Commission's order notes, the consent agreement with respondent provided that the

effective date of the order against Sylvania should be stayed until the Commission issued a final order in *General Electric Company*, Docket No. 8487. That case was dismissed on February 28, 1964 [64 F.T.C. 1238], "without adjudicating any issue of fact or law." I did not concur at the time in the failure to adjudicate the questions presented in Docket 8487. The issuance of a cease and desist order as such in the *General Electric* proceeding was not required by the terms of the consent agreement in this case as a prerequisite to the imposition of an order against Sylvania. Nevertheless, it is fair to say the agreement at least implicitly contemplated a disposition of *General Electric* on the merits, whether by way of a cease and desist order or dismissal. Since the Commission failed to perform its fact finding function in that instance, I agree that equity compels dismissal of the complaint and order in this proceeding. It is regrettable that the failure to perform its adjudicatory function in one proceeding has vitiated the Commission's efforts in another case.

ORDER VACATING FINAL ORDER AND DISMISSING COMPLAINT

This matter has come on to be heard by the Commission upon respondent's petition, filed December 1, 1964, requesting that the Commission's order to cease and desist, issued on February 28, 1964 [64 F.T.C. 1273], be vacated and set aside and the complaint dismissed.

The Commission's order in this matter is based upon an agreement containing a consent order. The agreement provided that it would be subject to the condition that the effective date of the Commission's order entered pursuant to the agreement would be stayed until the Commission issued a final order in the matter of *General Electric Company*, Docket No. 8487 [64 F.T.C. 1238]. By an order issued January 4, 1963, the Commission accepted the consent agreement subject to said condition. Thereafter, on February 28, 1964, the Commission issued its final order dismissing the complaint in the *General Electric* case. On the same date, the Commission issued its final order to cease and desist herein. Subsequently, on respondent's motion, enforcement of said order was stayed until further direction of the Commission.

Respondent bases its present request, in part, on the fact that the same promotional practices, *i.e.*, payments for advertising of photolamps in catalogs owned by wholesaler customers, which led to the consent agreement herein, were also the subject of one count in the *General Electric* complaint and that it did not contemplate at the time it executed the consent agreement that the *General Electric* complaint would be dismissed without adjudication of any issue of fact

or law. In addition, respondent bases its request on the fact that in seventeen related matters involving alleged discriminatory allowances by suppliers for advertising in the same wholesaler-owned catalogs named in the complaint herein, the Commission, in the exercise of its administrative discretion, determined that litigation should be terminated with acceptance of the assurances by the respondents therein that the practices which had been discontinued, would not be resumed. In its declaratory opinion in those matters, the Commission held that the practices were illegal. However, upon consideration of all the circumstances presented in those matters, the Commission concluded, in view of respondents' assurances, that the public interest did not require the entry of cease-and-desist orders.

In the petition now before us, respondent states that it is fully cognizant of the views of the Commission as to the law expressed in the aforesaid declaratory opinion. In an attached affidavit duly executed by a responsible official, respondent states that it has discontinued the practices and that it has no intention of resuming payments for photolamp advertising in customer-owned or customer-controlled publications in the absence of a plan proportionally available to all competing customers.

The Commission has duly considered respondent's petition and has concluded that in the circumstances the public interest will be fully served by acceptance of respondent's affidavit.

On the basis of the foregoing:

It is ordered, That this proceeding be, and it hereby is, reopened.

It is further ordered, That the Commission's decision and order to cease and desist, issued herein on February 28, 1964 [64 F.T.C. 1273], be, and it hereby is, vacated and set aside.

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

Commissioner MacIntyre concurring in the result for the reasons stated in his accompanying opinion.

IN THE MATTER OF

GARRETT-HOLMES & CO., INC.

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

Docket 8564. Complaint, Mar. 26, 1963—Decision, Feb. 26, 1965

Order requiring a Kansas City, Kans., wholesale purchaser and distributor of fresh fruits and vegetables—with total annual sales of approximately

$5.5 million—to cease violating Sec. 2(c) of the Clayton Act by receiving or accepting brokerage payments from suppliers on purchases of fresh fruit or produce for its own account or while acting in behalf of any buyer.

COMPLAINT

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

PARAGRAPH 1. Respondent Garrett-Holmes & Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 200 S. 5th Street, Kansas City 17, Kansas.

PAR. 2. Respondent is now and for the past several years has been engaged in business primarily as a wholesale distributor, buying, selling and distributing fresh fruit and produce, hereafter sometimes referred to as food products. Respondent purchases such food products from a large number of suppliers located in many sections of the United States. The annual volume of business done by respondent in the purchase and sale of food products is substantial.

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

PAR. 4. In the course and conduct of its business for the past several years, but more particularly since July 1, 1959, respondent has been and is now making substantial purchases of food products for its own account for resale from some, but not all, of its suppliers, and on a large number of these purchases respondent has received and accepted, and is now receiving and accepting, from said suppliers a

commission, brokerage, or other compensation or an allowance or discount in lieu thereof, in connection therewith.

More particularly, respondent makes substantial purchases of food products from suppliers such as Bodine Produce Co., Phoenix, Arizona, The Garin Company, Salinas, California, National Cranberry Association, Hanson, California, and Earl Fruit Company, San Francisco, California, and receives on said purchases varying rates of brokerages. In other instances respondent receives a lower price from the suppliers which reflects said commission or brokerage.

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

Mr. Basil J. Mezines and *Mr. Donald A. Surine* supporting the complaint.

Collier and Shannon, by *Mr. James F. Rill*, Washington, D.C., with *Mr. Frank Brockus*, of Kansas City, Missouri, for the respondent.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

SEPTEMBER 29, 1964

By complaint issued on March 26, 1963, the Federal Trade Commission charged the respondent in the above-entitled matter with violation of the provisions of subsection (c) of Section 2 of the Clayton Act, as amended, 15 U.S.C. Sec. 13(c). Specifically, the respondent was charged with receiving and accepting a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, from some of its suppliers, in connection with its purchases of food products for its own account for resale. By answer timely filed, respondent denied that it had received or accepted any unlawful brokerage payment or allowance in lieu thereof, and averred that it is an independent distributor of fresh fruits and vegetables, operating at a position in the chain of distribution which is essential to the distribution of such merchandise.

Several prehearing conferences were held where the issues were narrowed, exhibits marked and identified, stipulations entered into, and time and places of hearings agreed upon. Thereafter, hearings were held in Washington, D.C., Phoenix, Arizona, and Kansas City, Missouri, where both parties were represented, examination and cross-examination permitted, and exhibits received in evidence. No defense hearings were asked for or held. Proposed findings and briefs were

submitted and consideration given to such submissions. Proposed findings not adopted in this decision have been deemed unsupported by evidence or irrelevant to the issues. From the record thus constituted, the hearing examiner makes the following:

FINDINGS OF FACT

1. Respondent, Garrett-Holmes & Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri (Answer Par. 1).

2. Respondent is a family-type corporation engaged primarily in the purchase and resale of fresh fruits and vegetables. L. F. Garrett, Sr., is Chairman of the Board; his son, L. F. Garrett, Jr., is president. The total approximate annual volume of business is 5.5 million dollars (Tr. 1028–32).

3. Respondent maintains its principal place of business at 200 South 5th Street, Kansas City, Kansas, where it maintains a warehouse, including refrigerated storage, with facilities to bag or repack products. Respondent also maintains a number of tractor-trailer type trucks for delivery of produce sold to its customers (Tr. 1028–35).

4. Respondent purchases its fresh fruits and vegetables from suppliers located throughout the United States. This produce is resold to customers in a ten-state area, including Missouri, Kansas, Illinois, Iowa, South Dakota, Oklahoma, Arkansas, Minnesota, Nebraska and Wisconsin (Tr. 1030–31). Respondent also acts as a broker on some transactions with the National Cranberry Association, which will be discussed below.

5. Respondent also maintains a "City Market" outlet at 311 Walnut Street, Kansas City, Missouri, at which produce is sold to anyone regardless of the amount. Sales are made there to wholesalers, retailers, chain stores, peddler, jobbers, etc. (Tr. 1053, 1084–85; CX 1799). Approximately 10 per cent of respondent's total business is done at the City Market outlet. In 1960, about $443,000, in 1961, $430,000, and in 1962, $441,000 of produce were sold through that outlet (CX 2139; Tr. 1053–54). Respondent's customer classification has been set out in CX 1799, a document prepared by officials of the respondent. This shows:

Garrett-Holmes & Co., Inc., Customers

Service wholesalers	56
Group Stores	13
Chain Stores	5
Home Owned Stores	6

City Market Customers

Retail Stores	24
Government	2
Service Wholesalers	17
Jobbers	3
Prepack	3
Vender	1

6. The record is somewhat confused regarding the distribution of respondent's sales to these various classes of customers. It appears, and the examiner so finds, that sales from the City Market outlet to service wholesalers represent 85 percent of the total City Market outlet sales (Tr. 1086). Total company sales to customers shown as "group stores," "chain stores," and "home owned stores" are also substantial. Although Mr. Garrett, Sr., defined "substantial" as "good customers," he also defined "good" as "quantity buyers and good pay" (Tr. 1089). These "group stores" include independently owned retail stores, small retail chain stores, as well as national retail chain stores (Tr. 1078–81). Mr. Garrett, Sr., testified that more than a million dollars in total company sales are represented by sales to "group stores" (Tr. 1090–91). He further stated that a similar amount of business was involved in sales to service wholesalers. It is, therefore, concluded that much, if not a predominate share, of respondent's business involves sales to wholesalers or others performing wholesaling functions in the redistribution of the merchandise to retail stores. Nonetheless, respondent's sales to retail stores directly, as shown by CX 1799, cannot be ignored as insignificant.

7. Respondent's officers stated that its principal competitors are brokers (Tr. 113–19). Originally, respondent purchased through brokers. When the brokers started selling to respondent's customers, however, respondent was "forced" to compete with the broker by buying direct from the supplier (Tr. 1489–90). This was corroborated by Mr. Yankee, an officer of a local brokerage firm (Tr. 1316). On the other hand, officials from local wholesaling firms, L. Yukon & Sons, Inc., and A. Reich & Sons, Incorporated, testified that they, as well as the respondent, sell to the same types of customers (institutions, restaurants, hotels, retailers, jobbers, national chains), have similar facilities for warehousing, refrigerating and delivery, and even buy from and sell to each other on a fill-in basis when they run short (Tr. 1092, 1204, 1211, 1224, 1234–35, 1282–83, 1323–24). Mr. Davis, an official of a brokerage firm, Brown & Loe, Inc., stated that the respondent, as well as Yukon and Reich were considered jobbers,

and that all jobbers in the Kansas City, Missouri, area were competitive (Tr. 1188–90; 1206).

8. It is concluded and found that respondent is in active competition with wholesalers in its sales to some classes of customers such as retailers, as well as in active competition with brokers in its sales to some classes of customers such as wholesalers. Respondent warehouses some of its purchases, but also engages in drop shipments to a large extent. In the latter situation, respondent directs its supplier to deliver the respondent's purchases to designated customers of the respondent at intermediate points along the delivery route so that respondent finds it unnecessary to warehouse all of its purchases (Tr. 1114, 1477–78, 1481).

9. Jessie Thomas has been a broker representing various buyers of produce since 1955. Since 1960 he has been a paid employee of the respondent at an annual salary of $6,500 (Tr. 784–87, 794–95; CX 2138). As a buyer for the respondent his duty is to keep respondent informed of market conditions and to buy at the best possible price (Tr. 800).

10. When Mr. Thomas purchases for the respondent, he submits a "Confirmation of Purchase" (CX 2106–D), showing respondent as the purchaser and also showing the name of the seller, the commodity purchased, the quantity, and the price. On many of these transactions, the Confirmation of Purchase shows a deduction from the price, labeled "protection" or "protection for brokerage." At times it was shown as "distribution" (Tr. 825–29, 955). The amount thus deducted was usually 10 cents per unit, which is the usual amount for brokerage when paid by the supplier (Tr. 726). Mr. Thomas testified:

> * * * My state of mind at the time was to protect Garrett-Holmes & Co. 10 cents per carton and protect Garrett-Holmes 10-cent brokerage, the terms are synonymous * * * (Tr. 827).
>
> * * * * * * *
>
> Q. Mr. Thomas, actually, in fact, isn't the words when you use "protection for brokerage," you using it yourself, did not you understand that that was a deduction of brokerage?
>
> A. In some instances, yes.
>
> Q. And you asked, after bargaining on price, you then asked the seller if it were in a buyer's market, particularly, for a deduction for brokerage?
>
> A. I don't know that I asked ——
>
> Q. (Interposing) As a practice you have done that many times?
>
> A. Yes, I would say so.
>
> Q. Did you consider that the deduction was in lieu of brokerage?
>
> A. By that you mean what?
>
> Q. Well, allowance or brokerage granted to your employer of ten cents?
>
> A. Yes.

Q. You considered that to be?
A. Yes. (Tr. 828–29).

11. The sales manager of Bodine Produce Co., a supplier, stated that "brokerage" and "distribution" meant the same thing. Moreover, the words "less brokerage" and the deduction of 10 cents were entered on the invoices by the respondent in its office and the deduction was allowed by the supplier as a discount from the total price to cover the respondent's expense in selling the produce to somebody else (Tr. 955–57, CX 1834).

12. An officer of another supplier, Garin Company, stated that the deduction, denominated "less brokerage" upon the invoices, was charged by the supplier on the books of the supplier as brokerage expense (Tr. 731). This same officer testified that the 10-cent allowance, denominated "less brokerage" on the invoice, was not entered on the invoice by the supplier when it prepared the document (Tr. 732, 736; CX 1919, 2119b). Mr. Garrett, Jr., admitted that this was entered by the respondent after it received the invoice from the suppliers and that the brokerage was deducted from the invoice price (Tr. 1475–76).

13. The record contains other explanations for the apparent deductions for brokerage shown on a number of invoices. One such explanation made by the respondent's president was that the practice was merely "puffing"; that the price was artificially inflated by the amount of the so-called brokerage so that the deduction for brokerage brought the net price back to normal market levels (Tr. 817, 959). As counsel for the respondent states, "The rationale behind this record keeping is difficult to understand" (Proposed Findings, p. 17). The testimony supporting this theory is not credible. If such alleged "puffing" happened only rarely, it could be plausible. But Mr. Garrett's testimony supporting this explanation admits that it did not happen infrequently. It is not at all credible that the artificial inflation of a price coupled with a fictitious brokerage deduction, resulting in a net price that is exactly equal to a current normal level for all buyers, would be a regular business practice. Moreover, the respondent's theory of "puffing" as an explanation for the practice engaged in was contradicted by the testimony of various individuals cited in the foregoing findings. The conclusion is inescapable that "puffing" in this particular instance cannot be accepted as a fact, particularly when the deduction is often made by the respondent after it receives an invoice from the supplier showing a net price, and not by the supplier in arriving at his net price. Presumably, if the deduction represents a restoration to the

normal market level, it would have been negotiated and settled between respondent and the supplier when the sale was made, not afterwards, when respondent received the invoice, and not unilaterally by the respondent alone. Even Mr. Thomas admitted that on some occasions the discount or protection represented a reduction from actual market price, not a restoration to actual market price (Tr. 824).

14. According to an official of the Bodine Produce Company, one of respondent's suppliers, the respondent is given "preferred treatment" both as to the quality of the produce purchased and as to the price paid (Tr. 966). The price preference was illustrated by the witness in an example where the respondent and the supplier's broker had been invoiced at the same price for similar merchandise. The wholesaler buying from the broker, however, would pay 10 cents more than the respondent (Tr. 963–64). This was almost a constant practice; there were only a few instances shown where customers of the broker paid less than the respondent (RX 2, 3, 4, and 5).

15. Respondent notes that it does not appear that Bodine sold to local competitors of the respondent during the time period involved here and argues no competitive harm possible on Bodine's sales. There is nothing in the record, however, to indicate any unlikelihood of such sales in the future. In fact, the testimony of the Bodine official would indicate the existence of customers in the Kansas City area and their disadvantaged position:

> Q. If any of your other customers in the Kansas City area that buy through your broker or buy direct, if they could furnish you with the same kind of service that Garrett-Holmes furnishes, would you give them the preferred price?
>
> A. Definitely. If they had the amount of volume and amount of customers and could show us where they could do as good a job as Garrett, certainly they would receive the same treatment. (Tr. 969–70).

16. An official of the Garin Company, another of respondent's suppliers, stated that the brokerage allowed the respondent was not given to the Reich Company or the Yukon Company. Sales to the latter were made through a brokerage firm who would have received any brokerage involved, rather than Yukon (Tr. 738). As a matter of fact, the Yukon testimony indicates that Yukon never received any brokerage allowance (Tr. 1328). Garin sales to the Reich Company were direct without any brokerage allowance.

17. Hy-Klas Food Products, Inc., of St. Joseph, Missouri, operates as a purchaser for some 340 retail stores. An official of that company testified that he did not buy from the Reich or Yukon

firms, but did buy from the respondent because the Yukon and Reich prices were not comparable to respondent's (Tr. 1413–14).

18. The amount of the so-called "protection," "brokerage" or "distribution," usually 10 cents per unit, was a significant factor in the respondent's purchases as well as in the produce business (Tr. 972, 956, 1284).

19. Various witnesses testified that prices charged by suppliers vary for a number of reasons such as the quality of the produce, the volume involved, the rejection policy of the buyer, and his prompt payment (Tr. 893, 1017, 901, 950). In such respects, respondent appears to qualify for favorable price treatment (Tr. 903, 975, and preceding citations). It further appears that respondent often received such favored prices exclusive of brokerage, as for example, in a purchase from Garin where respondent's price was $1.35 exclusive of "protection" although Garin sold all others at $1.50 (CX 2107–E; Tr. 1158–59). It is not the $1.35 price that this proceeding is concerned with; it is the 10-cent "protection" given the respondent by Garin in addition to the $1.35 net price. Moreover, it does not appear that the preferred price given because of respondent's buying practices can satisfactorily explain the respondent's deduction of an additional allowance after receipt of the merchandise and the invoice covering same showing the net price.

Cranberry Sales

20. Ocean Spray Cranberries, Inc., is a corporation selling cranberries under the brand name "Ocean Spray" for approximately 1100 to 1200 growers of cranberries located in the States of Massachusetts, New Jersey, Wisconsin, Washington, Oregon, and Connecticut (Tr. 617–20). These cranberries are sold through exclusive brokers located in various areas of the United States and Canada (Tr. 623). There are about 90 such brokers, one of which is the respondent, the exclusive broker in Kansas City, Missouri, since 1957 (Tr. 624–25). Ocean Spray Cranberries, Inc., pays its brokers, including respondent, 10 cents per case of cranberries for acting as brokers in their respective areas (Tr. 625, 627).

21. Acting as a broker, respondent locates customers, and arranges the sale and the delivery of the cranberries involved. Ocean Spray sets the price and respondent is not permitted to deviate from that price. Once a sale is made, respondent sends Ocean Spray a "standard memorandum of sale" which informs the latter of all the details involved in the transaction (Tr. 627–29). Ocean Spray then

sends an invoice direct to the customer based on the information submitted by the respondent (Tr. 631; see also CX 1 for a typical memorandum of sales). Respondent is paid 10 cents brokerage on every case sold and an additional 15 cents in the event respondent is required to warehouse the cranberries. Respondent is paid by monthly brokerage statements (CX 1789–91; Tr. 632).

22. In 85 per cent of the sales, the merchandise is drop-shipped directly by Ocean Spray to its customers. Ocean Spray bills such customers directly and respondent submits a memorandum of sale (Tr. 1093). In these transactions, respondent receives a distribution or brokerage fee of 10 cents per case for negotiating these sales (Tr. 1096).

23. The remaining 15 per cent of the transactions involve cases shipped into respondent's warehouse and redistributed by respondent to Ocean Spray customers on respondent's trucks. For its services respondent receives a warehousing fee of 15 cents per unit, in addition to the 10-cent distribution fee. A number of the cases which move through respondent's warehouse, however, are shipped there without a prior order from a specific customer being communicated to Ocean Spray. As to these transactions, the Ocean Spray invoice shows the respondent as the buyer and also as broker. In such cases the respondent deducts from the charge thus made, the 25-cent brokerage and warehousing fees (CX 424–70, 1760, 1761, 532–52, 1540, 747–79, 1785, 825–57, 1787, 858–93, 1789, 602–26, 1544, 1772–73, 894–946, 1223–42, 1270–90, 1668). In CX 1796-B, Ocean Spray reported these case sales through Garrett-Holmes as broker:

1960	53,183
1961	51,999
1962	52,300

Of these, the following number of cases were billed to Garrett-Holmes' account:

1960	18,365
1961	9,552
1962	8,234

In each transaction where respondent is shown as the purchaser, Ocean Spray never inquires as to the price at which the goods are resold, nor does it know the identity of the ultimate customer, nor look for payment from anyone except the respondent (Tr. 642–43).

24. Respondent regularly, since 1960, billed Ocean Spray for brokerage and warehousing on its own purchases (Tr. 651–56). Respondent locates customers for the cranberries it has so purchased

and maintains warehouse facilities and truck delivery services to expedite the distribution of the cranberries (Tr. 673). As a result, Ocean Spray can and does send full truck loads to the Kansas City area via respondent, without waiting for specific orders, covering the whole load, to be received from the ultimate customers (Tr. 676). Respondent assumes the credit risks in these instances.

25. Ocean Spray exhibits a continuing interest in the cranberries, whether invoiced to the respondent or billed directly to the customer (Tr. 679). On occasion, Ocean Spray absorbed the loss on cranberries invoiced to the respondent (CX 372). Similarly, complaints received by the respondent following its sale of the cranberries which had been invoiced to the respondent were adjusted by Ocean Spray (CX 825, 827, 939; Tr. 688–90).

26. Competitors of the respondent in the Kansas City area must purchase Ocean Spray cranberries from Ocean Spray Cranberries, Inc., through respondent, acting as a broker. Respondent, however, sells some of these cranberries through its City Market outlet to its customers in the Kansas City area. These customers are wholesalers and retailers. On such sales, respondent's cost is 10 to 25 cents lower than the cost incurred by other wholesalers in the Kansas City area who must purchase from the respondent, because of the warehouse and brokerage deductions allowed by Ocean Spray to the respondent on such purchases (Tr. 1281–84). This cost differential gives the respondent a significant advantage over other wholesalers.

27. The amount of money involved in the respondent's total cranberry sales is relatively small and only 15 percent of such transactions are warehoused by the respondent, and even as to some of these warehoused cranberries, the customer is billed directly by Ocean Spray. It cannot be ignored, however, that on the warehoused cranberries which are invoiced to the respondent as purchaser and sold by it through its City Market outlet to retailers and wholesalers, the respondent enjoys a competitive advantage on a regular basis over other wholesalers in the Kansas City area who are also selling to similar purchasers.

The Hy-Klas Arrangement

28. One of respondent's better customers is Hy-Klas Food Products Company, Inc., St. Joseph, Missouri. This firm is a wholesaler which regularly sells to a number of independent retailers on a voluntary basis (Tr. 1357, 1382). Hy-Klas purchases approximately one third of its total produce requirements from the respondent, or

about one million dollars' worth (Tr. 1407). On some of Hy-Klas' purchases from the respondent the procurement services of Jessie Thomas are utilized.

29. The arrangements between respondent and Hy-Klas with respect to this portion of the produce Hy-Klas purchases from the respondent was negotiated between L. F. Garrett, Sr., and the Assistant Sales Manager of Hy-Klas. Respondent was to bill Hy-Klas for an amount equal to the respondent's cost of acquisition, plus a charge of 10 cents per unit (which charge, as described above, was labelled variously "discount," "protection" or "brokerage") plus 1 cent per unit. The 1-cent charge was specifically for the services of Mr. Thomas whose total salary, however, was borne by the respondent. Thus, where the produce was invoiced to the respondent at $1.50 per case, less 10 cents "protection," Hy-Klas would purchase from the respondent for $1.50 plus 1-cent procurement (Tr. 1147, 1100–03, 1392, 1473).

30. Hy-Klas prefers to pay for part of the respondent's expense in employing Mr. Thomas because it feels that it can secure preferred merchandise as a result, something with which it had difficulty prior to the engagement of Mr. Thomas. It further felt that it had insufficient volume to obtain a buyer for itself (Tr. 1424–26).

DISCUSSION

Section 2(c) of the Clayton Act, as amended, prohibits the receipt by a buyer not only of brokerage, but also of any allowances or discounts in lieu thereof. This prohibition was incorporated in the Act as a corollary and supplement to the original Section 2 prohibition of preferential price concessions, there being a realization that brokerage could be and was being employed as a means of price discrimination. Section 2(c), therefore, prohibits brokerage payments to one of the parties in a transaction, as well as allowances or discounts in lieu of brokerage, where no services are rendered or where such allowances or discounts were not justified by any services rendered. This provision has long been described as a *per se* provision of the statute. Cost justification, meeting competition, and lack of competitive injury have been considered irrelevant. *Southgate Brokerage Co.* v. *F.T.C.*, 150 F. 2d 607 (4th Cir. 1945); *Great Atlantic & Pacific Tea Co.* v. *F.T.C.*, 106 F. 2d 667 (3d Cir. 1939).

Section 2(c) appears to have three elements:

The first is a sale or purchase of goods. Here there can be no doubt that the various suppliers of produce sold various lots of

vegetables direct to the respondent without the use of any intermediary and that such transactions constituted a sale and purchase between them.

The second element of a Section 2(c) violation is the payment or receipt of brokerage, or compensation in lieu of brokerage, by the parties to the transaction, or an agent for such party. Here the facts are clear. On many transactions between the respondent and its suppliers, a price reduction was allowed the respondent by the suppliers and was labelled by both parties as brokerage.

The third element of a Section 2(c) violation is the absence of services performed by a party to the transaction, justifying the price concession obtained. The *A & P* case, *supra*, had decided that a buyer's agent could not, as a matter of law, render services compensable by the seller within the meaning of the section (106 F. 2d at 673–75; see also *Beleaguered Brokers: The Evisceration of Section 2(c) of the Robinson-Patman Act*, 77 Harvard Law Review, 1308 at 1312). In *F.T.C.* v. *Henry Broch and Co.*, 363 U.S. 166 (1960), the Supreme Court, while rejecting the cost justification defense of Section 2(a) (363 U.S. at 170–72, 176) did state:

> [The A & P] interpretation of the "services rendered" exception in § 2(c) has been criticized * * * . There is no evidence [in this case] that the buyer rendered any services to the seller * * * nor that anything in its method of dealing justified its getting a discriminatory price by means of a reduced brokerage charge. We would have quite a different case if there were such evidence * * * (363 U.S. at 173).

Two things should be noted: 1. The Court did not decide the answer in a situation where there was a significant difference between services rendered and the price reduction. 2. The Court emphasized that this was an *ad hoc* discriminatory preference to a single buyer, implying that a 2(c) violation requires discrimination:

> * * * Congress in its wisdom phrased § 2(c) broadly, not only to cover the other methods then in existence but all other means by which brokerage could be used to effect price *discrimination* (363 U.S. at 169). (Emphasis added.)

Here respondent argues that it performed valuable services for its suppliers which justified the brokerage or discount obtained. It points to the fact that it acted as a central point for redistribution of the suppliers' produce, rejected few of the purchases made, bought in large quantities, and paid promptly. These "services," however, are not characteristically those of a broker, but are rather characteristically those of any intermediary in the line of distribution. To allow such "services" to constitute justification for brokerage would negate 2(c) completely. Price discrimination among com-

peting wholesalers buying from the same supplier would be condoned by mere generalities of superior efficiency of some such buyers, converting 2(c) from a *per se* provision to one permitting blatant price discriminations under the guise of brokerage.

What must be convincingly shown is respondent's services above and beyond those rendered by efficient wholesalers in the chain of distribution. This has not been demonstrated. The services which the respondent performed might justify the price reduction which Mr. Thomas was able to effect in those instances where he reported that he had bought at a price lower than the current market level. They do not, however, explain the additional 10-cent brokerage which he obtained or which the respondent retained. Moreover, the allowance of such 10-cent brokerage to the respondent by the suppliers without a similar allowance to the respondent's wholesaler-competitors clearly raises the evil of discriminatory preference emphasized by the Supreme Court in the *Broch* decision.

Respondent argues, nevertheless, that under recent decisions of the Commission the complaint must be dismissed. It points to *Matter of Edward Joseph Hruby*, Docket No. 8068, where, by order dated December 26, 1962 [61 F.T.C. 1437], the complaint was dismissed. In that case, as in this, the respondent purchased foodstuffs from suppliers for his own account and resold to wholesalers. Some of his purchases were sold from his own warehouse and in his sales to wholesalers he competed with brokers. The compensation the respondent received was labelled brokerage. The Commission stressed the fact that Hruby was "not himself a powerful wholesaler or retail chain exacting from his suppliers false brokerage payments, to the *competitive disadvantage* of his smaller competitors." (Emphasis added.) It considered Hruby's function in the channel of distribution and deemed the discount or allowance as a " 'functional discount' which the Commission has recognized as involving no potential anticompetitive effect where the distributor who receives the lower price does not compete at the wholesale level." It is at this point that the similarities between the *Hruby* case and this case disappear. The lack of "record evidence" of sales to retailers in the *Hruby* case sets it apart from this case, where there is uncontradicted evidence of substantial sales by the respondent to retailers and where the harm to competition which the *Hruby* case finds essential to a Section 2(c) violation is obvious by reason of the higher cost incurred by respondent's wholesaler-competitors not receiving the 10-cent brokerage. See also *Western Fruit Growers Sales Co.*, Docket No. 8194, September 18, 1962 [61 F.T.C. 586].

The latest pronouncement of the Commission with respect to Section 2(c) violations is *Flotill Products, Inc.*, Docket No. 7226, June 26, 1964 [65 F.T.C. 1099]. In that case the respondent sold food products to field brokers to whom it looked for payment, but to whom it also paid brokerage. Chairman Dixon concluded that "none of the indicia of actual ownership of the goods by the field brokers are present * * * . [T]echnical title passage * * * would not be conclusive but would be merely incidental to the services performed by the field broker for the canner * * *. The facts in this record establish that these field brokers do not purchase for their own account but function as intermediaries on behalf of Flotill in its sales to other parties." Commissioner Elman, in agreeing that the complaint should be dismissed with respect to the transactions involving field brokers, felt that the extent to which the field broker acquired title to the goods was immaterial, relying on the *Hruby* case. Instead, he considered the lack of competitive harm, asking:

> Who, in this case, are the favored, and who the unfavored, buyers? Who is, or could be, injured by the field brokers' method of doing business? Where is there any threat to competition, or danger of monopoly?

In this case the respondent's direct purchases on which brokerage was received from its suppliers are culpable under either Chairman Dixon's view or Commissioner Elman's. The respondent's purchases from suppliers such as the Garin Co. and the Bodine Co. do not involve merely "technical title passage." Unlike the *Flotill* field broker, Garrett-Holmes does not pass on all discounts and allowances granted by the canner and price adjustments due to market fluctuations; nor does it bill the ultimate purchaser at the same price it paid the suppliers; nor does it call its sale to the ultimate purchaser an "accommodation billing for account of seller." On the cranberry sales, however, its transactions might be considered more like the field brokerage situation by reason of the continuing interest in the product manifest by Ocean Spray. Even here, however, the test laid down by Commissioner Elman would make such transactions culpable because of the competitive injury created when the respondent realizes a substantially lower cost for cranberries that it sells to retailers in competition with other wholesalers who also try to sell to retailers despite their higher cost.

The *Flotill* case also involved the granting by Flotill of discounts to Nash-Finch, a wholesale grocer. These discounts were equivalent to normal brokerage fees but were called promotional allowances by the parties. Chairman Dixon however with Commissioner MacIn-

tyre concurring, concluded that the promotional allowances could not be sustained as an exception under the "services rendered" clause of Section 2(c), stating:

> . . . the evidence discloses no economy to Flotill in its method of selling to Nash-Finch other than selling directly without brokerage expense. Moreover, the evidence negates a finding that in return for the allowance, Nash-Finch actually performed any services other than those which it usually performed for itself.

As stated before, Garrett-Holmes performed no special services for its suppliers. It was paid a warehouse fee when it warehoused a commodity. It secured special prices through the efforts of its buyer, Mr. Thomas, as evidenced by the contracts made below market levels. These reductions in price presumably reflected its purchasing power. Unlike the Nash-Finch situation, the additional 10-cent protection or brokerage was not even labelled as anything other than brokerage, the parties apparently recognizing the fact that the additional 10 cents were not payment for special services but only the savings in brokerage expense effected by this method of doing business.

Commissioner Elman, dissenting, felt that Flotill had received a "*quid pro quo* (i.e., promotional efforts on behalf of its products) for granting the allowance." Here there is no such *quid pro quo*. As Commissioner Elman recognized:

> . . . A variation of this would be where the dummy, in an attempt to mask a violation of the statute, performs only *slight or nominal services* which do not entitle him to brokerage. In the second type of transaction to which 2(c) applies, the dummy is dispensed with entirely. The seller grants directly to the buyer an allowance or discount for, on account of, or in lieu of, brokerage, and no services are rendered by the buyer to the seller *justifying the allowance*, and no savings in distribution costs are effected. (Emphasis added.)

The additional 10-cent fee obtained by Mr. Thomas after negotiating the best price possible in view of respondent's preferred buying habits, or simply deducted from the net invoiced price by respondent after completion of sale, has little or no connection with any substantial savings in distribution costs to the supplier other than the elimination of brokerage.

Thus, whether considered in the light of old precedents such as the *Southgate* and *A & P* cases or in the light of more recent Commission decisions such as the *Hruby* and *Flotill* cases, the receipt of the so-called protection or brokerage by Garrett-Holmes from its suppliers in the circumstances stated was a violation of Section 2(c).

As respects the transactions between the respondent and Hy-Klas Food Products Company, Inc., the relation is obviously that of a

supplier or seller (the respondent) and a buyer (Hy-Klas). The complaint, however, is quite clear in charging the respondent with a violation of Section 2(c) of the Clayton Act only with respect to its *purchases* of food products from some of its suppliers. It makes no mention of any practices of the respondent with respect to its *sales* to anyone. It must be concluded, therefore, that the evidence in this proceeding relating to the Hy-Klas purchases from the respondent is not within the coverage of the complaint without an appropriate amendment to that complaint. No such amendment has been made or proposed.

ORDER

It is ordered, That respondent Garrett-Holmes & Co., Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase of fresh fruit or produce in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

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

OPINION

BY MACINTYRE, *Commissioner:*

My decision to uphold the hearing examiner's findings of fact and order is based upon the clear evidence that the respondent, as a buyer, received brokerage or discounts in lieu thereof on purchases for its own account. Congress has decreed that such a showing is all that is necessary to prove a violation of 2(c). 15 U.S.C. 13(c) (1958 ed.); *Western Fruit Growers Sales Co.* v. *Federal Trade Commission*, 322 F. 2d 67 (9th Cir. 1963), *cert. denied*, 376 U.S. 907 (1964); *Modern Marketing Service, Inc.* v. *Federal Trade Commission*, 149 F. 2d 970 (7th Cir. 1945); *Southgate Brokerage Co.* v. *Federal Trade Commission*, 150 F. 2d 607 (4th Cir. 1945); *Webb-Crawford Co.* v. *Federal Trade Commission*, 109 F. 2d 268 (5th Cir. 1940); *Biddle Purchasing Co.* v. *Federal Trade Commission*, 96 F. 2d 687 (2d Cir. 1938); *Quality Bakers of America* v. *Federal Trade Commission*, 114 F. 2d 393 (1st Cir. 1940).

The Majority, in holding that the brokerage payments were discriminatory prices unjustified by services rendered to the seller, applies a Section 2(a) test where it does not belong and misinterprets through misapplication here the Supreme Court's *Broch* decision wherein it was clearly held:

> * * * By striking the words "other than brokerage" from § 2(a) we think Congress showed both an intention that "legitimacy" of brokerage be governed entirely by § 2(c) and an understanding that the language of § 2(c) was sufficiently broad to cover allowances to buyers in the form of price concessions which reflect a differential in brokerage costs. * * *

Consequently, the Majority's injection of references to "Services rendered to a seller" and "a discriminatory price" into this decision is confusing, wholly unnecessary and unwarranted. Although this time the Majority reaches the correct result, its reasoning is no less erroneous than that which led to the dismissal of *Edward Joseph Hruby* (Docket No. 8068, December 26, 1962) [61 F.T.C. 1437], and the partial dismissal of *Flotill Products, Inc.* (Docket No. 7226, June 26, 1964) [65 F.T.C. 1099].

Final Order

This matter has been heard by the Commission upon the appeal of respondent from the initial decision of the hearing examiner, and the Commission has concluded:

(1) The findings of fact contained in the initial decision are correct and proper and are hereby adopted by the Commission.

(2) Here, as in *F.T.C.* v. *Henry Broch & Co.*, 363 U.S. 166, 173 (1960), "There is no evidence that the buyer rendered any services to the seller[s] * * * nor that anything in its method of dealing justified its getting a discriminatory price" as "brokerage" or discounts in lieu thereof. On the basis of the findings of fact, the examiner was correct in concluding that the payments received by respondent violated Section 2(c) of the Clayton Act, as amended.

(3) The cease and desist order contained in the initial decision is an appropriate disposition of this proceeding and is hereby adopted as the order of the Commission. Accordingly,

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

Commissioner MacIntyre concurring in the result but disagreeing with the Commission's use of some parts of its statement in paragraph

(2) in application to this case for the reasons in his accompanying opinion.

IN THE MATTER OF

RINA CASUALS, LTD., ET AL.

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

Docket C-883. Complaint, Feb. 26, 1965—Decision, Feb. 26, 1965

Consent order requiring New York City importers of wool products to cease misbranding wool products in violation of the Wool Products Labeling Act by falsely labeling sweaters as containing "60% Mohair, 35% Wool, 5% Nylon," when such sweaters contained substantially different fibers and amounts than represented, by failing to disclose the correct fiber content and other elements of information on attached labels, as required, and by using the term "mohair" in lieu of the word "wool" on affixed labels when the fibers were not entitled to such designation.

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 Rina Casuals, Ltd., a corporation, and Philip Orlinsky, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the 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 Rina Casuals, Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Individual respondent Philip Orlinsky is an officer of said corporation and formulates, directs, and controls the acts, policies and practices of the corporate respondent including the acts and practices hereinafter referred to.

Respondents are importers of wool products with their office and principal place of business located at 224 West 35th Street, New York, New York.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, respondents have 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 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 60% Mohair, 35% Wool, 5% Nylon, whereas in truth and in fact, such sweaters contained substantially different fibers and amounts of fibers than represented.

PAR. 4. Certain of said wool products were further misbranded 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 products, exclusive of ornamentation, not exceeding five percentum of said total fiber weight; of (1) woolen fibers; (2) each fiber other than wool present in the wool product in the amount of five percentum or more by weight; and (3) the aggregate of all other fibers.

PAR. 5. Certain of said wool products were misbranded in violation of the Wool Products Labeling Act of 1939 in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder, in 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 when certain of the fibers described as "Mohair" were not entitled to such designation, in violation of Rule 19 of the Rules and Regulations under the Wool Products Labeling Act of 1939.

PAR. 6. The acts and practices of the respondents as set forth above were, and are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and

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

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 Rina Casuals, Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 224 West 35th Street, in the city of New York, State of New York.

Respondent Philip Orlinsky 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 Rina Casuals, Ltd., a corporation and its officers, and Philip Orlinsky, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from introducing into commerce, or offering for sale, selling, transporting, distributing or delivering for ship-

ment in commerce, wool sweaters or any other wool product, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939:

1. Which are falsely or deceptively stamped, tagged, labeled or otherwise identified as to the character or amount of the constituent fibers contained therein.

2. Unless each such product has securely affixed thereto, or placed thereon, a stamp, tag, label or other means of identification correctly 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. To which is affixed a label wherein the term "Mohair" is used in lieu of the word "Wool" in setting forth the required information on labels affixed to such wool products unless the fibers described as "Mohair" are entitled to such designation and are present in at least the amount stated.

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

MISSOURI COLLEGE OF AUTOMATION, INC., ET AL.

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

Docket C-884. Complaint, Mar. 3, 1965—Decision, Mar. 3, 1965

Consent order requiring St. Louis, Mo., sellers of correspondence and resident training courses, intended to prepare students for employment as I.B.M. Key Punch operators, to cease representing falsely in "Help Wanted" columns of newspapers and through salesmen offers of employment to secure leads to prospective purchasers of their courses, making exaggerated salary claims, and misrepresenting that they operate a placement service or assist in any manner in obtaining employment for persons completing their courses.

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 Missouri College of Automation, Inc., a corporation, and Marion Shreve, individually and as an officer and director 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 Missouri College of Automation, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 6050 Brown Road, St. Louis, Missouri.

Respondent Marion Shreve is an officer and director of said corporation. 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 have been for more than one year last past, engaged in the sale and distribution of courses of instruction intended to prepare students thereof for employment as I.B.M. key punch machine, machine tabulation, and computer operators. Said courses are pursued by correspondence through the United States mail, as well as by resident training in the school.

PAR. 3. In the course and conduct of their business, respondents have caused their courses of study and instruction to be sent from their place of business, located in the State of Missouri, to, into and through States of the United States other than the State of origin, to purchasers thereof located in such other States. Respondents also utilize the services of salesmen who call on prospective purchasers of the courses of instruction located in States other than the State of Missouri. There has been at all times mentioned herein a substantial course of trade in commerce of said courses of study and instruction as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, as aforesaid, respondents have published, and caused to be published, advertisements in the "Help Wanted" and other columns of newspapers distributed through the United States mail and by other means to prospective purchasers in the several States in which respondents do business, of which the following are typical, but not all inclusive:

WANTED
For I.B.M. Training
10 Women, age 18 to 38
to train as
I. B. M.
Key Punch Operators
Earn $300 to $500 a month.
10 Men, age 18 to 40,
to train as
I. B. M.
—Machine Operators
—Computer Programmers
—Systems Planners
Earn $400 to $800 a month.

For interview in your area, fill out and mail coupon to Box A–49, this newspaper.

COUPON

Name _____
Address _____
Telephone _____ Age _____
Hours at home _____

WANTED
For I.B.M. Training
10 Women, 18 to 38
To Train As
I. B. M.
Key Punch Operators
Earn High Earnings
10 Men, 18 to 40
To Train As
I. B. M.
Machine Operators
Computer Programmers
Systems Planners
Exceptionally High Earnings

For interview in your area, fill and mail coupon to C–357, Box 824, Piqua, Ohio in care of Herald-Whig.

Name _____
Address _____
City _____
Age _____ Phone Number _____
Hours at home _____

PAR. 5. By means of the statements and representations appearing in the advertisements referred to in Paragraph Four hereof, respondents represent, directly and by implication, that the advertiser is offering employment to 10 women and 10 men who will be trained to operate various items of equipment manufactured by the International Business Machines Corporation, or I.B.M. as it is popularly known.

PAR. 6. In truth and in fact, respondents do not offer employment to women and men to be trained to operate I.B.M. equipment. Respondents publish or cause said advertisements to be published to obtain leads to prospective purchasers of their courses of study and instruction.

Therefore, the statements and representations referred to in Paragraph Five were, and are, false, misleading and deceptive.

PAR. 7. Further, in the course and conduct of their business, as aforesaid, respondents have made other statements and representations, directly and by implication, in pamphlets, contract forms and other printed matter and through the medium of oral representations by their salesmen, that:

1. Persons completing respondents' course in I.B.M. Key Punch operation will thereby have received the training and experience required to qualify them for employment as I.B.M. Key Punch operators at salaries of $300 to $500 per month.

2. Respondents provide a placement service to assist persons completing their courses in obtaining employment and will actively attempt to obtain employment for those persons.

PAR. 8. In truth, and in fact:

1. The salaries set forth in Subparagraph (1) of Paragraph Seven hereof represent the salaries paid to experienced I.B.M. Key Punch operators. Persons completing respondents' course in I.B.M. Key Punch operation do not thereby receive the training and experience required to qualify them for employment as experienced I.B.M. Key Punch operators at salaries of $300 to $500 per month.

2. Respondents do not have a placement service to assist persons completing their courses in obtaining employment. Respondents do not contact prospective employers and arrange job interviews for their graduates or otherwise actively attempt to obtain employment for those persons. Those of respondents' graduates who may be successful in obtaining employment as operators of I.B.M. equipment do so as a result of their own efforts.

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

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

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has the tendency and capacity to mislead and deceive a sub-

stantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true, and to induce a substantial number thereof to purchase respondents' said courses of study and instruction by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, were and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Missouri College of Automation, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 6050 Brown Road, in the city of St. Louis, State of Missouri.

Respondent Marion Shreve is an officer and director 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 Missouri College of Automation, Inc., a corporation, and its officers and directors, and Marion Shreve, individually and as an officer and director of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of courses of study or instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

(1) Employment is being offered when the real purpose of such offer is to secure leads to persons interested in purchasing respondents' courses of study or instruction;

(2) Persons completing respondents' course in I.B.M. Key Punch operation will thereby have received the training and experience required to qualify them for employment as experienced I.B.M. Key Punch operators at salaries of $300 to $500 per month; or otherwise misrepresenting in any manner the employment or salaries for which persons completing respondents' courses will be qualified or the training and experience afforded by respondents' courses;

(3) Respondents operate a placement service to assist persons completing their courses in obtaining employment or that respondents will actively attempt to obtain employment for such persons; or misrepresenting in any other manner the assistance furnished by respondents in obtaining employment for persons completing respondents' courses of study or instruction.

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

FEDERAL SWEETS & BISCUIT CO., INC.

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

Docket C-885. Complaint, Mar. 3, 1965—Decision, Mar. 3, 1965

Consent order requiring a New Jersey manufacturer of cookies, cakes, crackers, candy bars and related products who sells and distributes its products through various outlets, including vending machine retailers, to cease

discriminating in price between competing purchasers of its products in violation of Sec. 2(a) of the Clayton Act.

COMPLAINT

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

PARAGRAPH 1. Respondent Federal Sweets & Biscuit Co., Inc., sometimes hereinafter referred to as Federal, 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 60 Clifton Boulevard, Clifton, New Jersey.

PAR. 2. Respondent is engaged in the production of cookies, cakes, crackers and candy bars at its plant in Clifton, New Jersey, and in the sale and distribution thereof through various outlets including vending machine operators. Its total annual sales have amounted to approximately $8,000,000.

Respondent's products are packaged in 100 count packages for sale to operators of vending machines. The same grade and quality of product is also packaged in 24 count packages for sale to grocery wholesalers and chain stores and supermarkets. Such products are sold at retail for 5¢ and 10¢ per package.

PAR. 3. Respondent, in the course and conduct of its business, has been and is now engaged in commerce, as "commerce" is defined in the amended Clayton Act in that it sells and distributes its products to purchasers thereof located in States other than the State of origin of shipment, and has, either directly or indirectly, caused such products when sold to be transported from the State of origin to purchasers located in other States. There has been a constant flow of trade and commerce in such products between respondent and purchasers located in other States, and such products have been and are now sold for use, consumption or resale within the United States.

PAR. 4. In the course and conduct of its business in commerce, respondent has sold and now sells its products to purchasers, some of whom are in competition with each other and with customers of competitors of respondent, in the purchase, resale and distribution of such products.

PAR. 5. Respondent, either directly or indirectly, for several years last past has been discriminating in price between different purchasers of its products by selling such products to some purchasers at substantially higher prices than the prices at which respondent has sold products of like grade and quality to other purchasers, some of whom are in competition with the less favored purchasers in the purchase, resale and distribution of such products.

For example, respondent has sold its products to vending machine operators in accordance with the following monthly quantity discount schedule:

Volume	*Discount (percent)*
$300 to $500	½
$500 to $1,000	1
$1,000 to $2,000	2
$2,000 to $3,000	3
$3,000 to $5,000	4
$5,000 and over	5

At the end of each month respondent has calculated the total purchases of each of its vending operator accounts and has remitted to them the amounts due in accordance with the foregoing schedule.

The granting of discounts or rebates in accordance with the aforementioned volume discount schedule has resulted in some of respondent's vending machine customers paying substantially higher prices than other vending machine customers, some of whom are in competition with the less favored customers.

PAR. 6. Respondent, in the course and conduct of its business in commerce, is engaged in competition with other corporations, partnerships and proprietorships in the manufacture, sale and distribution of its products.

PAR. 7. The effect of the discriminations in price, as hereinbefore alleged, may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which the purchasers receiving the preferential prices are engaged, or to prevent, injure or destroy competition between and among the purchasers of such products from respondent.

PAR. 8. The discriminations in price, as hereinbefore alleged, are in violation of the provisions of Section 2(a) of the amended Clayton Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption

hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Restraint of Trade proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 2(a) of the Clayton Act, as amended; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the 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 respondent 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 respondent has violated Section 2(a) of the Clayton Act, as amended, 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 Federal Sweets & Biscuit Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 60 Clifton Boulevard, Clifton, New Jersey.

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

ORDER

It is ordered, That respondent, Federal Sweets & Biscuit Co., Inc., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale and distribution of cookies, cakes, crackers, candy bars and related products, in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

> Selling such products of like grade and quality to any purchaser at net prices higher than those granted to any other purchaser, who in fact competes with the unfavored purchaser in the resale and distribution of such products.

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.

Complaint

IN THE MATTER OF

CITY OF PARIS ET AL.

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

Docket C-886. Complaint, Mar. 4, 1965—Decision, Mar. 4, 1965

Consent order requiring a department store in San Francisco, Calif., to cease misbranding and falsely advertising its fur and textile fiber products, and deceptively invoicing its fur products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Fur Products Labeling Act, and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that City of Paris, a corporation, and George De Bonis, individually and as an officer of said corporation, and Suzanne De Tesson, individually and as chairman of the Board of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act and the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent City of Paris is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 199 Geary Street, San Francisco, California.

Individual respondents George De Bonis and Suzanne De Tesson are respectively president and chairman of the board of the corporate respondent, and formulate, direct and control the acts, practices and policies of the corporate respondent, including the acts and practices complained of herein. Their business addresses are the same as said corporate respondent. Respondents are engaged in the operation of a retail department store.

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

PAR. 4. Certain of said fur products were misbranded in that labels attached thereto, set forth the name of an animal other than the name of the animal that produced the fur from which the said fur products had been manufactured, in violation of Section 4(3) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

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

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

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

(c) 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.

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

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

was set forth in handwriting on labels, in violation of Rule 29(b) of said Rules and Regulations.

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

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

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

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

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

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

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

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

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

(c) The term "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.

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

PAR. 8. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that certain advertisements intended to aid, promote 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 respondents which appeared in issues of the San Francisco Chronicle, a newspaper published in the city of San Francisco, State of California.

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

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

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

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

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

2. The disclosure that fur products were composed in whole or in part of paws, tails, bellies, sides, flanks, gills, ears, throats, heads, scrap pieces or waste fur was not made, where required, in violation of Rule 20 of the said Rules and Regulations.

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

PAR. 11. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondents have been and are now engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce and in the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products; as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 12. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name or amount of constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products which were falsely and deceptively advertised in the San Francisco Chronicle, a newspaper published in San Francisco, California and having interstate circulation, in that certain of said advertisements contained terms which represented, either directly or by implication, that certain textile fiber products, containing pile fabrics, were composed of only one fiber, when such was not the case.

PAR. 13. Certain of said textile fiber 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(b) of the Textile Fiber Products Identification Act, and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were custom made drapes, slip coverings and furniture coverings which were not labeled to show any of the information required to be disclosed under Section 4(b) of such Act and were not covered by invoices correctly disclosing the aforesaid information under Rule 21(b) of the Rules and Regulations under such Act.

PAR. 14. Certain of said textile fiber products were falsely and deceptively advertised in that respondents in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote, and assist directly or indirectly in the sale or offering for sale of said products, failed to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Fiber Products Identification Act and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such textile fiber products, but not limited thereto, were articles of wearing apparel which were falsely and deceptively advertised in the San Francisco Chronicle, a newspaper of interstate circulation, in that such terms as "Arnel jersey" were used without the true generic names of the fibers in such articles being set forth.

PAR. 15. Certain of said textile fiber products were falsely and deceptively advertised in violation of the Textile Fiber Products Identification Act in that they were not advertised in accordance with the Rules and Regulations promulgated thereunder.

Among such textile fiber products but not limited thereto, were textile fiber products which were falsely and deceptively advertised in the San Francisco Chronicle, a newspaper published in San Francisco, California, and having interstate circulation, in the following respects:

A. A fiber trademark was used in advertising textile fiber products, without a full disclosure of the fiber content information required by the said Act and the Rules and Regulations thereunder in at least one instance in said advertisement, in violation of Rule 41(a) of the aforesaid Rules and Regulations.

B. A fiber trademark was used in advertising textile fiber products, containing more than one fiber and such fiber trademark did not appear in the required fiber content information in immediate proximity and conjunction with the generic name of the fiber in plainly legible type or lettering of equal size and conspicuousness, in violation of Rule 41(b) of the aforesaid Rules and Regulations.

C. A fiber trademark was used in advertising textile fiber products, containing only one fiber and such fiber trademark did not appear, at least once in the said advertisement, in immediate proximity and conjunction with the generic name of the fiber in plainly legible and conspicuous type, in violation of Rule 41(c) of the aforesaid Rules and Regulations.

PAR. 16. The acts and practices of respondents as set forth above were and are in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute unfair methods of competition and unfair and deceptive acts or practices, in commerce, under the Federal Trade Commission Act.

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

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

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

1. Respondent City of Paris is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 199 Geary Street, San Francisco, California.

Respondents George De Bonis and Suzanne De Tesson are respectively president and chairman of the board of the corporate respondent and their address is the same as that of the corporate respondent.

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 City of Paris, a corporation, and its officers, and George De Bonis, individually and as an officer of said corporation, and Suzanne De Tesson, individually and as Chairman of the Board of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from introducing into commerce, or selling, advertising or offering for sale in commerce, or transporting or distributing in commerce, any fur product; or selling, advertising, offering for sale, transporting or distributing 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:

A. Unless each such fur product has securely affixed thereto a label:

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

2. Setting forth the term "Natural" as part of the information required 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. Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in the sequence required by Rule 30 of the aforesaid Rules and Regulations.

B. To which is affixed a label:

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

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

3. Which fails to set forth the term "Broadtail Lamb" in the manner required where there has been an election to use that term instead of the word "Lamb."

4. Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder mingled with non-required information.

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

It is further ordered, That respondents City of Paris, a corporation, and its officers, and George De Bonis, individually and as an officer of said corporation, and Suzanne De Tesson, individually and as Chairman of the Board 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 transportation or distribution in commerce, of any fur product; or in connection with the sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices 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 disclosed in each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

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

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

4. Failing to set forth the term "Natural" as part of the information required to be disclosed on invoices 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.

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

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

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

2. Fails to set forth the term "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.

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

It is further ordered, That City of Paris, a corporation and its officers, and George De Bonis, individually and as an officer of said

corporation, and Suzanne De Tesson, individually and as Chairman of the Board of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from introducing, delivering for introduction, selling, advertising, or offering for sale, in commerce, or transporting or causing to be transported in commerce, or importing into the United States, any textile fiber product; or selling, offering for sale, advertising, delivering, transporting, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or selling, offering for sale, advertising, delivering, transporting, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act:

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

B. Unless such textile fiber products have affixed thereto a label showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

It is further ordered, That City of Paris, a corporation, and its officers, and George De Bonis, individually and as an officer of said corporation, and Suzanne De Tesson, individually and as Chairman of the Board of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising or offering for sale, in commerce, or transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from falsely and deceptively advertising textile fiber products by:

1. Making any representations, directly or by implication, as to the fiber content of any textile fiber product in any written advertisement which is used to aid, promote, or assist, directly or indirectly, in the sale or offering for sale of such textile fiber product, unless the same information required to be shown on the stamp, tag, label or other means of identification under Section 4(b)(1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, in the manner and form required, except that the percentages of the fibers present in the textile fiber product need not be stated.

2. Using a fiber trademark in advertisements without a full disclosure of the required content information in at least one instance in the said advertisement.

3. Using a fiber trademark in advertising textile fiber products containing more than one fiber without such fiber trademark appearing in the required fiber content information in immediate proximity and conjunction with the generic name of the fiber in plainly legible type or lettering of equal size and conspicuousness.

4. Using a fiber trademark in advertising textile fiber products containing only one fiber without such fiber trademark appearing at least once in the advertisement, in immediate proximity and conjunction with the generic name of the fiber in plainly legible and conspicuous type.

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

CREDIT AND INVESTIGATION BUREAU OF MARYLAND ET AL.

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

Docket C-887. Complaint, Mar. 4, 1965—Decision, Mar. 4, 1965

Consent order requiring a Baltimore, Md., collection agency to cease misrepresenting that it is a credit rating organization, that its creditor customers are "members" of such organization, that it has a "legal" or "personnel" department, and that it maintains a staff of investigators.

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 Credit and Investigation Bureau of Maryland, a corporation, and S. Bruce Elieson, 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 Credit and Investigation Bureau of Maryland is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 825 N. Howard Street in the city of Baltimore, State of Maryland.

Respondent S. Bruce Elieson 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 business of operating a collection agency.

PAR. 3. Respondents solicit and receive accounts for collection from business and professional people located in Maryland and other States. In carrying out their aforesaid collection business, respondents have engaged, and are now engaged, in extensive commercial intercourse in commerce among and between the various States of the United States, and the District of Columbia, including the transmission and receipt of monies, checks, collection letters and forms, contracts and other written instruments. In carrying out their aforesaid collection business, respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with other corporations, firms and individuals engaged in the business of collecting alleged delinquent accounts.

PAR. 5. In the course of conducting their collection business, respondents transmit and mail, and cause to be transmitted and mailed, to alleged delinquent debtors, attorneys, and employers various form letters and other printed material:

Typical but not all inclusive, of the statements and representations in such materials are the following:

1. Form letters which are captioned:

Credit and Investigating Bureau of Maryland

And bearing the following language:

Reference is made to the above captioned claim of one of our Bureau members. * * *

* * * you wrote to us relative to the above captioned claim of one of our Bureau members. * * *

and signed by: Lawrence A. Lake, Legal Liaison Department

Our records indicate that the above named individual, who claims to be an employee of your firm, is indebted as follows to the following member of our Bureau.

and signed by: Ernest M. Parker Personnel Director

2. IBM cards which are captioned: Credit and Investigation Bureau of Maryland and bearing the following language:

Our member, shown below, has referred your account to the *BUREAU* for *IMMEDIATE COLLECTION.*

* * * * * * *

Mail or bring your payment in full to the *BUREAU* at once.

Return this card to the *BUREAU* immediately with check, cash or money order to stop further procedure.

PAR. 6. By and through the use of the name "Credit and Investigation Bureau of Maryland," and by and through the use of the aforesaid form letters and I.B.M. cards, bearing the statements and representations, aforesaid, and others of similar import and meaning but not specifically set forth herein, respondents have represented and now represent, directly or by implication:

1. That respondents' business is an association engaged in conducting a credit rating and credit reporting agency and operates as a credit bureau for its members.

2. That respondents' organization include bona fide legal and personnel departments with qualified employees serving in those departments.

PAR. 7. In truth and in fact:

1. Respondents' business is not an association of members conducting a credit rating and credit reporting agency and does not operate as a credit bureau for members. Respondents' sole business is that of a collection agency.

2. Respondents' organization does not include bona fide legal and personnel departments with qualified employees serving in those departments and the names appended to the letters are fictitious.

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

PAR. 8. By and through the use of the words "Credit Investigation Bureau," and words of similar import, the respondents induce the public to believe and understand that respondents operate an organization, association or institute engaged primarily in the gathering, recording and disseminating of information relative to the credit worth and financial responsibility, paying habits and character of individuals being considered for credit extension by members of said organization, a fact of which the Commission takes official notice.

In truth and in fact:

The respondents do not operate a "Credit Bureau," nor an investigational agency and are not engaged in gathering, recording or in the dissemination of information relative to the credit worth, financial responsibility, paying habits and character of individuals, for purposes of extending credit to them. Respondents' sole business is that of a collection agency.

Therefore, the aforesaid statements or representations were, and are, false, misleading and deceptive.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the tendency and capacity to mislead and deceive members of the public into the erroneous and mistaken belief that said statements and representations were, and are, true and to induce the recipients thereof to supply information which they otherwise would not have supplied and to the payment of accounts by reason of said erroneous and mistaken belief.

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

DECISION AND ORDER

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

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

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

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

1. Respondent Credit and Investigation Bureau of Maryland is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 825 N. Howard Street, in the city of Baltimore, State of Maryland.

Respondent S. Bruce Elieson 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 Credit and Investigation Bureau of Maryland, a corporation, and its officers, and S. Bruce Elieson, 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 solicitation of accounts for collection, or the collection of, or attempts to collect accounts, or to obtain information concerning delinquent debtors, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the corporate name "Credit and Investigation Bureau of Maryland" or any other trade or corporate name of similar import or meaning to designate, describe or refer to respondents' business or otherwise representing, directly or by implication, that respondents' business is a credit bureau or credit rating or credit reporting agency, unless respondents are able

to establish that their business is that of an organization, association or institute engaged primarily in gathering, recording and disseminating information relative to the credit worth and financial responsibility, paying habits and character of individuals being considered for credit extension by members of said orgnization.

2. Representing, directly or by implication, that any creditor customer of respondents is a "member" of respondents' organization unless respondents are able to establish that such customer is in fact a "member" of the organization.

3. Using fictitious names in connection with respondents' business; or representing, directly or by implication, that respondents' organization has or maintains a "legal" or "personnel" department; or misrepresenting in any manner any departmentalization of respondents' organization.

4. Representing, directly or by implication, that respondents operate an investigative agency or maintain an investigational staff, or have agents for investigating the assets, and other matters affecting the credit rating, employment status or sources of income of alleged delinquent debtors, unless respondents are able to establish that such is the fact.

5. Misrepresenting, through the use of any trade or corporate name, or in any other manner, directly or by implication, the nature or organization of respondents' business or the type of business activity engaged in by respondents.

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

FOREMOST DAIRIES, INC.

MODIFIED ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

Docket 6495. Complaint, Jan. 17, 1956—Decision Mar. 5, 1965

Order modifying by banning other acquisitions for a period of ten years without the prior approval of the Federal Trade Commission, pursuant to a decision of the Court of Appeals, Fifth Circuit, dated February 24, 1965,

7 S. & D. 1148, a divestiture order dated April 30, 1962, 60 F.T.C. 944, 1099, which required a major dairy company to sell certain of its acquired companies.

MODIFIED ORDER

Foremost Dairies, Inc., having filed in the United States Court of Appeals for the Fifth Circuit on July 13, 1962, a petition to review and set aside the order of divestiture issued herein on April 30, 1962; and the Commission and Foremost Dairies, Inc., having subsequently agreed upon a plan of divestiture and upon the provisions of a final order modifying the order entered by the Commission on April 30, 1962; and the Court, on February 24, 1965, having issued its final order affirming and enforcing said order as submitted by the Commission and Foremost Dairies, Inc.;

Now, therefore, it is hereby ordered, That the order of April 30, 1962 [60 F.T.C. 944], be, and it hereby is, modified in accordance with the final order of the Court to read as follows:

It is ordered, That respondent, Foremost Dairies, Inc., before December 31, 1965, shall divest itself absolutely, in good faith, of all of the assets and properties incident to the operation of the facilities referred to in Schedule 1 hereto, together with all plants, machinery, buildings, improvements, equipment and other property that have been or may be added thereto or placed on such premises by respondent, such divestiture to be effected subject to prior approval of the Commission by sales of assets to third persons, firms or corporations as may be necessary to restore the properties as competitive entities, all as hereinafter provided.

It is further ordered, That such divestiture shall be effected subject to the following:

1. Upon the completion of such transfer of assets to the third person, firm or corporation (herein called the "transferee"), respondent, its officers, directors, agents, representatives or employees shall not exercise any control or supervision over the policies, control, management, operation or acts of transferee, or any successor in interest to transferee: *Provided*, That respondent may license the use of any of its trademarks in the territory of the transferee during a period of twelve (12) years from the date this order is issued only after it has obtained prior approval by the Commission of each license.

2. By these divestitures, none of the stocks, assets, properties, rights or privileges, tangible or intangible, shall be sold or transferred, directly or indirectly, to anyone who is at the time of the divestiture an officer, director, employee or agent of, or under the control or direction of, respondent or any of respondent's divisions, subsidiaries or affiliated corporations, or who owns or controls, directly or indirectly, more than one (1) percent of the outstanding shares of common stock of respondent, nor to anyone who is not approved as a purchaser by the Federal Trade Commission in advance.

It is further ordered, That, as used in this order, the term "anyone" or "person" shall include natural persons who are members of the immediate family by reason of blood relationship, marriage, adoption, or living in the same household.

It is further ordered, That for a period of ten (10) years after the date of service of this Order upon respondent, respondent and its successor in interest shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, the whole or any part of the stock, share capital or assets (other than products sold in the course of business) of any concern, corporate or noncorporate, engaged principally or as one of its major commodity lines at the time of such acquisition in any State of the United States in the business of manufacturing, processing or selling at wholesale or on retail milk routes (*a*) fluid milk, or (*b*) ice cream, ice milk, Mellorine, sherbet or water ices, without the prior approval of the Federal Trade Commission.

It is further ordered, That respondent shall submit to the Commission on the first day of each calendar month a report in writing setting forth its efforts and progress in carrying out the divestiture requirements of this order until all the assets have been divested with the approval of the Commission; and respondent shall submit to the Commission on the first day of each calendar year a report in writing setting forth its compliance with the cease and desist provisions of this order.

SCHEDULE I

SOUTHEASTERN REGION

BRISTOL, VA. DISTRICT

Processing plants

Bristol—Milk
Bristol—Ice Cream
Kingsport—Milk
Spartanburg—Ice Cream
Welch—Milk
Charlotte—Milk

Sales Branches

Appalachia
Ashland
Bluefield
Bristol
Charlotte
Columbia, S.C.
Johnson City
Kingsport
Richlands
Spartanburg
Welch
Williamson

JACKSONVILLE, FLA. DISTRICT

Processing plants

Daytona—Milk
Savannah—Milk
St. Petersburg—Milk
Jacksonville—Milk
Jacksonville—Ice Cream

Sales Branches

Daytona
Gainsville
Jacksonville
Orlando
Savannah
St. Augustine
St. Petersburg
Tallahassee
Tampa
Valdosta
San Juan

MIAMI, FLA. DISTRICT

Processing Plants

Miami—Milk
Miami—Ice Cream

Sales Branches

Miami
Ft. Lauderdale-West Palm Beach

MONTGOMERY, ALA. DISTRICT

Processing Plants

Atlanta—Milk
Birmingham—Milk
Montgomery—Milk
Sylacauga—Ice Cream

Sales Branches

Atlanta
Birmingham
Columbus, Ga.
Fayetteville
Montgomery
Huntsville
Pensacola
Sylacauga
Tuscumbia

COLUMBIA, TENN. DISTRICT

Processing Plants

Columbia

FLORIDA JUICE

Processing Plant

Miami, Fla.

Sales Branch

Miami, Fla.

PHILADELPHIA DAIRY

PHILADELPHIA, PA. MILK DISTRICT

Processing Plants

Philadelphia—Milk
Ardmore—Milk

Sales Branches

Allentown
Ardmore
Darby
Blenheim, N.J.
Philadelphia
Paoli
Somerton

DISTRICT I (PHILADELPHIA—ICE CREAM)

Processing Plants

Philadelphia—Ice Cream

Sales Branches

Allentown
Atlantic City
Harrisburg
Laurel
Philadelphia
Pottstown

DISTRICT II (NORTHEAST, PA.—ICE CREAM)

Processing Plants

Wilkes-Barre—Ice Cream
Dushore—Ice Cream

Sales Branches

Scranton
Wilkes-Barre
Dushore
Portville, N.Y.
Sayre
Williamsport

DISTRICT III (NORTHERN NEW JERSEY: NEW YORK—ICE CREAM)

Sales Branches

Asbury Park
Newark
Monticello

RICHMOND, VA. DISTRICT

Processing Plants

Richmond—Milk
Richmond—Ice Cream

Sales Branches

Richmond
Waynesboro

SCRANTON, PA. DISTRICT

Processing Plants

Scranton—Milk

Sales Branches

Scranton
Wilkes-Barre

CRESCENT DAIRY

SIOUX FALLS, S. DAK. DISTRICT

Processing Plants

Sioux Falls—Milk

Sales Branches

Hawarden, Iowa
Madison, S. Dak.
Sioux Falls
Worthington, Minn.

Commissioner MacIntyre not participating.

Complaint

IN THE MATTER OF

UNIVERSAL BUSINESS FORMS COMPANY ET AL.

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

Docket C-888. Complaint, Mar. 11, 1965—Decision, Mar. 11, 1965

Consent order requiring a Chicago, Ill., distributor of business forms to cease threatening, harassing, or otherwise coercing any manufacturer or supplier of business forms not to sell its products to respondent's competitors, or entering into any planned course of action with others to prevent suppliers from selling to competitors of respondent.

COMPLAINT

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

PARAGRAPH 1. Respondent Universal Business Forms Company, hereinafter called Universal, 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 222 West Adams Street, Chicago, Illinois. Universal is a business in which salesmen solicit orders for business forms products from customers located in Wisconsin, Indiana and Illinois, among other States, and place such orders with business forms printing manufacturers located throughout the country. The salesmen then report such orders to Universal. Universal is subsequently billed for such orders by the business forms printing manufacturer. Pursuant to said orders, shipments are made by the business forms printing manufacturers to the aforesaid customers of Universal, who are billed by Universal. Universal achieved annual gross sales of approximately $500,000, in the year 1962.

PAR. 2. Verl G. Elya is president of Universal. He formulates, directs, controls, and participates in the policies and practices of Universal.

PAR. 3. Respondents, in the course and conduct of their business, cause business forms products to be shipped from the place or places of manufacture to customers located in various States of the United States, including those States set forth in Paragraph One, above, and have been, and now are, engaged in "commerce" as that term is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, respondents have been and are now in substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution of various types of business forms products in commerce among and between the various States of the United States.

PAR. 5. Respondents, for many years, and particularly since 1961, and continuing to the present time, in connection with the sale and distribution of business forms products, have adopted, maintained and effectuated and now maintain and effectuate, directly or indirectly, through various means and methods, including letters, intercorporate memoranda, telephone calls, and informal meetings, a sustained policy of harassing, interfering with, threatening and obstructing the businesses of competitors by requesting, soliciting, persuading, coercing, suggesting, inducing, threatening, or demanding that various business forms printing manufacturers who supply respondents, refrain from taking orders from or selling to various competitors of respondents.

PAR. 6. Respondents and certain manufacturers of business forms products, not made respondents herein, for many years, and particularly since approximately 1961, and continuing to the present time, in connection with the sale and distribution of business forms products, at various times have entered into, maintained, and effectuated, and now maintain and effectuate, through various means and methods, including letters, intercorporate memoranda, telephone calls, and informal meetings, understandings, agreements, combinations, and conspiracies to pursue, and they have pursued, planned common courses of action or courses of dealing, that each of the said manufacturers would refrain, and each of the said manufacturers has refrained, from taking orders from or selling to various competitors of respondents.

PAR. 7. Pursuant to and in furtherance of said understandings, agreements, combinations and conspiracies to foreclose competitors of respondents from access to sources of supply, each of the aforesaid manufacturers, for many years, and continuing to the present time, has done and performed, inter alia, the following:

1. Refused to sell to various competitors of respondents.

2. Refused to grant sales franchises to various competitors of respondents.

3. Refused to authorize sales agencies to various competitors of respondents.

4. Instructed sales and other personnel to refuse to accept or process orders from various competitors of respondents.

PAR. 8. The acts and practices of the respondents and the aforesaid manufacturers not made respondents herein, as hereinbefore alleged, have had and do have the effect of hindering, lessening, restricting, restraining and eliminating competition between respondents and their competitors, actual or potential, in the sale and distribution of business forms products; are all to the prejudice of business forms products customers and to the public; and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Universal Business Forms 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 222 West Adams Street, in the city of Chicago, State of Illinois.

Respondent Verl G. Elya 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 Universal Business Forms Company, a corporation, and its officers, and respondent Verl G. Elya, individually and as an officer of said corporation, and said respondents' agents, representatives, employees, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of business forms products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Harassing, interfering with, threatening, or obstructing in any way, the business of any competitor by:

1. Initiating, continuing, maintaining, or effectuating a policy of requesting, soliciting, coercing, threatening, persuading, suggesting, demanding, inducing, or attempting to induce in any way any manufacturer or supplier to refrain from taking orders from or selling to any competitors of respondents; or

2. Entering into, continuing, cooperating in, or carrying out any planned common course of action or course of dealing or understanding, agreement, combination, and conspiracy between themselves and one or more corporations not made respondents herein or between themselves and others not parties hereto, to do or perform the act and practice of agreeing that any manufacturer or supplier will refrain from taking orders from or selling to any competitors of respondents.

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

ALLIED STORES CORPORATION ET AL.

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

Docket C-889. Complaint, Mar. 12, 1965—Decision, Mar. 12, 1965

Consent order requiring New York City operators of low mark-up retail stores to cease falsely invoicing and advertising their fur products.

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 Allied Stores Corporation, a corporation, Allied Central Stores, Inc., a corporation, Pomeroy's, Inc., a corporation, and Almart Stores, Inc., a corporation, and its and their officers, hereinafter referred to as respondents have violated the provisions of the 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 Allied Stores Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware. Its office and principal place of business is located at 401 Fifth Avenue, New York, New York.

Respondent Allied Central Stores, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri. Its office and principal place of business is located at 138 Public Square, Springfield, Missouri.

Respondent Pomeroy's, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania. Its office and principal place of business is located at 600 Penn Street, Reading, Pennsylvania.

Respondent Almart Stores, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware. Its office and principal place of business is located at 11 East 36th Street, New York, New York.

Respondents Allied Central Stores, Inc., Pomeroy's, Inc., and Almart Stores, Inc., are subsidiaries of respondent Allied Stores Corporation.

Allied Stores Corporation is charged in its capacity as operator of low mark-up, mass merchandising, self-service retail stores of the type heretofore operated as "Almart" stores or stores of a type similar thereto and whether operated under the description "Almart" or otherwise.

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

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

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

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

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

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

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

(f) The disclosure that fur products were composed in whole or in substantial part of paws, tails, bellies, sides, flanks, gills, ears, throats, heads, scrap pieces or waste fur, where required, was not

set forth on invoices in violation of Rule 20 of said Rules and Regulations.

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

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

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

PAR. 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 respondents which appeared in issues of the Kansas City Star, a newpaper published in the city of Kansas City, State of Missouri.

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

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

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

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.

PAR. 7. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products in violation of the Fur Products Labeling Act in that the said fur products were not advertised in accordance with the Rules and Regulations promulgated thereunder in the following respects:

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

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

(c) The term "assembled" was used to describe fur products composed of pieces in lieu of the required terms, in violation of Rule 20 of the said Rules and Regulations.

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

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

PAR. 9. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products in that said advertisements misrepresented prices as being "Below Mfr.'s Wholesale Price" and thereby also misrepresented the savings available to purchasers of said products, in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of the Rules and Regulations promulgated under the aforesaid Act.

PAR. 10. In advertising fur products for sale as aforesaid respondents falsely and deceptively advertised said fur products in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of the said Rules and Regulations by representing directly or by implication, through such statements as "Spectacular $75,000 Fur Sale! Unseasonable Heat Forces a Master New York Furrier to Liquidate His Surplus Inventory. Peck's is ONLY K. C. 'outlet' for hundreds of magnificent fur coats, fur jackets, fur capes, and fur stoles from a fabulous New York workroom," that respondents obtained price concessions from a supplier of fur products due to unusual circumstances and as a result of the special purchase were

able to offer the fur products for sale to the purchasing public at savings, when in truth and in fact the representation was false, misleading and deceptive in that respondents did not make a special purchase of all the fur products offered for sale but only a small percentage thereof and savings were not thereby afforded to customers as represented.

PAR. 11. In advertising fur products for sale as aforesaid respondents falsely and deceptively advertised such fur products in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of the said Rules and Regulations by representing, directly and by implication, through such statements as: "Prize pelts bought at auction from Hudson Bay Company" and "Middleman costs eliminated," that respondents were offering said fur products for sale at reduced prices due to purchases at auction from the Hudson Bay Company and middleman costs were thereby eliminated when in truth and in fact such fur products were not purchased at auction from the Hudson Bay Company, middleman costs were not thus eliminated and savings were not thereby afforded to customers as represented.

PAR. 12. In advertising fur products for sale, as aforesaid, 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. 13. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging violation of the Federal Trade Commission Act and the Fur Products Labeling Act, and the respondents named in the caption above having been duly so informed 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 Allied Stores Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 401 Fifth Avenue, in the city of New York, State of New York.

Respondent Allied Central Stores, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri with its office and principal place of business located at 138 Public Square, in the city of Springfield, State of Missouri.

Respondent Pomeroy's, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania with its office and principal place of business located at 600 Penn Street, in the city of Reading, State of Pennsylvania.

Respondent Almart Stores, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 11 East 36th Street, in the city of New York, State of New York.

Respondents Allied Central Stores, Inc., Pomeroy's, Inc. and Almart Stores, Inc. are subsidiaries of proposed respondent Allied Stores 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 Allied Stores Corporation, a corporation, and its officers, agents, representatives, employees and corporate subsidiaries and affiliates, as operator and/or operators of low mark-up, mass merchandising, self-service retail stores of the type heretofore operated as "Almart" stores, or stores of any type

similar thereto and whether operated under the description "Almart" or otherwise, and respondents Allied Central Stores, Inc., Pomeroy's, Inc., and Almart Stores, Inc., corporations, and said respondents' officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Falsely or deceptively invoicing fur products by:

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

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

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

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

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

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

7. 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.

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

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

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

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

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

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

4. 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.

5. Sets forth the term "assembled" or any term of like import as part of the information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe fur products composed in whole or in substantial part of paws, tails, bellies, sides, flanks, gills, ears, throats, heads, scrap pieces or waste fur.

6. Falsely or deceptively represents directly or by implication that the prices of fur products are "below manufacturer's wholesale price."

7. Represents in any manner, contrary to fact, that fur products are the surplus stock, liquidated inventory or

distress merchandise of a supplier or that fur products are are offered for sale at a savings as a result of unusual circumstances.

8. Represents in any manner, contrary to fact, that special price concessions have been obtained from suppliers with respect to any fur products offered for sale.

9. Represents in any manner, contrary to fact, that the furs contained in fur products offered for sale were obtained directly from a supplier of fur pelts or at an auction of fur pelts.

10. Represents in any manner, contrary to fact, that middleman costs have been eliminated with respect to any fur products offered for sale.

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

12. Falsely or deceptively represents in any manner that prices of respondents' fur products are reduced.

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 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

JOHN SURREY, LTD., ET AL.

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

Docket 8605. Complaint, Nov. 8, 1963—Decision, Mar. 16, 1965

Order requiring a direct mail order catalog distributor of New York City engaged in selling articles of general merchandise—such as pens, radios, typewriters, tools, and drill bits—to cease making false and deceptive pricing, savings, and quality claims in advertising its merchandise by using the word "Reg.," or similar words, in comparative pricing claims to refer to prices which were higher than its regular selling price of such merchandise, using the words "manufacturer's list price," or similar words