FEDERAL TRADE COMMISSION DECISIONS

FINDINGS, OPINIONS, AND ORDERS, JANUARY 1, 1967, TO JUNE 30, 1967

IN THE MATTER OF

HETTRICK MANUFACTURING COMPANY, INC., ET AL.

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

Docket C-1154. Complaint, Jan. 3, 1967—Decision, Jan. 3, 1967

Consent order requiring a Statesville, N.C., manufacturer of tents, tarpaulins and other canvas products to cease using fictitious pricing methods in catalogs furnished retailers of its products.

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 Hettrick Manufacturing Company, Inc., a corporation, and Aldo L. Tombari, 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 Hettrick Manufacturing Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at Taylorsville Road, Statesville, North Carolina.

PAR. 2. Respondent Aldo L. Tombari, 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. The business address of Aldo L. Tombari is the same as that of the corporate respondent.

PAR. 3. Respondents are now, and for some time last past have been, engaged in the manufacture, advertising, offering for sale,

sale and distribution of hunting clothes, tents, tarpaulins, and other canvas products to retailers for resale to the public.

PAR. 4. In the course and conduct of their business, respondents now cause, and for some time last past have caused, said products, when sold, to be shipped from their place of business in the State of North Carolina to retailers thereof located in various States of the United States and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Respondents, for the purpose of inducing the purchase of their products, have engaged in the practice of using fictitious prices in connection therewith by the following method and means:

By distributing, or causing to be distributed to retailers and others, catalogs which depict and describe their aforesaid products and contain a stated price for each.

In the manner aforesaid respondents thereby represent, directly or indirectly, that the amounts shown are respondents' bona fide estimate of the actual retail prices of said products in respondents' trade area and that they do not appreciably exceed the highest prices at which substantial sales of said products are made at retail in said trade area.

In truth and in fact, said amounts shown are not respondents' bona fide estimate of the actual retail prices of said products in respondents' trade area and they appreciably exceed the highest prices at which substantial sales of said products are made at retail in said trade area.

Therefore, the statements and representations set forth above are false, misleading and deceptive.

PAR. 6. By the aforesaid acts and practices, respondents place in the hands of retailers the means and instrumentalities by and through which they may mislead the public as to the usual and regular retail price of said products.

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

PAR. 8. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken

belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The 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 Hettrick Manufacturing Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at Taylorsville Road, Statesville, North Carolina.

Respondent Aldo L. Tombari 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, Hettrick Manufacturing Com-

pany, Inc., a corporation, and its officers, and Aldo L. Tombari, 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 advertising, offering for sale, sale, or distribution of tents, tarpaulins, or other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising, disseminating or distributing any purported retail price unless (a) it is respondents' bona fide estimate of the actual retail price of the product in the area where respondents do business and (b) it does not appreciably exceed the highest price at which substantial sales of said product are made in said trade area.

2. Misrepresenting in any manner the prices at which respondents' merchandise is sold at retail.

3. Furnishing to others any means or instrumentalities whereby the purchasing public may be misled as to the retail prices of respondents' products.

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

IN THE MATTER OF

SOLOMON FURRIERS, INC.

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

Docket C-1155. Complaint, Jan. 3, 1967—Decision, Jan. 3, 1967

Consent order requiring an Albany, N.Y., retail furrier to cease deceptively advertising, invoicing, and labeling its 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 Solomon Furriers, Inc., a corporation, hereinafter referred to as respondent, has violated the

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

PARAGRAPH 1. Respondent Solomon Furriers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent is a retailer of fur products with its office and principal place of business located at 64 South Pearl Street, city of Albany, State of New York.

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

PAR. 3. Certain of said fur products were misbranded in violation of Section 4(1) of the Fur Products Labeling Act in that they were falsely and deceptively labeled or otherwise falsely and deceptively identified in that labels affixed to fur products, contained representations, either directly or by implication, that the prices of such fur products were reduced from respondent's former bona fide prices in the recent regular course of business and the amount of such purported reduction constituted savings to purchasers of respondent fur products. In truth and in fact, the alleged former prices were false and deceptive in that they were not the actual, bona fide prices at which respondent offered the products to the public on a regular basis for a reasonably substantial period of time in the recent regular course of business. The said fur products were not reduced in price as represented, nor were savings afforded purchasers of respondent's fur products as represented.

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

Among such misbranded fur products, but not limited thereto,

were fur products with labels which failed to show the true animal name of the fur used in any such fur product.

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

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

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

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

(d) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth separately on labels with respect to each section of fur products composed of two or more sections containing different animal furs, in violation of Rule 36 of said Rules and Regulations.

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

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

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

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

3. To show the country of origin of 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 "Persian Lamb" was not set forth on invoices in the manner required by law, in violation of Rule 8 of said Rules and Regulations.

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

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

(e) 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 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 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. 9. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that certain advertisements intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of such fur products were not in accordance with the provisions of Section 5(a) of the said Act.

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

Among such false and deceptive advertisements, but not limited thereto, were advertisements which failed to show that the fur contained in the fur product was bleached, dyed, or otherwise artificially colored, when such was the fact.

PAR. 10. Respondent falsely and deceptively advertised fur products in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of the Rules and Regulations promulgated thereunder by affixing labels thereto which represented

either directly or by implication that the prices of such fur products were reduced from respondent's former bona fide prices in the recent regular course of business and the amount of such purported reduction constituted savings to purchasers of respondent's fur products. In truth and in fact, the alleged former prices were false and deceptive in that they were not the actual, bona fide prices at which the respondent offered the products to the public on a regular basis for a reasonably substantial period of time in the recent regular course of business. The said fur products were not reduced in prices as represented, nor were savings afforded purchasers of respondent's fur products as represented.

PAR. 11. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondent falsely and deceptively advertised fur products in violation of the Fur Products Labeling Act in that said fur products were not advertised in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form, in violation of Rule 4 of 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) All parts of the information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder were not set forth in type of equal size and conspicuousness and in close proximity with each other, in violation of Rule 38(a) of the aforesaid Rules and Regulations.

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

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

methods of competition in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

The 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 Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act and the Fur Products Labeling Act; 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 the Federal Trade Commission Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Solomon Furriers, 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 64 South Pearl Street, Albany, New York.

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

ORDER

It is ordered, That respondent Solomon Furriers, Inc., a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation and distribution in commerce, of any fur product; or in connection with the sale, advertising, offering for sale, transportation

or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

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

2. Representing, directly or by implication on labels, that any price whether accompanied or not by descriptive terminology is the respondent's former price of fur products when such price is in excess of the price at which such fur products have been sold or offered for sale in good faith by the respondent in the recent regular course of business, or otherwise misrepresenting the price at which such fur products have been sold or offered for sale by respondent.

3. Misrepresenting in any manner on labels or other means of identification the savings available to purchasers of respondent's fur products.

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

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

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

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

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

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

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

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

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

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

7. Failing to set forth on invoices the item number or mark assigned to each such fur product.

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

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

2. Represents, directly or by implication, that any price, whether accompanied or not by descriptive terminology is the respondent's former price of fur products when such price is in excess of the price at which such fur products have been sold or offered for sale in

good faith by the respondent in the recent regular course of business, or otherwise misrepresenting the price at which such fur products have been sold or offered for sale by respondent.

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

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

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

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

D. Failing to maintain full and adequate records disclosing the facts upon which pricing claims and representations of the types described in subsections (a), (b), (c) and (d) of the Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act, are based.

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

IN THE MATTER OF

HARNEY COUNTY LAND DEVELOPMENT CORPORATION ET AL.

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

Docket 8568. Complaint, May 1, 1963—Decision, Jan. 4, 1967

Order removing complaint against two Oregon land development companies from suspense calendar and dismissing it on the ground of insufficient public interest.

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 Harney County Land Development Corporation, a corporation, and John M. Phillips, Jack C. Cherbo and Richard D. Walker, individually and as officers of said corporation; and Harney County Escrow Company, Inc., a corporation, and Willis F. Bardwell, 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 Harney County Land Development Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its office and principal place of business located at 417 South Jefferson Street, Chicago, Illinois.

Respondents John M. Phillips, Jack C. Cherbo, and Richard D. Walker are officers of said corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of said corporate respondent.

Respondent Harney County Escrow Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its office and principal place of business located at 150 West Washington Street, Burns, Oregon. Respondent Willis F. Bardwell is an officer of this corporate respondent. He formulates, directs and controls the acts and practices of this corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of this corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale and sale of lots or parcels of real estate located in the State of Oregon to the public in various parts of the United States by means of the United States mails and through agents and sales representatives. The said land is known as Lake Valley.

PAR. 3. Respondents, in conducting the business aforesaid, have sent and transmitted, and have caused to be sent and transmitted, letters, contracts, checks, deeds and other papers and documents of a commercial nature from their places of busi-

ness in the States of Illinois and Oregon to purchasers and prospective purchasers located in various other States of the United States and have thus engaged in extensive commercial intercourse, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents, for the purpose of inducing the purchase of said parcels of real estate, have placed advertisements in metropolitan newspapers and have distributed form letters and advertising circulars to members of the public by means of the United States mails. Typical of the statements and representations in said advertising materials, but not all inclusive thereof, are the following:

LAND In The West's Greatest Recreation Area * * * LAKE VALLEY OREGON * * * A Paradise For Sportsmen * * * For Healthful, Outdoor Living * * * HUNT! FISH! SWIM!

You have swimming and skiing, camping and boating * * * outdoor barbecues * * * Four Seasons of Outdoor Life * * * just minutes and you are in Burns, the friendliest town in the West * * *.

Ten Years Ago, an acre of Land in New Mexico Sold for $1,000. Today, it is priced at $20,000 up. The same thing has happened in Oregon's neighboring States—Nevada and California—where land values have jumped as high as 5000% in the last ten years.

Electricity is available to you from the Harney Electric Cooperative, Inc. * * * Water is available from wells * * * approximately 120 to 150 feet in depth * * *.

A fertile valley of untold beauty * * * Sunny, invigorating climate * * * 300 days of warm, wonderful sunshine throughout the year. * * * big money lies ahead * * *.

Harney County is Reached by two U.S. Highways—U.S. 20—fastest all-weather route from Coast to Coast, and U.S. 395—the three flag highway from Canada to Mexico.

PAR. 5. By and through the use of the above-quoted statements and others of similar import not specifically set out herein, and by the use of pictures and photographs, respondents have represented that:

1. The land offered for sale is located in the West's greatest recreation area.

2. Said land is located in close proximity to hunting, fishing, swimming, skiing, boating and similar recreational facilities.

3. Said land has a moderate or temperate climate with warm sunshine for 300 days a year and year round outdoor living.

4. An adequate supply of water is available to purchasers of said land.

5. Electricity for home use is readily available to purchasers of said land.

6. Said land has a value greater than the offering price and is likely to increase in value as much as 5000% of the present value.

7. Said land is adjacent to, or is located in close proximity to, U.S. Highway 20 and U.S. Highway 395.

8. Said land lies in a fertile valley and is suitable for cultivation.

PAR. 6. In truth and in fact:

1. Said land is not located in the West's greatest recreation area.

2. Said land is not located in close proximity to hunting, fishing, swimming, skiing, boating or similar recreational facilities.

3. Said land does not have a moderate or temperate climate with 300 days of warm sunshine a year or year round outdoor living.

4. An adequate supply of water is not available to purchasers of said land.

5. Electricity for home use is not readily available to purchasers of said land since the purchaser must bear the cost of bringing the current from the existing power lines to his property.

6. Said tracts or parcels of land do not have a value greater than the offering price nor are they likely to increase in value as much as 5000% of the present value, or any other such large percentage.

7. Said land is not adjacent to, nor is it located in close proximity to, U.S. Highway 20 or U.S. Highway 395 or any other U.S. Highway.

8. Said land does not lie in a fertile valley nor is it suitable for cultivation.

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

PAR. 7. At all times herein mentioned, respondents have been, and are, in substantial competition in commerce, with corporations, firms and individuals in the sale of real estate of the same general kind and nature as that sold by respondents.

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

PAR. 9. The aforesaid acts and practices of respondents, as

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

ORDER DISMISSING COMPLAINT

This matter is before the Commission upon the motion of complaint counsel filed December 13, 1966, and joined in by respondents by a paper filed December 19, 1966, requesting the Commission to remove this proceeding from the suspense calendar and to dismiss the complaint on the ground that there is not sufficient public interest in the matter to warrant further proceedings; and

It appearing to the Commission that the complaint herein was issued May 1, 1963, and that the matter was placed in suspense June 19, 1963, until further order of the Commission since it appeared that the individual respondents named were defendants in a criminal proceeding in the United States District Court in Portland, Oregon, charged with use of the mails to defraud on matters relating to those in this proceeding; and

The Commission having determined that because the evidence which covered a period prior to the latter part of 1962 is now old and stale the complaint should be dismissed:

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

IN THE MATTER OF

FASHION SEWING CENTER, INC., TRADING AS BRANT'S SEWING AND APPLIANCE CENTER ET AL.

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

Docket C-1156. Complaint, Jan. 9, 1967—Decision, Jan. 9, 1967

Consent order requiring two Cincinnati, Ohio, distributors of sewing machines to cease using deceptive promotional methods in selling their sewing machines and other merchandise.

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 Fashion Sewing Center, Inc., a corporation, trading as Brant's Sewing and Appliance Center, and Maxine Brant, individually and as an officer of said corporation, and Milton Brant, a stockholder of said corporation, and Brant Sewing Machine Co., Inc., a corporation, and Milton Brant, 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 Fashion Sewing Center, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 1722 Race Street, Cincinnati, Ohio. It does business under the name Brant's Sewing and Appliance Center.

Respondent Maxine Brant is an individual and an officer of said Fashion Sewing Center, Inc., and her husband, respondent Milton Brant is a stockholder thereof. They formulate, direct and control the acts and practices of said respondent corporation, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

Respondent Brant Sewing Machine Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 1720–22 Race Street (at Findlay Market), Cincinnati, Ohio.

Respondent Milton Brant is an officer of respondent Brant Sewing Machine Co., Inc., and he directs and controls the acts and practices of said corporation, including the acts and practices hereinafter set forth.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of sewing machines, TV sets and phonographs to the public.

PAR. 3. In the course and conduct of their business, respond-

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

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the purchase of their products, respondents now make, and have made, certain statements and representations with respect to contests, drawings, free goods, selection of customers and discounts in direct mail advertising, through oral representations of respondents and their salesmen, and by other means.

Typical and illustrative of said advertising and promotional material, but not all inclusive thereof, are the following:

FREE DRAWING! REGISTER NOW!

Name

Address

City Zone

State Phone No.

GRAND PRIZE!

WIN Nelco Deluxe Sewing Machine Complete with Cabinet!

PLUS Consolation Awards Nelco Sewing Machines

Sewing machines do not include cabinet. Selected participants to receive award with purchase of an inexpensive cabinet to contain their machine. One must be 16 years old to enter. You do not have to be present to win.

* * * * * * *

As the NECCHI and NELCO Sewing Machine franchised distributor in the area * * * we are assisting the manufacturer in an extensive advertising campaign.

We are authorized to give away a limited number of new Automatic Zig-Zag and Deluxe Sewing Machine Heads.

You have been selected from the entries at our drawings * * * to receive your choice of three models, Necchi #500 Deluxe, Nelco #110 Automatic Zig-Zag, or Model #826 Straight Stitch, determined by the cabinet. You are to pay absolutely nothing for the sewing machine itself. All you must purchase to receive it is a new cabinet to contain it from our excellent selection. New cabinet prices range from $39.95 depending on style, size, finish and wiring.

* * * * * * *

* * * This offer is limited to the time period of ten days from this date. If you have not taken advantage of this award by then, it will be cancelled and another person selected as we intend to place the new machines as soon as possible.

* * * * * * *

This letter is your authorization to receive the machine. The only Sewing Center authorized to honor it is listed below. We suggest you take immediate advantage of this sincere offer.

PAR. 5. By and through the use of the aforementioned statements and representations, by oral statements of respondents or their salesmen, and by other written statements of similar import and meaning not specifically set out herein, respondents represent, and have represented, directly or by implication:

1. That they are conducting bona fide drawings and that persons other than the grand prize winner whose names are drawn from among entrants will win valuable prizes or prizes of specified value referred to as "consolation awards."

2. That the manufacturers of Necchi and Nelco sewing machines are conducting said advertising campaign assisted by respondents and that said manufacturers have authorized respondents to give away a number of their sewing machines.

3. That the offer of a free sewing machine is made only to a limited number of specially selected persons for a limited period of ten days.

4. That they are making bona fide offers to give a limited number of the advertised sewing machines free to purchasers of a sewing machine cabinet as part of a promotion to sell the advertised sewing machines.

5. That customers who elect to purchase one of their regular lines of sewing machines, rather than one of the machines referred to in their promotional letter will be granted discounts or allowances from the prices usually charged by respondents for said regular line of sewing machines equal to the advertised price of the sewing machine or some other equally substantial amount and that savings are thereby afforded.

PAR. 6. In truth and in fact:

1. Respondents do not conduct bona fide drawings for the aforesaid consolation awards. Their purpose in having persons register for drawings is to obtain leads to prospective purchasers of their sewing machines. Almost every purchaser who buys pursuant to such promotion receives as a prize an "award" or "Contest Winner's Discount" which is an amount deducted from the represented price of the product. However, said deduction is made not from respondents' regular and customary price of the product but from a higher price and therefore the prize given to purchasers is illusory.

2. The said manufacturers are not conducting said advertising

campaign nor have they authorized respondents to give away their products in the said promotion. Instead, the said sales promotion is the sole endeavor of respondents conducted in furtherance of their own retail sales of said products.

3. Respondents' said offers were not made to only a limited number of or to specially selected persons but were made generally to members of the purchasing public on the basis of their addresses to obtain the greatest coverage possible. Said offers were not limited to ten days but were open to recipients of respondents' letters beyond that period of time.

4. They were not making bona fide offers to give a limited number of the advertised sewing machine heads free to purchasers of a sewing machine cabinet as part of a promotion to sell the advertised sewing machines. On the contrary, respondents' said offers were made to attract prospective purchasers of respondents' higher priced sewing machines.

5. Customers who elected to buy a sewing machine from respondents' regular line rather than one of the sewing machines referred to in respondents' promotional letter were not granted said discounts or allowances since said purported deductions are based on amounts higher than the net prices at which said regular line of sewing machines are usually and customarily sold by respondents in the normal course of their business and the represented savings were not afforded.

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

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

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

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of the 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 Fashion Sewing Center, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 1722 Race Street, Cincinnati, Ohio.

Respondent Maxine Brant is an officer of said Fashion Sewing Center, Inc., and her address is 1722 Race Street, Cincinnati, Ohio.

Brant Sewing Machine Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 1720–22 Race Street (at Findlay Market), Cincinnati, Ohio.

Milton Brant is an officer of said Brant Sewing Machine Co., Inc., and a stockholder of said Fashion Sewing Center, Inc. His address is 1722 Race Street, Cincinnati, Ohio.

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 Fashion Sewing Center, Inc., a

said corporate respondents. They formulate, direct and control the acts and practices of said corporate respondents including the acts and practices hereinafter set forth. Their business address is the same as that of respondent Sportwelt Shoe Co., Inc.

The aforesaid respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacturing, offering for sale, sale and distribution of footwear, including men's shoes which closely resemble in appearance shoes issued to members of the United States Navy, which are sold to dealers and others for resale to the public.

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

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

PAR. 5. The said shoes sold and distributed by respondents, in the course and conduct of their business as aforesaid, closely resemble the shoes issued and furnished to members of the United States Armed Forces in color, material, pattern and style. Respondents also cause to be affixed to said shoes and their containers certain markings, labels, and tags respecting their manufacture, construction, inspection and specifications.

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

GENUINE U.S. NAVY LAST
D.R. SHERBURN, INSPECTOR.

MADE ON THE AUTHENTIC GOVERNMENT
U.S. NAVY LAST. Surplus Last.

INSPECTOR NO. 43
U.S. NAVY LAST.

Authentic Gov't Surplus Last
NAVY SHOE.

Genuine U.S. Gov't Specifications
R. Sullivan, Inspector.

PAR. 6. Through the use of the terms "U.S. Navy" and "U.S. Government" alone and in conjunction with the other statements and representations set out above, and other terms of similar import and meaning but not specifically set out herein, in and on markings, labels and tags, respondents represent, and have represented, directly or by implication:

1. That said shoes are official, regulation or surplus United States Navy shoes and are manufactured in accordance with United States Navy or Government specifications.

2. That said shoes are inspected by United States Navy or Government inspectors and approved as meeting United States Navy or Government specifications.

PAR. 7. In truth and in fact:

1. Said shoes are not official, regulation, surplus United States Navy or Government shoes and are not manufactured in accordance with Navy or Government specifications.

2. Said shoes are not inspected by United States Navy or Government inspectors and are not approved as meeting United States Navy or Government specifications.

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

PAR. 8. By selling and distributing to dealers and others said shoes having affixed to them or their containers the markings, labels, and tags hereinabove described, respondents furnish to such dealers and others the means and instrumentalities by and through which they may mislead and deceive the purchasing public as to the origin, kind, type, construction, manufacture and quality of their said shoes.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' product 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 Sportwelt Shoe Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at 51 Lake Street, in the city of Nashua, State of New Hampshire.

Respondent Wilson Shoe Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Puerto Rico, with its office and principal place of business located in Santa Isabel, Puerto Rico.

Respondents Emanuel Alberts and Muray Alberts are officers of said corporations and their address is the same as that of respondent Sportwelt Shoe Co., Inc.

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

ORDER

It is ordered, That respondents Sportwelt Shoe Co., Inc., a corporation, and Wilson Shoe Co., Inc., a corporation, and their respective officers, and Emanuel Alberts and Murray Alberts,

individually and as officers of said corporate respondents, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of footwear in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that said shoes are official, regulation or surplus United States Navy shoes or Armed Forces shoes or are manufactured in accordance with United States Navy or Government specifications: *Provided, however,* It shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that said shoes are genuine surplus shoes manufactured for and in accordance with specifications of such Armed Forces or Government.

2. Representing, directly or by implication, that said shoes have been inspected by United States Navy or Government inspectors or that they have been approved by said inspectors as meeting United States Navy or Government specifications: *Provided, however,* It shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that said shoes have been inspected and approved by said United States Navy or Government inspectors.

3. Misrepresenting in any manner the parties, organizations, firms or corporations for whom said shoes were manufactured, or the specifications for or inspection of said shoes.

4. Furnishing or otherwise placing in the hands of retailers of said products, or others, any means or instrumentalities by or through which they may mislead and deceive the public in the manner or as to the things hereinabove prohibited: *Provided, however,* That nothing hereinabove shall be construed to prohibit the respondents from truthfully and nondeceptively stamping or marking shoes manfactured by respondent *Sportwelt* as (1) "Navy-type shoes [or Navy-type oxfords] made on surplus United States Navy lasts [or duplicates thereof, whichever is the case] by Sportwelt Shoe Co., Inc." or as (2) "Navy-type shoes [or Navy-type oxfords] made on surplus United States Navy lasts [or duplicates thereof, whichever is the case] by and inspected by Sportwelt Shoe Co., Inc."; or from similarly stamping or marking shoes made by respondent *Wilson* as (1) "Navy-type shoes [or Navy-type oxfords] made on surplus United States Navy lasts [or duplicates thereof, whichever is the case] by Wilson Shoe Co., Inc."

or as (2) "Navy-type shoes [or Navy-type oxfords] made on surplus United States Navy lasts [or duplicates thereof, whichever is the case] by and inspected by Wilson Shoe Co., Inc."

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

ARCHWAY INDUSTRIES, INC., ET AL.

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

Docket C-1158. Complaint, Jan. 12, 1967—Decision, Jan. 12, 1967

Consent order requiring a Richmond Heights, Mo., distributor of cigar vending machines, cigars and supplies to cease using exaggerated earning claims and other misrepresentations to sell its cigar vending machines and supplies.

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 Archway Industries, Inc., a corporation, and Paul A. Hejna, Jr., and Bernard Barhorst, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Archway Industries, 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 1410 Big Bend Boulevard, Richmond Heights, Missouri.

Respondents Paul A. Hejna, Jr., and Bernard Barhorst are officers of said corporation. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of cigar vending machines, cigars and supplies used and dispensed thereby to purchasers for installation in commercial establishments such as hotels, motels, bowling alleys, etc., and operated as a business on a route basis.

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

PAR. 4. In the course and conduct of their business as aforesaid, respondents cause advertisements to be inserted in newspapers, soliciting persons to whom to sell said products. Persons responding to said advertisements are contacted by respondents or their representatives. Said respondents or their representatives, in soliciting the sale of said products, make various oral statements and representations concerning the business opportunities and benefits to be derived by purchasing said products.

Among and typical, but not all inclusive, of the statements and representations made in newspapers, circulars, form letters, flyers and by other printed material given to prospective purchasers are the following:

BIGGEST
MONEY
MAKER

Get in Now on The Cigar
Smoking Boom thru Automatic Cigar Dispensers.
Cigar Sales Are Climbing
(SKYROCKETING) Due To
Cancer Scare.
We Turn Over Top Locations
for you to service in your
area * * * Leading Restaurants,
Hotels, Motels, Cocktail
Lounges, Bus Terminals,
Bowling Alleys, Etc.
No Selling or Soliciting
required.
Full or Part Time.
(5 to 8 hours weekly)

No previous experience
necessary * * * We train you.
COULD NET UP TO
$800.00 PER MONTH
To qualify, you must have:
1. An Automobile
2. $3495.00 Cash available immediately
3. References
For interview, write:
CIGARS
8703 Antler Drive
Richmond Heights, Mo. 63117

* * * * * * *

Our SELECTRA CIGAR machines are
unconditionally guaranteed.

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import but not specifically set forth herein, separately and in connection with said oral statements and representations made by the respondents or their representatives, respondents represent, and have represented, directly or by implication that:

1. Persons selected must own a car and have references to qualify to purchase respondents' products.

2. Respondents obtain top sales producing locations such as leading restaurants, hotels, motels, cocktail lounges, bus terminals, and bowling alleys for the placing of vending machines purchased from them.

3. Purchasers investing the sum of $3,495 in said vending machines and cigars may reasonably expect to earn net profits approximating $800 per month and that said investment may reasonably be expected to be returned out of net profits in a year or less.

4. Respondents' vending machines are unconditionally guaranteed.

5. That the purchasers of said machines will be trained by the respondents as to the operation of the machines and the methods to be used in servicing them.

6. No selling or soliciting will be required.

7. A survey has been made of the market in which the prospective purchaser will operate.

8. If the purchaser becomes dissatisfied or for any reason wishes to go out of the business, the respondents will either accept a return of the machines or will help the purchaser to resell them.

9. The vending machines are equipped with a humidifier.

10. The vending machines are able to handle all popular brands of cigars.

11. The vending machines to be delivered will be the same as the one depicted in the photograph which is displayed to the prospective customer by the salesman.

12. The respondents will furnish advertising and other promotional material.

PAR. 6. In truth and in fact:

1. It is not necessary to own a car or to furnish references in order to purchase respondents' vending machines or other products but, on the contrary, the only requirement is that the purchaser must have, immediately available, the amount of money required to purchase the vending machines and cigars.

2. Respondents do not obtain top sales locations such as leading restaurants, hotels, motels, cocktail lounges, bus terminals, and bowling alleys for the vending machines purchased from them, but such locations as may be secured by respondents are usually undesirable, unsuitable and unprofitable.

3. Purchasers who have invested the sum of $3,495 in the purchase of said vending machines and supplies do not earn profits approximating $800 per month and do not earn sufficient net profits for the return of the investment in a year or less but, on the contrary, in most instances, persons purchasing said vending machines and supplies make little or no profit from the operation of the machines.

4. Respondents' vending machines are not unconditionally guaranteed but, on the contrary, are guaranteed for one year by warranty of the manufacturer which agrees to repair or replace, as required, any defective machine or part, where the defect existed at the time of shipment, upon return to the manufacturer of the part or machine in question, freight prepaid.

5. Respondents do not train the purchasers of the vending machines in the operation of the machines or the method to be used in servicing the locations where installed.

6. The purchasers of the machines are required to do selling and soliciting, since it is frequently necessary to place machines in other locations because of the undesirable, unsuitable, and unprofitable nature of the locations selected by the respondents or for other reasons.

7. No survey has been made of the market in which the prospective purchaser intends to operate, prior to the contact by the salesman or thereafter.

8. Respondents do not accept the return of the machines and do

not help the purchaser to sell them, regardless of the purchaser's reasons for going out of business.

9. The vending machines are not equipped with a humidifier.

10. The vending machines cannot handle all popular brands of cigars but, on the contrary, are only of a proper size to handle "Phillies" cigars.

11. The vending machines delivered to the purchaser are not the same as that depicted in the picture which was displayed to the prospective purchaser by the salesman; but differ therefrom in substantial and material respects.

12. The respondents furnish little, if any, advertising or promotional material.

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

PAR. 7. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of the same or similar products.

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

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Archway Industries, 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 1410 Big Bend Boulevard, Richmond Heights, Missouri.

Respondents Paul A. Hejna, Jr., and Bernard Barhorst are officers of said corporation and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents, Archway Industries, Inc., a corporation, and its officers, and Paul A. Hejna, Jr., and Bernard Barhorst, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of vending machines and vending machine supplies 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. Persons must own an automobile or that persons must furnish references in order to purchase respondents' products.

2. Respondents will furnish top sales producing locations or misrepresenting, in any manner, the sales potential or character of the locations in which respondents place their

vending machines and products at the time of the purchase of the machines.

3. Purchasers of respondents' vending machines and products will earn net profits approximating $800 per month or any other amount of net or gross profits: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented earnings, either gross or net, are those which have been typically earned by others operating respondents' machines in circumstances similar to those under which they will be operated by the purchaser.

4. The net profits from the operation of said vending machines will be sufficient to return the investment of the purchaser within a year or any other period of time: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the net profits typically earned by others operating respondents' machines in circumstances similar to those under which they will be operated by the purchaser have been sufficient to return said investment within the time specified.

5. Respondents' vending machines are guaranteed unless the nature, conditions, and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

6. Purchasers of respondents' vending machines will be trained by the respondents as to the operation of the machines or the methods to be used in servicing the locations where installed.

7. No selling or soliciting will be required.

8. A survey has been made of the market in which the prospective purchaser will operate.

9. If the purchaser becomes dissatisfied, or for any reason wishes to go out of the business, the respondents will accept a return of the machines and repay the purchase price or will help the purchaser to resell the machines.

10. The vending machines sold by the respondents and intended for the sale of cigars are equipped with a humidifier.

11. The vending machines sold by the respondents will handle all popular brands of cigars or misrepresenting in any

manner the number of brands which will be handled by respondents' machines.

12. The vending machines to be delivered by the respondents will be the same or similar to the one depicted in the picture displayed to the prospective customer: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the vending machine depicted in the picture shown to the prospective purchaser is a true reproduction of the vending machines actually delivered to the customer.

13. The respondents will furnish advertising or promotional material: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that such advertising or promotional material is actually furnished to purchasers of respondents' vending machines and products.

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

IN THE MATTER OF

LONE STAR CEMENT CORPORATION

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

Docket C-1159. Complaint, Jan. 16, 1967—Decision, Jan. 16, 1967

Consent order requiring a New York City manufacturer of portland cement to divest itself of ready-mix concrete plants and related equipment recently acquired from a Houston, Texas, ready-mix company.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent has violated the provisions of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and that a proceeding in respect thereof would be in the public interest, issues this complaint, stating its charges as follows:

I. DEFINITIONS

1. For the purpose of this complaint the following definitions shall apply:

(a) "Portland Cement" includes Types I through V of portland cement as designated by the American Society for Testing Materials. Neither masonry nor white cement is included.

(b) "Ready-mixed Concrete" includes all portland cement concrete manufactured and delivered to a purchaser in a plastic and unhardened state. Ready-mixed concrete includes central-mixed concrete, shrink-mixed concrete and transit-mixed concrete.

(c) "The Houston Area" consists of Harris County, Texas.

II. LONE STAR CEMENT CORPORATION

2. Respondent Lone Star Cement Corporation, hereinafter referred to as "Lone Star," is a corporation organized and existing under the laws of the State of Maine, with its principal office located at 100 Park Avenue, New York, New York.

3. Lone Star, the largest or second largest portland cement manufacturing company in the United States, operates fifteen portland cement manufacturing plants and thirteen distribution terminals located in thirteen different States. Through acquired subsidiaries, Lone Star is also engaged in the production and sale of ready-mixed concrete, concrete products and mineral aggregates. In 1964, Lone Star had sales of approximately $155 million, assets of about $217 million and net income of about $14 million.

4. In the State of Texas, Lone Star operates cement manufacturing plants at Dallas, Houston and Maryneal, and distribution terminals at Amarillo, Corpus Christi and Orange. These plants have an annual capacity of approximately 10 million barrels of portland cement. Their output is marketed principally in the State of Texas. The Houston area is an important metropolitan market for the output of Lone Star's Houston plant.

5. Lone Star is and for many years has been engaged in the shipment of portland cement across State lines. Lone Star is engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act.

III. W. D. HADEN CO.

6. W. D. Haden Co., hereinafter referred to as "Haden," is a corporation organized and existing under the laws of the State of Texas, with its principal office and place of business located at 2243 Milford Street, Houston, Texas.

7. At the time of the acquisition, Haden was principally engaged in the production and sale of ready-mixed concrete in the Houston area and in the dredging for oyster shells. In 1960, Haden

had total sales of $7,887,000, total assets of $6,570,000, and net income of $308,000.

8. Haden is, and was at the time of the acquisition, one of the three largest producers of ready-mixed concrete and one of the three largest consumers of portland cement in the Houston area. In 1960, Haden consumed 452,485 barrels of portland cement and sold 209,726 cubic yards of ready-mix concrete.

IV. THE ACQUISITION

9. On or about December 7, 1961, Lone Star acquired 40% of Haden's outstanding common stock for approximately $1 million. On or about April 18, 1966, Lone Star acquired from Haden an option to purchase the remaining 60% of Haden's outstanding common stock and an irrevocable proxy to operate Haden's business.

10. The Haden acquisition by Lone Star was an act or practice in commerce within the meaning of the Federal Trade Commission Act.

V. THE NATURE OF TRADE AND COMMERCE

11. Portland cement is a material which, in the presence of water, binds aggregates, such as sand and gravel, into concrete. Portland cement is an essential ingredient in the production of ready-mixed concrete. There is no practical substitute for portland cement in the production of concrete.

12. The portland cement industry in the United States is substantial. In 1964, there were approximately 52 cement companies in the United States operating approximately 181 plants. Total shipments of portland cement in that year amounted to approximately 365 million barrels, valued at about $1.1 billion.

13. Cement manufacturers sell their portland cement to consumers such as ready-mixed concrete companies and concrete products companies, and to contractors and building materials dealers. On a national basis, approximately 57% of all portland cement is shipped to firms engaged in the production and sale of ready-mixed concrete.

14. In recent years, there has been a significant trend of mergers and acquisitions by which ready-mixed concrete companies in major metropolitan markets in various portions of the United States have become integrated with portland cement companies. Since 1959, there have been at least 35 such acquisitions.

15. Each vertical merger or acquisition which occurs in the

portland cement industry potentially forecloses competing cement manufacturers from a segment of the market otherwise open to them and places great pressure on competing manufacturers likewise to acquire portland cement consumers in order to protect their markets. Thus, each such vertical acquisition may form an integral part of a chain reaction of such acquisitions—contributing to both the share of the market already foreclosed, and to the impetus for further such acquisitions.

16. In the Houston area, the trend toward vertical integration is well advanced. Additional vertical acquisitions have been made and a large ready-mixed concrete company has integrated backward by constructing its own cement plant. More than 40% of the market for portland cement in the Houston area already has been potentially foreclosed to competing cement manufacturers as the result of vertical integration.

VI. THE VIOLATION CHARGED

17. The effects of the acquisition of Haden by Lone Star, as hereinbefore described, both in itself and by aggravating the trend toward vertical integration between suppliers and consumers of portland cement, may be the following, among others:

a. Lone Star's competitors may have been and/or may be foreclosed from a substantial segment of the market for portland cement.

b. The ability of Lone Star's non-integrated competitors effectively to compete in the sale of portland cement and ready-mixed concrete has been and/or may be substantially impaired.

c. The entry of new portland cement and ready-mixed concrete competitors may have been and/or may be inhibited or prevented.

d. The production and sale of ready-mixed concrete, now a decentralized, locally controlled, small business industry, may become concentrated in the hands of a relatively few manufacturers of portland cement.

Now therefore, the acquisition of Haden by Lone Star is in unreasonable restraint of trade, is to the prejudice and injury of the public, has restrained and hindered, or has a dangerous tendency to restrain or hinder, competition unduly, and thereby constitutes an unfair method of competition and an unfair act and practice in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Lone Star Cement Corporation is a corporation organized, existing and doing business under the laws of the State of Maine, with its office and principal place of business located at 100 Park Avenue, New York, New York.

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

ORDER

I

It is ordered, That respondent Lone Star Cement Corporation (hereinafter "Lone Star") shall divest, absolutely and in good faith, by any appropriate means, to a person or persons approved by the Federal Trade Commission, Lone Star's ownership of and control over the ready-mixed concrete plants and related equipment, located at the following sites, constituting all of such plants and equipment acquired by Lone Star as a result of its acquisition of W. D. Haden Company. Said sites are described generally as follows:

Plant Site	*Address*
Fulton	200 Bennington Houston, Texas
Jefferson Street	1720 Delano Houston, Texas
Sims-Bayou	Foot of 96th Street Houston, Texas
Hadco	Highway 146 Seabrook, Texas
Alief	5700 Alief Road Houston, Texas
Greenbriar	4101 Greenbriar Houston, Texas

II

It is further ordered, That Lone Star, in divesting ownership of and control over ready-mixed concrete plants and related equipment under Paragraph I of this Order, make available to the person or persons acquiring each plant and related equipment such trucks as are necessary to establish such person or persons in the manufacture and sale of ready-mixed concrete from such plant.

III

It is further ordered, That Lone Star shall divest, absolutely and in good faith, to a person or persons approved by the Federal Trade Commission, so much of the real property underlying the Fulton, Jefferson Street and Sims-Bayou plants as is necessary for the efficient operation of said plants and related equipment:

Provided, however, That Lone Star may, at its option, lease or sublease said real property or portion thereof for a term which, if all renewal options are exercised, will extend for a period of at least ten (10) years.

IV

It is further ordered, That Lone Star begin to make efforts to divest itself of its ownership of and control over said assets promptly after the effective date of this Order and that they continue such efforts to the end that the divestiture thereof be accomplished within one (1) year.

V

It is further ordered, That, pending divestiture, Lone Star not make any changes in any of the aforesaid assets which would

impair their present capacity for the production and sale of ready-mixed concrete, or their market value.

VI

It is further ordered, That, in the aforesaid divestiture, none of the assets be transferred, directly or indirectly, to any person who is at the time of divestiture an officer, director, employee, or agency of, or under the control or direction of, Lone Star or any of its subsidiaries or affiliates, or to any person who owns or controls directly or indirectly, more than one (1) percent of the outstanding shares of common stock of Lone Star or any of its subsidiaries or affiliates.

VII

It is further ordered, That from and after one (1) year from the effective date of this Order Lone Star cease and desist using the name "W. D. Haden Co." and the name "Haden" in any of its operations.

VIII

It is further ordered, That Lone Star shall not, for a period of ten (10) years, distribute ready-mixed concrete from any portion of the real property located at the sites described in Paragraph I of this Order and acquired from W. D. Haden Company.

IX

It is further ordered, That Lone Star, within sixty (60) days from the effective date of this Order, and every sixty (60) days thereafter until it has fully complied with the provisions of Paragraphs I through IV of this Order, submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which it intends to comply, is complying, and/or has complied with this Order. All compliance reports shall include, among other things that will be from time to time required, a summary of all contracts and negotiations with persons who have or may have an interest in acquiring ownership of and control over the assets to be divested under this Order, the identity of all such persons, copies of all written communications to and from such persons, copies of any proposed or executed sales contracts and leases, and a statement of whether or not such persons intend to operate the divested ready-mixed concrete plants and equipment within Harris County, Texas.

IN THE MATTER OF

THE JOS. M. ZAMOISKI CO.

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

Docket 8711. Complaint, Sept. 16, 1966—Decision, Jan. 19, 1967

Consent order requiring a Baltimore, Md., distributor of Zenith color TV sets to cease making price misrepresentations, and furnishing retailers with price lists and other material which enable them to deceive the public as to prices and savings.

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

PARAGRAPH 1. Respondent The Jos. M. Zamoiski Co. 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 1101 De Soto Road, Baltimore, Maryland, 21223. Respondent also operates and maintains a place of business at 2122 24th Place, NE., Washington, D.C., 20018.

PAR. 2. Respondent has been and is now engaged in the wholesale distribution of merchandise, including electrical household appliances and housewares that are sold to retail dealers for resale to the buying public.

Respondent sells some of its merchandise, including Zenith color television sets, under exclusive territorial distributorship grants which include the State of Maryland, District of Columbia, northern parts of the State of Virginia and northwestern parts of the State of West Virginia.

PAR. 3. In the course and conduct of its aforesaid business, respondent now causes, and for some time last past has caused, its merchandise, including Zenith color television sets, to be transported from its places of business in the State of Maryland and the District of Columbia to retail dealers located in other States

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

PAR. 4. In the course and conduct of its business as aforesaid, respondent supplies price schedules for Zenith color television sets to its retail dealers. Said price schedules designated "S" (stocking dealer) and "N/S" (non-stocking dealer), are composed by respondent and list "suggested retail prices" that are substantially higher than the retail prices suggested for the same Zenith color television sets by the manufacturer's national sales subsidiary, Zenith Sales Corporation.

Among and typical, but not all inclusive, of the suggested retail prices supplied by respondent, The Jos. M. Zamoiski Co., to its retailers during the first six months of 1966, as compared to the suggested retail prices listed for the same color television sets by Zenith Sales Corporation during the same period, are the following:

	The Jos. M. Zamoiski Co.	Zenith Sales Corp.	Amount higher
25" Console—			
Space Command:			
9351-H	$995.00	$850.00	$145.00
9310-W	799.95	725.00	74.95
6521-W	795.00	699.95	96.05
25" Console—			
Regular:			
8326-H	750.00	675.00	125.00
8308-W	675.00	599.95	75.05
4519-W	675.00	579.95	95.05
21" Console—			
Regular:			
5320-W	559.95	499.95	60.00
5318-W	529.95	469.95	60.00

The aforementioned price schedules supplied to retail dealers by respondent also list "dealer cost" of Zenith color television sets. The "N/S" schedule listing costs to nonstocking dealers contains costs which are from $10 to $25 higher than dealer costs for the same sets as listed on the "S" schedule for stocking dealers. Respondent usually supplies both price schedules to each dealer. However, the actual net cost of said sets to the dealer is usually lower

than the listed cost on either of the aforesaid price schedules since dealers regularly receive an additional $10 to $40 off the cost of more than 75% of the Zenith color television sets sold by respondent. Moreover, the net cost to some of respondent's dealers is even lower due to special negotiated prices given these dealers.

Among and typical of the dealer costs listed on the "S" and the "N/S" price schedules supplied to dealers as aforesaid, and the actual net costs to said dealers are the following:

Model No.	Dealer cost on "N/S" schedule	Dealer cost on "S" schedule	Actual dealer cost	Amount by which "N/S" schedule exceeds actual dealer cost
9351–H	$800.00	$775.00	$750.00	$ 50.00
9310–W	655.00	630.00	533.74	121.26
6521–W	660.00	635.00	620.00	40.00
8326–H	600.00	575.00	550.00	50.00
8310–W	565.00	540.00	460.12	104.78
4519–W	550.00	525.00	510.00	40.00
5320–W	460.00	440.00	386.90	74.10
5318–W	445.00	425.00	400.00	45.00

PAR. 5. By and through the use of the aforesaid "suggested retail price" and "dealer cost" schedules, respondent represents, directly or by implication, and places in the hands of retailers and others the means and instrumentalities whereby they are enabled to, and do, represent directly or by implication:

(a) That the "suggested retail prices" as shown thereon are the suggested retail prices of the manufacturer of the merchandise listed thereon;

(b) That the "dealer cost" as shown thereon is the actual cost of the listed or identified merchandise to the retail dealer;

(c) That the "suggested retail prices" are not appreciably in excess of the prices at which such merchandise has been regularly offered for sale and sold in the recent regular course of business by a substantial number of the principal retail outlets in the same trade area;

(d) That purchasers of said merchandise save an amount equal to the difference between the stated "suggested retail prices" and the prices at which they purchase such merchandise;

(e) That purchasers are buying said merchandise at a low markup or profit margin to the retailer, *i.e.*, the difference between the retailer's selling price and the "dealer's cost" as stated on the said schedule.

PAR. 6. In truth and in fact:

1. The "suggested retail prices" as shown on respondent's schedules are not the suggested retail prices of the manufacturer of such merchandise but are in excess thereof;

2. The "dealer cost" as shown on respondent's schedules is not the actual cost of the merchandise listed or identified thereon but exceed the actual dealer cost thereof;

3. The "suggested retail prices" as shown on respondent's schedules are appreciably in excess of the highest prices at which such merchandise has been offered for sale and sold in the recent regular course of business by a substantial number of the principal retail outlets in the same trade area;

4. Purchasers of said merchandise do not save an amount equal to the difference between the stated "suggested retail prices" and the prices at which they purchase said merchandise;

5. Purchasers from such retailers are not buying said merchandise at a markup or profit margin to the retailer in an amount equal to the difference between said retailer's selling price and the "dealer's cost" as listed on the said price schedule.

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

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

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

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted and now constitute, unfair methods of competition in commerce and unfair

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

DECISION AND ORDER

The Commission having issued its complaint in this proceeding on September 16, 1966, charging respondent The Jos. M. Zamoiski Co., a corporation, with violation of the Federal Trade Commission Act, and the respondent having been served with a copy of that complaint; and

The respondent having thereafter filed with the hearing examiner a motion requesting waiver of Rule 2.4(d) and withdrawal of its answer to said complaint, to which motion was attached an executed consent agreement entered into between respondent and counsel supporting the complaint; and

The hearing examiner having certified to the Commission the said motion, with attached agreement, which agreement contains, *inter alia*, a consent order, an admission by respondent of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having determined that in the circumstances the public interest would be served by waiving, and having hereby waived, the provision of Rule 2.4(d) that the consent procedure shall not be available after issuance of complaint; and the Commission having further determined that the respondent's request to withdraw its answer to the complaint should be granted and having hereby duly stricken such answer from the record; and

The Commission having considered the aforesaid executed agreement, and having now determined that said agreement constitutes an adequate basis for appropriate disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent The Jos. M. Zamoiski Co. 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 1101 DeSoto Road, Baltimore, Maryland, and an additional office at 2122 24th Place, NE., in the city of Washington, District of Columbia.

2. The Federal Trade Commission has jurisdiction of the sub-

ject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent, The Jos. M. Zamoiski Co., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of Zenith color television sets or any other merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that any price is the manufacturer's suggested retail or list price unless respondent is able to establish that such amount is the price currently suggested by the manufacturer for the item of merchandise in question;

2. Representing that any amount is the cost of merchandise to a retailer or dealer unless respondent is able to establish that such amount is the actual net cost for the item of merchandise.

3. Representing that any amount is the customary or usual retail selling price of any item of merchandise which is appreciably in excess of the price at which such merchandise is regularly offered for sale and sold in the recent regular course of business by a substantial number of retail outlets in the same trade area;

4. Misrepresenting in any manner, the amount of savings to be realized by purchasers of respondent's merchandise from any retailer, dealer or other seller;

5. Misrepresenting in any manner, the retailer's, dealer's, or other seller's markup or profit margin for any merchandise.

6. Placing in the hands of retailers, dealers, or others, any pricelist, schedule or other material, information, or any other means or instrumentalities by and through which they are enabled to mislead or deceive members of the public in the respects hereinabove prohibited.

It is further ordered, That respondent shall within sixty (60) days of the issuance hereof serve by certified mail on each of its retailers, dealers or customers which sell Zenith products, a copy of this complaint and order, together with written instructions to such retailers, dealers or customers to destroy all previous price-lists furnished them by the respondent and to cease making any

of the representations prohibited in the order, and take such additional steps, under a plan to be submitted to and approved by the Commission, as will assure general compliance with such instructions.

It is further ordered, That for a period of six (6) months following the date of the acceptance of its compliance report, respondent spot check its retailers, dealers, and customers to make certain that said instructions have been carried out.

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

IN THE MATTER OF

BOW SOLDER PRODUCTS CO., INC., ET AL.

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

Docket 8712. Complaint, Sept. 21, 1966—Decision, Jan. 19, 1967

Consent order requiring a Newark, N.J., distributor of commercial solders to cease misrepresenting the nature, quality or composition of its solders.

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 Bow Solder Products Co., Inc., a corporation, and Samuel Turkus, Jr., 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 Bow Solder Products Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 251 Freeman Street, in the city of Brooklyn, State of New York.

Respondent Samuel Turkus, Jr., is an officer of the corporate respondent. He formulates, directs and controls the acts and prac-

tices 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 offering for sale, sale and distribution of commercial solders including wire solder designated "50/50 By Volume." Said solder is sold to wholesalers and retailers for ultimate resale to the public.

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

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the purchase of their commercial wire solders, respondents have engaged in the practice of labeling and describing certain of said solders as "50/50 By Volume."

PAR. 5. By and through the use of the aforesaid manner of labeling and describing said wire solder, the respondents represented:

That their wire solder designated "50/50 By Volume" is a 50/50 solder which is known in the trade as a solder containing 50% tin and 50% lead by weight.

PAR. 6. In truth and in fact:

Their wire solder designated "50/50 By Volume" is not a 50/50 solder as known in the trade as it contains less than 50% tin and more than 50% lead by weight.

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

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

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

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

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of the 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 issued its complaint in this proceeding on September 21, 1966, charging respondents Bow Solder Products Co., Inc., a corporation, and Samuel Turkus, Jr., individually and as an officer of said corporation, with violation of the Federal Trade Commission Act, and the respondents having been served with a copy of that complaint; and

The respondents having filed with the hearing examiner a motion requesting waiver of Rule 2.4(d) of the Commission's Rules, and thereafter respondents and counsel supporting the complaint having executed an agreement containing a consent order to cease and desist; and

The hearing examiner having certified to the Commission the aforementioned motion and agreement, which agreement contains, *inter alia*, a consent order, an admission by respondents of all the jurisdictional facts alleged in the complaint, 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 alleged in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having determined that in the circumstances the public interest would be served by waiving, and so hereby waives, the provision of Rule 2.4(d) that the consent procedure shall not be available after issuance of complaint; and

The Commission having considered the aforesaid executed agreement, and having now determined that said agreement constitutes an adequate basis for appropriate disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent Bow Solder Products Co., Inc., is a corporation

organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 25 Amsterdam Street, in the city of Newark, State of New Jersey (formerly located at 251 Freeman Street, in the city of Brooklyn, State of New York, which is the address hereinbefore set forth in the complaint).

Respondent Samuel Turkus, Jr., is an officer of the corporate respondent and his office and principal place of business 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 Bow Solder Products Co., Inc., a corporation, and its officers, and Samuel Turkus, Jr., individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of solders, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Using the designation 50/50 alone or in conjunction with the words "By Volume" to designate, describe or refer to a commercial solder which does not contain 50% tin by weight: *Provided, however,* That it shall be a defense in any enforcement proceeding hereunder for respondents to establish that the tin content of a solder is within the permissible variations in composition allowed in the sampling procedures set forth in the then existing Specification for Solder Metal as published by the American Society for Testing and Materials.

(2) Misrepresenting by any numerical designation or in any other manner the nature, quality or composition of any of their solders.

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

ELYSÉE FASHIONS, INC., ET AL.

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

Docket C-1160. Complaint, Jan. 19, 1967—Decision, Jan. 19, 1967

Consent order requiring two New York City fur manufacturers to cease misbranding and falsely invoicing 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 Elysée Fashions, Inc., a corporation, and Milbrooke Fashions, Inc., a corporation, and Elias Miller and Seymour Miller, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the 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. Respondents Elysée Fashions, Inc., and Milbrooke Fashions, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Elias Miller and Seymour Miller are officers of said corporations. They formulate, direct and control the policies, acts and practices of said corporations.

Respondents are manufacturers of fur products with their office and principal place of business located at 262 West 38th Street, New York, New York.

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

part of 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 falsely and deceptively labeled to show that fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Section 4(1) of the Fur Products Labeling Act.

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

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

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) Sample fur products used to promote or effect sales of fur products were not labeled to show the information required under the said Act and Regulations, in violation of Rule 33 of said Rules and Regulations.

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

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

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed to show the country of origin of imported fur 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 inasmuch as 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.

PAR. 8. 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 Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Fur Products Labeling Act; and

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

The Commission, having reason to believe that the respondents have violated the said Acts, 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. Respondents Elysée Fashions, Inc., and Milbrooke Fashions, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their principal office and place of business located at 262 West 38th Street, New York, New York.

Respondents Elias Miller and Seymour Miller are officers of said corporations and their address is the same as that of said corporations.

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

ORDER

It is ordered, That respondents Elysée Fashions, Inc., a corporation, and its officers, and Milbrooke Fashions, Inc., a corporation, and its officers, and Elias Miller and Seymour Miller, individually and as officers of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding any fur product by:

1. Representing directly or by implication on a label that the fur contained in such fur product is natural when the fur contained therein is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

2. Failing to affix a label to such fur product 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.

3. Failing to affix a label to such sample fur product used to promote or effect sales of fur products showing in words and figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act and of the Rules and Regulations promulgated thereunder.

4. Failing to set forth on a label the item number or mark assigned to such fur product.

B. Falsely or deceptively invoicing any fur product by:

1. Failing to furnish an invoice, 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 by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

2. Setting forth information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules

and Regulations promulgated thereunder in abbreviated form.

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.

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

Docket C-1161. Complaint, Jan. 23, 1967—Decision, Jan. 23, 1967

Consent order permanently forbidding a nationwide dairy with headquarters in San Francisco from acquiring any pharmaceutical manufacturer or drug wholesaler without prior consent of the Federal Trade Commission, and also requiring divestiture of two previously acquired manufacturing drug companies.

COMPLAINT

The Federal Trade Commission has reason to believe that Foremost Dairies, Inc. has violated, and intends to continue to violate, the provisions of Section 7 of the Clayton Act (U.S.C., Title 15, Section 18) and Section 5 of the Federal Trade Commission Act, (U.S.C., Title 15, Section 45) by the acquisition of capital stock of McKesson & Robbins, Incorporated, and therefore issues this complaint, stating its charges in that respect as follows:

I

DEFINITIONS

1. For the purposes of this complaint, the following definitions shall apply:

a. The pharmaceutical preparations industry. This industry includes establishments primarily engaged in manufacturing, formulating, or processing drugs into pharmaceutical preparations for human or veterinary use. The greater part of the products of these establishments are finished in the form intended for final consumption, such as ampoules, tablets, capsules, ointments, medicinal powders, solutions and suspensions. Products of this industry consist of two important lines, namely: (1) pharmaceuti-

cal preparations promoted primarily to the health professions such as the dental, medical, or veterinary professions; and (2) pharmaceutical preparations promoted primarily to the public. This definition corresponds to Standard Industrial Classification Industry No. 2834.

b. Antibiotic preparations for human use are chemical substances produced by microorganisms which have the capacity, in diluted solutions, to inhibit the growth of, or to destroy, bacteria and other microorganisms.

c. Analgesic preparations, including narcotics are substances which reduce sensibility to pain without causing a loss of consciousness.

d. Lactose is a milk sugar produced by concentration and crystallization of whey, a by-product of the manufacture of cheese. Lactose is used in the manufacture of pharmaceutical preparations as a matrix for the production of penicillin, and as a binder or coating for tablets, pills or capsules. Substantial quantities of lactose are also used in the production of infant formula products.

e. Private formulators of pharmaceutical preparations are establishments engaged primarily in the manufacture of pharmaceutical preparations for and in accordance with specifications of other pharmaceutical manufacturers.

f. Drug wholesaling establishments are engaged primarily in the wholesale distribution of drugs, drug proprietaries, druggists' sundries, and toiletries. This definition corresponds to Standard Industrial Classification Industry No. 5022.

g. Merchant drug wholesaling establishments are engaged primarily in drug wholesaling on their own account. This definition excludes: (1) manufacturers' sales branches or sales offices, and (2) merchandise agents and brokers.

II

FOREMOST DAIRIES, INC.

A. *Business*

2. Respondent, Foremost Dairies, Inc. (Foremost), is a corporation organized and existing under the laws of the State of New York with its principal office and place of business located at 111 Pine Building, San Francisco, California, 94111.

3. In 1964, Foremost ranked as the nation's 144th largest industrial corporation. It had sales of $417 million, earned profits of $7.2 million, and enjoyed a satisfactory cash flow in 1964. It had assets in that year of $150 million.

4. Through its Industrial Division, Foremost operates thirty-five dairy product processing plants throughout the United States. These plants produce dairy products and byproducts, including lactose, whey and whey based products, and dried and evaporated milk, among other products. Respondent alone accounts for about 60% of total United States lactose sales.

B. *Merger History*

5. Foremost has shown a predilection for growth by the merger route. This pattern of growth demonstrates a proclivity for the elimination of substantial competition in industries and market areas in which Foremost intends to expand its position. Between 1951 and 1954, Foremost entered the dairy business in California by the acquisition of several smaller dairy companies. In 1954, Foremost eliminated the most substantial competition to its further growth in this State by acquiring Golden State Company, Ltd., the largest dairy company in California. Foremost's acquisitional expansion in the Eastern United States between 1950 and 1955 brought it ever closer to the market area of Philadelphia Dairy Products, Inc., one of the largest independent dairies in the country. Foremost and this company were in direct competition in Brooklyn, New York, and were operating on the periphery of the markets of each other in several States. In 1955, Foremost acquired this company rather than compete its way into its very sizeable market area. Foremost would still have had an incentive to enter this company's markets and Philadelphia Dairy Products, Inc., would have had an incentive to penetrate respondent's areas, had not Foremost eliminated this company by acquisition.

6. Foremost has for many years expressed a desire to diversify its operations, and has had an intention of long standing to enter the drug industry. Over the last five years, Foremost has acquired an entirely new management team which borrows heavily from past experience in the drug industry. The chief executive officer and the financial vice president of Foremost have spent many years with Rexall Drug & Chemical Company. Foremost considers food and drug products to be complimentary since both are consumer directed and highly regulated. Foremost's interest in the drug industry is thus a natural one.

C. *Acquisition of Strong Cobb Arner, Inc.*

7. On July 1, 1965, Foremost took its first substantial step into the drug industry by acquiring, for a consideration of approximately $14 million, all of the assets and business of Strong Cobb

Arner, Inc. (SCA), a New York corporation, having its office and principal place of business at 11700 Shaker Boulevard, Cleveland, Ohio.

8. SCA was the surviving corporation in a merger on June 8, 1959, with Strong Cobb and Company, Inc., and the Arner Company, Inc., both of which were successors to drug manufacturing businesses which had been continuously operated since 1833 and 1908, respectively. In 1960, SCA entered the business of wholesale drug and sundry distribution by the acquisition of Rawson Drug & Sundry Company, Inc., and expanded its position by the acquisition of Housewares Distributing Company of Dallas, the name of which has since been changed to Rawson Drug & Sundry Company of Texas, Inc. In July, 1964, SCA's pharmaceutical manufacturing operations were extended to the West Coast through the acquisition of the assets of Teknol, Inc. In December, 1964, Teknol, Inc., entered into a long-term requirements contract with Boyle & Company, one of the West's oldest and largest pharmaceutical companies, and obtained an option to purchase the manufacturing assets of this company.

9. Prior to the sale of its assets to Foremost, SCA was the nation's largest custom formulator of pharmaceutical preparations. In addition, SCA manufactures pharmaceutical preparations which it markets to some 600 member hospitals of Hospital Bureau, Incorporated. In 1964, SCA's sales of pharmaceutical preparations manufactured by it were approximately $10 million. Through its Rawson subsidiaries, SCA ranked as a leading distributor of drug proprietaries, druggists sundries, toiletries, housewares and related products, with sales of approximately $33 million. In the San Francisco-Oakland Standard Metropolitan Statistical Area, SCA's wholesale sales of such products totaled $9.5 million in 1964 and accounted for approximately eight percent of the sales of such products by merchant wholesalers in this area.

10. The acquisition of SCA by Foremost, with its greater financial, technical and marketing resources, was consummated to permit the SCA business to be strengthened and expanded; and to give Foremost an entree into the pharmaceutical field, a field Foremost selected for good growth potential. Foremost-SCA plans further growth in private label pharmaceutical preparations, a market in which Foremost estimates a growth potential of from 50% to 75% in the next five years. Foremost-SCA expects vitamins to show the greatest gains, particularly in multiple one-a-day, therapeutic and chewable forms for children. Foremost-

SCA also plans gains in cold remedies and pain relievers. Foremost-SCA now have pending a new drug application for a new sustained release analgesic compound for use in the treatment of arthritis. All of the formulae for these products are currently produced by Foremost-SCA. Further growth of Rawson Drug & Sundry operations is also contemplated in new Western markets, *i.e.* the Pacific Northwest, Phoenix, Arizona, and Los Angeles, California.

11. On January 26, 1966, Foremost placed SCA in a conditional five year trust administered by Crocker-Citizens National Bank. The trust provides that SCA shall be returned to Foremost at the expiration of five years unless the trust property has been sold for not less than $23 million cash, or unless the Federal Trade Commission has informed Foremost that it may reacquire the trust property without the Federal Trade Commission presently issuing a complaint against Foremost, alleging that such acquisition or the acquisition of a controlling stock interest in McKesson & Robbins, Incorporated are violative of the antitrust laws.

12. Foremost is and for many years has been, engaged in commerce, as "commerce" is defined in the Clayton Act.

III

McKESSON & ROBBINS, INCORPORATED

13. McKesson & Robbins, Incorporated (McKesson), is a corporation organized and existing under the laws of the State of Maryland, with its principal office and place of business located at 155 East 44th Street, New York, New York.

14. In 1964, McKesson's net sales totaled $844 million, ranking it among the largest merchandising firms in the nation. McKesson is the only nationwide wholesale distributor of drugs and related products. Approximately 60% of McKesson's sales are derived from its wholesale distribution of drugs and related products. McKesson operates more than 100 merchant wholesale drug establishments throughout the nation, including establishments located in the Pacific Northwest, San Francisco, Oakland and Los Angeles, California, and in Phoenix, Arizona. McKesson wholesale drug establishments serve the wholesale drug needs of more than 38,000 retail pharmacies and 6,000 hospitals in the United States.

15. In the San Francisco-Oakland SMSA, McKesson operates merchant drug wholesale establishments, serving retail pharmacies through its McKesson division, and other retail establish-

ments through its Skaggs-Stone division. Together, these divisions rank among the leading merchant wholesalers of drug and related products in this area; its sales of about $11.6 million accounted for approximately 9% of all sales by San Francisco-Oakland SMSA merchant drug wholesalers in 1964.

16. Through its McKesson Laboratories and Norcliff Laboratories divisions, McKesson engages in the manufacture and sale of pharmaceutical preparations. McKesson's pharmaceutical manufacturing sales have increased continuously since 1961, to a 1965 level of approximately $17 million.

17. McKesson manufactures and distributes a large line of pharmaceutical preparations. Vitamins, nutriments and hematinic preparations constitute the largest single class of products manufactured by McKesson. Other products manufactured by it include cough and cold preparations, analgesics, tranquilizers, sedatives, hypnotics, hormone preparations and a number of proprietary preparations. McKesson commenced the marketing of tetracycline, a broad spectrum antibiotic, on July 1, 1964, at a price to the druggist of approximately one third the prices of competing tetracycline manufacturers.

18. Since 1959, McKesson has expanded its position by the acquisitions of Merchant's Chemical Co., Barade & Page, Inc., Skaggs-Stone, Inc., and Roemer & Karrer, Inc. In 1966, McKesson expanded its Hospital and Laboratory Supplies Department by the acquisition of W. H. Curtin, a manufacturer and wholesaler of laboratory supply equipment located in Houston, Texas.

19. In 1965, McKesson had sales of approximately $844 million and net income of about $12 million. McKesson is in sound financial condition. Its current assets of about $240 million on March 31, 1965, were more than $100 million in excess of its total current and long term debt.

20. McKesson is, and for many years has been, engaged in commerce, as "commerce" is defined in the Clayton Act.

VIOLATION CHARGED

21. Prior to October, 1965, Foremost acquired 71,029 shares of McKesson common stock for $3,081,000. In October, 1965, Foremost purchased an additional 1,000,000 shares of McKesson common stock from Glen Alden Corporation for $50,500,000. On February 7, 1966, Foremost purchased for $38,917,500 approximately 750,000 additional shares of McKesson stock, tendered to it in response to its tender offer and solicitation. Foremost now

owns approximately 40% of the total outstanding shares of McKesson common stock. All but $9,581,000 of the $92,498,500 paid by Foremost for McKesson stock thus far has been borrowed from The Prudential Insurance Company or other financial institutions.

22. Foremost solicited the purchase of an additional 250,000 shares of McKesson common stock at $51 per share, to be tendered on or before February 18, 1966, but did not receive the number of shares required to be tendered. On September 16, 1966, Foremost purchased an additional 550,000 shares of McKesson common stock at a price of $53 per share, tendered to it in response to a solicitation of September 1, 1966. Foremost now owns more than 51% of the outstanding common stock of McKesson. Foremost intends to effect a merger between Foremost and McKesson.

23. Foremost considers McKesson's principal business, distribution of consumer-directed products, a natural area for further corporate growth. McKesson's excellent credit rating, capital structure, and debt free properties are viewed by Foremost as a means for financing further acquisitions in the areas selected by it for corporate expansion.

IV

TRADE AND COMMERCE

A. *Pharmaceutical Preparations*

24. The pharmaceutical preparation industry has expanded from a level of approximately $342 million in 1939 to a level of approximately $3,142 million in 1964. Sales of pharmaceutical preparations promoted primarily to health professions increased rapidly, growing from approximately $158 million in 1939 to $2,191 million in 1964; sales of pharmaceutical preparations promoted primarily to the public increased from $168 million to $845 million during the same period. Recent legislation increases opportunities for further expansion in the sales of pharmaceutical preparations.

25. The rate of return on invested capital of the leading pharmaceutical firms during 1964 surpassed that of the leading firms of all other major industries in the United States. In 1964, the leading pharmaceutical firms had a median rate of return of 16.3 percent after taxes, and in 1963 they had a median rate of return of 14.7 percent. This is considerably higher than the

median of the 500 largest manufacturing corporations who averaged a 10.5 percent return after taxes on invested capital in 1964 and 9.1 percent in 1963. In 1964, profits before tax as a percent of sales in the pharmaceutical industry were approximately 20 percent, the highest in any manufacturing industry and more than twice the rate of all manufacturing industries combined.

26. In 1958, the 20 largest firms accounted for 71 percent of the value of shipments of pharmaceutical preparations. These 20 firms averaged 2,333 employees each. Conversely, the 500 smallest companies averaged less than 2 employees each, and the 905 smallest companies averaged less than 9 employees each. Between 1958 and 1963, the number of companies in the pharmaceutical industry declined by more than 100.

27. The entry barriers to the manufacture of pharmaceutical preparations on a significant scale are substantial, primarily as a result of the existing high degree of concentration, patent protection and the large resources required to introduce new drugs by heavy advertising and promotion or by intensive use of detail men. These high entry barriers not only make it difficult for new firms to enter but severely limit the capability of the smaller firms already engaged in the manufacture of pharmaceutical preparations to expand to a scale whereby they could be able to furnish effective competition to the industry leaders.

B. *Antibiotic Preparations for Human Use*

28. Shipments of antibiotics for human use have increased substantially from approximately $253 million in 1954 to approximately $350 million in 1964. Penicillin, tetracycline, and streptomycin are among the leading antibiotics. The manufacture and sale of antibiotics is highly concentrated. In 1964, the four largest companies accounted for approximately 57 percent of antibiotic sales, and the eighth largest accounted for approximately 88 percent. In 1958, the percent of the value of shipments accounted for by the four and eight largest firms were 59 and 85, respectively. In 1958, the 20 largest accounted for 98 percent of such shipments.

29. Both Foremost-SCA and McKesson manufacture antibiotics for human use. McKesson has been conspicuously active in the sale of antibiotics at prices considerably lower than those of industry leaders. In 1964, Foremost-SCA began marketing antibiotics to Hospital Bureau, Incorporated member hospitals. The expected increased sale of antibiotics under generic names may prove beneficial to both McKesson and Foremost-SCA.

C. *Analgesic Preparations*

30. Shipments of analgesics have increased substantially, from approximately $256 million in 1958 to approximately $399 million in 1964. Acetylsalicylic acid (aspirin), other salicylates, and aspirin combinations accounted for approximately $214 million of all analgesic shipments in 1964. The manufacture and sale of analgesics is highly concentrated. In 1958, the four largest companies accounted for 55 percent of the value of shipments of all analgesics, the eight largest accounted for 70 percent, and the 20 largest for 85 percent.

31. Both Foremost-SCA and McKesson manufacture and sell analgesics. Foremost-SCA also has a patented sustained release aspirin tablet for which it has a new drug application pending approval of the Food and Drug Administration.

D. *Other Pharmaceutical Preparations*

32. Both Foremost and McKesson are engaged in the manufacture and sale of other pharmaceutical preparations in which concentration is high. These include, but are not limited to, tranquilizers, sedatives and hypnotics, of which the four, eight and twenty largest companies accounted for 55, 73 and 92 percent, respectively, of value of shipments in 1958; and hormone preparations, of which the four, eight and twenty largest companies accounted for 58, 83, and 95 percent, respectively, of such shipments in 1958. In addition, both McKesson and Foremost are significant producers of vitamins, nutriments and hematinic preparations. Such preparations constitute the largest single class of pharmaceutical preparations manufactured by Foremost-SCA and McKesson.

E. *Drug Wholesaling*

33. Sales of drug wholesaling establishments are substantial and increasing. In 1963, drug wholesaling establishments sales totaled $6.9 billion, an increase of nearly $1 billion over such sales in 1958.

34. Merchant wholesalers account for by far the largest number of drug wholesaling establishments and the largest portion of sales by drug wholesaling establishments. In 1963, the nation's 2,946 merchant drug wholesalers represented about 92 percent of all drug wholesaling firms and accounted for more than half of all wholesale drug sales. Merchant drug wholesalers accounted for approximately four-fifths of the total increase in all wholesale drug establishment sales between 1958 and 1963.

35. McKesson is the largest and only nationwide drug wholesaler in the United States. In 1963, McKesson's wholesale drug establishment sales accounted for about 14 percent of all sales by merchant drug wholesalers in the United States.

36. Both McKesson and Foremost operate merchant drug wholesale establishments in the San Francisco-Oakland Standard Metropolitan Statistical Area. This area ranks sixth among the nation's Standard Metropolitan Statistical Areas in population, with 2.9 million persons; and fifth in the retail value of drug sales, with 1963 retail drug sales of approximately $186.4 million. Combined, the wholesale drug establishments of McKesson and Foremost rank first among merchant drug wholesalers in this area, accounting for approximately 17 percent of all sales by San Francisco-Oakland SMSA merchant drug wholesalers.

V

EFFECTS OF VIOLATION CHARGED

37. The effects of the acquisition of McKesson common stock by Foremost may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of pharmaceutical preparations, in drug wholesaling, and in the manufacture and sale of lactose, throughout the United States and in Sections thereof, in violation of Section 7 of the Clayton Act (U.S.C., Title 15, Section 18) ; and to create an unreasonable restraint of trade and commerce, or to hinder or have a dangerous tendency to hinder competition unduly, thereby constituting an unfair act and practice in commerce, in violation of Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Section 45), in the following, among other, ways:

(a) Foremost, a firm which possesses the capability to become a significant competitor and has demonstrated its intention to expand its position in the manufacture and sale of pharmaceutical preparations, has been or may be eliminated as an actual and potential competitor in the manufacture and sale of pharmaceutical preparations, in general, and in the manufacture and sale of antibiotics and analgesics, among others, specifically.

(b) Foremost has been or may be eliminated as an actual and potential competitor of McKesson in the manufacture and sale of pharmaceutical preparations, in general, and in the manufacture and sale of antibiotics and analgesics, among other individual pharmaceutical preparations.

(c) The elimination of substantial, actual or potential competi-

tion which has been, or may be, the probable effect of the violation charged tends further to sustain or increase already high levels of concentration in the manufacture and sale of pharmaceutical preparations in general, and in antibiotic preparations and analgesic preparations in particular, among other individual pharmaceutical preparations.

(d) Substantial, actual or potential competition has been, or may be, eliminated between Foremost and McKesson in the merchant wholesale distribution of drugs, drug proprietaries, druggist sundries and toiletries in the United States and subdivisions thereof.

(e) A substantial probability of reciprocal dealing has been, or may be, created between Foremost, a seller of private pharmaceutical formulations, and its private pharmaceutical formulation customers whose products are suitable for distribution through McKesson's wholesale establishments.

(f) Members of the consuming public have been, or may be, denied the benefits of free and open competition in the manufacture and wholesale distribution of pharmaceutical preparations by the substitution of Foremost's conflicting pharmaceutical industry interest and business objectives for McKesson's demonstrated vigorous competition in the manufacture and sale of pharmaceutical preparations, including tetracycline.

(g) The cumulative effect of the violation charged has been, or may be, to accelerate tendencies toward increasing concentration in the manufacture and sale of pharmaceutical preparations, and in drug wholesaling, by encouraging tendencies toward combination and merger of actual and potential competitors, and by increasing barriers to the entry of new competition.

38. The acquisition by respondent, as alleged above, constitutes a violation of Section 7 of the Clayton Act (U.S.C., Title 15, Section 18) as amended.

39. The acts and practices of respondent, as alleged above, including without limitation paragraphs 5, 11, 21–23 and 37, constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Section 45).

DISSENTING STATEMENT

BY JONES, *Commissioner:*

Because of the continued growth and importance of the drug industry and because of the increasing significance of the aged in our population, the wide assortment of government-assisted health

programs and their increasing availability to larger and larger sections of our population, together with the general increase in affluence affecting all segments of our population, I cannot agree that the consent order entered today by the Commission represents an adequate disposition of our complaint charging that the acquisition by Foremost Dairies, Inc., of McKesson & Robbins Company violated Section 7.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of Section 7 of the Clayton Act, as amended, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

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

1. Respondent Foremost Dairies, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 111 Pine Building, San Francisco, California, 94111.

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

ORDER

I

It is ordered, That respondent, Foremost Dairies, Inc., a corporation, and its officers, directors, agents, representatives and employees, shall forthwith terminate the trust entered into with the Crocker-Citizens National Bank pursuant to an indenture of

trust made on January 26, 1966, by and between Foremost Dairies, Inc., and Crocker-Citizens National Bank.

II

It is further ordered, That respondent, Foremost Dairies, Inc., a corporation, and its officers, directors, agents, representatives and employees, shall, within six (6) months from the date this Order becomes final, divest absolutely and in good faith of all stock, share capital, right, title or interest in Strong Cobb Arner, Inc., and associated companies, together with all additions and improvements to the assets of said companies, to a purchaser or purchasers to be approved by the Federal Trade Commission.

III

It is further ordered, That respondent, Foremost Dairies, Inc., a corporation, and its officers, directors, agents, representatives and employees, shall, within six (6) months from the date this Order becomes final, divest absolutely and in good faith of all stock, share capital, right, title or interest in Rawson Drug & Sundry Company, Inc., and associated companies, together with all additions and improvements to the assets of said companies, to a purchaser or purchasers to be approved by the Federal Trade Commission.

IV

It is further ordered, That respondent, Foremost Dairies, Inc., a corporation, and its officers, directors, agents, representatives and employees, shall make available at reasonable, nondiscriminatory prices, to other producers and consumers of lactose in the United States, crude lactose used in the production of pharmaceutical grades of lactose for so long as Foremost Dairies, Inc., sells thirty percent (30%) or more of the lactose sold in the United States.

V

It is further ordered, That respondent, Foremost Dairies, Inc., a corporation, and its officers, directors, agents, representatives and employees, henceforth from the date this Order becomes final, shall cease and desist from the acquisition, directly or indirectly, or through any corporate or other device, of any part of the stock, share capital, right, title or interest in any corporation (other

than McKesson & Robbins, Incorporated) engaged in the manufacture of pharmaceutical preparations, or engaged in the wholesale distribution of drugs, drug proprietaries, druggist sundries, toiletries, housewares or related products without the prior approval of the Federal Trade Commission.

VI

It is further ordered, That within sixty (60) days after the effective date of this Order and every sixty (60) days thereafter until it has fully complied with the provisions of Paragraphs I through III of this Order, respondent, Foremost Dairies, Inc., submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which it intends to comply, is complying or has complied, with said paragraphs of this Order. All compliance reports shall include, among other things that will be from time to time required, a summary of all contacts and negotiations with potential purchasers of the properties to be divested under this Order, the identity of all such potential purchasers, and copies of all written communications to and from such potential purchasers.

VII

It is further ordered, That within sixty (60) days after the effective date of this Order and annually thereafter until it has fully complied with the provisions of Paragraphs IV and V of this Order, respondent, Foremost Dairies, Inc., submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which it intends to comply, is complying or has complied, with said paragraphs of this Order.

Commissioner Jones dissenting.

IN THE MATTER OF

HOLIDAY UNIFORM COMPANY, INC., ET AL.

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

Docket C-1162. Complaint, Jan. 27, 1967—Decision, Jan. 27, 1967

Consent order requiring two Brooklyn, N.Y., sellers of uniforms to cease misrepresenting the character of their salesmen, their policy on refunds

and exchanges, deceptively using offers of free merchandise, making false guarantees, and engaging in other deceptive practices.

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 Holiday Uniform Company, Inc., a corporation, and Town & Country Fashion Designers, Inc., a corporation, and Warren J. Lewis, individually and as an officer of said corporations, and as an individual trading as Brooklyn Uniform Center and Universal Uniforms, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Holiday Uniform Company, Inc., and Town & Country Fashion Designers, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their principal office and place of business located at 519 Fulton Street, Brooklyn, State of New York.

Respondent Warren J. Lewis is an officer of the corporate respondents. He formulates, directs and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth.

Respondent Warren J. Lewis also does business as an individual trading as Brooklyn Uniform Center and Universal Uniforms. The principal office and place of business of Brooklyn Uniform Center is also located at the aforementioned address and the principal place of business of Universal Uniforms is located at 1200 Hyland Boulevard, city of New York, State of New York. The address of the individual respondent is the same as that of the corporate respondents.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of uniforms and other clothing to the public.

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

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

PAR. 4. In the course and conduct of their aforesaid business, respondents sell and distribute substantial quantities of their uniforms and other clothing to the public by and through direct sales agents. Direct sales agents are usually recruited by respondents through advertising solicitation. Said advertisements appear in periodicals circulated throughout the United States. Persons responding to said advertising are supplied by respondents with a sales kit consisting of an illustrated catalog and price list, swatch book and printed order book.

The aforesaid catalog contains detailed illustrations and descriptions of the style, features, workmanship, fabric, size, color and selling price and deposit of said garments, together with a section consisting of a swatch book with representative fabric samples.

PAR. 5. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their uniforms and other clothing, the respondents in their catalogs and other advertising material have made numerous statements and representations respecting the character of their salesmen, guarantees and their policy concerning return of merchandise.

Typical and illustrative of such statements and representations but not all inclusive thereof, are the following:

A Pledge of Quality
Value and integrity.
HOLIDAY
GUARANTEE
TO SAVE YOU MONEY
TO DELIVER YOUR
MERCHANDISE SAFELY
TO SATISFY YOU
PERFECTLY.

We guarantee that every article shown in this catalog is honestly described and represented in good faith.

We guarantee that any article bought from us will give you the service you have a right to expect.

If, for any reason, you are dissatisfied with any article purchased from us, we assure you that you may return it to us.

You can be confident when you buy from Holiday * * *.

* * * * * * *

Style 0300
Dacron Knit Jersey

Sizes 6–11, 5–15, 18½–22½
Colors White, Blue, Aqua
Price $11.98
Deposit $3.00

* * * * * * *

We guarantee that every article shown in this catalog is honestly described and represented in good faith.

We guarantee that any article bought from us will give you the service you have a right to expect.

If, for any reason, you are dissatisfied with any article purchased from us, we assure you that you may return it to us.

We will then exchange it for exactly what you want, or you will get a refund of the money we received. The merchandise must be returned to us within five days of receipt and in the same condition as it was received by you.

YOU CAN BE CONFIDENT WHEN YOU BUY FROM HOLIDAY UNIFORM CO., INC.
252 Duffield Street, Brooklyn 1, N. Y.
Triangle 5–7780.

Respondents' sales representatives usually call on prospective purchasers at their places of business or employment such as medical offices, restaurants or similar establishments where uniforms are worn. Orders are solicited by respondents' sales representatives with the aid of the aforesaid catalog and other sales materials furnished by respondents.

Under respondents' sales program, as aforesaid, respondents' sales agents are permitted to retain cash deposits as their sales commissions. In many instances, respondents' sales agents, after accepting the amount of deposit specified in the catalog or a greater amount, have failed to transmit the customers' orders to respondents. When the customer fails to receive his order and complains to respondents, the respondents disclaim all responsibility for return of the funds so deposited with respondents' sales agents and the customer is advised by respondents that it will be necessary for the customer to obtain such refund exclusively from the particular sales agent to whom the deposit was paid.

PAR. 6. By and through the above-quoted statements and representations and others of similar import, but not specifically set out herein, separately and in connection with oral statements and representations of their salesmen, respondents represent, and have represented, directly or by implication, that:

1. The persons to whom respondents furnished their sales kits have been screened by respondents for reliability and integrity prior to the issuance of such material.

2. Respondents customarily make full refunds or satisfactory exchanges in the event of dissatisfaction on the part of the purchaser with any of respondents' merchandise.

3. Purchasers placing orders for respondents' merchandise with persons displaying respondents' sales kits will be afforded personal delivery by such persons of the ordered merchandise.

4. Respondents' sales agents can assure purchasers safe and prompt delivery within a specified time.

5. Respondents offer complimentary merchandise such as ladies hosiery or other free merchandise as an inducement for the purchase of respondents' products.

6. Purchasers can obtain respondents' products for the prices stated in respondents' catalog in every instance without further charges or additional expenses.

7. The merchandise described in respondents' catalog is unconditionally guaranteed.

PAR. 7. In truth and in fact:

1. In many instances, the persons to whom respondents furnish their sales kits have not been screened by respondents for reliability or integrity prior to the issuance of such material.

2. a. Respondents do not make full refunds or satisfactory exchanges in the event of customer dissatisfaction with respondents' merchandise. Such monies as are paid directly to respondents' sales representatives can be recovered by the purchaser only from the sales representative and not from or through respondents.

b. In many instances where purchasers have attempted to obtain refunds or exchanges from respondents, purchasers have experienced unreasonable difficulty and delay in obtaining satisfactory adjustments by way of refunds or exchanges.

3. Purchasers placing orders for respondents' merchandise with sales representatives displaying respondents' sales kits will not be afforded personal delivery by such sales representatives of the ordered merchandise. Respondents' sales representatives ordinarily do not make personal delivery directly to purchasers placing orders for respondents' merchandise with such sales agents. Merchandise ordered through respondents' said sales representatives is customarily shipped directly to the purchaser and not the sales agent.

4. Respondents' sales agents cannot assure purchasers safe and prompt delivery within a specified time. Respondents' sales agents have no control over the manner in which respondents process orders and are in no position to assure safe and prompt delivery of

respondents' products. In many instances respondents' sales representatives have failed to forward orders to respondents and have absconded after obtaining payment for such orders.

5. Respondents do not offer or give complimentary merchandise such as ladies hosiery or other free merchandise as an inducement for the purchase of respondents' products.

6. Purchasers cannot obtain respondents' products for the prices stated in respondents' catalog in every instance without further charges or additional expense. Unless payment in full of the catalog price is made to respondents' order at the time the order is placed with respondents' sales agent and such payment is actually received by respondents, purchasers are obliged to pay additional amounts in excess of the aforesaid catalog prices consisting of c.o.d. charges, parcel post charges, money order charges or other similar extra charges in excess of the advertised catalog price.

7. The merchandise described in respondents' catalog is not unconditionally guaranteed in that respondents impose terms, conditions and limitations to which such claims of guarantee are subject, and the terms of said guarantees are not clearly or conspicuously stated in said catalog.

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

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

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

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

DECISION AND ORDER

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

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

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

1. Respondents Holiday Uniform Company, Inc., and Town & Country Fashion Designers, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their principal office and place of business located at 519 Fulton Street, Brooklyn, New York.

Respondent Warren J. Lewis is an officer of said corporations and his address is the same as that of said corporations. He also does business as an individual trading as Brooklyn Uniform Center and as Universal Uniforms. The principal office and place of business of Brooklyn Uniform Center and the principal office of Universal Uniforms are also located at the aforementioned address. The principal place of business of Universal Uniforms is located at 1200 Hyland Boulevard, New York, New York.

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

ORDER

It is ordered, That respondents Holiday Uniform Company, Inc., a corporation, and Town & Country Fashion Designers, Inc., a corporation, and the officers of each of said corporations, and Warren J. Lewis, individually and as an officer of each of said corporations, and Warren J. Lewis, an individual trading and

doing business as Brooklyn Uniform Center or Universal Uniforms or under any other trade name or names and respondents' agents, representatives and employees, directly or through any corporate or other device in connection with the advertising, offering for sale, sale or distribution of uniforms or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication:

a. That the persons to whom respondents furnish their sales kits have been screened by respondents for reliability or integrity prior to the issuance of such material: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish the truth or accuracy of such representation.

b. That respondents make full refunds to purchasers.

c. That respondents make exchanges or adjustments in the event of dissatisfaction of the purchaser unless the terms and conditions under which such exchanges or adjustments will be made are clearly and conspicuously disclosed in immediate conjunction therewith.

d. That persons displaying respondents' sales kit or any other of respondents' representatives will make personal delivery to prospective purchasers or purchasers of respondents' products.

e. That purchasers of respondents' merchandise can be assured safe and prompt delivery or delivery within a specified time.

f. That respondents give complimentary or free merchandise as an inducement for the purchase of respondents' products.

g. That any stated price amount constitutes the full purchase price of an article when there are additional charges of any nature added thereto; or failing, clearly and conspicuously to reveal in all promotional material the kind and amount of any charges, however imposed, in addition to any purported selling price.

h. That any of respondents' products are guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in immediate conjunction with such representation.

2. Conducting, or causing to be conducted, any direct sales program without disclosing in sales catalogs and any other sales material shown to prospective purchasers, and, on the front of order forms or receipts given to or shown to customers, clearly and of such conspicuousness as likely to be observed and read by purchasers and prospective purchasers:

a. That respondents take no responsibility whatever for cash deposits, or payments in full or in part, paid to their salesmen.

b. That in the event the ordered merchandise is not delivered, the customer must obtain any and all refunds from the salesmen and not respondents.

3. Placing in the hands of dealers or others means and instrumentalities by and through which they may mislead or deceive the purchasing public in the manner or as to the things hereinabove prohibited.

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

GOODFRIENDS, INC., ET AL.

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

Docket C-1163. Complaint, Jan. 31, 1967—Decision, Jan. 31, 1967

Consent order requiring an Austin, Tex., department store to cease misbranding, deceptively invoicing, and falsely advertising its 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 Goodfriends, Inc., a corporation, and Nathaniel Goodfriend, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations

promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Goodfriends, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas. Its office and principal place of business is located at 901 Congress Avenue, Austin, Texas.

Respondent Nathaniel Goodfriend is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of said corporation.

Corporate respondent is a department store which retails fur products.

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

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

(a) 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.

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

PAR. 5. Certain of said fur products were misbranded in vio-

lation of Section 4(1) of the Fur Products Labeling Act in that they were falsely and deceptively labeled or otherwise falsely and deceptively identified in that labels affixed to fur products, contained representations, either directly or by implication that the prices of such fur products were reduced from respondents' former prices and the amount of such purported reduction constituted savings to purchasers of respondents' fur products. In truth and in fact, the alleged former prices were fictitious in that they were not actual bona fide prices at which respondents offered the products to the public on a regular basis for a reasonably substantial period of time in the recent regular course of business and the said fur products were not reduced in price as represented and savings were not afforded purchasers of respondents' said fur products, as represented.

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 to show the true animal name of the fur used in the 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 "natural" was not used on invoices to describe fur products which were not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Rule 19(g) of said Rules and Regulations.

PAR. 8. Respondents falsely and deceptively advertised fur products by affixing labels thereto which represented either directly or by implication that prices of such fur products were reduced from respondents' former prices and the purported reductions constituted savings to purchasers of respondents' fur products. In truth and in fact, the alleged former prices were fictitious in that they were not the actual bona fide prices at which respondents offered the fur products to the public on a regular basis for a reasonably substantial period of time in the recent regular course

of business and the said fur products were not reduced in price as represented and the represented savings were not thereby afforded to purchasers, in violation of Section 5(a) (5) of the Fur Products Labeling Act and Rule 44(a) of the Rules and Regulations.

PAR. 9. 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 false and deceptive advertisements, but not limited thereto, were advertisements of respondents which appeared in issues of the Austin American Statesman, a newspaper published in the city of Austin, State of Texas, having a wide circulation in Texas and in other States of the United States.

PAR. 10. In offering fur products for sale in advertisements as aforesaid respondents represented through such statements as "⅓ to ½ off" that prices of fur products offered for sale were reduced in direct proportion to the percentages stated and that the amount of said reduction afforded savings to the purchasers of respondents' products when in fact such prices were not reduced in direct proportion to the percentages stated and the represented savings were not thereby afforded to the said purchasers, in violation of Section 5(a) (5) of the Fur Products Labeling Act.

PAR. 11. 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. 12. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investiga-

tion of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Fur Products Labeling Act; and

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

The Commission, having reason to believe that the respondents have violated said Acts, 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 Goodfriends, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 901 Congress Avenue, in the city of Austin, State of Texas.

Respondent Nathaniel Goodfriend 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 proceding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Goodfriends, Inc., a corporation, and its officers, and Nathaniel Goodfriend, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in com-

merce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

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

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

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

4. Representing, directly or by implication on labels, that any price, whether accompanied or not by descriptive terminology is the respondents' former price of fur products when such amount is in excess of the actual, bona fide price at which respondents sold or offered the fur products for sale to the public on a regular basis for a reasonably substantial period of time in the recent regular course of business or otherwise misrepresenting the price at which the said fur products have been sold or offered for sale by respondents.

5. Misrepresenting in any manner on labels or other means of identification the savings available to purchasers of respondents' products.

6. Falsely or deceptively representing in any manner, directly or by implication, on labels or other means of identification that prices of respondents' fur products are reduced.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed in each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

2. Setting forth information required under Section 5(b)(1) of the Fur Products Labeling Act and the

Rules and Regulations promulgated thereunder in abbreviated form.

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

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

1. Represents, directly or by implication that any price, whether accompanied or not by descriptive terminology, is the respondents' former price of a fur product when such amount is in excess of the actual, bona fide price at which respondents sold or offered such fur products for sale to the public on a regular basis for a reasonably substantial period of time in the recent regular course of business or otherwise misrepresents the price at which the said fur products have been sold or offered for sale by respondents.

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

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

4. Misrepresents directly or by implication through percentage savings claims that prices of fur products are reduced to afford purchasers of respondents' fur products the percentage of savings stated.

D. Making claims and representations of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act unless there are maintained by 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

REPUBLIC CONSTRUCTION COMPANY, INC., ET AL.

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

Docket C-1164. Complaint, Jan. 31, 1967—Decision, Jan. 31, 1967

Order requiring a Fern Park, Fla., distributor of residential aluminum siding and roofing to cease using false pricing and savings claims and other misrepresentations to sell its products.

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 Republic Construction Company, Inc., a corporation, and Lester Mossman and Irving Kaplow, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Republic Construction Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at Routes 17 and 92 in the city of Fern Park, in the State of Florida.

Respondents Lester Mossman and Irving Kaplow are officers of corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of residential aluminum siding to the general public.

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

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their products, respondents have, by statements and representations in advertisements in various publications, in direct mail advertising, and in verbal statements to prospective purchasers by respondents or their salesmen or representatives, represented, directly or by implication, that:

1. Respondents' products are being offered for sale at special or reduced prices, and that savings are thereby afforded purchasers from respondents' regular prices.

2. Homes of prospective purchasers had been specially selected as model homes for the installation of the respondents' products; after installation such homes would be used as points of reference or demonstration by respondents; and as a result of allowing their homes to be used as models, purchasers would receive enough commissions to enable them to obtain respondents' products at little or no cost.

3. Purchasers of respondents' products would receive enough commissions for providing referrals who subsequently bought respondents' products to enable them to obtain respondents' products at little or no cost.

4. Respondents' salesmen or representatives are representatives or agents of the Kaiser Aluminum and Chemical Corporation thereby implying that purchasers would be dealing directly with the manufacturer.

PAR. 5. In truth and in fact:

1. Respondents' products are not offered at special or reduced prices and savings are not granted respondents' customers because of a reduction from respondents' regular selling price; in fact, respondents do not have a regular selling price but the prices at which respondents' products are sold vary from customer to customer depending on the resistance of the prospective customer.

2. Homes of prospective purchasers are not specially selected as model homes for the installation of respondents' products; after installation such homes are not used for demonstration or advertising purposes by respondents; and few, if any, purchasers received enough, if any, commissions to enable them to obtain respondents' products at little or no cost.

3. Few, if any, purchasers of respondents' products received enough, if any, commissions from referrals who subsequently purchased respondents' products to enable them to obtain respondents' products at little or no cost.

4. Respondents' salesmen or representatives are not represent-

atives or agents of the Kaiser Aluminum and Chemical Corporation and purchasers do not deal directly with the manufacturers of such products but with respondents.

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

PAR. 6. In the conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of residential aluminum siding of the same general kind and nature as that sold by respondents.

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

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and 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 Republic Construction Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at Routes 17 and 92, in the city of Fern Park, State of Florida.

Respondents Lester Mossman and Irving Kaplow are officers of said corporation and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Republic Construction Company, Inc., a corporation, and its officers, and Lester Mossman and Irving Kaplow, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of residential aluminum siding, roofing, or other products and services, 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. Any price for respondents' products is a special or reduced price, unless such price constitutes a significant reduction from an established selling price at which such products have been sold in substantial quantities by respondents in the recent, regular course of their business; or misrepresenting, in any manner, the savings available to purchasers.

2. The home of any of respondents' customers or prospective customers has been selected to be used or will be used as a model home or otherwise for advertising purposes; or that any commission is given by respondents to purchasers in return for permitting the premises in which respondents' products are to be installed, to be used for model homes or demonstration purposes.

3. Any commission is given by respondents to purchasers of respondents' products for referrals who subsequently purchased respondents' products.

4. Respondents' salesmen or representatives are represent-

atives of the Kaiser Aluminum and Chemical Corporation or that purchasers are or will be dealing directly with the manufacturer; or misrepresenting in any manner, the status or affiliation of respondents' salesmen or the manufacturer or the source of any of respondents' products.

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

IN THE MATTER OF

THE FIRESTONE TIRE & RUBBER COMPANY ET AL.

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

Docket 6487. Complaint, Mar. 9, 1961—Decision, Feb. 6, 1967

Order modifying a cease and desist order of March 9, 1961, 58 F.T.C. 371, against a major tire company and a major oil company, pursuant to a decision of the U.S. Court of Appeals, Fifth Circuit, 360 F. 2d 470, April 18, 1966, by eliminating two paragraphs of the order dealing with overt coercion of dealers.

ORDER MODIFYING ORDER TO CEASE AND DESIST

Respondents having filed in the United States Court of Appeals for the Fifth Circuit petitions to review and set aside the order to cease and desist issued herein on March 9, 1961 [58 F.T.C. 371]; and that court on April 18, 1966 [8 S.&D. 145], having rendered its opinion and judgment affirming and directing enforcement of the order, except for numbered paragraphs 5 and 6 of that portion directed against Shell Oil Company, which portion it did not approve or affirm; and the United States Supreme Court on January 9, 1967, having denied petitions filed by respondents for writs of certiorari to the court of appeals for review of said judgment [385 U.S. 1002]; and the court of appeals on January 19, 1967, having issued its mandate affirming and enforcing in part and reversing in part the order of the Commission in accordance with the court of appeals' opinion of April 18, 1966;

Now, therefore, it is hereby ordered, That the aforesaid order to cease and desist be, and it hereby is, modified by deleting numbered paragraphs 5 and 6 of that portion of the order directed against Shell Oil Company.

It is further ordered, That respondents, The Firestone Tire & Rubber Company, a corporation, and Shell Oil Company, a corporation, shall within sixty (60) days after service upon them of this order, file with the Commission reports in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

NATIONAL CHINCHILLA GUILD, INCORPORATED, ET AL.

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

Docket C–1165. Complaint, Feb. 6, 1967—Decision, Feb. 6, 1967

Consent order requiring a Prairie Village, Kansas, distributor of chinchilla breeding stock to cease misrepresenting the profits to be made from home breeding of chinchillas, their rate of reproduction, and making other false claims.

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 National Chinchilla Guild, Incorporated, a corporation, and Robert E. Bouckhout, 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 National Chinchilla Guild, Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kansas, with its principal office and place of business located at 20 On The Mall, Prairie Village, Kansas.

Respondent Robert E. Bouckhout is an individual and an officer of National Chinchilla Guild, Incorporated. 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 advertising, offering for sale, sale and distribution of chinchilla breeding stock to the public.

PAR. 3. In the course and conduct of their aforesaid business, respondents now cause, and for some time last past have caused, their said chinchillas, when sold, to be shipped from their principal source of supply in Vancouver, State of Washington, for delivery by them to customers in Missouri and Kansas, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said chinchillas in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the sale of their chinchillas, the respondents make numerous statements and representations in direct mail advertising and through the oral statements and display of promotional material to prospective purchasers by salesmen, with respect to the breeding of chinchillas in the home for profit and without previous experience, the rate of reproduction of said animals, the expected income from the sale of their pelts, their freedom from disease, the quality of said animals, the providing of a priming, pelting and marketing service, the buying back of animals from dissatisfied purchasers, their guaranty and the status of their organization.

Typical and illustrative but not all inclusive of the statements made in respondents' direct mail advertising and promotional literature are the following:

We've found the answer to financial problems for hundreds of City People and Farmers alike.

If you are interested in making money!!! * * *. Return this card Right Now * * * to have a brochure with additional information on the Guild's method of Chinchilla production.

* * * additional annual income of: (ck one)

$2,500 ——— $5,000 ——— $7,500 ——— $10,000 ——— $15,000 ———

* * * raising quality chinchillas
* * * thousands of dollars a year

IN * * * SPARE TIME. Turn extra room into income for Education, Travel, Retirement.

PROFIT IS HIGH

Quality pelts are valued at $20—$55 * * *
* * * even if you have no experience.

* * * * * * *

STARTING WITH 3 SELECT QUALITY FEMALES, 1 MALE

[the fourth year and on]

YOUR 81 FEMALES PRODUCE * * * 324 OFFSPRING YEARLY * * * AT $30 AVERAGE PER PELT:

THAT'S $9,720. A YEAR!

* * * * * * *

CHINCHILLA PRODUCTION:

* * * 4 Young per year, per female
(2 per litter, 2 litters a year)

CHINCHILLA PELT PRICE:

* * * thirty dollars ($30) is * * * an average selling price for a GOOD QUALITY chinchilla pelt.

* * * select quality chinchillas
* * * select quality breeding stock

THE CHINCHILLA GUILD PLAN "B"

(With three year warranty to live and produce as outlined in the Code of Ethics)

PAR. 5. By and through the use of said statements and representations made by respondents in advertising, promotional material and in oral representations made by their salesmen, and others of similar import and meaning but not expressly set out herein, respondents represent, directly or indirectly, that:

1. It is practicable to raise chinchillas in the home and large profits can be made in this manner.

2. The breeding of chinchillas for profit requires no previous knowledge or experience.

3. Chinchillas are not susceptible to diseases.

4. Chinchilla breeding stock sold by respondents is select or choice quality.

5. The breeding stock of three female chinchillas and one male chinchilla purchased from respondents will result in live offspring as follows: 12 the first year, 36 the second year, 108 the third year and 324 the fourth year.

6. All of the offspring referred to in 5 will have good quality pelts selling for the average price of $30 per pelt.

7. A purchaser starting with three females and one male of respondents' chinchilla breeding stock will have a gross income of $9,720 from the sale of pelts in the fourth year.

8. Each female chinchilla purchased from respondents and each female offspring will produce at least four live young per year.

9. Respondents will buy back chinchilla breeding stock if the purchaser is not satisfied.

10. Respondents provide a local priming, pelting and marketing facility.

11. Chinchilla breeding stock purchased from respondents is

unconditionally warranted in writing to live and reproduce for three years.

12. Respondent corporation is a "guild" or association formed for the mutual aid and protection of purchasers of respondents' chinchilla breeding stock.

PAR. 6. In truth and in fact:

1. It is not practicable to raise chinchillas in the home and large profits cannot be made in such manner.

2. The breeding of chinchillas for profit requires specialized knowledge in the feeding, care and breeding of said animals, much of which must be acquired through actual experience.

3. Domesticated chinchillas are susceptible to pneumonia and other diseases.

4. Chinchilla breeding stock sold by respondents is not select or choice quality.

5. The initial chinchilla breeding stock of three females and one male purchased from respondents will not result in the number specified since these figures do not allow for factors which reduce chinchilla production, such as those born dead or which die after birth, the culls which are unfit for reproduction, fur chewers, and sterile animals.

6. All of the offspring referred to in subparagraph 5, Paragraph Five above will not produce good quality pelts; and the average price of pelts produced by offspring of breeding stock sold by respondents is not $30 but substantially less than that amount.

7. A purchaser starting with three females and one male of respondents' breeding stock will not have a gross income of $9,720 from ths sale of pelts in the fourth year but substantially less than that amount.

8. Each female chinchilla purchased from respondents and each female offspring will not produce as many as four live young per year but generally less than that number.

9. Respondents do not buy back breeding stock if the purchaser is not satisfied.

10. Respondents do not provide a local priming, pelting or marketing facility.

11. Chinchilla breeding stock purchased from respondents is not unconditionally warranted to live and reproduce for three years. Respondents guarantee breeding stock originally purchased for three years against fatalities only and replacement is made only upon payment of 25% of the original price and if the carcass is frozen and returned in good condition to the company.

12. Respondent company is not a guild or association formed for the mutual aid and protection of purchasers of respondents' chinchilla breeding stock but is a corporation formed for the purpose of selling chinchilla breeding stock for respondents' own profit.

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

PAR. 7. In the course and conduct of their business, at all times mentioned herein, respondents have been in substantial competition in commerce, with corporations, firms, and individuals in the sale of chinchilla breeding stock.

PAR. 8. 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 members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' chinchillas by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of the respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent National Chinchilla Guild, Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kansas, with its office and principal place of business located at 20 On the Mall, Prairie Village, Kansas.

Respondent Robert E. Bouckhout 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 National Chinchilla Guild, Incorporated, a corporation, and its officers, and Robert E. Bouckhout, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of chinchilla breeding stock in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that:

1. It is practicable to raise chinchillas in the home or that large profits can be made in this manner.

2. Breeding chinchillas for profit can be achieved without previous knowledge or experience in the feeding, care and breeding of such animals.

3. Chinchillas are not subject to diseases.

4. Chinchilla breeding stock sold by respondents is select or choice quality.

5. The initial chinchilla breeding stock of three females and one male purchased from respondents will produce live offspring of 12 the first year, 36 the second year, 108 the third year or 324 the fourth year; or that

they will produce live offspring in any number in excess of the number of live offspring generally produced by chinchilla breeding stock purchased from respondents, and their offspring.

6. All of the offspring of chinchilla breeding stock purchased from respondents will produce good quality pelts selling for the average price of $30 per pelt; or representing that a purchaser of respondents' breeding stock will receive for chinchilla pelts any amount in excess of the amount usually received for pelts produced by chinchillas purchased from respondents, or their offspring.

7. A purchaser starting with three females and one male of respondents' breeding stock will have from the sale of pelts a gross income of $9,720 in the fourth year after purchase, or that the earnings or profits from the sale of pelts is any amount in excess of the amount generally earned by purchasers of respondents' chinchilla breeding stock.

8. Each female chinchilla purchased from respondents and each female offspring will produce at least four live young per year; or that the number of live offspring per female is any number in excess of the number generally produced by females purchased from respondents or their offspring.

9. Respondents will buy back chinchillas from purchasers who are dissatisfied with their purchases.

10. Respondents provide a local priming, pelting or marketing facility.

11. Breeding stock purchased from respondents is guaranteed without disclosing the terms and conditions of such guarantee.

B. Using the word "guild" or any other word of similar import or meaning as part of respondents' trade or corporate name, or misrepresenting in any other manner the nature or status of respondents' business.

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.