It is further ordered. That Count II and Count III of the complaint be, and they hereby are, dismissed.

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

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

Commissioner Elman dissented. Commissioner MacIntyre concurred in part and dissented in part. Commissioner Jones concurred in part and dissented in part.

IN THE MATTER OF

CROWN CENTRAL PETROLEUM CORPORATION

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

Docket 8539. Complaint, Oct. 19, 1962—Decision, June 30, 1967.

Order dismissing complaint which charged a Baltimore, Md., petroleum company with fixing prices of gasoline at retail and suppressing competition by selling below cost to certain dealers.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, (U.S.C., Title 15, Sec. 45), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Crown Central Petroleum Corporation, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of Section 5 of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges with respect thereto as follows:

COUNT I

PARAGRAPH 1. Respondent Crown Central Petroleum Corporation 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 the American Building, Baltimore 3, Maryland.

PAR. 2. Respondent is now, and for several years last past, has been, among other things, engaged in the offering for sale, sale and distribution of gasoline and other petroleum products in a thirteen State area including the States of Connecticut, New York, New Jersey, Pennsylvania, Maryland, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Alabama, Florida and Texas. Said gasoline is offered for sale, and sold under the brand names of "Crown Gold" and "Crown Silver." Respondent comprises an integrated unit in the petroleum industry. It is engaged in the acquisition, development and exploitation of oil and other petroleum products as well as the purchase, sale and transportation of crude oil, and the refining of crude oil and its derivatives, and the subsequent marketing at wholesale and retail of the products of its refinery in the hereinabove named States of the United States. Respondent has a refinery in Houston, Texas. It also owns and operates pipe lines, terminals and bulk plants for the transportation, distribution, offering for sale and sale of its gasoline and other products to service station dealers. In 1961 its gross sales of petroleum products totaled $66,410,463.

PAR. 3. In the delivery and sale of its gasoline to its various marketing outlets located in the aforementioned States, respondent ships or otherwise transports its gasoline and other petroleum products from its refinery located in Houston, Texas, to bulk stations and other distributing points across State lines, from which said gasolines are distributed to service stations, dealers and other customers located in the various States in which it does business. Accordingly, respondent is now, and has been at all times mentioned herein, engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in the shipment and transportation of such gasoline between respondent's refinery, terminals and distribution points, its bulk storage plants and said wholesalers, jobbers and retail dealers purchasing said gasoline in the 13-State area. All of such purchases by wholesalers, jobbers and retail dealers in these States are and have been in the course of such commerce.

PAR. 4. Respondent has been and is now marketing its refined petroleum products, including gasoline, through a number of retail outlets, located in Baltimore, Maryland, among other areas, by the medium of contracts or lease agreements under the terms of which respondent agrees to sell and deliver and dealers agree to buy all of their requirements of gasoline from respondent. A

substantial number of these retail outlets are operated by independent businessmen, or those who would be such in the absence of the power and control exercised over them by respondent, who lease or sublease their service station properties from respondent and have entered into the aforementioned supply contracts for gasoline and certain other requirements wtih respondent.

In addition, respondent owns or operates through agents or representatives a number of retail service station outlets in Baltimore, Maryland, which are commonly known or referred to as "commission" stations.

PAR. 5. Except to the extent that competition has been hindered, frustrated, lessened and eliminated as set forth in this complaint, respondent has been and now is in substantial competition with other corporations, firms, partnerships and individuals engaged in the sale and distribution of gasoline in "commerce" as that term is defined in the Federal Trade Commission Act.

PAR. 6. It is now and has been for some time past the practice and policy of Crown Central Petroleum Corporation to enter into certain agreements, arrangements and understandings with various of its marketing outlets, located in the areas within which it does business including Baltimore, Maryland, whereby respondent, under the guise and pretext of giving assistance to said outlets, can and does establish control, manipulate or fix the retail price at which its gasoline is sold to motorists and others of the consuming public.

For example, commencing on or about June 12, 1962, Crown Central Petroleum Corporation initiated, adopted and directed the placing into effect of a policy or plan under which all of its retail dealer outlets, including both its own commission stations and those operated by independent lessee-dealers, in Baltimore, Maryland, would sell the "Crown Silver" brand of gasoline to consumers at a posted pump price of 17.9¢ per gallon. Under said pricing plan or policy, respondent offered to give and did grant price allowances of 12.5¢ per gallon to those of its said retail outlets selling "Crown Silver" gasoline to consumers at a posted retail pump price of 17.9¢ per gallon. By about 5:30 p.m. of June 12, 1962, almost all stations in the Baltimore City area were posting the said 17.9¢ per gallon retail price. By 7 p.m. of the same day all stations in the Baltimore City area had been contacted by respondent and the 17.9¢ per gallon retail price was in effect.

By means of various provisions in the leases, subleases and

supply contracts, including riders applicable thereto, and through a system of policing the business operations of the said independent lessee-dealers, the respondent is able to and does, to a substantial extent and degree, dominate and control the manner in which said lessee-dealers operate the service stations. The power resident in respondent through such domination and control is exercised, exerted and used by respondent to persuade, influence, coerce and induce said independent lessee-dealers to abide by, agree to, adhere to, follow or acquiesce in, various plans, policies or methods of doing business which may be suggested by respondent or which respondent may desire or elect to place in effect and operation, including the pricing policy or plan herein set forth. At all times the independent lessee-dealer is conscious and aware of the power of respondent and is influenced and persuaded by the presence of such power in the everyday decisions made by him in the conduct of his business.

As a result of the exercise of such power or the threat of the use thereof, respondent has caused its independent lessee-dealers to enter into or acquiesce in a course of dealing, cooperation, understanding, combination and planned common course of action, with respondent whereby the retail price at which gasoline was sold or offered for sale to the purchasing public at retail stations operated by the said lessee-dealers was and is fixed and maintained.

PAR. 7. This alleged unlawful planned common course of action, combination, agreement, understanding or course of dealing is singularly unfair, oppressive and to the prejudice of the public, and respondent's competitors and retailers of gasoline in the Baltimore, Maryland, area and other areas, and has a dangerous tendency to unduly restrain, hinder, suppress and eliminate competition between and among respondent's retail dealers and others, in the sale and distribution of gasoline in commerce within the meaning of the Federal Trade Commission Act, and constitutes an unfair method of competition and an unfair act and practice within the intent and meaning of Section 5 of the Federal Trade Commission Act.

COUNT II

PAR. 8. All of the allegations of Paragraphs One through Five of Count I of this complaint are hereby adopted and incorporated herein by reference and made a part of this Count II the same as if they were repeated herein verbatim.

PAR. 9. In the course and conduct of its business in commerce,

respondent offered to sell and deliver and has delivered and sold its gasoline at below cost prices with the intent and purpose, or under circumstances where the effect may be, to injure, restrain, suppress, or destroy competition in the sale of gasoline within the area of Baltimore, Maryland.

Pursuant to a policy or plan initiated, established and placed into effect on June 12, 1962, as alleged in Paragraph 6 of Count I, respondent offered to deliver and sell and has delivered, offered for sale and sold its gasoline to retail outlets located in Baltimore, Maryland, at a price of 3.4¢ per gallon while selling its gasoline of the same grade to other retail outlets in other areas at substantially higher prices.

The 3.4¢ per gallon price was below respondent's costs of producing, refining, distributing and selling such gasoline, and sales at such price were made for the purpose and with the intent or under circumstances where the effect may be as aforesaid.

PAR. 10. The effect and result of the pricing practice of respondent, as alleged in Paragraph Nine hereof, has been or may be to substantially lessen competition in the distribution and sale of gasoline, to the injury and prejudice of the public, and to the injury and prejudice of respondent's competitors, as aforesaid; and such pricing practice constitutes an unfair method of competition and an unfair act and practice in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Mr. Anthony Zabiegalski and *Mr. Harold Brandt* for the Commission.

Bergson & Borkland, by *Mr. Herbert Borkland, Mr. Howard Adler, Jr.*, and *Mr. James H. Kelley* of Washington, D.C.; with *Mr. Richard F. Cadigan*, of Baltimore, Md., for respondent.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

MARCH 17, 1964

Preliminary Statement

On October 19, 1962, the Federal Trade Commission issued its complaint against Crown Central Petroleum Corporation, a corporation (hereinafter called respondent or Crown), charging it with price fixing and selling below cost in violation of Section 5 of the Federal Trade Commission Act (hereinafter called the Act), 15 U.S.C. 41, *et seq.* Copies of said complaint together with a notice of hearing were duly served on Crown. Count I

of the complaint alleges in substance that Crown entered into a resale price fixing agreement and combination with its retail dealers in violation of Section 5. The second count charges Crown with selling below cost in violation of Section 5.

Respondent appeared by counsel and filed answer admitting the corporate and certain other factual allegations of the complaint but denying the commerce allegations and all of the alleged violations. Pursuant to notice, prehearing conferences and hearings were held at various times and places before the undersigned hearing examiner duly designated by the Commission to hear this proceeding.

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

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

FINDINGS OF FACT

I. *Corporate Organization*

Crown is a Maryland corporation with its principal office and place of business located at the American Building, Baltimore 3, Maryland (Answer).

II. *Interstate Commerce and Competition*

Crown is now and for several years last past has been, among other things, engaged in the offering for sale, sale and distribution of gasoline and other petroleum products in a 13-State area, including the States of Connecticut, New York, New Jersey, Pennsylvania, Maryland, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Alabama, Florida and Texas (Answer). Crown offers for sale, sells and has sold gasoline under the brand names of "Crown Gold" and "Crown Silver" in the States of Connecticut, New Jersey, New York, Maryland,

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

North Carolina, South Carolina, Pennsylvania, Texas, Virginia and West Virginia, and unbranded gasoline at wholesale in the above-mentioned thirteen States (Answer; CX 2A; RX 39).[2]

Crown is engaged in the acquisition and development of, and exploration for, oil producing properties and the production, purchase, sale and transportation of crude oil, the refining of crude oil and its derivatives, and the subsequent marketing of such refinery products (Answer). Crown has a refinery at Houston, Texas (Answer). It also owns and operates pipelines, terminals and bulk plants for the transportation, distribution and sale of its gasoline and other products to purchasers thereof, including service station dealers (Answer). An integrated unit in the petroleum industry consists of one engaged in the production, refining, transportation and marketing of petroleum products (Tr. 727; 1381). Thus Crown comprises an integrated unit in the petroleum industry (CX 1 B; CX 2A; CX 4 B–H; CX 1078). In 1961 Crown's gross operating income was $66,410,463 (Answer), with gross sales of petroleum products approximately $63,000,000 (CX 49).

In the delivery and sale of its gasoline to its various marketing outlets, Crown ships or otherwise transports its gasoline and other petroleum products from its Houston, Texas refinery across State lines to bulk stations and other distributing points, from which said gasolines are distributed to service stations, dealers or other customers (Answer). In the shipment, transportation and sale of gasoline from its refinery, terminals, bulk storage plants and other distribution points to said wholesalers, jobbers or retail dealers in the aforesaid States, Crown is now and at all times mentioned herein has been engaged in commerce within the meaning of the Act. Although Crown denies that it is engaged in commerce and that its sales to retail dealers (with which both counts of the complaint are concerned) are in commerce, the contrary is too well established to require extended discussion.[3]

In the course and conduct of such business, Crown has been and now is in substantial competition in commerce with others likewise engaged in the sale and distribution of gasoline in commerce within the meaning of the Act, including such fully integrated companies as Sun, Gulf, Humble, American, Shell,

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[2] The following abbreviations are used throughout this decision: CX (Commission exhibit); RX (Respondent exhibit); Tr. (transcript); CPF (Commission proposed finding); RPF (Respondent proposed finding).

[3] *Standard Oil Co.* v. *F.T.C.*, 340 U.S. 231 (1951); *Sun Oil Company*, 63 F.T.C. 1371, D.N. 6934 (1963), and cases cited therein.

Sinclair, Texaco and Cities Service (Answer; CX 1588; RX 38; 130–34; National Petroleum News Factbook, Mid-May, 1963, pp. 64–69 and 76–79, of which pages official notice was taken).

III. *The Unlawful Practices*

A. The Issues

Count I of the complaint alleges a resale price fixing agreement or combination between Crown and its retail dealers in the Baltimore, Maryland area. Count II alleges sales by Crown to said dealers below cost with the intent and purpose, or where the effect may be, to injure, destroy or substantially lessen competition.

B. Resale Price Fixing

Crown has been and now is marketing its refined petroleum products, including gasoline, in part through a number of retail outlets located, among other areas, in Baltimore, Maryland, and has entered into contracts or lease agreements under the terms of which it agrees to sell and deliver and the dealers agree to buy all of their requirements of gasoline at said outlets from Crown, and which require the purchase of specified minimum annual quantities (Answer; CX 5 A; CX 13 A). A substantial number of these retail outlets are operated by independent business men who lease or sublease their service station properties from Crown and have entered into such contracts to purchase gasoline, motor oil and greases from Crown (Answer). In addition, Crown owns or operates through agents or representatives a number of retail service stations in Baltimore, commonly known or referred to as "commission" stations (Answer). Crown in Baltimore also marketed its gasoline through one unbranded retail service station outlet (Tr. 237–40; Tr. 1156–60).

The complaint alleges a resale price fixing agreement or combination between Crown and its dealers, both as the result of actual agreements entered into with its dealers and, independently thereof, as the result of the existence of the aforesaid lease and dealer supply contracts between Crown and its dealers and certain actions by Crown thereunder. The issues, by agreement, are limited to the Baltimore area, Crown's regular brand gasoline, called Crown Silver, and February through June, 1962.

Prior to 1962, the "usual" or "regular" retail pump price for house-brand or regular major brand gasoline had been 30.9 cents per gallon, with the so-called "private" brands selling for 2¢ per

gallon less (Tr. 477, 593, 633, 709, 832). During the first six months of 1962, the Baltimore area experienced a series of gasoline price wars, resulting in substantial declines in the retail price of gasoline (Answer). These price wars were triggered by the introduction in that market of new sub-regular branded gasolines, particularly Gulftane and Sun 190, by major brand operators at pump prices lower than their regular gasolines and equal to the private brands (Answer; Tr. 364, 475, 594, 633, 704).

Crown's tank wagon price to its dealers for regular gasoline throughout this period was 25.9 cents, resulting at "usual" prices in a margin to the dealer of five cents per gallon (CX 137–482). The dealers could not meet prices below 30.9 cents and retain such margin. As a result of the declining pump prices, in order to protect the dealers' gallonage and margin of profit, Crown upon their request from time to time granted them temporary tank wagon price allowances to enable them to meet competition (Answer). On such temporary allowances, to meet the first cent of a reduced pump price the dealer was given only ½ cent, thus reducing his margin of profit to 4½ cents, which margin thereafter remained the same throughout succeeding price reductions (Tr. 336, 850).

Crown's policy and procedure with respect to granting such allowances required a dealer request, a survey of his competitors' prices by a Crown salesman, a recommendation to the Division office for an allowance to "protect" a specific pump price, the transmission thereof by telephone to Mr. Garrison, Crown's Assistant Manager of Marketing, who granted or denied such requests, and his approval thereof. In addition to such oral transmission, the Division office filled out a form, directed to Garrison, listing the dealer's pump price (the price to be protected), his 4.5 cents margin, the prevailing competitive prices, and the recommended allowance, which always equaled the price to be protected less the dealer's margin, subtracted from 25.9 cents, the tank wagon price (Tr. 329–37; 835–47; CX 53–73).

After approval, the Division office notified the salesman, who in turn advised the dealer that he was "protected" at a certain pump price (Tr. 329–31; 518; 544–5; 851). The record clearly establishes that the temporary price allowances were given to "protect" a specific pump price and that the salesmen so advised the dealers (CX 53–73; 46 B; Tr. 288; 331; 544–5; 518; 850).

The dealers were paid the allowances only upon the gasoline they actually sold rather than upon that bought, by means of the salesmen reading their pump meters at the time the allowance

was granted and thereafter periodically. Such readings were recorded on forms by the salesman with the appropriate computations, signed by him and the dealer, and credited by the Crown drivers against subsequent deliveries of gasoline (Tr. 347–9; CX 74–80; CX 586–685). A dealer could not receive any allowance unless he would allow Crown to read his pump meters (CX 47, Tr. 355–6). The record reveals that the dealers receiving allowances could post the protected price or a lower price, but not a higher price (Tr. 288; 324; 331; 518; 545; 550; 556–7).

On June 12, 1962, the prevailing retail price of major brand regular and Crown regular gasoline was 23.9 cents a gallon (Tr. 513; CX 44 D; CX 53–73; CX 89; CX 103; CX 133; RX 2). As a result of the price wars that year, Crown had expended substantial amounts of money because of allowances granted to dealers to support a price and enable them to meet competition (RX 126; Tr. 1280), had lost substantial gallonage because Crown did not act until the prices of others had gone down (RX 129), and the number of closed Crown stations had increased from one in January to five in June (CX 44 D; RX 60 B; RX 70 C). In addition, Crown had experienced a substantial decline in overall gross income (RX 128).

On June 12, 1962, Crown's top management decided to post and protect a retail price of 17.9 cents per gallon, 6 cents below prevailing prices, by placing such price into effect at its commission stations, and giving its independent dealers a 12.5 cent allowance to protect such price, which would continue their margin at 4.5 cents (Answer; CX 46 B; RX 7). This price was substantially below Crown's costs (CX 1078; 1548–49; 1587 A). The avowed purpose was to alleviate Crown's losses (Answer). Just how this action would accomplish such a result is not clear, but apparently the contention is that it might have shocked competitors into realizing the futility of the price war and restoring more normal prices (Tr. 714; 757–8).

About 2 p.m. Crown dropped its price at all commission stations to 17.9 cents and notified all of its dealers, through the salesmen, that a pump price of 17.9 cents would be protected (Answer; Tr. 341; CX 46 B; RX 7). Crown had 44 service stations in Baltimore, of which five were closed and 11, or approximately 28% of those open, were commission stations (CX 34). By about 5:30 p.m., almost all of the dealers were posting 17.9 cents, and by 7 p.m. all dealers contacted were posting 17.9 cents (CX 46 B; Tr. 346; 749). One dealer, who was not contacted and not given the allowance because he would not permit Crown

to read his meters, did not post the 17.9 price (CX 47; Tr. 335–6). The 12.5 cent allowance, and the 17.9 cent pump price, remained in effect until about 2 p.m., June 18 (CX 45 E).

With respect to the June 12 allowance, Mr. Burke, Crown's Baltimore division manager who supervised all of the salesmen, testified that he instructed them to offer each service station operator "a 12.5 cent allowance *in line with their going to a 17.9 price*" (Tr. 359–60; emphasis added). Mr. Newsom, Crown's General Manager of Marketing, who conveyed management's order to Burke on June 12, told Burke to instruct all the salesmen to tell the dealers: "If you will post or go to 17.9¢ a gallon at the pump we will protect that figure" (Tr. 283). Newsom testified that the dealers would get the allowance if they posted 17.9 or less, but not if they posted higher (Tr. 318; 324). Several dealers testified they were required to post the protected price or lower (Tr. 519; 554–57; 567–8), and one said he did not know what the allowance was on June 12 when he posted 17.9 (Tr. 554). Burke said that Crown wanted a 17.9 price sign at every station and if necessary the salesmen were to make the signs themselves on the spot and get them posted (Tr. 341).

It is clear that the allowance of 12.5 cents per gallon was given to dealers to "protect" the 17.9 price and upon condition that they post the 17.9 price, or lower. As found above, the dealers were regularly and on this occasion advised that the allowances were to protect a price, or that a certain price was protected. The allowances were only granted on gasoline sold, and the dealers knew this required the reading of their pump meters by Crown salesmen, which enabled them to ascertain the posted price.

Crown, while admitting the granting of the 12.5 cent allowance to protect a retail price of 17.9 cents and the "recommending" of such price to its dealers, contends that this allowance was unconditional and the dealers were free to do as they chose. In addition to the facts found above demonstrating that this allowance was conditioned upon the dealers posting the 17.9 price or lower, the surrounding circumstances likewise impel such a conclusion.[4] This allowance was not in accord with Crown's established policy, which required a dealer request for help, a survey of his competitors' prices, and an allowance based upon such facts. Here there was no request, no survey, and indeed a known

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[4] It is well established that a price-fixing agreement or conspiracy may be inferred from circumstantial evidence and does not have to be proved by direct evidence. *Interstate Circuit, Inc.* v. *United States*, 306 U.S. 208 (1939); *Theatre Enterprises, Inc.* v. *Paramount*, 346 U.S. 537 (1954).

prevailing higher price of 23.9, with sub-regular and private brands slightly lower. With respect to prior allowances, even though the dealers were told the allowances were to "protect" a price or that they were "protected" at a price, and their meters were read, nevertheless such allowances had been granted upon the dealers' request and a demonstrated need for help to meet competition, and it might be expected, without any conditions attached, that they would post such competitive prices. Here the expectation would be the contrary.

Given an unconditional 12.5 cent allowance, with competitors generally posting 23.9¢, and having been losing ½ cent of their normal margin for six months in order to meet lower prices, the dealers could easily have posted 18.9 (or indeed higher), been substantially below all competition, logically expected a substantial increase in gallonage, and restored their margin to normal or better. Yet all of the dealers given the allowance posted 17.9. While the record establishes, as Crown points out, that the dealers welcomed this allowance with joy (Tr. 315; 345; 720; 862) this does not negate their singular lack of self-interest in failing to restore a normal margin under such fortuitous circumstances.

It is concluded and found that the above found facts, particularly with respect to the allowance of June 12, 1962, demonstrate that Crown and its dealers entered into an agreement, arrangement, understanding, planned common course of action or conspiracy to fix, control and stabilize the retail price at which Crown gasoline was to be sold. That such agreements or arrangements are illegal *per se*, in violation of the Sherman Act, and unfair methods of competition under the Act is well settled.[5]

Counsel supporting the complaint also contend, as the complaint alleges, that the dealers were coerced or caused to agree to fix their retail prices by reason of their lease and dealer equipment and supply contracts with Crown, independently of the above-found facts demonstrating an agreement to fix prices. In this connection, counsel contend such written contracts, coupled with Crown's "policing" of the dealers' operations, gave Crown the power to dominate and control the dealers with such alleged effect. The leases and supply contracts are substantially the same as those used throughout the industry. The lease gives Crown the right to inspect the premises. Either party may cancel upon 5

[5] *Ethyl Gasoline Co.* v. *United States*, 309 U.S. 436 (1940); *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150 (1940); *F.T.C.* v. *Cement Institute*, 333 U.S. 683, 691 (1948); *F.T.C.* v. *Motion Picture Advertising Service Co.*, 344 U.S. 392 (1953).

days written notice (CX 6 A, B). These are customary and usual provisions. As found above, the supply contracts required the dealer to buy his station requirements from Crown, with a specified annual minimum. They ran from year to year, with 90 days termination notice required of the dealer, although Crown could terminate on 10 days notice at any time (CX 7 A and E).

There is no evidence, aside from the method of handling allowances discussed above, which method is unrelated to any of the provisions or requirements of the leases and supply contracts, that Crown in any manner "policed" the operations of the dealers. It was conceded that there was no evidence of actual or threatened coercion by Crown (Prehearing Conference Tr. 80; 95–6). In addition, the record establishes that Crown's dealers were frequently solicited by competing oil companies to transfer their allegiance (Tr. 244; 521).

It is concluded and found that the leases and dealer supply and equipment contracts between Crown and its dealers, and the operation thereof, have not coerced or caused the dealers to enter into price-fixing arrangements with Crown, independently of the actions and agreements with respect to the allowances hereinabove considered.

C. Selling Below Cost

1. *The Facts*

The complaint alleges that the same sales by Crown from June 12 through June 18, 1962, when the dealers were given a 12.5 cent allowance, were below cost with the intent and purpose, or where the effect may be, to injure or substantially lessen competition in violation of the Act. Crown's net tank wagon price, after deduction of the 12.5 cent allowance and the 10 cents Federal and state taxes, was 3.4 cents per gallon (Answer). This was substantially below Crown's costs (CX 1078; 1548–49; 1587 A). During the same period, Crown's net tank wagon prices to dealers in other areas where it operated were substantially higher (CX 45 A–J).

In addition to the major integrated companies above found, Crown was also in competition in Baltimore with a number of unbranded or private brand operators, including Cashin, Joe's, Hudson, Midway, Savon, Scot, Thriftway, Thrifty, and Thompson (CX 53–63; 70; 89; Tr. 461–2; 581; 630–31). Crown, in addition to its sales to its dealers, also made wholesale sales at its Baltimore terminal to various such unbranded or private brand operators (Tr. 737). Crown's regular wholesale price to such unbranded

operators was below its normal tank wagon price of 15.9 cents (less taxes), and from June 12 to June 18, 1962, was 11.3 cents per gallon (Tr. 737; CX 3). This was 7.9 cents higher than the 3.4 cent price to the dealers, and resulted in a net wholesale price, with taxes but not including delivery from terminal costs, of 21.3 cents to such unbranded operators, substantially above the retail price of 17.9 cents being posted by Crown and its dealers.

The drastic retail price reduction of June 12 to 17.9 cents was characterized by Crown officials as "rocking" the market (Tr. 279–81), with the avowed purpose of trying to restore normal prices by shocking competitors into realizing the futility of continued price wars, as found hereinabove. The normal retail or pump price differential between major and unbranded regular gasolines in Baltimore was two cents, as found above, and of course Crown knew that the unbranded operators could not meet the 17.9 price, let alone two cents less, with a terminal wholesale cost of 21.3 cents from Crown or the 20.4 cents prevailing unbranded terminal wholesale price (CX 44 F; 45 F), or even the limited gallonage 17.4 cent terminal wholesale subsidy price of some competitors (CX 45 F). In deciding to adopt the 17.9 cent retail price, Crown officials stated they were indifferent as to what might happen to their unbranded customers (Tr. 281).

Although Crown contends that its action was purely "defensive" (hereinafter considered in more detail), Crown also knew that such sales below cost and the resulting 17.9 cent retail price would, unless met, result in substantially increased sales at its stations (CX 45 E), with a corresponding decline in sales by competitors, particularly private brand operators who traditionally sold at a price two cents lower, and whose operations were geared almost exclusively to price (Tr. 477; 505; 593; 633; 809; 832). Mr. Diwoky, Crown's president, in effect so testified (Tr. 721; 740–41).

Crown argues that it is not a "major" oil company. However, as found above, it is an integrated unit in the petroleum industry, and markets as a major. Unquestionably it is much smaller than the major integrated companies, hereinabove found, with which it competes in Baltimore (CX 1588 A–Z; RX 130–34). On the other hand, it is much larger than the unbranded operators with which it competes in Baltimore, a number of which are intrastate operations (Tr. 490; 578; 628; 640). Whether Crown is or is not a "major" does not appear relevant to the allegations of Count II.

It is undisputed that the sales of all Crown dealers posting the

17.9 cent price from June 12 to June 18 increased substantially, from three to five times the gallonage sold the previous week (CPF 13; RPF 123, RX 129 A–K; CX 45 E). Crown's Baltimore sales returned to normal or less during the following week, and the following month (RX 129 A–K). As found above, Crown's sales in Baltimore in the first five months of 1962 had declined in comparison with 1961 (RX 129 A–K). Crown's 1962 Baltimore sales and Maryland share of the market also declined substantially compared with 1961 (RX 129 A–K; RX 41).

The unbranded or private brand operators in competition with Crown's stations lost substantial gallonage during the six days Crown's 17.9 price remained in effect (Tr. 474; RX 3; Tr. 584; RX 4). As found above, their wholesale cost price, including delivery, exceeded Crown's 17.9 retail price (Tr. 470; 582; 606; 631). Their retail pump prices varied from 20.9 to 21.9 cents per gallon during the period (RX 3; 4; Tr. 475; 610). These prices, 3 to 4 cents above instead of two cents below Crown's price, would necessarily cause a decline in sales. One private brand, Scot, elected to meet Crown's 17.9 price at two of its three stations, at which price it was selling below delivered costs, not including other operational costs (Tr. 631; CX 1544–46). It did so to prevent loss of customers to Crown (Tr. 631). Its gallonage increased (Tr. 632), which of course caused it to lose more money than if it had not.

2. *Intent*

Crown, while conceding that it intentionally sold below cost and posted the 17.9 cent price, argues that its intention or purpose was purely "defensive," in an effort to "rock" the market, shock competitors into restoring more normal prices and obviate its continued losses of both gallonage and income. Even assuming such intention as bona fide, which is subject to some doubt inasmuch as Crown had previously attempted a similar action in Houston with uncertain results (Tr. 279–80; 314), nevertheless, as found above, Crown knew the adverse competitive effect it would have upon private brand competitors. Crown knew that they traditionally sold two cents below the majors and Crown because their operations were geared to price, that their wholesale costs were higher than Crown's intended retail price, that unless they maintained their normal differential or at least met such price Crown's sales would increase and their sales would decline substantially, and that if, conversely, they maintained their

normal differential or met Crown's price they would be selling below cost and at a substantial loss.

A person must be presumed to intend the known and necessary consequence of his actions. As the Supreme Court stated in the *Griffith* [6] case:

> * * * And even if we assume that a specific intent to accomplish that result [the elimination of competition by the use of monopoly power] is absent, he is chargeable in legal contemplation with that purpose since the end result is the necessary and direct consequence of what he did. *United States* v. *Patten, supra,* p. 543.

In addition, both the Supreme Court and the Commission have held that sales below cost warrant an inference of predatory intent. In *Anheuser-Busch,*[7] the Supreme Court said:

> * * * For example, it might be argued that the existence of predatory intent bears upon the likelihood of injury to competition,[21] and that a price reduction below cost tends to establish such an intent. * * * [Footnote omitted.]

In its *Forster* [8] decision, the Commission said:

> [31] Express declarations of predatory intent—such as respondent Hodgkins' statement that "we will put you out of business"—are of course the most convincing evidence of such an intent. Even without such direct evidence, however, predatory intent could have been reasonably inferred from respondents' below-cost selling. *Federal Trade Commission* v. *Anheuser-Busch, Inc.,* 363 U.S. 536, 552 (1960). It is said that such predatory pricing is "foreign to any legitimate commercial competition," *Porto Rican American Tobacco Co.* v. *American Tobacco Co.,* 30 F. 2d 234, 237 (2d Cir. 1929), *cert. denied,* 279 U.S. 858, and that it "inevitably frustrates competition by excluding competitors from the market or deliberately impairing their competitive strength." *Report of the Attorney General's National Committee to Study the Antitrust Laws* 165 (1955).

It is concluded and found that Crown sold below cost with the intent and purpose to injure, restrain, suppress or destroy competition in violation of Section 5 of the Act.

3. *Effect*

Count II of the complaint alternatively pleads predatory intent and probable adverse competitive effect, and, as found above, such intent has been established. However, it is well settled that intent is not a necessary element of a violation of Section 5, or for that matter, of the Clayton Act or Section 1 of the Sherman

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[6] *United States* v. *Griffith,* 334 U.S. 100, 108 (1948).

[7] *Federal Trade Commission* v. *Anheuser-Busch, Inc.,* 363 U.S. 536, 552 (1960).

[8] *Forster Mfg. Co., Inc., et al.,* Docket No. 7207, 62 F.T.C. 852 (1963).

Act. Proof that the sales below cost had a reasonable probability of substantially lessening competition, as alleged, would also, independently of intent, establish a violation of Section 5 of the Act, for the reasons next discussed.

Section 3 of the Robinson-Patman Act [9] makes it a crime to sell at "unreasonably low prices for the purpose of destroying competition or eliminating a competitor." The Supreme Court has held that selling below cost is encompassed within the words "unreasonably low prices." [10] Because Congress has declared such competitive conduct against public policy and indeed a crime, *a fortiori* it would be an unfair method of competition, for the reasons expressed by the Supreme Court in its *Motion Picture Advertising* decision.[11] Moreover, the same incipiency doctrine there relied upon by the Court would appear inapplicable.

Because Section 3 requires a purpose to destroy competition, Crown argues such intent or purpose is required to make selling below cost an unfair method of competition. However, it does not follow that intent is a necessary element under Section 5. It has long been established, even prior to the Federal Trade Commission Act, that sales below cost, absent acceptable business exigencies, are in violation of the Sherman Act.[12] The Supreme Court has delineated the type of business exigency required. In *National Dairy*,[13] the Court said:

> This opinion is not to be construed, however, as holding that every sale below cost constitutes a violation of § 3. Such sales are not condemned when made in furtherance of a legitimate commercial objective, such as the liquidation of excess, obsolete or perishable merchandise, or the need to meet a lawful equally low price of a competitor. 80 Cong. Rec. 6332, 6334; see *Ben Hur Coal Co.* v. *Wells*, 242 F. 2d 481 (C.A. 10th Cir. 1957). Sales below cost in these instances would neither be "unreasonably low" nor made with predatory intent. But sales made below cost without legitimate commercial objective and with specific intent to destroy competition would clearly fall within the prohibitions of § 3.

Of course violations of the Sherman Act are violations of Section 5.[14] Furthermore, incipient acts and practices which, when full blown, would violate the Sherman and Clayton Acts, are un-

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[9] 15 U.S.C. 13a.

[10] *United States* v. *National Dairy Products Corp.*, 372 U.S. 529 (1963).

[11] *F.T.C.* v. *Motion Picture Advertising Service Co.*, 344 U.S. 392, 395 (1953); see also *Fashion Originators Guild* v. *F.T.C.*, 312 U.S. 457 (1941), and *F.T.C.* v. *Beech-Nut Co.*, 257 U.S. 441 (1922).

[12] *Standard Oil Co.* v. *United States*, 221 U.S. 1, 43 (1911); *United States* v. *American Tobacco Co.*, 221 U.S. 106, 160, 182 (1911); *United States* v. *National Dairy Products Corp.*, 372 U.S. 29 (1963).

[13] Footnote 12, *supra*.

[14] *F.T.C.* v. *Cement Institute*, 333 U.S. 683, 691 (1948).

fair methods of competition in violation of Section 5.[15] In addition, since incipient violations of the Clayton Act are violations of Section 5, it would seem that the requisite adverse competitive effect under Section 5 need be no greater than under the Clayton Act., *i.e.*, a reasonable probability of a substantial lessening of competition.

While predatory intent is not a requisite under Section 5 of the Act, where it is found, as here, it tends to make the injury to competition probable. The Supreme Court in *Anheuser-Busch* [16] said:

> * * * For example, it might be argued that *the existence of predatory intent bears upon the likelihood of injury to competition*,[21] and that a price reduction below cost tends to establish such an intent. * * * [Footnote omitted.] (Emphasis added.)

In *Balian*,[17] an area price discrimination case, the Court held:

> * * * Of course, intent is not an essential factor to a § 2(a) violation, although, if the intent to destroy were found to exist, it might tend to render the injury probable.

And in *Forster*,[18] the Commission said:

> * * * However, those events [selling below cost] strongly suggest that respondents, in the formulation of their pricing policies, were motivated by an *intent* to destroy their competitor, Farmington. And, while such a predatory intent is not a necessary element in a price discrimination case, it is certainly relevant in determining whether or not the discriminations in question may have the *effect* of substantially injuring competition. *Federal Trade Commission* v. *Anheuser-Busch, Inc.*, 363 U.S. 536, 552 (1960); *Moore* v. *Mead's Fine Bread Co.*, 348 U.S. 115, 120 (1954); *Atlas Building Products Co.* v. *Diamond Block & Gravel Co.*, 269 F. 2d 950, 956 (10th Cir. 1959), cert. denied, 363 U.S. 843 (1960); *Maryland Baking Co.* v. *Federal Trade Commission*, 243 F. 2d 716, 718 (4th Cir. 1957); *Porto Rican American Tobacco Co.* v. *American Tobacco Co.*, 30 F. 2d 234, 237 (2d Cir. 1929), cert. denied, 279 U.S. 858.

Because of the relatively short duration (six days) of selling below cost, the fact that Crown's sales returned to normal or less thereafter, and the fact that competitors' gallonage and prices returned to normal, Crown argues that its selling below cost had no substantial adverse effect upon competition. While the period was of short duration and the gallonage and monetary losses did not permanently impair competition, this argument overlooks the ob-

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[15] *F.T.C.* v. *Motion Picture Advertising Service Co.*, 344 U.S. 392, 395 (1953).

[16] Footnote 7, *supra*.

[17] *Balian Ice Cream Co.* v. *Arden Farms Co.*, 231 F. 2d 356, 369. See also, *Swift & Co.* v. *United States*, 196 U.S. 375, 396 (1905).

[18] Footnote 8, *supra*.

vious, namely, if continued, it would have driven the private brands out of business. Two private brand operators graphically described the inevitable result of continued selling below cost by Crown as follows:

Mr. Barton (Tr. 505):

Q. Mr. Barton, if a branded operator went below you, if you know, would you have lost business?
A. Yes, If he kept it up long enough, I would probably go broke, bankrupt.
Q. Do you consider Crown a branded operator?
A. Yes.

Mr. Pickett (Tr. 605):

A. How can you stay in business and sell under cost? I haven't found out how to do this yet.

As the Court of Appeals observed in *Atlas Building Products*: "* * *, surely there is no more effective means of lessening competition or creating monopolies than the debilitation of a competitor." [19]

Selling below cost cannot be equated with a price reduction which could be met, albeit with less profit, and thus prevent substantial shifts in market share. While Crown was much smaller than its major competitors, it was much larger than most if not all of its private brand competitors. Under somewhat similar facts in the *Porto Rican Tobacco Co.* case,[20] in connection with a selling below cost charge brought under the price discrimination provisions of the original Clayton Act, where the smaller competitor met the below cost prices at substantial monetary losses but was still in business and did not suffer loss of market share, the Court of Appeals held:

* * * If this competition, resulting in such loss, continued, it is fair to assume that the appellee could not continue in business, and its elimination as a competitor was certain. Thus the appellant's discrimination will substantially lessen competition. * * *

Thus it may be seen that an actual effect, or elimination of a competitor, was not a prerequisite there. That such an actual effect on competition, as distinguished from a reasonable probability thereof, is not required under a Section 5 selling below cost charge was made clear by the Court of Appeals in the *Muller* case,[21] where the Court stated:

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[19] *Atlas Building Prod. Co.* v. *Diamond Block & Gravel Co.*, 269 F. 2d 950 (10th Cir. 1959).
[20] *Porto Rican American Tob. Co.* v. *American Tob. Co.*, 30 F. 2d 234 (2d Cir. 1929).
[21] *E. B. Muller & Co., et al.* v. *Federal Trade Commission*, 142 F. 2d 511, 517 (6th Cir. 1944).

* * * The fact that the sales were not greatly below cost does not aid the petitioners. It was not necessary that the evidence show that Schanzer suffered loss. *Federal Trade Commission* v. *Raladam Co.*, 316 U.S. 149, 152. The purpose of the Federal Trade Commission Act is to prevent potential injury by stopping unfair methods of competition in their incipiency. *Fashion Originators' Guild* v. *Federal Trade Commission*, 312 U.S. 457, 466. * * *

It is concluded and found that the effect of Crown's selling below cost may be substantially to lessen competition in violation of Section 5 of the Act.

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce, and engaged in the above-found acts and practices in the course and conduct of its business in commerce, as "commerce" is defined in the Act.

2. The acts and practices of respondent hereinabove found in Section III B are all to the prejudice and injury of the public and competition, and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of the Act.

3. As a result thereof, substantial injury has been done to competition in commerce.

4. The acts and practices of respondent hereinabove found in Section III C were with the intent and purpose, and under circumstances where the effect may be, substantially to lessen competition, and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of the Act.

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

ORDER

It is ordered, That respondent, Crown Central Petroleum Corporation, a corporation, its officers, directors, agents, representatives, or employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of its gasoline in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, contract or conspiracy with any person or per-

sons not parties hereto, to establish, fix, adopt, maintain, adhere to, or stabilize by any means or method, prices at which its gasoline is to be resold: *Provided, however,* That nothing contained in this section shall be construed to limit or otherwise affect any resale price maintenance contracts which respondent may enter into in conformity with Section 5 of the Federal Trade Commission Act, as amended by the McGuire Act (Public Law 542, 82nd Cong., 2nd Session, approved July 14, 1952).

2. Selling or offering to sell its gasoline at a price less than the cost thereof to respondent with the purpose or intent, or where the effect may be, substantially to lessen competition or tend to create a monopoly in the distribution or sale of gasoline.

ORDER VACATING INITIAL DECISION AND DISMISSING COMPLAINT

This matter having come before the Commission on the appeal of respondents from the hearing examiner's initial decision, and upon briefs and oral argument in support thereof and in opposition thereto; and

The Commission having determined that the initial decision should be vacated and set aside and that the complaint be dismissed:

It is ordered, That the initial decision in this proceeding be, and it hereby is, vacated and set aside.

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

By the Commission, without the concurrence of Commissioner MacIntyre. Commissioner Jones did not participate.

IN THE MATTER OF

SIMON AND SCHUSTER, INC., ET AL.

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

Docket 8594. Complaint, Sept. 6, 1963—Decision, June 30, 1967.

Order dismissing complaint which charged a book publisher, advertising agency, and a physician with making false claims in advertising a book on dieting.

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 Simon and Schuster, Inc., a corporation, and Jason C. Berger, individually and as an officer of said corporation, and Richard L. Grossman, individually, Schwab, Beatty and Porter, Inc., a corporation, and Herman Taller, an individual, 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 Simon and Schuster, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. This respondent has offices and its principal place of business at 630 Fifth Avenue, in the city of New York, State of New York.

Respondent Jason C. Berger, an officer of Simon and Schuster, Inc., actually participates in the formulation, direction and control of the policies, acts and practices of said corporation including the acts and practices hereinafter set forth. His address is 630 Fifth Avenue in the city of New York, State of New York.

Respondent Richard L. Grossman was formerly an officer of Simon and Schuster, Inc., during which time he actively participated in the formulation, direction and control of the policies of said corporation in connection with the acts and practices set forth herein. His address is Valley Stream Road, in the city of Larchmont, State of New York.

Respondent Schwab, Beatty and Porter, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York. This respondent has offices and its principal place of business at 660 Madison Avenue, city of New York, State of New York.

Respondent Herman Taller is an individual, a licensed and practicing physician, whose address is 440 East 57th Street, New York, New York.

PAR. 2. Respondents Simon and Schuster, Inc., and Jason C. Berger are now, and for some time last past have been, engaged in the publication, promotion, sale and distribution of a book entitled "Calories Don't Count" by respondent Herman Taller. These respondents cause said book when sold to be transported from their place of business in the State of New York to pur-

chasers located in various other States of the United States and in the District of Columbia. These respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said book in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent Richard L. Grossman has engaged in the business described herein and has participated in the acts and practices herein described.

Respondent Schwab, Beatty and Porter, Inc., is now, and at all times mentioned herein has been, the advertising agency of respondent Simon and Schuster, Inc., and now prepares and places, and has prepared and placed, for publication the advertising and promotional material, referred to herein, to induce the sale of the aforesaid book, and through such means has promoted the sale and distribution of Safflower Oil Capsules.

PAR. 3. Cove Vitamin and Pharmaceutical, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York.

Harry Bobley, Edward Bobley and Peter M. Bobley are officers of Cove Vitamin and Pharmaceutical, Inc. They each participate in the formulation, direction and control of the policies, acts and practices of said corporation, including the acts and practices hereinafter set forth.

CDC Pharmaceutical Corporation is a corporation organized and existing under and by virtue of the laws of the State of New York. It is a subsidiary of Cove Vitamin and Pharmaceutical, Inc.

Kenneth Beirn is an individual who resides in the city of New York, State of New York.

Cove Vitamin and Pharmaceutical, Inc., CDC Pharmaceutical Corporation, Harry Bobley, Edward Bobley and Peter M. Bobley have been engaged in the promotion, sale and distribution of safflower oil capsules designated "CDC Capsules" and have participated in the acts and practices set forth below. They have caused said capsules when sold to be transported from the place of business in the State of New York to purchasers located in various other States of the United States and in the District of Columbia. They have maintained, at all times material to this complaint, a substantial course of trade in said capsules in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Kenneth Beirn participated in the promotion, sale and distribution of the book entitled "Calories Don't Count" and the

safflower oil capsules designated "CDC Capsules" and has participated in the acts and practices herein described.

PAR. 4. In the course and conduct of the business of jointly promoting, selling and distributing the book "Calories Don't Count" and the safflower oil capsules, "CDC Capsules," all respondents named herein and the corporations and individuals referred to in Paragraph Three herein, at all times mentioned herein, have been in substantial competition, in commerce, with other corporations, firms and individuals in the sale of books and safflower oil capsules.

PAR. 5. In the course and conduct of their businesses, and for the purpose of inducing the purchase in commerce of said book and of safflower oil capsules, respondents and the corporations and individuals named in Paragraph Three herein have made certain statements and representations with respect thereto in said book and in other advertisements inserted in newspapers and magazines, and in other promotional material, having a general circulation throughout the various States of the United States and in the District of Columbia.

PAR. 6. Among and typical, but not all inclusive, of the statements and representations made and appearing in said advertisements and other promotional material disseminated as herein set forth are the following:

News about a revolutionary reducing plan, based on a new biochemical discovery * * *.

UNBELIEVABLE—but true! You need to eat fat if you are to be slim. It isn't how many calories you consume that matters—but what kind of calories. The inclusion of polyunsaturated fatty acids in your diet is the essential step toward loosening the body's long-stored fat. It is the key to your losing only excess fat rather than vital body tissue.

In this just-published book, CALORIES DON'T COUNT, Dr. Herman Taller explains the principles behind this new understanding of the body's chemistry—and tells you in full detail:

1. How to eat three full meals a day and lose weight in the safest way possible.

* * * * * * *

4. How this radical new way of losing weight is linked with a low cholesterol count, better skin condition, and resistance to colds.

5. Why you may eat fried foods every day and keep slim—what kind of fats to fry them in.

After painstaking research he put his program into practice on a group of 93 problem dieters with extraordinary success. Today patients from all over the country come to Dr. Taller for treatment. And his principles have won ever widening interest in the medical field. In the preface to the book he writes:

"The concept this book advances is revolutionary. Perhaps all I need

say in support of my nutrition principle is that it works. It has been tested in medical laboratories and among large numbers of patients. There have been no failures, nor can there be any when the principle is properly applied. For it is based on new knowledge—a medical breakthrough."

* * * * * * *

How this radical way of losing weight is linked to a low cholesterol count, better skin condition and resistance to colds and sinus trouble.

* * * * * * *

CALORIES DON'T COUNT

* * * * * * *

In addition, you must supplement your diet further in unsaturated fats. In all, you should take three ounces of highly unsaturated vegetable oil and eat two ounces of margarine every day * * *.

* * * * * * *

The key substance in vegetable oils is linoleic acid, an essential, unsaturated fatty acid. The oils with the greatest quantity of linoleic acid are most valuable in conquering obesity and in keeping cholesterol level low * * *.

Clearly, safflower oil is the most valuable by far. * * * Safflower oil is becoming more easily available, both in liquid form and in capsules obtainable at drug and department stores or through such mail-order sources as Cove Pharmaceuticals, New York.

PAR. 7. Through the use of said advertisements, and others similar thereto not specifically set out herein, respondents and the corporations and individuals referred to in Paragraph Three herein, have represented, directly and by implication:

1. That the dietary principals expounded in said book are new, that they are based on a new discovery, new knowledge and new understanding, and that they constitute a medical breakthrough;

2. That a person will be able to loosen long-stored fat by the inclusion of polyunsaturated fatty acids in his diet;

3. That the book truthfully reflects an established scientific fact that polyunsaturated fatty acids are essential to an effective reducing diet, and that polyunsaturated fatty acids are more effective in a reducing diet than are other fats;

4. That said book enables a person to improve the condition of his skin and increase his resistance to colds and sinus trouble;

5. That all other reducing programs and principles will cause loss of vital body tissue or are less safe than those set forth in said book;

6. That the book truthfully reflects an established scientific fact that it is necessary for a person to eat fat in order to lose weight;

7. That calories are not important in relation to obesity, and that a person can reduce his body weight, regardless of the number

of calories consumed, by following the principles set forth in the book sold under the title "Calories Don't Count";

8. That Safflower oil capsules will be of substantial value as a part of diet in reducing body weight.

PAR. 8. In truth and in fact:

1. The dietary principles expounded in said book are not new. They are not based upon a new discovery, new knowledge or new understanding and do not constitute a medical breakthrough;

2. A person, by the inclusion of polyunsaturated fatty acids in his diet, will not be able thereby to loosen long-stored fat;

3. It is not an established scientific fact that polyunsaturated fatty acids are essential to an effective reducing diet, or that they are more effective in a reducing diet than are other fats;

4. Said book will not enable a person to improve the condition of his skin or increase his resistance to colds or sinus trouble;

5. Many reducing programs and principles other than those of respondents' and the corporations and individuals referred to in Paragraph Three herein when properly administered, will not cause loss of vital body tissue and are no less safe than the reducing programs and principles of the respondents and the corporations and individuals referred to in Paragraph Three herein.

6. It is not an established scientific fact that it is necessary for a person to eat fat in order to lose weight;

7. Calories are important in their relation to obesity, and the number of calories consumed by the individual is important to, and directly related to, the reduction of his body's weight. Contrary to representations of the respondents and the corporations and individuals referred to in Paragraph Three herein, a person cannot, by following the principles set forth in the book "Calories Don't Count," reduce his body weight without regard to the number of calories consumed;

8. Safflower oil capsules are not of substantial value as a part of a diet in the reduction of body weight.

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

PAR. 9. In the course and conduct of their businesses, the respondents and the corporations and individuals referred to in Paragraph Three herein have entered into understandings, agreements, and planned courses of action to mislead and deceive the public into believing that the reducing plans outlined in said book, including the use of safflower oil capsules, would produce the

results in bringing about reduction in body weight specified and implied through the representations contained in said book. Thus, through their understandings, agreements and planned courses of action, respondents and the corporations and individuals referred to in Paragraph Three herein conceived the scheme to make the book entitled "Calories Don't Count" and advertising material which would promote the sale of safflower oil capsules. In doing so the respondents and the corporations and individuals referred to in Paragraph Three herein and each of them acted to induce members of the public to purchase said book and also to purchase safflower oil capsules in commerce.

Pursuant to the said understandings, agreements, arrangements, planned courses of action, combination and conspiracy and in furtherance thereof respondents and the corporations and individuals referred to in Paragraph Three herein have acted in concert and in cooperation in the performance of the things hereinabove alleged and in order to assist them in the effectuation of their scheme, respondents and the corporations and individuals referred to in Paragraph Three herein performed the following acts and practices:

1. Respondent Herman Taller, the nominal author of "Calories Don't Count," presented a draft of the manuscript of his original version of the aforesaid book to the respondent publisher, Simon and Schuster, Inc. Respondent Berger and his associates concluded that in order to further the schemes of the respondents and the corporations and individuals, the book should be revised by some professional writer. Therefore, arrangements were made with Roger Kahn, a sports writer, to revise the manuscript. When the revision was completed, Mr. Kahn had made substantial contributions to the content of the book. Kahn also conceived the title for the book, "Calories Don't Count."

2. During the period of time that Kahn was rewriting the book, respondents and the corporations devised the scheme to make the book a piece of advertising material which would promote the sale of safflower oil capsules. That was done. Respondents and the corporations and individuals referred to in Paragraph Three herein thereupon embarked upon a joint sales campaign for advertising the book "Calories Don't Count" and of advertising through it the sale and distribution of safflower oil capsules. It was their hope that they would develop, through the advertising contained in the book a market for the safflower oil capsules. In this way it was intended that the owners of Cove Vitamin and

the officials of Simon and Schuster would profit at the expense of deceiving and misleading the public through the misleading and false statements contained in the book.

3. By agreement and general understandings, respondents and the corporations and individuals referred to in Paragraph Three herein made it the primary responsibility of respondent Richard L. Grossman and the advertising agency of respondent Schwab, Beatty and Porter, Inc., to prepare, disseminate and make effective various forms of advertising to induce the sale and distribution of the book "Calories Don't Count," and through it the advertising, sale and distribution of safflower oil capsules.

4. This scheme and planned course of action of respondents and the corporations and individuals referred to in Paragraph Three herein went so much further in deceiving and misleading the public than the original version of the manuscript prepared by respondent Taller that he took the position privately, but did not inform the public, that the portion of the book "Calories Don't Count" which referred to safflower oil capsules was without justification.

5. By arrangement of respondents and the corporations and individuals referred to in Paragraph Three herein CDC Pharmaceutical Corporation planned to, and did, use the title of the book "Calories Don't Count," pictures of its cover, and abstracts from its pages for use in the promotion of safflower oil capsules.

6. Respondents and the corporations and individuals referred to in Paragraph Three herein carried out newspaper campaigns and other advertising and promotional activities promoting the sale of the book "Calories Don't Count" and the sale and distribution of safflower oil capsules.

PAR. 10. Each of the respondents and the corporations and individuals referred to in Paragraph Three herein have acted to promote the dissemination and circulation of false and misleading advertising, including the publication, sale and distribution of the advertising material contained in the book "Calories Don't Count" and the advertising material appearing in newspapers, magazines, counter displays and in other forms, to induce not only the sale and distribution of the book "Calories Don't Count" but also of safflower oil capsules. Among the acts thus committed were those involving the advertising hereinafter alleged.

(1) Two advertisements side by side in New York Times, Sunday, December 17, 1961.

(a) for the book "Calories Don't Count":

Read the book the whole country's talking about CALORIES DON'T COUNT by Dr. Herman Taller.

(b) for "CDC Capsules":

Crash! Go Crash Diets * * *. "Eat and lose weight" says Dr. Herman Taller, prominent N.Y. Physician. A Revolutionary new way to lose pounds, inch by inch, while eating and enjoying three square meals a day supplemented by CDC Capsules * * *.

(2) Counter display pictures bottle of "CDC Capsules" and cover of book "Calories Don't Count":

We've Got It!
CDC
Capsules
Calories Don't Count
Weight Control Program.

PAR. 11. The use by the respondents of the foregoing false, misleading and deceptive statements has had, and now has, the tendency and capacity to mislead and deceive members 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 the aforesaid book and safflower oil capsules by reason thereof.

PAR. 12. The aforesaid acts and practices of respondents, including the aforesaid understanding, agreement, and planned course of action, 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.

Mr. Garland S. Ferguson and *Mr. Richard W. Whitlock* supporting the complaint.

Mr. Selig J. Levitan, for respondents Simon and Schuster, Inc., and *Mr. Jason C. Berger,* as an officer of said corporate respondent; *Mr. Jason C. Berger,* as an individual, *pro se; Mr. Charles Rembar,* for respondent Mr. Richard L. Grossman; *Paul, Weiss, Rifkind, Wharton & Garrison,* for respondent Schwab, Beatty and Porter, Inc.; and *Mr. Emil K. Ellis,* for respondent Mr. Herman Taller, all of New York, N.Y.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER
MAY 27, 1966

STATEMENT OF PROCEEDINGS

The Federal Trade Commission issued its complaint against the above-named respondents on September 6, 1963, charging them with engaging in unfair methods of competition and unfair and deceptive acts and practices, in commerce, in violation of Section 5 of the Federal Trade Commission Act. Said complaint alleges, in substance, that respondents and certain other named corporations and individuals, (a) made false, misleading and deceptive statements and representations in advertisements and other promotional material used in connection with promoting the sale of the publication entitled "Calories Don't Count," and certain safflower oil capsules designated as "CDC Capsules," and (b) entered into understandings, agreements and planned courses of action to mislead and deceive the public in connection with the sale of said publication and capsules. After being served with said complaint, respondents appeared by counsel (except for the individual respondent Berger), and thereafter filed their respective answers denying, in substance, having engaged in the illegal practices charged, and raising certain affirmative defenses in connection therewith, including the defenses that, (a) the activities engaged in by certain of the respondents are protected by the First Amendment to the Constitution of the United States, and (b) this proceeding has become moot by reason of the cessation of the activities complained of prior to the issuance of the complaint herein.

Upon notice duly given, a prehearing conference was held on December 20 and 23, 1963, at New York, New York, before a hearing examiner of the Commission, then assigned to this proceeding. Following said conference a stipulation as to certain of the facts was entered into and signed by counsel supporting the complaint and counsel for all respondents, except respondent Herman Taller. Said stipulation was transmitted to the then hearing examiner on April 30, 1964. Said hearing examiner issued a prehearing order, dated May 4, 1964, defining the principal issues in the case and providing for a stay of all proceedings herein due to the pendency of a criminal proceeding in the United States District Court for the Eastern District of New York against respondent Herman Taller. Such stay was made "subject to motion by any party that the case be set for trial."

The undersigned hearing examiner was substituted as hearing

examiner in this proceeding, in place and stead of the former hearing examiner, by order of the Director of Hearing Examiners, dated December 11, 1964. No hearings were scheduled by the present hearing examiner, based on his understanding that complaint counsel did not desire to proceed to hearing in this proceeding until after the disposition of the criminal proceeding because of the immunity that might be conferred on certain of the witnesses who were expected to testify herein. On March 4, 1966, the undersigned hearing examiner issued an order to show cause why hearings should not be scheduled to begin in the above proceeding at an early date. In response to said order, a series of motions to dismiss the complaint were filed on March 15 and 18, 1966, by all respondents, except respondent Herman Taller who submitted a statement opposing the resumption of hearings herein. Counsel supporting the complaint filed answer, on March 18, 1966, to the order to show cause and to the motions of respondents to dismiss the complaint.

The principal motion to dismiss was filed on behalf of respondent Simon and Schuster, Inc. Said motion requests that this proceeding be dismissed, without prejudice, for the following reasons: (1) Said respondent has neither printed nor advertised the book "Calories Don't Count" since May 1962, has removed said book from the backlist, as well as the current list, of respondent's catalogs since 1964, and said respondent has no intention of printing, advertising or promoting the sale of said book; (2) the exclusive grant to it in the publishing agreement is now subject to termination at will by the author; (3) certain corporations and individuals named in the complaint as being jointly involved with respondents in the sale and promotion of the book and safflower oil capsules have pleaded guilty to certain counts of a criminal indictment filed in the United States District Court for the Eastern District of New York, arising out of the sale and promotion of said capsules, and respondent Herman Taller awaits trial as the only other defendant named in the aforesaid criminal indictment; (4) respondent Simon and Schuster, Inc., has entered into an agreement to merge with another corporation, effective June 30, 1966; and (5) there is no public interest in the resumption of the instant proceeding in view of the foregoing facts and circumstances.

The motions to dismiss filed on behalf of the other respondents, except Herman Taller, adopt the grounds for dismissal set forth in the motion of respondent Simon and Schuster, Inc., and set forth the following additional grounds: (1) Respondent Richard

L. Grossman has not been employed by respondent Simon and Schuster, Inc., since June 1962, has no publishing rights in the book, and has no intention of publishing, promoting or advertising it; (2) respondent Jason C. Berger has not been connected with the sale, advertisement or promotion of the book "Calories Don't Count" since service of a copy of the complaint herein, and has no intention of engaging therein hereafter; and (3) respondent Schwab, Beatty and Porter, Inc., has not caused the book "Calories Don't Count" to be advertised since May 1962, and has no intention of ever advertising such book again. Respondent Herman Taller has filed a statement requesting that this matter not be scheduled for hearing in view of the pendency of the criminal proceeding, in which similar issues are involved.

In the answer filed by them to the order to show cause, complaint counsel state that respondent Herman Taller was indicted on March 11, 1964, by a grand jury in the United States District Court for the Eastern District of New York, on charges of mail fraud, mislabeling in violation of the Federal Food, Drug and Cosmetic Act, and conspiracy in connection with the advertising and sale of the book "Calories Don't Count," and the sale of safflower oil capsules sold under the name of "CDC Capsules." Counsel also state that the three officers of the corporation which manufactured said capsules and which is referred to in Paragraph 3 of the complaint herein, were indicted at the same time. Counsel supporting the complaint express the opinion that the action by the hearing examiner then in charge of this proceeding, in staying any further proceedings herein until the conclusion of the litigation against respondent Taller, was "well taken [since] any further proceeding by the Commission in regards to its litigation against Taller would have raised the grave question of his immunity to the criminal proceedings." Counsel also point out that it was their intention to call as witnesses herein the three officers of the corporations indicted with Taller, and state that such officers would have been unavailable to testify in the Commission proceeding during the pendency of the criminal proceeding. Complaint counsel request that no hearings be scheduled herein while the proceeding against respondent Taller remains pending in the District Court. Counsel advise the examiner that, on the basis of present information, the criminal proceeding against respondent Taller "may be tried sometime in April of 1966."

With respect to the motion to dismiss filed on behalf of respondents other than Taller, complaint counsel state:

Because of the reasons set forth in said motions and in the supporting affidavits, as well as the great lapse of time since the issuance of the complaint in this matter due to the fault of no party to this proceeding, and because of all of the circumstances enumerated herein, counsel supporting the complaint do not oppose the dismissal of the complaint as to said respondents nor in its entirety. It is believed that in consideration of the circumstances, and of the nature of the complaint, if it is dismissed against the moving parties, it should be dismissed as to all respondents. It is further believed that any dismissal should be without prejudice to the Commission to take future corrective action if warranted by the facts.

Ruling on the motions to dismiss was held in abeyance by the undersigned, pending possible disposition of the criminal proceeding against respondent Taller in April. However, the undersigned has been advised by complaint counsel that, according to information recently received from the Assistant United States Attorney for the Eastern District of New York, the criminal proceeding against respondent Taller was not brought to trial in April, and that it appears unlikely such trial will commence prior to the 1966 fall term of court. Accordingly, the examiner has concluded that ruling on said motions to dismiss should not be further deferred.

This matter is now before the examiner for final consideration on the complaint, the answers of respondents, the motions of respondents (other than Taller) to dismiss, and the answer thereto of complaint counsel. It appearing that there is no dispute as to the facts on which respondents base their motions to dismiss, and that complaint counsel do not oppose such motions because of the reasons therein set forth and because of the great lapse of time which has occurred since the issuance of the complaint herein, the undersigned makes the following findings with respect to the facts involved in respondents' motions to dismiss:

FINDINGS

1. The complaint herein, which was issued September 6, 1963, challenges the activities of respondents and certain other corporations and individuals in connection with the publication, promotion, sale and distribution of a book entitled "Calories Don't Count," and the promotion, sale and distribution of certain safflower oil capsules designated as "CDC Capsules."

2. Respondent Simon and Schuster, Inc., has not printed nor advertised for sale the book "Calories Don't Count" since May 1962,* has removed the title of said book from its backlist and

* Among the facts stipulated to in the Stipulation of Facts entered into by all parties except respondent Taller, is the fact that said book was published by Simon and Schuster, Inc., on or about September 27, 1961, and that said respondent has not advertised or promoted the sale of said book since May 20, 1962.

current list in catalogs since 1964, and has no intention of printing, advertising or promoting the sale of said book. The exclusive grant to said respondent in the publishing agreement with the author is now subject to termination at will, and said respondent's corporate existence is expected to terminate June 30, 1966.

3. Respondent Jason C. Berger, an officer of respondent Simon and Schuster, Inc., has not, since the service of the complaint herein, engaged in the sale, advertising or promotion of the book "Calories Don't Count" and does not intend hereafter, in any way, directly or indirectly, to participate or engage therein.

4. Respondent Richard L. Grossman has not been employed by respondent Simon and Schuster, Inc., since June 1962, has no publishing rights in the book "Calories Don't Count" nor any intention of publishing, advertising, or promoting the sale of said book, and has never engaged in the business of selling safflower oil capsules.

5. Respondent Schwab, Beatty and Porter, Inc., has not caused the book "Calories Don't Count" to be advertised since May 1962, and has no intention of ever advertising such book again.

6. The corporations, Cove Vitamin and Pharmaceutical, Inc., and CDC Pharmaceutical Corporation, and/or their officers, Harry Bobley, Edward Bobley and Peter M. Bobley, named in Paragraphs 3 and 4 of the complaint as having engaged in the promotion, sale and distribution of safflower oil capsules designated as "CDC Capsules," and as having participated with respondents in jointly promoting, selling and distributing said capsules and the book "Calories Don't Count," have pleaded guilty to certain counts of an indictment filed in the United States District Court for the Eastern District of New York, relating to the sale, promotion and labeling of safflower oil capsules, and are awaiting sentence therein.

7. Respondent Herman Taller was also indicted in the aforesaid criminal proceeding and is now awaiting trial.

CONCLUSION

In view of the facts above found, the great lapse of time which has occurred since the issuance of the complaint herein, the lack of opposition by counsel supporting the complaint to the motions to dismiss, and the request of counsel supporting complaint that if the complaint is dismissed as to the moving parties, it should be dismissed as to all parties, it is concluded that there is no public interest in the continuance of this proceeding and that the

complaint herein should be dismissed as to all parties, without prejudice to the right of the Commission to take such further corrective action as future events may warrant.

ORDER

It is ordered, That the complaint in the above-entitled proceeding be, and the same hereby is, dismissed, without prejudice to the right of the Commission to take such further corrective action as future events may warrant.

FINAL ORDER

No appeal from the initial decision of the hearing examiner, dismissing the complaint, having been filed, and the Commission having determined that the case should not be placed on its own docket for review and that pursuant to § 3.21 of the Commission's Rules of Practice (effective August 1, 1963), the initial decision should be adopted and issued as the decision of the Commission:

It is ordered, That the initial decision of the hearing examiner shall, on the 30th day of June, 1967, become the decision of the Commission.

IN THE MATTER OF

COLE NATIONAL CORPORATION ET AL.

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

Docket 8701. Complaint, Aug. 4, 1966—Decision, June 30, 1967

Consent order prohibiting a Cleveland, Ohio, wholesaler of replacement keys, key blanks and key duplicating machines from acquiring any competitor for a period of 10 years without prior Commission approval.

COMPLAINT

The Federal Trade Commission, having reason to believe that Cole National Corporation and the Independent Lock Company have violated the provisions of Section 7 of the Clayton Act and Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. §§ 18 and 45(a)(1), by reason of the acquisition of the independ-

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* Order amending complaint, p. 1630 herein.

ent Lock Company by Cole National Corporation, and other acts and practices engaged in by respondents, and that a proceeding in respect thereof would be to the interest of the public, issues this complaint, stating its charges as follows:

I. *DEFINITIONS*

1. For the purposes of this complaint, the following definitions are applicable:

(a) "Key"—a metal instrument which will cause a lock to operate.

(b) "Replacement key"—a duplicate of another key, usually of a key which was originally sold, or otherwise transferred, with the lock which the key operates.

(c) "Key blank"—a milled, cast, and/or stamped piece of metal, which will enter into a lock (in most cases) but will not operate it, and from which a key can be made.

(d) "Key duplicating machine"—(i) a machine which will make a replacement key, or (ii) a device used principally by locksmiths which will produce a key from a given set of numbers or letters.

II. *THE RESPONDENTS*

A. *Cole National Corporation*

2. Respondent Cole National Corporation ("Cole National") is a corporation organized and existing under the laws of the State of Ohio, with its principal office and principal place of business at 5777 Grant Avenue, Cleveland, Ohio.

3. Cole National operates leased key departments located in department stores, in shopping centers and in the stores of major variety and merchandise chains. Through such leased departments, Cole National sells replacement keys to the public.

4. Cole National also sells key blanks to approximately 40,000 retail customers. Such customers include retail chain stores as well as independent retailers.

5. Key blanks sold by Cole National are either manufactured by it or purchased from outside sources. For a number of years, the Independent Lock Company, the acquisition of which is challenged herein, supplied the bulk of Cole National's requirements of key blanks, pursuant to a long-term contract.

6. Cole National designs and manufactures electric key duplicating machines for use in its own leased departments and for distribution to key duplicating departments operated by others.

Most of the major components are purchased from outside sources.

7. In addition to leased key departments, Cole National operates leased optical and shoe repair departments. The company also sells cutlery, key chains and novelty items and manufactures gift and premium merchandise.

8. Cole National's total sales of key blanks and replacement keys amounted to over $6 million in 1963, the year prior to the challenged acquisition. The company's overall sales for the first ten months of that year were $15 million.

9. Cole National is and for many years has been extensively engaged in the purchase, sale and shipment of key blanks and other products across State lines, and it is engaged in "commerce" within the meaning of the Clayton and Federal Trade Commission Acts.

B. *Independent Lock Company*

10. Respondent Independent Lock Company ("Ilco") is a corporation organized and existing under the laws of the commonwealth of Massachusetts, with its principal office and principal place of business at 35 Daniels Street, Fitchburg, Massachusetts.

11. Ilco has for many years sold and distributed to distributors, jobbers and wholesalers (a) key blanks and replacement keys and (b) key duplicating machines.

12. Prior to the acquisition, Ilco also sold and distributed to retailers a substantial number of (a) key blanks and replacement keys and (b) key duplicating machines. Such sales were made, in part, through Ilco's distribution facilities in Baltimore, Philadelphia, Chicago, Boston and elsewhere. Retail customers of Ilco have included chain stores and lessees of key duplicating departments in retail chain stores. In addition, Ilco sold replacement keys to the public through its own retail facilities.

13. Ilco's (a) key blanks and replacement keys and (b) key duplicating machines are sold and distributed in competition with those sold and distributed by Cole National, except to the extent that such competition has been eliminated by the acquisition subject to this complaint.

14. In addition to key blanks, replacement keys and key duplicating machines, Ilco sells principally door locks, locksets, locksmiths' tools and door-controlling devices.

15. In the year prior to acquisition, Ilco's sales of (a) key blanks and replacement keys and (b) key duplicating machines

amounted to $2.5 million. The company's overall sales for the first ten months of that year were more than $13 million.

16. Ilco is and for many years has been extensively engaged in the sale and shipment of key blanks, key duplicating machines and other products across State lines, and it is engaged in "commerce" within the meaning of the Clayton and Federal Trade Commission Acts.

III. *THE ACQUISITION*

17. On or about March 18, 1964, Cole National acquired all the stock of Ilco in exchange for $5,750,000 in cash and 12,500 shares of Cole National common stock. Cole National has since continued to operate Ilco as a subsidiary.

IV. *THE NATURE OF TRADE AND COMMERCE*

A. *Key Blanks and Replacement Keys*

18. Manufacturers of keys, key blanks and replacement keys sold approximately 145 million key blanks and replacement keys, with a value of $13 million, in 1963 and approximately 163 million key blanks and replacement keys, with a value of $15 million, in 1964, exclusive of inter-manufacturer sales. There were approximately 63 such manufacturers who sold key blanks and replacement keys in 1963 and 62 in 1964.

(a) In 1963, the four leading manufacturers accounted for approximately 61% of all key blanks and replacement keys sold by such manufacturers, and the eight leading manufacturers for 79%.

(b) In 1964, the four leading manufacturers accounted for approximately 67% of all key blanks and replacement keys sold by such manufacturers, and the eight leading manufacturers for 82%.

19. Of all manufacturers of keys, key blanks and replacement keys, Ilco and Cole National ranked first and second in sales of key blanks and replacement keys in 1963 with 24% and 20% of total sales, respectively. In 1964, the companies ranked first with a combined share of 43%.

20. With sales of over 19 million key blanks and replacement keys to retailers in 1963, representing approximately 13% of total sales of key blanks and replacement keys by manufacturers in that year, Cole National is a major distributor of key blanks and replacement keys in the United States. With sales of over 4 million key blanks and replacement keys to retailers in 1963, Ilco

was also a major distributor of key blanks and replacement keys in the United States.

21. With sales of over 8 million replacement keys at retail in 1963, representing approximately 6% of total sales of key blanks and replacement keys by manufacturers in that year, Cole National is a major retailer of replacement keys in the United States. Prior to the acquisition, Ilco was also engaged in the sale of replacement keys at retail.

B. *Key Duplicating Machines*

22. Companies that manufacture or assemble key duplicating machines distributed (by sale or otherwise) approximately 10,000 key duplicating machines in 1963 and 21,000 in 1964, exclusive of inter-manufacturer sales. In 1963 and 1964, there were 11 companies and 10 companies, respectively, who manufactured or assembled key duplicating machines.

(a) In 1963, the three leading manufacturers accounted for approximately 91% of all key duplicating machines distributed by such manufacturers, and the six leading manufacturers for 97%.

(b) In 1964, the three leading manufacturers accounted for approximately 95% of all key duplicating machines distributed by such manufacturers, and the six leading manufacturers for 99%.

23. In 1963, Cole National accounted for approximately 24% of all key duplicating machines distributed by companies that manufacture or assemble such machines, and Ilco accounted for approximately 30%. Their combined share was approximately 60% in 1964.

V. *BACKGROUND OF VIOLATIONS AND VIOLATIONS CHARGED*

A. *Background*

24. The continuing relationship between Cole National and Ilco began in 1949. At that time, Ilco acquired a 50% interest in Cole National (then doing business as National Key Shops, Inc.). On August 29, 1957, Ilco sold back to Cole National (then doing business as National Key Company) its 50% interest in Cole National.

B. *Violations*

25. The effects of Cole National's acquisition of all the capital stock of Ilco may be substantially to lessen competition or to tend

to create a monopoly in the United States, in violation of Section 7 of the Clayton Act and in violation of Section 5 of the Federal Trade Commission Act, in the following ways, among others:

(a) Competition in the manufacture and sale of key blanks and replacement keys has been eliminated or prevented between Cole National and Ilco;

(b) Competition in the manufacture and distribution of key duplicating machines has been eliminated or prevented between Cole National and Ilco;

(c) Cole National, a major competitive factor in the key blank and key duplicating machine industries, has by merger eliminated the independent competition of Ilco, also a major factor in those industries;

(d) Already high concentration levels in the manufacture, sale and distribution of (i) key blanks and replacement keys and (ii) key duplicating machines may be substantially increased and the possibility of deconcentration lessened;

(e) The restraining influence upon non-competitive behavior in the various sectors of the manufacture, sale and distribution of key blanks, replacement keys and key duplicating machines, which existed by reason of the independent competition of Cole National and Ilco, has been eliminated;

(f) The members of the consuming public may be deprived of the benefits of free and unrestricted competition in the manufacture, sale and distribution of key blanks, replacement keys and key duplicating machines.

ORDER WAIVING RULE 2.4(d) AND ACCEPTING AGREEMENT CONTAINING ORDER TO CEASE AND DESIST

This matter is before the Commission on the hearing examiner's certification of the joint motion by respondent and complaint counsel to waive Section 2.4(d) of the Rules of Practice and accept a consent agreement and order. The examiner recommends that the Commission accept the order. Upon consideration of the motion, the Commission has determined to waive Section 2.4(d) of the Rules of Practice. Accordingly,

It is ordered, That the provisions of Section 2.4(d) of the Rules of Practice be, and they hereby are, waived.

Upon consideration of the consent agreement, and the fact that respondent Cole National Corporation has divested itself of all of the outstanding stock of Independent Lock Company acquired by it on or about March 18, 1964, the Commission has determined

that said agreement affords an adequate basis for disposition of this proceeding and should be accepted. The Commission notes that on February 6, 1967, it ordered that the allegations of the complaint relating to violation of Section 5 of the Federal Trade Commission Act be stricken, and that the complaint be dismissed in all respects as to respondent Independent Lock Company.

The consent agreement is hereby accepted and the following jurisdictional findings are made and the following order is entered:

(1) Respondent Cole National Corporation is a corporation organized and existing under the laws of the State of Ohio with its principal offices and place of business at 5777 Grant Avenue, Cleveland, Ohio.

(2) The Federal Trade Commission has jurisdiction over the subject-matter of this proceeding and over the respondent Cole National Corporation.

ORDER

I

It is ordered, That respondent Cole National Corporation, its subsidiaries and affiliates and any successor to substantially all of its assets, for a period of ten (10) years from the effective date of this Order, cease and desist from acquiring, directly or indirectly, without the prior approval of the Federal Trade Commission, the whole, or any part, of the assets, stock or other share capital of any firm engaged in the manufacture, production or wholesale distribution of replacement key blanks, replacement keys and key duplicating machines, except for purchases in the ordinary course of business.

II

It is further ordered, That Cole National, within sixty (60) days from the effective date of this Order and at other times as the Commission may require, file with the Commission a report, in writing, setting forth the manner and form in which it has complied with Paragraph I of this Order.

Complaint

IN THE MATTER OF

ALAN LIBMAN DOING BUSINESS AS BRAND STORES

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

Docket C-1234. Complaint, June 30, 1967—Decision, June 30, 1967

Consent order requiring a Boston, Mass., retailer of sewing machines and vacuum cleaners to cease using bait advertisements, deceptive pricing and savings claims, and other deceptive means to sell his 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 Alan Libman, an individual, doing business as Brand Stores, 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 Alan Libman is an individual doing business as Brand Stores with his principal office and place of business located at 374 Massachusetts Avenue, in the city of Boston, State of Massachusetts.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of sewing machines and vacuum cleaners to the public.

PAR. 3. In the course and conduct of his business, respondent now causes, and for some time last past has caused, his said products, when sold, to be shipped from his place of business in the State of Massachusetts to purchasers thereof located in various other States of the United States, and maintains, and at all times mentioned herein has 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 his business, and for the purpose of inducing the purchase of his products, respondent has made certain statements and representations in advertisements inserted in newspapers having general circulation and by oral representations to prospective purchasers respecting the bona fide character of the offer, availability of merchandise, prices, savings and financing.

Among and typical, but not all inclusive, of the statements and

representations contained in such advertisements are the following:

NECCHI SEWING Machine last years' model, never used, equipped to zig-zag, make button holes, darn monogram, etc. Original 5-year guarantee. $20 complete, will take $1.00 weekly. Call 889-0124 any time.

* * * * * * *

ELECTROLUX Vacuum Cleaner, runs like new, all attachments, rugs, upholstery, bare floors, dusting, etc. 2 year written guarantee. $15 complete, will take $1 weekly. Call 889-0124 any time.

* * * * * * *

SINGER SEWING Machine—Rebuilt, runs like new, equipped to zig-zag, make button holes, etc. Written 5 year guarantee. $15 complete, will take $1 weekly. Call Brand Stores, 889-0124 any time.

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not specifically set out herein, and by the oral statements and representations of his salesmen, respondent represents, and has represented, directly or by implication, that:

1. The offer set forth in said advertisements was a bona fide offer to sell the advertised products at the prices and on the terms and conditions stated.

2. The advertised products are in respondent's stock of merchandise and they are available for purchase.

3. Respondent's products are being offered for sale at special or reduced prices, and that savings are thereby afforded purchasers from respondent's regular selling prices.

4. No finance company would be involved in the financing of the customer's purchase and that the customer's account would be handled by respondent's business.

PAR. 6. In truth and in fact:

1. Respondent's offers are not genuine or bona fide offers to sell the advertised products at the prices and on the terms and conditions stated, but were made for the purpose of obtaining leads as to persons interested in the purchase of respondent's products. After response to said advertisements respondent's salesmen called upon such interested persons in their homes but made no effort to sell the advertised products. Instead, they exhibited what they represented to be the advertised merchandise but which because of its poor appearance and condition, elicited little interest on the part of the prospective purchaser. Concurrently, respondent's salesmen presented a new higher priced machine whose superior appearance and condition by comparison disparaged and demeaned the advertised product, and they otherwise dis-

couraged the purchase thereof and attempted to sell and often did sell, the higher priced machine.

2. Many of the advertised products are not in respondent's stock of merchandise and they are not available for purchase.

3. Respondent's products are not being offered for sale at special or reduced prices, and savings are not thereby afforded purchasers because of reduction from respondent's regular selling prices.

4. A finance company is involved in the financing of the customer's purchase and the customer's account is not handled by respondent's business.

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

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

PAR. 8. The use by the respondent of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondent's products 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 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 Alan Libman is an individual doing business as Brand Stores, with his principal office and place of business located at 374 Massachusetts Avenue, in the city of Boston, State of Massachusetts.

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

ORDER

It is ordered, That respondent Alan Libman, an individual, doing business as Brand Stores, or under any other trade name or names, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of sewing machines, vacuum cleaners or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using, in any manner, any advertisement, sales plan, scheme or device wherein false, misleading or deceptive statements or representations are made in order to obtain leads or prospects for the sale of other merchandise or services.

2. Making representations purporting to offer merchandise for sale when the purpose of the representation is not to sell the offered merchandise but to obtain leads or prospects for the sale of other merchandise at higher prices.

3. Discouraging the purchase of or disparaging any merchandise or services which are advertised or offered for sale.

4. Representing, directly or by implication, that any merchandise or services are offered for sale when such offer is not a bona fide offer to sell such merchandise or services.

5. Representing, directly or by implication, that advertised products are in stock and available for purchase: *Provided, however,* That it shall be a defense in any enforcement

proceeding instituted hereunder for respondent to establish that the advertised products were in stock and were available.

6. Representing, directly or by implication, that any price for respondent's 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 respondent in the recent regular course of his business, or misrepresenting in any manner the savings available to purchasers.

7. Representing, directly or by implication, that respondent finances his customer's installment contracts or notes or does not negotiate such notes to finance companies.

8. Failing to disclose orally at the time of sale and in writing on any conditional sales contract, promissory note or other instrument executed by the purchaser, with such conspicuousness and clarity as is likely to be read and observed by the purchaser that:

(1) Such conditional sales contract, promissory note or other instrument may, at the option of the seller and without notice to the purchaser, be negotiated or assigned to a finance company or other third party.

(2) If such negotiation or assignment is effected, the purchaser will then owe the amount due under the contract to the finance company or third party and may have to pay this amount in full whether or not he has claims against the seller under the contract for defects in the merchandise, nondelivery or the like.

9. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of the respondent's products to purchasers; and failing to secure from each such person a signed statement acknowledging receipt of said order and agreeing to abide by the requirements of said order and to refrain from engaging in any of the acts or practices prohibited by said order; and for failure so to do, agreeing to dismissal or to the withholding of commissions, salaries and other remunerations or both to dismissal and to withholding of commissions, salaries and other remunerations.

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

IN THE MATTER OF

BROOKPORT CLASSICS, INC., ET AL.

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

Docket C-1235. Complaint, June 30, 1967—Decision, June 30, 1967

Consent order requiring a New York City clothing manufacturer to cease misbranding its woolen car coats.

COMPLAINT

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

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

Individual respondents Jacques Schweitzer and Mac Savid are officers of said corporation. They are responsible for and formulate the acts, practices and policies of said corporation, including the acts and practices hereinafter referred to.

Respondents are manufacturers of wool products (car coats) with their office and principal place of business located at 247 West 38th Street, New York, New York.

PAR. 2. Respondents now, and for some time last past, have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated

thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were wool products, namely, car coats, which contain substantially different amounts and types of fibers than were set forth on the labels affixed thereto.

PAR. 4. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a) (2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were certain wool products, namely car coats with labels on or affixed thereto, which failed to disclose the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool, when said percentage by weight of such fiber was 5 per centum or more; and (5) the aggregate of all other fibers.

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

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939; 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 Brookport Classics, 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 247 West 38th Street, New York, New York.

Respondents Jacques Schweitzer and Mac Savid 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 Brookport Classics, Inc., a corporation, and its officers, and Jacques Schweitzer and Mac Savid, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

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

Complaint

IN THE MATTER OF

VARIETY DRESSES TRADING AS DAN-DEE SPORTSWEAR ET AL.

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

Docket C-1236. Complaint, June 30, 1967—Decision, June 30, 1967

Consent order requiring a New York City partnership to cease misbranding its wool products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Variety Dresses, a partnership, trading as Dan-Dee Sportswear, and Samuel Rankus and Moe Weber, individually and as copartners trading as Variety Dresses, hereinafter referred to as respondents, have violated the provisions of the said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Variety Dresses is a partnership, trading as Dan-Dee Sportswear. Respondents Samuel Rankus and Moe Weber are individuals and copartners trading as Variety Dresses. All the respondents have their office and principal place of business located at 247 West 35th Street, in the city of New York, State of New York.

Respondents are manufacturers of wool products.

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

PAR. 3. Certain of said wool products were misbranded within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped,

tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were certain skirts stamped, tagged, labeled, or otherwise identified as containing "95% wool, 5% nylon," whereas in truth and in fact, said skirts contained substantially different fibers and amounts of fibers than as represented.

PAR. 4. Certain of said wool products were further misbranded in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were certain products, namely skirts, with labels on or affixed thereto which failed to disclose the percentage of the total fiber weight of the wool products, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool, when said percentage by weight of such fiber is 5 per centum or more; and (5) the aggregate of all other fibers.

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

DECISION AND ORDER

The 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 Wool Products Labeling Act of 1939; 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 Variety Dresses is a partnership, trading as Dan-Dee Sportswear. Respondents Samuel Rankus and Moe Weber are individuals and copartners trading as Variety Dresses. Said respondents have their office and principal place of business located at 247 West 35th Street, in the city of New York, State of New York.

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

ORDER

It is ordered, That respondent Variety Dresses, a partnership, trading as Dan-Dee Sportswear, or any other name and Samuel Rankus and Moe Weber, individually and as copartners trading as Variety Dresses, 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 offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

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

SANI DISTRIBUTORS, INC., ET AL.

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

Docket C-1237. Complaint, June 30, 1967—Decision, June 30, 1967

Consent order requiring a New York City importer of wool fabrics to cease misbranding its wool products.

COMPLAINT

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

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

Individual respondents Sham Sani and Lal C. Sani are officers of said corporation. They are responsible for and formulate the acts, practices and policies of said corporation, including the acts and practices hereinafter referred to.

Respondents are importers of wool products (fabrics) with their office and principal place of business located at 9 East 37th Street, New York, New York.

PAR. 2. Respondents now, and for sometime last past, have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promul-

gated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were wool products, namely, fabrics, which contain substantially different amounts and types of fibers than were set forth on the labels affixed thereto.

PAR. 4. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were certain wool products, namely fabric with labels on or affixed thereto, which failed to disclose the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool, when said percentage by weight of such fiber was 5 per centum or more; (5) the aggregate of all other fibers.

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

DECISION AND ORDER

The 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 Wool Products Labeling Act of 1939; 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 Sani Distributors, 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 9 East 37th Street, New York, New York.

Respondents Sham Sani and Lal C. Sani 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 Sani Distributors, Inc., a corporation, and its officers, and Sham Sani and Lal C. Sani, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

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

ROCK RIVER WOOLEN MILLS ET AL.

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

Docket C-1238. Complaint, June 30, 1967—Decision, June 30, 1967

Consent order requiring a Brownwood, Texas, clothing manufacturer to cease misbranding and falsely invoicing its wool products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Rock River Woolen Mills, a corporation, and James B. Tait and Robert J. Tait, individually and as officers of said corporation, hereinafter referred to as respondents, having violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Rock River Woolen Mills is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas.

Individual respondents James B. Tait and Robert J. Tait are officers of said corporation. They formulate, direct and control the acts, practices and policies of the corporate respondent including the acts and practices hereinafter referred to.

Respondents are manufacturers of wool products with their office and principal place of business located at Camp Bowie Industrial Area, Brownwood, Texas.

PAR. 2. Respondents now, and for some time last past, have manufactured for introduction into commerce, introduced into

commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale in commerce, as "commerce" is defined in said Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

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

Among such misbranded wool products, but not limited thereto, were fabrics which were stamped, tagged, labeled, or otherwise identified by respondents as containing 70% Wool, 25% Nylon and 5% Fibrene, whereas in truth and in fact said fabrics contained substantially different fibers and amounts of fibers than as represented.

Also among such misbranded wool products, but not limited thereto, were certain fabrics which were stamped, tagged, labeled, or otherwise identified as 70% Wool, 10% Dacron, 10% Orlon and 10% Fibrene, whereas in truth and in fact said fabrics contained substantially different fibers and amounts of fibers than represented.

PAR. 4. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were woolen fabrics with labels on or affixed thereto, which failed to disclose the percentage of the total fiber weight of the said wool product, exclusive of ornamentation not exceeding five per centum of said total fiber weight of (1) wool fibers; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool when said percentage by weight of such fiber was five per centum or more; and (5) the aggregate of all other fibers.

PAR. 5. Certain of said wool products were misbranded in violation of the Wool Products Labeling Act of 1939, in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in that the respective common generic names of the fibers present in wool products were not used in

naming such fibers in required information, in violation of Rule 8(a) of the aforesaid Rules and Regulations.

Among such misbranded wool products, but not limited thereto, were certain fabrics with labels on or affixed thereto which described a portion of the fiber content as "Dacron," "Orlon" and "Fibrene" without using the common generic name of said fiber.

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

PAR. 7. Respondents are now, and for some time last past, have been engaged in the offering for sale, sale and distribution of certain products, namely fabrics. In the course and conduct of their business as aforesaid 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 Texas to purchasers located in various other States of the United States, and maintain, and at all other 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. 8. Respondents in the course and conduct of their business have made statements on invoices to their customers, misrepresenting the fiber content of certain of their wool products.

Among such misrepresentations, but not limited thereto, were statements made on invoices representing the fiber content thereof as "80% Wool, 20% Nylon Fibrene decoration," whereas in truth and in fact, the products contained substantially different fibers and amounts of fibers than represented.

PAR. 9. The acts and practices set out in Paragraph Eight have the tendency and capacity to mislead and deceive the purchasers of said products as to the true content thereof.

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 constituted, and now constitute, unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939; 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 agreements, makes the following jurisdictional findings, and enters the following order:

1. Respondent Rock River Woolen Mills 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 Camp Bowie Industrial Area, Brownwood, Texas.

Respondents James B. Tait and Robert J. Tait 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 Rock River Woolen Mills, a corporation, and its officers, and James B. Tait and Robert J. Tait, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool prod-

uct" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

3. Failing to set forth the common generic name of fibers in the required information on stamps, tags, labels, or other means of identification attached to wool products.

It is further ordered, That respondents Rock River Woolen Mills, a corporation, and its officers, and James B. Tait, and Robert J. Tait, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of fabrics or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or amount of the constituent fibers contained in such products, on invoices or shipping memoranda applicable thereto or in any other manner.

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

IN THE MATTER OF

PARAMOUNT FIBRE CORP., INC., ET AL.

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

Docket C-1239. Complaint, June 30, 1967—Decision, June 30, 1967

Consent order requiring a Bronx, New York, clothing manufacturer to cease misbranding and falsely guaranteeing its textile fiber products and misbranding its wool products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Paramount Fibre Corp., Inc., a corporation, and Sol Rosenblum, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

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

Respondent Sol Rosenblum is an officer of said corporate respondent. He formulates, directs and controls the acts, practices and policies of said corporate respondent.

Respondents are engaged in the manufacture and sale of wool and textile fiber products, including batting, with their office and principal place of business located at 348 Manida Street, Bronx, New York.

PAR. 2. Respondents, now and for some time last past, have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

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

Among such misbranded wool products, but not limited thereto, was batting stamped, tagged, labeled, or otherwise identified by respondents as "50/50" thereby representing the product as containing 50% Acrylic and 50% other unknown fibers, whereas in truth and in fact, said products contained woolen fibers together

with substantially different fibers and amounts of fibers than represented.

PAR. 4. Certain said wool products were further misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, was a wool product with a label on or affixed thereto which failed to disclose the percentage of the total fiber weight of the said wool products, exclusive of ornamentation not exceeding 5% of the total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool, when said percentage by weight of such fiber was 5% or more; and (5) the aggregate of all other fibers.

PAR. 5. Certain of said wool products were misbranded in violation of the Wool Products Labeling Act of 1939 in that they were not stamped, tagged, labeled or otherwise identified in accordance with the Rules and Regulations promulgated thereunder in that the respective common generic names of fibers present in such wool products were not used in naming such fibers in required information, in violation of Rule 8(a) of the aforesaid Rules and Regulations.

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

PAR. 7. Respondents are now, and for some time last past have been, engaged in the introduction, delivery for introduction, manufacture for introduction, sale, advertising, and offering for sale in commerce, and the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products which had been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products; as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 8. Certain textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name or amounts of the constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, was batting that was represented to be 100% Acetate whereas, in truth and in fact, such products contained substantially different fibers and amounts of fibers other than as represented.

PAR. 9. Certain of the textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled or otherwise identified to show each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded textile fiber products but not limited thereto, was batting with labels which failed:

(1) To disclose the true percentage of the fibers present by weight; and

(2) To disclose the true generic names of the fibers present.

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

PAR. 11. The acts and practices of respondents, as set forth in Paragraphs Seven, Eight and Nine above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices 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, the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification Act; and

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

The Commission, having reason to believe that the respondents have violated 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 Paramount Fibre Corp., 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 348 Manida Street, Bronx, New York.

Respondent Sol Rosenblum 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 Paramount Fibre Corp., Inc., a corporation, and its officers, and Sol Rosenblum, 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, or manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

3. Failing to set forth the common generic name of fibers

in naming such fibers in the required information on stamps, tags, labels, or other means of identification attached to wool products.

It is further ordered, That respondents Paramount Fibre Corp., Inc., a corporation, and its officers, and Sol Rosenblum, 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, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

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

2. Failing to affix a stamp, tag, label, or other means of identification to each such product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

It is further ordered, That respondents Paramount Fibre Corp., Inc., a corporation, and its officers, and Sol Rosenblum, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any textile fiber product is not misbranded or falsely invoiced under the provisions of the Textile Fiber Products Identification Act.

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 wth this order.

Complaint

IN THE MATTER OF

SIMON AND MOGILNER ET AL.

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

Docket C-1240. Complaint, June 30, 1967—Decision, June 30, 1967

Consent order requiring a Birmingham, Ala., manufacturer of children's clothing to cease misbranding and falsely guaranteeing its wool and textile fiber products and falsely advertising its textile fiber products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Simon and Mogilner, a partnership, and Isadore E. Simon, Emanuel Mogilner and Blair Simon, individually and as copartners trading as Simon and Mogilner, and Jerrold A. Simon, individually and as Director of Quality, Finishing and Packaging of Simon and Mogilner, and Max Friedman, individually and as Assistant General Manager of Simon and Mogilner, sometimes hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Simon and Mogilner is a partnership. Respondents Isadore E. Simon, Emanuel Mogilner and Blair Simon are individuals and copartners trading as Simon and Mogilner. Respondent Jerrold A. Simon, is an employee of Simon and Mogilner acting in the capacity of Director of Quality, Finishing and Packaging. Respondent Max Friedman, is an employee of Simon and Mogilner acting in the capacity of Assistant General Manager.

Respondents are engaged in the manufacture and sale of wool and textile fiber products, including children's clothing, with their

principal office and place of business located at 1420 14th Street, SW., city of Birmingham, State of Alabama.

PAR. 2. Respondents, now and for some time last past, have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

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

Among such misbranded wool products, but not limited thereto, were quilted fabrics stamped, tagged, labeled, or otherwise identified by respondents as 90% Orlon Acrylic, 10% Other Fibers, whereas in truth and in fact, said products contained woolen fibers as well as substantially different fibers and amounts of fibers other than as represented.

PAR. 4. Certain of said wool products were further misbranded by respondents in that they were not stamped, labeled, tagged, or otherwise identified as required under the provisions of Section 4(a) (2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, was a wool product with a label on or affixed thereto which failed to disclose the percentage of the total fiber weight of the said wool product, exclusive of ornamentation not exceeding 5% of the total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool, when said percentage by weight of such fiber was 5% or more; and (5) the aggregate of all other fibers.

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

PAR. 6. The acts and practices of the respondents as set forth

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

PAR. 7. Respondents, are now and for some time last past, have been engaged in the introduction, delivery for introduction, manufacture for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which had been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products; as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 8. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name of the constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were quilted fabrics that were labeled as 70% Orlon Acrylic, 30% Other Fibers, whereas, in truth and in fact, such products contained substantially different fibers and amounts of fibers other than as represented.

PAR. 9. Certain of the textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified to show each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were quilted fabrics with labels which failed:

(1) To disclose the true percentage of the fibers present by weight; and

(2) To disclose the true generic names of the fibers present.

PAR. 10. Certain of said textile fiber products were falsely and

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

Among such textile fiber products, but not limited thereto, was children's clothing which was falsely and deceptively advertised in, among others, The Women's Wear Daily, a newspaper published in the city and State of New York and having an extensive interstate circulation. The aforesaid children's clothing was described by means of such terms, among others, as "Corduroy" and "Denim" and the true generic names of the fibers contained in such products were not set forth.

PAR. 11. Respondents have furnished false guaranties that their textile fiber products were not misbranded in violation of Section 10 of the Textile Fiber Products Identification Act.

PAR. 12. The acts and practices of respondents, as set forth in Paragraphs Eight, Nine, Ten and Eleven above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices 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, the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of

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

The Commission, having reason to believe that the respondents have violated 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 Simon and Mogilner is a partnership trading as Simon and Mogilner. Respondents Isadore E. Simon, Emanuel Mogilner and Blair Simon are individuals and copartners trading as Simon and Mogilner, with their office and principal place of business located at 1420 14th Street, SW., city of Birmingham, State of Alabama.

Respondent Jerrold A. Simon is an individual acting in the capacity of Director of Quality, Finishing and Packaging of Simon and Mogilner and his address is the same as that of said partnership.

Respondent Max Friedman is an individual acting in the capacity of Assistant General Manager of Simon and Mogilner and his address is the same as that of said partnership.

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 Simon and Mogilner, a partnership, and Isadore E. Simon, Emanuel Mogilner and Blair Simon, individually and as copartners trading as Simon and Mogilner, or any other name, and Jerrold A. Simon, individually and as Director of Quality, Finishing and Packaging of Simon and Mogilner, and Max Friedman, individually and as Assistant General Manager of Simon and Mogilner, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

It is further ordered, That respondents Simon and Mogilner, a partnership, and Isadore E. Simon, Emanuel Mogilner and Blair Simon, individually and as copartners trading as Simon and Mogilner, or any other name, and Jerrold A. Simon, individually and as Director of Quality, Finishing and Packaging of Simon and Mogilner, and Max Friedman, individually and as Assistant General Manager of Simon and Mogilner, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any wool product is not misbranded under the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder when there is reason to believe that any wool product so guaranteed may be introduced, sold, transported or distributed, in commerce as the term "commerce" is defined in the aforesaid Act.

It is further ordered, That respondents Simon and Mogilner, a partnership, and Isadore E. Simon, Emanuel Mogilner and Blair Simon, individually and as copartners trading as Simon and Mogilner, or any other name, and Jerrold A. Simon, individually and as Director of Quality, Finishing and Packaging of Simon and Mogilner, and Max Friedman, individually and as Assistant General Manager of Simon and Mogilner, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product whether in its original state or contained in other textile fiber products, as the terms "com-

merce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

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

2. Failing to affix a stamp, tag, label, or other means of identification to each such product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

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

It is further ordered, That respondents Simon and Mogilner, a partnership, and Isadore E. Simon, Emanuel Mogilner and Blair Simon, individually and as copartners, trading as Simon and Mogilner, or any other name, and Jerrold A. Simon, individually and as Director of Quality, Finishing and Packaging of Simon and Mogilner, and Max Friedman, individually and as Assistant General Manager of Simon and Mogilner, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any textile fiber product is not misbranded or falsely invoiced under the provisions of the Textile Fiber Products Identification Act.

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

DAVID HOFFMAN TRADING AS HOFFMAN & SON

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

Docket C-1241. Complaint, June 30, 1967—Decision, June 30, 1967

Consent order requiring a Worcester, Mass., producer of wool fiber stock to cease misrepresenting the fiber content of wool products on invoices, misbranding woolens, and furnishing false guarantees on textile fiber products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that David Hoffman, an individual trading as Hoffman & Son, sometimes hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent David Hoffman is an individual trading as Hoffman & Son. Respondent is engaged in the production and sale of wool fiber stock with his office and principal place of business located at 41 Sutton Lane, Worcester, Massachusetts.

PAR. 2. Respondent, now and for some time last past, has manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

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

Among such misbranded wool products, but not limited thereto, was wool fiber stock stamped, tagged, labeled, or otherwise identified by respondents as 77% Wool, 13% Acetate and 10% Nylon, whereas in truth and in fact, said products contained substantially different fibers and amounts of fiber than represented.

PAR. 4. Certain of said wool products were further misbranded by respondent in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, was a wool product with a label on or affixed thereto which failed to disclose the percentage of the total fiber weight of the said wool product, exclusive of ornamentation not exceeding 5% of the total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool, when said percentage by weight of such fiber was 5% or more; and (5) the aggregate of all other fibers.

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

PAR. 6. Respondent is now, and for some time last past has been, engaged in the offering for sale, sale and distribution of certain products, namely wool fiber stock. In the course and conduct of its business the aforesaid respondent now causes, and for some time last past has caused, its said products, when sold, to be shipped from its place of business in the Commonwealth of Massachusetts to purchasers located in various other States of the United States, and maintains, and at all other times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. Respondent in the course and conduct of its business has made statements on invoices to its customers, misrepresenting the fiber content of certain of its wool products.

Among such misrepresentations, but not limited thereto, were statements made on invoices representing the fiber content thereof as 77% Wool, 13% Acetate and 10% Nylon whereas in truth and

in fact, the products contained substantially different fibers and amounts of fibers than represented.

PAR. 8. The acts and practices set out in Paragraph Seven have the tendency and capacity to mislead and deceive the purchasers of said products as to the true content thereof.

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 constituted, and now constitute, unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

PAR. 10. Respondent furnished false guaranties on invoices, pertaining to products sold, shipped and distributed in commerce, that its products were not misbranded in violation of Section 10(b) of the Textile Fiber Products Identification Act.

PAR. 11. The acts and practices of respondent, as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts or practices, in commerce, within the meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the 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, the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification 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 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 David Hoffman is an individual trading as Hoffman & Son, with his office and principal place of business located at 41 Sutton Lane, Worcester, Massachusetts.

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

ORDER

It is ordered, That respondent David Hoffman, an individual trading as Hoffman & Son, or under any other trade name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

It is further ordered, That respondent David Hoffman, an individual trading as Hoffman & Son, or under any other trade name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of wool products or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or amount of the constituent fibers contained in such products, on invoices or shipping memoranda applicable thereto or in any other manner.

It is further ordered, That respondent David Hoffman, an individual trading as Hoffman & Son, or under any other trade name, and respondent's representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any textile

fiber product is not misbranded or falsely invoiced under the provisions of the Textile Fiber Products Identification Act.

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

IN THE MATTER OF

SMART MODES OF CALIF., INC., ET AL.

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

Docket C-1242. Complaint, June 30, 1967—Decision, June 30, 1967

Consent order requiring a Los Angeles, Calif., clothing manufacturer to cease misbranding its fur and wool products and falsely invoicing its furs.

COMPLAINT

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

PARAGRAPH 1. Respondent Smart Modes of Calif., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California.

Respondents Julius Reinis and Lester Leonard are officers of the corporate respondent. They formulate, direct and control the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are manufacturers of fur products and wool prod-

ucts with their office and principal place of business located at 834 South Broadway, Los Angeles, California.

PAR. 2. Respondents are now, and for some time last past have been, 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 or otherwise falsely or deceptively identified with respect to the name or designation of the animal or animals that produced the fur from which the said fur products had been manufactured, in violation of Section 4(1) of the Fur Products Labeling Act.

Among such misbranded fur products, but not limited thereto, were fur products which were labeled as Opossum when fur contained in such products was, in fact, Australian Opossum.

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:

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 name, or other identification issued and registered by the Commission, of one or more of the persons who manufactured any such fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale, in commerce, or transported or distributed it in commerce.

PAR. 5. Certain of said fur products were misbranded in that labels attached thereto, set forth the name of an animal other than the name of the animal that produced the fur from which the said fur products had been manufactured, in violation of Section 4(3)

of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

PAR. 6. 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) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in handwriting on labels, in violation of Rule 29(b) of said Rules and Regulations.

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

PAR. 7. 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 any such fur product.

PAR. 8. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) The term "natural" was not used 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.

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

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

PAR. 10. Respondents, now and for some time last past, have

manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 11. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were wool products stamped, tagged, labeled, or otherwise identified by respondents as "100% wool," whereas in truth and in fact, said products contained substantially different fibers and amounts of fibers than as represented.

PAR. 12. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, was a wool product with a label on or affixed thereto, which failed to disclose the percentage of the total fiber weight of the said wool product, exclusive of ornamentation not exceeding 5% of the said total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool, when said percentage by weight of such fiber was 5% or more; and (5) the aggregate of all other fibers.

PAR. 13. The acts and practices of the respondents as set forth in Paragraphs Eleven and Twelve above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished there-

after 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, the Fur Products Labeling Act and the Wool Products Labeling Act of 1939; 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 Smart Modes of Calif., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 834 South Broadway, Los Angeles, California.

Respondents Julius Reinis and Lester Leonard 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 Smart Modes of Calif., Inc., a corporation, and its officers, and Julius Reinis and Lester Leonard, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the 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. Falsely or deceptively labeling or otherwise identifying such fur product as to the name or designation of the animal or animals that produced the fur contained in the fur product.

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

3. Setting forth on a label attached to such fur product the name or names of any animal or animals other than the name of the animal producing the fur contained in the fur product as specified in the Fur Products Name Guide, and as prescribed by the Rules and Regulations.

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 a label affixed to such fur product.

5. Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in handwriting on a label affixed to such fur product.

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

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

3. Failing to set forth on an invoice the item number or mark assigned to such fur product.

It is further ordered, That respondents Smart Modes of Calif., Inc., a corporation, and its officers, and Julius Reinis and Lester Leonard, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the manufacture for introduction into commerce, the introduction into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding wool products by:

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

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

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

TRANSAMERICAN SPINNING MILLS, INC., ET AL.

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

Docket C-1243. Complaint, June 30, 1967—Decision, June 30, 1967

Consent order requiring a Fall River, Mass., manufacturer of woolen goods to cease misbranding its wool products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Com-

mission, having reason to believe that Transamerican Spinning Mills, Inc., a corporation, and Charles S. Weinstein, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Transamerican Spinning Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts.

Individual respondent Charles S. Weinstein is an officer of said corporate respondent. He formulates, directs and controls the acts, practices and policies of said corporation including the acts and practices hereinafter referred to.

Respondents are manufacturers of wool products (yarn) with their office and principal place of business located at 18 Martine Street, Fall River, Massachusetts, with their mailing address being Post Office Box 152, Flint Station, Fall River, Massachusetts, 02723.

PAR. 2. Respondents now, and for sometime last past, have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

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

Among such misbranded wool products, but not limited thereto, were wool products, namely, yarns, which contain substantially different amounts and types of fibers than set forth on the labels thereto affixed.

PAR. 4. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were certain wool products, namely, yarn, with labels on or affixed thereto, which failed to disclose the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool, when said percentage by weight of such fiber was 5 per centum or more; and (5) the aggregate of all other fibers.

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

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939; 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 Transamerican Spinning Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 18 Martine Street, Fall

River, Massachusetts, with its mailing address being Post Office Box 152, Flint Station, Fall River, Massachusetts, 02723.

Respondent Charles S. Weinstein is an officer of said corporation and his office, mailing address and principal place of business 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 Transamerican Spinning Mills, Inc., a corporation, and its officers, and Charles S. Weinstein, 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, or manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

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

GLOVESHIRE COATS, INC., ET AL.

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

Docket C-1244. Complaint, June 30, 1967—Decision, June 30, 1967

Consent order requiring two New York City clothing manufacturers to cease misbranding their wool products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Gloveshire Coats, Inc., and Toby Juniors, Ltd., corporations, and Stuart Glovinsky and Jerome Glovin, 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 Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Gloveshire Coats, Inc., and Toby Juniors, Ltd., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York.

Individual respondents Stuart Glovinsky and Jerome Glovin are officers of said corporations. They formulate, direct and control the acts, practices and policies of said corporations, including the acts and practices hereinafter referred to.

Respondents are manufacturers of wool products (coats) with their office and principal place of business located at 252 West 37th Street, New York, New York.

PAR. 2. Respondents now, and for sometime last past, have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded within the intent and meaning of Section 4(a)(1) of the Wool Products

Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were wool products, namely coats, which contained substantially different amounts and types of fibers than as represented on the labels affixed thereto.

PAR. 4. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were certain wool products, namely, coats, with labels on or affixed thereto, which failed to disclose the percentage of the total fiber weight of the said wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool, when said percentage by weight of such fiber was 5 per centum or more; and (5) the aggregate of all other fibers.

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

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939; 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. Respondents Gloveshire Coats, Inc., and Toby Juniors, Ltd., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their office and principal place of business located at 252 West 37th Street, New York, New York.

Respondents Stuart Glovinsky and Jerome Glovin 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 Gloveshire Coats, Inc., and Toby Juniors, Ltd., corporations, and their officers, and Stuart Glovinsky and Jerome Glovin, individually and as officers of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

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

MARS MFG. CO., INC. OF ASHEVILLE, NORTH CAROLINA, ET AL.

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

Docket C-1245. Complaint, June 30, 1967—Decision, June 30, 1967

Consent order requiring an Asheville, N. C., distributor of textile products to cease misbranding textile fiber products and misrepresenting imperfect hosiery as first or perfect quality.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Mars Mfg. Co., Inc. of Asheville, North Carolina, a corporation, and Morry A. Bard, Ronald S. Bard and Sally G. Bard, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Mars Mfg. Co., Inc. of Asheville, North Carolina, is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina.

Respondents Morry A. Bard, Ronald S. Bard and Sally G. Bard are officers of said corporation. They formulate, direct and control the policies, acts and practices of the corporate respondent.

Respondents are engaged in the sale and distribution of textile products such as hosiery, leotards, swimwear and beach wear gar-

ments. Their office and principal place of business is located at Route 1 Johnson School Road, Asheville, North Carolina.

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

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

Among such misbranded textile fiber products, but not limited thereto, were ladies hosiery with labels which failed:

1. To disclose the true generic names of the fibers present.

2. To disclose the percentage of each fiber present, by weight, in the total fiber content of the textile fiber product, exclusive of ornamentation not exceeding 5 per centum by weight of the total fiber content;

3. To disclose the name, or other identification issued and registered by the Commission of the manufacture of said ladies hosiery or one or more persons subject to Section 3 of the said Act with respect to such hosiery.

4. To disclose the name of the country where imported textile fiber products were processed or manufactured.

PAR. 4. Certain of said textile fiber products were misbranded in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respect:

1. All parts of the required information were not conspicuously and separately set out on the same side of the label in such a

manner as to be clearly legible and readily accessible to the prospective purchaser, in violation of Rule 16(b) of the aforesaid Rules and Regulations.

2. Nonrequired information and representations were placed on the label or elsewhere on the product and were set forth in such a manner as to interfere with, minimize, detract from, and conflict with required information, in violation of Rule 16(c) of the aforesaid Rules and Regulations.

PAR. 5. Respondents have failed to maintain and preserve proper records showing the fiber content of the textile fiber products manufactured by them, in violation of 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

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

PAR. 7. In the course and conduct of their business, respondents purchase unfinished hosiery products which are imperfect and unlabeled as to quality. Such hosiery products are known to the trade as "irregulars," "seconds" or "thirds" depending upon the nature of the imperfection. The respondents cause such hosiery products to be finished and then sell and distribute them to retailers who in turn sell said hosiery products to the consuming public.

PAR. 8. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, including hosiery, when sold, to be shipped from their place of business in the State of North Carolina 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. 9. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind as that sold by respondents.

PAR. 10. In the conduct of their business as set forth above respondents did not mark their said imperfect hosiery products

in a clear, and conspicuous manner to disclose that they were "irregulars" or "seconds," so as to inform purchasers thereof of their imperfect quality. The purchasing public in the absence of markings showing that hosiery products are "irregulars" or "seconds," understands and believes that they are of perfect quality. Respondents' failure to mark or label their products in such a manner as will disclose that said products are imperfect, has had, and now has, the capacity and tendency to mislead dealers and members of the purchasing public into the erroneous and mistaken belief that said products are perfect quality products and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

Official notice is hereby taken of the fact that, in connection with the sale or offering for sale of imperfect hosiery, the failure to disclose on such hosiery products that they are "irregulars" or "seconds," as the case may be, is misleading, which official notice is based upon the Commission's accumulated knowledge and experience, as expressed in Rule 4 of the Commission's amended Trade Practice Rules for the Hosiery Industry promulgated August 30, 1960 (amended June 10, 1964).

PAR. 11. Respondents in selling their imperfect hosiery products as aforesaid have labeled certain of said hosiery products by transfer as "First quality," thereby representing that said hosiery is of first quality. Respondents' practice of labeling by transfer imperfect hosiery as "First quality" has had, and now has, the capacity and tendency to mislead dealers and members of the purchasing public into the erroneous and mistaken belief that said products are first quality products and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

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

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

DECISION AND ORDER

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

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

The Commission, having reason to believe that the respondents have violated 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 Mars Mfg. Co., Inc. of Asheville, North Carolina is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina, with its office and principal place of business located at Route 1 Johnson School Road, Asheville, North Carolina.

Respondents Morry A. Bard, Ronald S. Bard and Sally G. Bard 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 Mars Mfg. Co., Inc. of Asheville, North Carolina, a corporation, and its officers, and Morry A. Bard, Ronald S. Bard and Sally G. Bard, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in

commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. Failing to affix a stamp, tag, label, or other means of identification to each such product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

2. Failing to set forth all parts of the required information conspicuously and separately on the same side of the label in such a manner as to be clearly legible and readily accessible to the prospective purchaser.

3. Setting forth nonrequired information or representations on the label or elsewhere on the product in such a manner as to minimize, detract from, or conflict with information required by the said Act and the Rules and Regulations promulgated thereunder.

B. Failing to maintain and preserve for at least three years proper records showing the fiber content of textile fiber products manufactured by them, as required by Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

It is further ordered, That respondents Mars Mfg. Co., Inc. of Asheville, North Carolina, a corporation, and its officers, and Morry A. Bard, Ronald S. Bard and Sally G. Bard, 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 offering for sale, sale or distribution of hosiery, or other related "industry products," which are "irregulars," "seconds," or otherwise imperfect, as such terms are defined in Rule 4(c) of the Amended Trade Practice Rules for the Hosiery Industry (16 CFR 152.4(c)), in commerce as

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

A. Selling or distributing any such product without clearly and conspicuously marking on each stocking the words "irregulars" or "seconds," as the case may be, in such degree of permanency as to remain thereon until the consummation of the consumer sale and of such conspicuousness as to be easily observed and read by the purchasing public.

B. Using the words "first quality" or words of similar import on the package in which such product is sold or in reference to any such product in any advertisement or promotional material.

C. Representing in any other manner, directly or by implication, that such products are first quality or perfect quality.

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

MIDWESTERN CHINCHILLA CORPORATION ET AL.

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

Docket C-1246. Complaint, June 30, 1967—Decision, June 30, 1967

Consent order requiring a Harlan, Iowa, seller of chinchilla breeding stock to cease making exaggerated profit claims, exaggerating the number of live offsprings, deceptively guaranteeing its stock, and falsely stating the extent of seller service to purchasers in selling its chinchilla animals.

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 Midwestern Chinchilla Corporation, a corporation, and Grant D. Rice, Lowell G. Schmidt, John F. Sawin and Ronald R. Davis, individually and as officers of said corporation, and Richard W. Pauley, Donald E. Morgan and Fred Wollschlager, individually and as di-

rectors 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 Midwestern Chinchilla Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, with its principal office and place of business located at 613 Court Street, Harlan, Iowa.

Respondents Grant D. Rice, Lowell G. Schmidt, John F. Sawin and Ronald R. Davis are individuals and officers of Midwestern Chinchilla Corporation. Respondents Richard W. Pauley, Donald E. Morgan and Fred Wollschlager are individuals and directors of Midwestern Chinchilla Corporation and with the said Lowell G. Schmidt and John F. Sawin are the sole stockholders of said corporation. All of said individual respondents cooperate and act together to formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Respondent Richard W. Pauley's address is the same as that of the corporate respondent. Respondent Grant D. Rice's address is 801 Market Street, Harlan, Iowa. Respondent John F. Sawin's address is 711 Court Street, Harlan, Iowa. Respondent Ronald R. Davis' address is 1619 Farnan, Harlan, Iowa. Respondent Lowell G. Schmidt's address is 801 South Broadway, New Ulm, Minnesota. Respondent Donald E. Morgan's address is Cambria, Minnesota. Respondent Fred Wollschlager's address is Fairmont, Minnesota.

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 place of business in the State of Iowa 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 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 obtaining the names of prospective purchasers and inducing the purchase of said chinchillas, the respondents make numerous statements and representations by means of television and radio broadcasts, in direct mail advertising and

through the oral statements and display of promotional material to prospective purchasers by their salesmen, with respect to the breeding of chinchillas for profit without previous experience, the rate of reproduction of said animals, the expected return from the sale of their pelts and the training assistance to be made available to the purchasers of respondents' chinchillas.

Typical and illustrative, but not all inclusive of the said statements and representations made in respondents' television broadcasts and promotional literature, are the following:

The average pelt price received by Midwestern Chinchilla associate breeders is $25.00, with top quality pelts reaching the sixty dollar range. Starting with a small herd of six females and one male, the income can reach 5 figures in a relatively short span, if the guidance and direction of Midwestern Chinchilla Corp. is utilized.

* * * The animals can be housed anywhere, basement, spare room, out building, garage * * *.

* * * The detail man * * * will follow up and call on the ranchers every 90 days to assist the new rancher, to give him proper background and proper direction in the chinchilla industry * * *.

* * * Our program consists of starting with 6 females and 1 male, estimating only 3 offspring per year per female. Now the gestation period being 111 days. You will sometimes get 3 litters per year, but as a rule, you will get 2 litters per year per female * * *. The first year you would have 18 offspring. Your second year 33 offspring * * *. The third year 69 offspring * * * right on down to the fifth year. Your fifth year you would have 303 offspring * * * at the end of the fifth year you would have had 285 males, 288 females * * *. Now the income at the end of the sixth year if you take your 288 females plus 3 babies per year—this would give you 778 offspring times your $21.60 using the 1964 national pelt average again—so this would give you an income of $16,814.80.

Also The Midwestern Corporation will guarantee that these animals will live and litter.

PAR. 5. By and through the use of the aforesaid statements and representations and others of similar import and meaning, but not expressly set out herein, and through the oral statements and representations made in sales presentations to purchasers, respondents represent and have represented, directly or by implication, 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 experience.

3. The breeding stock of six female chinchillas and one male chinchilla purchased from respondents will result in live offspring as follows: 18 the first year, 33 the second year, 69 the third year,

144 the fourth year, 303 the fifth year and 778 the sixth year.

4. All of the offspring referred to in Paragraph Five (3) above will have pelts selling for an average price of $25 per pelt.

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

6. Pelts from the offspring of respondents' breeding stock generally sell for $21.60 to $60 per pelt.

7. A purchaser starting with six females and one male of respondents' chinchilla breeding stock will have an annual income of $16,814.80 from the sale of the pelts in the sixth year.

8. Chinchilla breeding stock purchased from respondents is unconditionally guaranteed to live one year and that all females will reproduce within one year.

9. Purchasers of respondents' breeding stock would be given guidance in the care and breeding of chinchillas.

10. Purchasers of respondents' breeding stock would receive service calls from respondents' service personnel every 90 to 120 days.

11. Purchasers of respondents' chinchilla breeding stock receive select or choice quality chinchillas.

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. The initial chinchilla breeding stock of six females and one male purchased from respondents will not result in the number specified in subparagraph (3) of Paragraph Five above 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.

4. All of the offspring referred to in subparagraph (4) of Paragraph Five above will not produce pelts selling for an average price of $25 per pelt but substantially less than that amount.

5. Each female chinchilla purchased from respondents and each female offspring will not produce at least three live young per year but generally less than that number.

6. A purchaser of respondents' chinchillas could not expect to receive from $21.60 to $60 for each pelt produced since some of the pelts are not marketable at all and others would not sell for $21.60 but for substantially less than that amount.

7. A purchaser starting with six females and one male of respondents' breeding stock will not have an annual income of $16,814.80 from the sale of pelts in the sixth year but substantially less than that amount.

8. Chinchilla breeding stock purchased from respondents is not unconditionally guaranteed to live one year and all females are not unconditionally guaranteed to reproduce within one year; but said guarantee is subject to numerous terms, limitations and conditions.

9. Purchasers of respondents' breeding stock are not given guidance in the care and feeding of chinchillas.

10. Purchasers of respondents' breeding stock do not receive service calls from respondents' service personnel every 90 to 120 days.

11. Purchasers of respondents' breeding stock do not receive select or choice quality chinchillas.

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 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' 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 Midwestern Chinchilla Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, with its office and principal place of business located at 613 Court Street, Harlan, Iowa.

Respondents Grant D. Rice, Lowell G. Schmidt, John F. Sawin and Ronald R. Davis are officers of said corporation. Respondents Richard W. Pauley, Donald E. Morgan and Fred Wollschlager are directors of said corporation. Respondent Richard W. Pauley's business address is the same as the corporate respondent. Respondent Grant D. Rice's residence address is 801 Market Street, Harlan, Iowa. Respondent John F. Sawin's residence address is 711 Court Street, Harlan, Iowa. Respondent Ronald R. Davis' residence address is 1619 Farnan, Harlan, Iowa. Respondent Lowell G. Schmidt's residence address is 801 South Broadway, New Ulm, Minnesota. Respondent Donald E. Morgan's residence address is Cambria, Minnesota. Respondent Fred Wollschlager's residence address is Fairmont, Minnesota.

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 Midwestern Chinchilla Corporation, a corporation, its officers and directors and Grant D. Rice, Lowell G. Schmidt, John F. Sawin and Ronald R. Davis, individually and as officers of said corporation, and Richard W. Pauley,

Donald E. Morgan and Fred Wollschlager, individually and as directors 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 chinchilla breeding stock or any other products, 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. The initial chinchilla breeding stock of six females and one male chinchilla purchased from respondents will produce live offspring of 18 the first year, 33 the second year, 69 the third year, 144 the fourth year, 303 the fifth year or 778 the sixth year.

4. Chinchillas will produce live offspring in any number: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented number of offspring are usually and customarily produced by the chinchillas sold by respondents or by the offspring of said chinchillas.

5. All of the offspring of chinchilla breeding stock purchased from respondents will produce pelts selling for the average price of $25 each.

6. Purchasers of respondents' breeding stock will receive for chinchilla pelts any price or prices: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented price or prices per pelt are usually received for pelts produced by chinchillas purchased from respondents, or by the offspring of said chinchillas.

7. Each female chinchilla purchased from respondents and each female offspring produce at least three live young per year.

8. The number of live offspring produced per female chinchilla is any number: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented number of offspring are usually and custom-

arily produced by female chinchillas purchased from respondents or the offspring of said chinchillas.

9. Pelts from the offspring of respondents' breeding stock generally sell for $21.60 to $60 each.

10. Chinchilla pelts produced from respondents' breeding stock will sell for any price or range of prices per pelt: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented price or range of prices are usually received for pelts produced by chinchillas purchased from respondents or by the offspring of said chinchillas.

11. A purchaser starting with six females and one male will have, from the sale of pelts, an annual income, earnings or profits $16,814.80 in the sixth year after purchase.

12. Purchasers of respondents' breeding stock will realize earnings, profits or income in any amount or range of amounts: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented amount or range of amounts of earnings, profits or income are usually realized by purchasers of respondents' breeding stock.

13. Breeding stock purchased from respondents is warranted or guaranteed without clearly and conspicuously disclosing the nature and extent of the guarantee, the manner in which the guarantor will perform and the identity of the guarantor.

14. Purchasers of respondents' chinchilla breeding stock are given guidance in the care and breeding of chinchillas or are furnished advice by respondents as to the breeding of chinchillas.

15. Purchasers of respondents' chinchilla breeding stock will receive service calls from respondents' service personnel every 90 to 120 days or at any other interval or frequency: *Provided, however,* That it shall be a dedefense in any enforcement proceeding instituted hereunder for respondents to establish that the represented service calls are actually furnished.

16. Purchasers of respondents' chinchilla breeding stock will receive select or choice or any other grade or quality, of chinchillas: *Provided, however,* That it shall

be a defense in any enforcement proceeding instituted hereunder for respondents to establish that purchasers do actually receive chinchillas of the represented grade or quality.

B. 1. Misrepresenting in any manner, the assistance, training, services or advice supplied by respondents to purchasers of their chinchilla breeding stock.

2. Misrepresenting, in any manner, the earnings or profits of purchasers of respondents' chinchilla breeding stock.

C. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of the respondents' products to purchasers; and failing to secure from each such person a signed statement acknowledging receipt of said order and agreeing to abide by the requirements of said order and to refrain from engaging in any of the acts or practices prohibited by said order; and for failing so to do, agreeing to dismissal or to the withholding of commissions, salaries and other remunerations or both to dismissal and to withholding of commissions, salaries and other remunerations.

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

SOL RATTNER, 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-1247. Complaint, June 30, 1967—Decision, June 30, 1967

Consent order requiring a New York City manufacturing furrier to cease misbranding and falsely invoicing 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 Sol Rattner, Inc., a corporation, and Sol Rattner also known as Sol Ratner, 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 Sol Rattner, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent Sol Rattner, also known as Sol Ratner, is an officer of the corporate respondent. He formulates, directs and controls the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are manufacturers of fur products with their office and principal place of business located at 252 West 30th Street, city of New York, State of New York.

PAR. 2. Respondents are now, and for some time last past have been, 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 or otherwise falsely or deceptively identified with respect to the name or the country of origin of furs contained in such fur products, in violation of Section 4(1) of the Fur Products Labeling Act.

Among such misbranded fur products, but not limited thereto, were fur products labeled to show the country of origin of furs used in such fur products as the United States when the country of origin of such furs was, in fact, Argentina.

PAR. 4. Certain of said fur products were misbranded in that they were falsely and deceptively labeled or otherwise falsely or deceptively identified with respect to the name or designation of the animal or animals that produced the fur from which the said fur products had been manufactured, in violation of Section 4(1) of the Fur Products Labeling Act.

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

PAR. 5. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

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

1. To show the true animal name of the fur used in 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 the imported furs contained in the fur products.

PAR. 6. 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 "Dyed Broadtail-processed Lamb" was not set forth on labels in the manner required by law, in violation of Rule 10 of said Rules and Regulations.

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

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

PAR. 7. Certain of said fur products were falsely and deceptively invoiced by the respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated under such Act.

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

1. To show the true animal name of the fur used in 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. 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 which were invoiced as "Broadtail" thereby implying that the furs contained therein were entitled to the designation "Broadtail Lamb" when in truth and in fact the furs contained therein were not entitled to such designation.

PAR. 9. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects.

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

(b) 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.

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

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

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and practices 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 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 Sol Rattner, 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 252 West 30th Street, city of New York, State of New York.

Respondent Sol Rattner also known as Sol Ratner 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 Sol Rattner, Inc., a corporation, and its officers, and Sol Rattner also known as Sol Ratner, 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, 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. Falsely or deceptively labeling or otherwise falsely or deceptively identifying any such fur product as to the country of origin of furs contained in such fur product.

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

3. 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.

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

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

6. 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 on an invoice pertaining to such fur product 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. Failing to set forth the term "Persian Lamb" in the manner required where an election is made to use that term instead of the word "Lamb."

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

5. Failing to set forth the term "natural" as part of

the information required to be disclosed on an invoice under the Fur Products Labeling Act and Rules and Regulations promulgated thereunder to describe such fur product which is not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

6. Failing to set forth on an invoice the item number or mark assigned to such fur product.

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

IN THE MATTER OF

HERMAN MILLER, INC.

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

Docket C-1248. Complaint, June 30, 1967—Decision, June 30, 1967

Consent order requiring a Zeeland, Mich., furniture manufacturer to cease discriminating in price between competing customers and using any anticompetitive merchandising plan.

COMPLAINT

The Federal Trade Commission, having reason to believe that Herman Miller, Inc., the party respondent named in the caption hereof and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsection (a) of Section 2 of the Clayton Act (U.S.C., Title 15, Section 13) as amended by the Robinson-Patman Act, approved June 19, 1936, and the provisions of Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Section 45), hereby issues its complaint, stating its charges with respect thereto as follows:

COUNT I

PARAGRAPH 1. Respondent Herman Miller, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 140 McKinley Street, Zeeland 2, Michigan.

PAR. 2. Respondent is now, and for many years last past has been, engaged in the manufacture, sale and distribution of furniture and furniture products. These products are sold to a large number of customers located throughout the United States and in foreign lands. Its sales of these products are substantial, amounting to about $12.7 million for the year ending May 31, 1966.

PAR. 3. In the course and conduct of its business, respondent has engaged and is now engaged in commerce, as "commerce" is defined in the Clayton Act. Respondent employs interstate means of communication with its customers in the consummation of sales and in the settling of accounts. Respondent ships, or causes to be shipped, its products from the states in which said products are manufactured to its customers, or to purchasers from its customers, located in other States of the United States and the District of Columbia. Thus, there is and has been, at all times mentioned herein, a continuous course of trade in commerce in said products across State lines between respondent and its customers.

PAR. 4. In the course and conduct of its business in commerce, respondent has been and now is discriminating in price, directly or indirectly, between different purchasers of its furniture and furniture products of like grade and quality by selling said products at higher prices to some purchasers than it sells said products to other purchasers, many of whom have been and now are in competition with the purchasers paying the higher prices.

PAR. 5. Included among, but not limited to, the discriminations in price as above alleged, are the following:

For several years last past respondent has priced its products in terms of net prices (or trade prices). Some classes of respondent's customers purchase at said net prices while other classes of customers purchase at net prices less discounts ranging up to approximately 25%. Respondent has also published dealer prices at which certain classes of customers purchase products from respondent. Dealer prices generally amount to the net prices less a discount of 25%. Although the manner of stating such price differences between customers has been changed by respondent from time to time, in effect the amounts of such differences have remained essentially the same over the last several years. Various members of each class of customers compete with each other and with various members of each of the other classes.

PAR. 6. The effect of respondent's discriminations in price as alleged herein has been or may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which

respondent's customers are engaged, or to injure, destroy, or prevent competition with purchasers from respondent who receive the benefit of such discriminations.

PAR. 7. The aforesaid acts and practices constitute violations of the provisions of subsection (a) of Section 2 of the Clayton Act (U.S.C., Title 15, Section 13) as amended by the Robinson-Patman Act, approved June 19, 1936.

COUNT II

PAR. 8. Paragraphs One through Three of Count I hereof are incorporated herein by reference and made a part of this Count as fully and with the same effect as if set forth herein verbatim, except that the reference to the Clayton Act in Paragraph Three of Count I is eliminated herein and references to the Federal Trade Commission Act is substituted therefor.

PAR. 9. Respondent competes with other furniture manufacturers for the business of dealers and other purchasers of furniture and furniture products, except to the extent that competition has been hindered, lessened, restricted, or suppressed by the unfair methods of competition and unfair acts or practices hereinafter set forth.

PAR. 10. Respondent's customers are in competition with other customers in the resale of respondent's products, except to the extent that competition has been hindered, lessened, restricted, or suppressed by the unfair methods of competition and unfair acts or practices hereinafter set forth.

PAR. 11. For several years last past respondent and certain of its customers have been and now are engaged in unfair methods of competition and unfair acts or practices in commerce by cooperating, combining, conspiring, agreeing, entering into, or carrying out understandings, or following a planned common course of action, or course of dealing to hinder, lessen, restrict, or suppress competition in the production, sale, and distribution of furniture and furniture products.

PAR. 12. Pursuant to and as a part and parcel of said unfair methods of competition and unfair acts or practices, respondent and its customers have entered into and effectuated programs, plans, or policies, included among which, but not limited to, is the following:

From time to time those customers which are granted the maximum rate of discount by respondent have occasion to specify, or cause to be specified, the furnishings to be used in rooms or

buildings, which furnishings are to be purchased by awarding the sale of respondent's products to the person bidding or quoting the lowest prices. When, upon such an occasion, one of respondent's customers registers with respondent the fact that it has specified, or caused to be specified, respondent's products to be used on such a job, respondent notifies its other maximum discount customers in the same trading area of the fact that said registration has been made. Such other customers are thereby notified that respondent will allow the maximum rate of discount on that particular job only to the registering customer and that such other customers will be allowed a substantially reduced rate of discount should they be invited to bid or otherwise quote prices on the job. Customers other than the registering customer which are invited to bid or otherwise quote prices on the job are required to confirm with respondent the reduced rate of discount they will be granted. On some occasions, respondent also has expressly requested customers other than the registering customer to refrain from bidding. Such practice results in the registering customer's favoring respondent's products over other manufacturers' products and in submitting the lowest bid or quoting the lowest prices and being awarded the sale.

PAR. 13. The capacity, tendency or effect of the aforesaid unfair methods of competition and unfair acts or practices in commerce has been, is now, and may be:

1. To hinder, lessen, restrict, or suppress competition in the distribution and sale of furniture and furniture products.

2. To hinder, lessen, restrict, or suppress competition among various of respondent's customers and thereby to deprive said customers of their freedom to sell respondent's products at prices which, in their judgment, would be warranted by trade conditions.

3. To limit, allocate, or restrict the persons or classes of persons to whom respondent's customers may sell respondent's products.

4. To deny purchasing consumers or users of respondent's products the right to receive competitive price quotations on respondent's products from respondent's customers.

5. To deprive the purchasing public of the advantages which it would derive if competition between and among customers of respondent in the sale of respondent's products were not restrained and restricted in the manner and by the methods, acts or practices hereinbefore set forth.

6. To foreclose markets and access to markets to competitors of respondent engaged in the manufacture, distribution and sale of furniture and furniture products.

7. To substantially enhance the prices which the public is required to pay for furniture and furniture products.

8. To mislead purchasing consumers or users of furniture and furniture products into believing that respondent's customers, in specifying respondent's products, are making disinterested selections from various competing lines.

PAR. 14. The acts and practices of respondent, as hereinbefore set forth are to the prejudice and injury of the public and constitute unfair methods of competition and unfair acts or practices within the intent and meaning of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act and subsection (a) of Section 2 of the Clayton 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 Herman Miller, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 140 McKinley Street, Zeeland 2, Michigan.

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 Herman Miller, Inc., a corporation, and its officers, representatives, agents and employees, di-

rectly or through any corporate or other device, in, or in connection with, the offering for sale, sale, or distribution of furniture and furniture products in commerce, as "commerce" is defined in the Clayton Act, as amended, do on and after December 1, 1967 cease and desist from:

Discriminating, directly or indirectly, in the price of such products of like grade and quality by selling such products to any purchaser at net prices higher than the net prices charged any other purchaser who in fact competes in the resale or distribution of such products with the purchaser paying the higher price.

It is further ordered, That respondent Herman Miller, Inc., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in, or in connection with, the offering for sale, sale, or distribution of furniture and furniture products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Putting into effect, maintaining or enforcing any merchandising or distribution plan or policy under which contracts, agreements, or understandings are entered into with its customers which have the purpose or effect of requiring or inducing, directly or indirectly, any of its customers to refrain from bidding or otherwise quoting prices which are effectively designed to secure for such customers the sale of respondent's products.

2. Entering into, continuing, or enforcing, or attempting to enforce, any contract, agreement or understanding with any of its customers for the purpose or with the effect of establishing or maintaining any merchandising or distribution plan or policy prohibited by paragraph 1 of this order.

3. Engaging, either as part of any contracts, agreements, or understandings with any of its customers, or individually or unilaterally, in the practice of:

(a) Notifying, or otherwise communicating to, its customers, directly or indirectly, that one or more of its customers will be favored, in terms of price or otherwise, with respect to bargaining with, or submitting bids or otherwise quoting prices to, particular consumers or users of such products.

(b) Requiring or inducing, directly or indirectly, its customers to confirm with it the prices it will charge such customers for such products in the event that such

customers make sales to particular consumers or users of such products.

It is further ordered, That respondent shall, within sixty (60) days after service of this order upon respondent, serve by mail on all maximum discount dealers of its products a copy of this order.

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

NATIONAL MATTRESS COMPANY ET AL.

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

Docket C–1249. Complaint, June 30, 1967—Decision, June 30, 1967

Consent order requiring a Huntington, West Va., mattress and bedding manufacturer and its seven wholly owned subsidiaries, to cease misrepresenting that its products have any health or therapeutic benefits, that they are built to specifications promulgated by any health organization or are approved by any such organization.

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 Mattress Company, Jasper National Mattress Company, Cincinnati National Mattress Company, Huntington National Mattress Company, Saginaw National Mattress Company, Tyler National Mattress Company, Charlotte National Mattress Company and Youngstown National Mattress Company, corporations, and James F. Edwards, Carter W. Wild and Ernest C. Ghrist, individually and as officers and directors of said corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent National Mattress Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of West Virginia, with its principal

office and place of business located at 21st Street and Second Avenue in the city of Huntington, State of West Virginia.

Respondent Jasper National Mattress Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alabama, with its principal office and place of business located at 12120 Russellville Road in the city of Jasper, State of Alabama.

Respondent Cincinnati National Mattress Company 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 501 East Pearl Street in the city of Cincinnati, State of Ohio.

Respondent Huntington National Mattress Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of West Virginia, with its principal office and place of business located at 21st Street and Second Avenue in the city of Huntington, State of West Virginia.

Respondent Saginaw National Mattress Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 1510 Holland Avenue in the city of Saginaw, State of Michigan.

Respondent Tyler National Mattress Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 620 Hillcrest Drive in the city of Tyler, State of Texas.

Respondent Charlotte National Mattress Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 2112 Thrift Road in the city of Charlotte, State of North Carolina.

Respondent Youngstown National Mattress Company 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 Tod and West Avenues in the city of Youngstown, State of Ohio.

Individual respondents James F. Edwards, Carter W. Wild and Ernest C. Ghrist are officers and directors of said corporate respondents and control, direct and formulate the acts, practices and policies of said corporate respondents, including the acts and practices herein set forth. Their business addresses are the same as that of corporate respondent National Mattress Company.

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 manufacturing, advertising, offering for sale, sale and distribution of mattresses, box springs and other bedding products to retailers for resale to members of the purchasing public.

Respondent National Mattress Company wholly owns eight subsidiary corporations engaged in the aforesaid business activities, including respondents Jasper National Mattress Company, Cincinnati National Mattress Company, Huntington National Mattress Company, Saginaw National Mattress Company, Tyler National Mattress Company, Charlotte National Mattress Company and Youngstown National Mattress Company.

Respondents use the registered mark "Posture Queen" on certain of their mattresses and box springs and as a trade name in the promotion of the sale of said products. Respondent National Mattress Company prepares all advertising and designs all labels bearing said trademark and trade name.

For the purpose of promoting the sale of said mattresses and box springs, respondents have contracted with twelve statewide associations of practitioners of chiropractic and the interstate association of which said statewide associations are members. By terms of the contracts, the contracting mattress companies are permitted to represent their aforesaid "Posture Queen" mattresses and box springs as endorsed by said associations under specified conditions, in consideration of which each of said associations receives a payment for each sale of a mattress or box spring so represented which is attributable to its contract. Respondent Jasper National Mattress Company is a party to a number of said contracts and has been instrumental in promoting sales of said mattresses and box springs under the terms of said contracts.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time past have caused, their products, when sold, to be shipped to purchasers thereof located in States other than the State or States in which said products were made at respondents' several production facilities 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, and for the purpose of inducing the purchase of their mattresses and box springs, the respondents have made, and are now making,

numerous statements in advertisements inserted in newspapers, in promotional materials and on labels, with respect to the health properties, design, construction, endorsement and approval of their mattresses and box springs:

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

(1) Scientifically Built For Proper Sleeping Posture!
Posture Queen Mattress and Box Spring
The only Mattress and Box
Spring built to Chiropractic
Specifications of Your *
State Chiropractic Asso.
Ask Your
Chiropractor
How "Posture Queen"
Can Help You!
A National Product

* * * * * * *

*Here appears, in some advertisements, the name of the state in which the representation is published.

(2) IT'S COMPLETELY NEW!
BY Namaco 60 Years of Fine Mattresses
Posture Queen DELUXE
Mattress and Box Spring
The only Mattress and Box
Spring built to Chiropractic
Specifications of Your
State CHIROPRACTIC Asso.
Ask Your
Chiropractor
How "Posture Queen"
Can Help You!
A National Product

* * * * * * *

It's quilted (The New Way) Foam Insulation
Each Side . Crush Proof Edge Supported . Built
to Chiropractic Specifications by Expert
Craftsmen . Luxury-Beauty-Chiropractic Support

3) Posture Queen
A CHIROPRACTIC POSTURE MATTRESS
Helps maintain Spinal Alignment
For use as an aid in the management
of general
Back conditions when purchased with
matching Foundation
[*] Manufactured under Attested Specifications by
NAMACO
60 years of fine mattresses
* Here appears a representation of the human spinal column

PAR. 5. By and through the use of the above-quoted statements and representations and others of similar import and meaning, but not specifically set out herein, the respondents have represented, and are representing, directly or by implication, that:

1) Said mattress and box springs have been specially designed and constructed so as to prevent, correct or afford relief with respect to a body deformity or deformities.

2) Respondents' mattresses and box springs have been designed and constructed in accordance with mattress and box spring design and construction standards and specifications established by an association of chiropractic practitioners, which standards and specifications consist of specific engineering characteristics.

3) The association referred to has established mattress and box spring design and construction standards known to or readily available to those competitors of respondents whose mattresses and box springs are sold in the area of said organization's existence.

4) Said standards are a measure of quality for mattresses and box springs of a grade similar to those so described by respondents.

5) Respondents' mattresses and box springs so described by respondents as having been designed and constructed in accordance with said standards have in fact been so designed, while said competitors either manufacture their said mattresses and box springs in disregard of said standards or are unable to manufacture their said mattresses and box springs in compliance with said standards.

6) Authority to describe respondents' mattresses and box springs as approved or endorsed by the referred to associations has been given without remuneration or other consideration, directly or indirectly, from respondents to said associations.

PAR. 6. In truth and in fact:

1) Respondents' mattresses and box springs have not been specially designed or constructed so as to, nor will they in fact, prevent, correct or afford relief with respect to a body deformity or deformities.

2) Respondents' mattresses and box springs have not been designed or constructed in accordance with mattress and box spring design or construction standards and specifications established by an association of chiropractic practitioners, which standards and specifications consist of specific engineering characteristics.

3) The associations referred to in respondents' representations have established no mattress or box spring design or construction

standards and specifications known to or readily available to those competitors of respondents whose products are sold in the area of existence of said associations.

4) Said standards are nonexistent, and are not, therefore, a measure of quality for mattresses or box springs of a grade similar to those described by respondents by reference to said standards.

5) Respondents' mattresses and box springs have not met any such standards, which are nonexistent, and said competitors of respondents do not manufacture their mattresses and box springs in disregard of nor are they unable to meet said nonexistent standards.

6) Authority of respondents to refer to the chiropractic associations to which they do refer, directly or by implication, in describing their mattresses and box springs is not given without remuneration from respondents to said associations. Said associations, by terms of contracts with respondents, receive financial benefit from the sale of each mattress or box spring so referred to.

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

PAR. 7. In the conduct of their business at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of mattresses and box springs and other bedding products of the same general kind and nature as those 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 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 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 Mattress Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of West Virginia, with its principal office and place of business located at 21st Street and Second Avenue in the city of Huntington, State of West Virginia.

Respondent Jasper National Mattress Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alabama, with its principal office and place of business located at 12120 Russellville Road in the city of Jasper, State of Alabama.

Respondent Cincinnati National Mattress Company 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 501 East Pearl Street in the city of Cincinnati, State of Ohio.

Respondent Huntington National Mattress Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of West Virginia, with its principal office and place of business located at 21st Street and Second Avenue in the city of Huntington, State of West Virginia.

Respondent Saginaw National Mattress Company is a corpora-

tion organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 1510 Holland Avenue in the city of Saginaw, State of Michigan.

Respondent Tyler National Mattress Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 620 Hillcrest Drive in the city of Tyler, State of Texas.

Respondent Charlotte National Mattress Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 2112 Thrift Road in the city of Charlotte, State of North Carolina.

Respondent Youngstown National Mattress Company 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 Tod and West Avenues in the city of Youngstown, State of Ohio.

Respondents James F. Edwards, Carter W. Wild and Ernest C. Ghrist are officers and directors of said corporations and their address is the same as that of respondent National Mattress Company.

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 Mattress Company, Jasper National Mattress Company, Cincinnati National Mattress Company, Huntington National Mattress Company, Saginaw National Mattress Company, Tyler National Mattress Company, Charlotte National Mattress Company and Youngstown National Mattress Company, corporations, and their officers, and James F. Edwards, Carter W. Wild and Ernest C. Ghrist, individually and as officers and directors of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the manufacturing, advertising, offering for sale, sale or distribution of mattresses, box springs, bedding products or any other article of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any stock mattress or box spring has been specially designed or constructed so as to, or will in fact, prevent, correct or afford relief with respect to a body deformity or deformities.

2. Misrepresenting, in any manner, the therapeutic properties or health benefits of any of respondents' said products.

3. Representing, directly or by implication, that any of respondents' mattresses or box springs are designed or constructed in accordance with specifications or standards established by any organization unless the organization so referred to has prescribed the number of coils, composition and gauge of wire, tensile strength, flexibility and other similarly specific engineering characteristics for said mattresses or box springs and respondents' mattresses and box springs so described have in fact been designed and constructed in accordance therewith.

4. Representing, directly or by implication, that any association of practitioners of the healing arts has established mattress or box spring design or construction standards or specifications known to or readily available to those competitors of respondents whose mattresses and box springs are sold in the area of said association's existence.

5. Representing, directly or by implication, that any nonexistent standards or specifications, or any standards or specifications which do not describe and establish with detail and particularity the design, construction, quality and performance of mattresses and box springs are a measure of quality for mattresses or box springs.

6. Representing, directly or by implication, that respondents' mattresses or box springs have been designed or constructed in accordance with any nonexistent standards or specifications, or in accordance with any standards or specifications which do not prescribe and establish with detail and particularity the design, construction, quality and performance of mattresses and box springs, or that the products of others do not meet said standards or specifications.

7. Representing, directly or by implication, that any of respondents' products have been approved or endorsed by any member, members or association of members of the healing arts, without clearly and conspicuously revealing the fact of any remuneration or other consideration given, directly or in-

directly, by respondents to said member, members or association for said approval or endorsement.

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

ANGORA CORPORATION OF AMERICA ET AL.

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

Docket C-1250. Complaint, June 30, 1967—Decision, June 30, 1967

Consent order requiring a New York City importer and processor of fabrics to cease misbranding and falsely guaranteeing its wool products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Angora Corporation Of America, a corporation, and Sam Flomenhaft, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Angora Corporation Of America is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Its office and principal place of business is located at 29 West 35th Street, New York, New York.

Individual respondent Sam Flomenhaft is an officer of said corporation. He formulates, directs and controls the acts, practices and policies of the said corporation. His office and principal place of business is the same as that of said corporation.

The respondents import and sell, among other items, mohair and wool yarns.

PAR. 2. Respondents now, and for sometime last past, have introduced into commerce, sold, transported, distributed, delivered for shipment, shipped and offered for sale in commerce, as "commerce" is defined in said Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

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

Among such misbranded wool products, but not limited thereto, were yarns stamped, tagged, labeled, or otherwise identified by respondents as "100% Mohair" and "100% Italian Mohair," whereas in truth and in fact, such products contained substantially different fibers and amounts of fibers than as represented.

PAR. 4. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, was a wool product, *viz.*, yarn, with a label on or affixed thereto which failed to disclose the percentage of the total fiber weight of the said wool product, exclusive of ornamentation not exceeding 5% of the total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool, when said percentage by weight of such fiber was 5% or more; and (5) the aggregate of all other fibers.

PAR. 5. Certain of said wool products were misbranded by respondents in violation of the Wool Products Labeling Act of 1939 in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder, in that the term "Mohair" was used in lieu of the word "Wool" in setting forth the required fiber content information on labels affixed to wool products when certain of the fibers described as "Mohair" were not entitled to such designation, in violation of Rule 19 of the Rules and Regulations under the Wool Products Labeling Act of 1939.

PAR. 6. Respondents have furnished a false guaranty that their

wool products were not misbranded, when they knew, or had reason to believe, that the said wool products so falsely guaranteed might be introduced, sold, transported, or distributed in commerce, in violation of Section 9 of the Wool Products Labeling Act of 1939.

PAR. 7. The acts and practices of the respondents as set forth above, were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939; 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 Angora Corporation Of America 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 29 West 35th Street, New York, New York.

Respondent Sam Flomenhaft 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 Angora Corporation Of America, a corporation, and its officers, and Sam Flomenhaft, 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 offering for sale, sale, transportation, distribution, delivery for shipment or shipment in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from:

A. Misbranding such products by:

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

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

3. Affixing thereto labels whereon the term "Mohair" is used in lieu of the word "Wool," in setting forth the required information, unless the percentage of fibers designated as "Mohair" are entitled to that designation and are present in at least the amount stated.

B. Furnishing a false guaranty that their wool products are not misbranded under the provisions of the Wool Products Labeling Act, where there is reason to believe that the wool products so guaranteed may be introduced, sold, transported, or distributed in commerce.

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