

d. Which contains the statement "The form enclosed is confidential, no one else may open" or any statement of similar purport.

4. Representing, directly, or by implication, that any of respondent's Payment Demand forms or any similar collection material sold by the respondent have been approved by the Federal Trade Commission or have been deemed to be in compliance with the requirements of the order to cease and desist entered by the Federal Trade Commission in Docket No. 6236, *In the Matter of Mitchell S. Mohr, et al.*

5. Misrepresenting Federal Trade Commission or court approval of any of respondent's envelopes, forms, or other material.

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.

Commissioner Nicholson not participating for the reason that oral argument was heard prior to his taking the oath of office.

IN THE MATTER OF

AMERICAN MARKETING ASSOCIATES, INC., ET AL.

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION

OF THE FEDERAL TRADE COMMISSION ACT

Docket 8727. Complaint, Jan. 17, 1967—Decision, Feb. 5, 1968

Order requiring a Philadelphia, Pa., retail door-to-door seller of encyclopedias and other educational books, to cease misrepresenting that it is affiliated with the American Marketing Association or any other business group or that it is doing market research, that its employee applicants will be trained as junior executives and paid a salary, that it is affiliated with any educational or governmental agency, that it is selling its books at reduced prices, and using other deceptive sales tactics.

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 American Marketing Associates, Inc., a corporation, and Stanley Kessler, individually and as a director of the 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 American Marketing Associates, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its main office and place of business located at 1422 Chestnut Street (Suite 702), Philadelphia, Pennsylvania.

Respondent Stanley Kessler is an individual and director of the corporate respondent. He is the sole stockholder and operator of the business of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

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

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

PAR. 4. In the course and conduct of their business as aforesaid, respondents have been, and now are, in substantial competition in commerce with corporations, firms and individuals in the sale of books of the same general kind and nature as those sold by respondents.

PAR. 5. In the course and conduct of their business, as aforesaid, respondents sell said books at retail to the general public. Sales are made by respondents' agents, representatives or employees who contact prospective purchasers in their homes or at their places of business.

Respondents have formulated, developed and carried out a plan for the purpose of attracting and acquiring sales employees and for the purpose of selling said books.

A

In furtherance of said plan, respondents have disseminated or caused to be disseminated, and now disseminate or cause to be disseminated,

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classified advertisements in newspapers of general and interstate circulation and in other advertising media and have made statements and representations designed and intended to induce individuals to apply for employment and training in respondents' organization in reliance thereon.

Typical and illustrative of the foregoing, but not all inclusive thereof, are the following:

American Marketing Assoc. now opening new center city offices. Require services of several perky, well-groomed beginners (over 17) to assist our staff of bright, young, busy marketing, sales, Anthology & public relation execs.

\$89 SAL TO START

to those who meet our requirements, no exp. required. FULL TRAINING. No typing. These are permanent positions which could lead to a career in personnel management and supervision & on income in excess of \$4800 per year. YOU MUST BE PREPARED TO START IMMEDIATELY.

CALL FOR APPOINTMENT

LO 4-4345

FEMALE HELP WANTED

GALS

JR. EXEC.

TRAINEE

SAL. \$89 PER WK.

Large international marketing corp will now employ 4 bright well-groomed beginners (over 17) to fill supervisory and Jr. Market research positions now available due to recent promotions. If accepted you'll be trained (at our expense) to assist our present staff of Jr. Execs. MUST BE PREPARED TO START IMMEDIATELY. CALL FOR APPOINTMENT

543-4345

GALS

WOULD YOU

LIKE TO

OVER 17

* * * * *
 * * * You will be working in our Marketing & Analysis Dept. assisting our staff of bright young, marketing, advertising, sales, anthological & public relations execs. * * * You must be prepared to start work immediately on \$360 monthly starting salary. For Easiest & best way to apply call for appt. Mr. Disney 564-4345

MEN—Large international Marketing Concern Has Several Open'gs in its New Consumer Acceptance Dept Career Position. No Exp. Nec. No Selling. Full Training Provided. Must Be Able To Meet Public. Excel. Sal. To Start Management Oppty Available. Rapid Advancement To Excess of \$9000 per yr. Must be Able To Start Immediately. Apply At Our Center City Personnel Office. Amer. Mktg. Assoc. 1422 Chestnut St. Suite 702, 10 A.M. to 4 P.M. Only.

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MEN

OVER 17

SUPERVISORY
TRAINEES
SAL. \$89 PER WK.

Dynamic & fast growing WOMEN'S ORGANIZATION will now employ 4 bright well-groomed BEGINNERS to fill Jr. public relations and sales executive positions now available due to promotions. If accepted you'll be trained (at our expense) to supervise the young women who handle our printed matter for us. MUST BE PREPARED TO START IMMEDIATELY Interview by appointment only

Miss Marlo

LO 4-4345

* * * will come again employ the services of several students * * * to fill supervisory and Jr. Market Research positions under our Summer Student Employment Opportunity Program. Those accepted will be trained (at our expense) in all phases of marketing * * * Those who meet our requirements will be paid a salary of \$70.00 per week. No experience is required since full training will be provided by competent personnel administrators and students who are rejoining our staff this summer * * *

Marketing Research & Analysis

* * * * *

American Marketing Assocs Inc.
1422 Chestnut LO 4-4345

PRODUCTS ACCEPTANCE DIVISION
American Marketing Associates, Inc.

Editorial & Research Depts
Chicago Ill.

B

In furtherance of that part of the aforesaid plan to sell their books to prospective customers, respondents supply their agents, representatives or employees with a printed "sales pitch" and material in connection therewith and instruct them to use and follow same. Said agents, representatives or employes employ said printed sales presentation and material in orally soliciting the purchase of respondents' encyclopedias and other educational books.

Respondents, in said printed sales presentation and in advertising and promotional literature and other printed materials, and respondents' agents, representatives or employees, in the course of their sales talks, make many statements and representations concerning the trade status and organization of the respondents' corporation, their own status and employment, the quality and characteristics, the offer and price of respondents' books. Some of these statements and representations

are made orally by said agents, representatives and employees to prospective purchasers and some are contained in advertising and promotional literature displayed by said representatives to prospective customers.

PAR. 6. Through the use of such statements and representations and others similar thereto, but not specifically set forth herein, separately and in connection with the oral sales presentations of respondents' salesmen, as used variously by the respondents in the advertisements and the promotion of their products, respondents have represented, directly or by implication:

1. That respondents are associated or affiliated with the American Marketing Association; and that they are an association of persons, firms or corporations having a common interest.

2. That respondents are an international corporation with branch offices in major cities and its home office in Chicago, Illinois. They are engaged in the business of marketing research and analysis, advertising credits and public relations with annual sales in a recent year amounting to \$100,000,000.

3. That they are recruiting young men and women as trainees for career positions as junior executives in marketing research, sales, advertising credits, public relations, personnel supervision and management, to fill positions, created by promotions.

4. That trainees will be paid \$70 or \$89 a week, \$360 a month, or \$4,628 a year, as starting salaries with no previous experience required.

5. That respondents' organization consists of separate functional departments and divisions, such as Editorial, Research, Educational and Legal and a Products Acceptance Division; and that it has in its employ experts in the educational field, possessing special skills and qualifications such as doctoral degrees and maintains its own company psychologists.

6. That it represents Parents-Children's Institute, an organization that supplies educational materials to school systems; and that it is also affiliated with Parents Magazine and various agencies of the United States Government.

7. That the respondents have engaged in market research in conjunction with the University of California.

8. That at the request of leading educators meeting at Atlantic City, New Jersey, the respondents developed, in conjunction with the University of California, an educational program to link the home to the school.

9. That the aforesaid educational program was endorsed and approved by leading educators and contained all the required readings of a child's school work; and that it would prepare the preschool child to pass the "Reading Readiness Test," required to enter the first grade of elementary school.

10. That respondents' representatives were making a "survey" of a select group of mothers, to solicit "endorsements" of the aforesaid educational program.

11. That the respondents' representatives were mothers with children or teachers who volunteered their services solely out of interest in the aforesaid educational program at no compensation or at a nominal compensation.

12. That under a "Mother's Club Plan" the aforesaid select group of mothers were being afforded the opportunity of obtaining this educational program at a special price, far below the regular price, which special price only covered the cost of production, such as paper, printing, bindings and royalties; and that the regular price would amount approximately to \$1,000, whereas the special price was only \$249.50; or that an optional yearly supplement could be purchased at a cost of \$4.98, which supplement normally cost \$14.98.

13. That if the customer paid a certain amount above the normal deposit, depending on the amount of the said excess deposit, the respondents would give the educational program, or parts thereof FREE to an orphanage.

PAR. 7. In truth and in fact:

1. The respondents are not associated nor affiliated in any manner with the American Marketing Association or any other organization and are not an association of persons, firms or corporations, having a common interest. Respondents are but a simple corporate entity engaged in business as hereinabove described.

2. The respondents are not an international corporation with branch offices in major cities and its home office in Chicago, Illinois. Further, the respondents are not engaged in the business of marketing research and analysis, advertising credits and public relations. The respondents maintain a single office in Philadelphia, Pennsylvania and are engaged in the door-to-door sale of encyclopedias and other educational books. At no time did their annual sales ever even remotely total \$100,000,000.

3. The respondents do not recruit young men and women as trainees for career positions as junior executives in marketing research, advertising credits, public relations, personnel supervision and management to fill positions, created by promotions or for any like positions. Indi-

viduals, recruited by respondents, are trained only for door-to-door selling of respondents' products.

4. Trainees recruited by respondents are not paid \$70 or \$89 a week, \$360 a month or \$4,628 a year or any salary by the respondents. Their only form of compensation is in the form of commissions on sales made by them.

5. The respondents' organization does not consist of separate functional departments and divisions, nor does it have in its employ experts in the educational field possessing skills and qualifications such as doctoral degrees nor do they maintain a staff of company psychologists.

6. The respondents do not represent Parents-Children's Institute, nor are they affiliated with Parents Magazine nor any agency of the United States Government.

7. The respondents have not engaged in market research or any other research in conjunction with the University of California or any other organization or institution.

8. The respondents have not developed an educational program in conjunction with the University of California, at the request of leading educators.

9. The aforesaid educational program was not endorsed and approved by leading educators and did not contain all the required readings of a child's school work. Further, a preschool child is not required to pass a "Reading Readiness Test" as a prerequisite for entering elementary school.

10. The respondents' representatives were not making a "survey," relating to schools, children, educational problems and conditions of a select group of mothers for the purpose of soliciting an "endorsement" for the aforesaid educational program or for any other purposes. The sole purpose of the respondents' representatives was to sell encyclopedias and other books to any customers who would purchase the same.

11. Respondents' representatives were not necessarily mothers with children or teachers who volunteered their services with little or no compensation but solely out of an interest in the aforesaid educational program. Respondents' representatives, as aforesaid, were salesmen and saleswomen, married or single, working for a commission to be realized from the sale of respondents' books.

12. The customers of the respondents are not a select group of mothers, who are being afforded the opportunity of obtaining the aforesaid educational program, under a "Mother's Club Plan" at a special price far below the regular price, which special price only covered the cost of production, such as paper, printing, bindings and royalties. Further, the regular price of the program would not amount approximately to

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\$1,000. In fact the respondents' regular price for this collection of books was the promoted "special" price of \$249.50, for which the respondents paid \$53.90. Further, the advertised "regular" price of \$14.98 for the optional yearly supplement was nonexistent and respondents' actual regular price of the yearly supplement was the "special" price of \$4.98.

13. Respondents did not give the educational program "free" to any orphanage in return for a customer paying a certain amount in excess of the usual minimum deposit.

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

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

The use by respondents of the aforesaid statements and representations in connection with the recruitment of personnel to sell encyclopedias and related books has had, and now has, the capacity and tendency to mislead prospective employees into the erroneous and mistaken belief that such statements and representations were, and are true and to induce them to respond to such advertisements and enter into respondents' employ in reliance thereon.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury to 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. Anthony Kennedy, Mr. Ralph Carrigan, Federal Trade Commission, Washington, D.C., supporting the complaint.

Mr. Robert Eugene Smith, Baltimore, Md., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

AUGUST 24, 1967

Preliminary Statement

This is a proceeding under Section 5 of the Federal Trade Commission Act¹ in which respondents are charged with engaging in decep-

¹ 15 U.S.C.A. § 45 "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful."

tive acts and practices. The corporate respondent American Marketing Associates, Inc. (hereinafter AMA), a Pennsylvania corporation, has, since late 1964, been engaged in the door-to-door selling, in interstate commerce, of the New Standard Encyclopedia; Child Horizons; the Science Library; The Childrens' Classics Library, and other "educational materials" in Pennsylvania, Delaware, New Jersey, Maryland and the interstate area surrounding Philadelphia, Pennsylvania.

The complaint, which was issued January 17, 1967, seeks to have the individual respondent Stanley Kessler included in any order which may be entered against the corporate respondent, on the grounds, among others, that such inclusion is required in order to prevent effectively the violations of law which are charged in the complaint.

After the customary prehearing procedures under the Rules of Practice for Adjudicative Proceedings of the Federal Trade Commission, hearings were held in Philadelphia, Pennsylvania, on May 29 to June 7, 1967, both inclusive. Twenty-five (25) witnesses testified, and approximately 135 exhibits were received in evidence. The hearing record was closed on June 21, 1967. Proposed findings, conclusions and briefs have been filed by complaint counsel, but not by respondents. The matter is now before the hearing examiner for decision upon the entire record, including a prehearing stipulation, the exhibits, the testimony of the witnesses and other documents of record.

The deceptive acts with which the respondents are charged, include, among others:

1. The selection and use of a corporate name which is designed to, and does, lead the public to believe that the corporate respondent, American Marketing Associates, Inc., which was organized in 1964 under the laws of the State of Pennsylvania, is the American Marketing Association, a nonprofit, old, long-established, and highly respected, nationally active association which is primarily engaged in marketing research;
2. Using deceptive acts and practices in employing personnel;
3. Using deceptive acts and practices in effecting sales of their products;
4. Concealing and being evasive concerning the nature of the articles they sell;
5. Misrepresenting the corporation's true purpose; and
6. Representing to a prospective purchaser of their products that the price at which their products are being offered for sale is substantially lower than the price at which such products are customarily sold in the trade area in the regular course of business.

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The hearing examiner finds and concludes that complaint counsel have proven their case by reliable, probative and substantial evidence, and the hearing examiner has entered an order which has been framed to stop respondents' current deceptions and to prevent future deceptions.

Witnesses who testified in this proceeding were:

1. Dr. Charles S. Goodman, professor of marketing at the University of Pennsylvania, former director and officer of the Philadelphia chapter of the American Marketing Association;
2. Bonnie Ruth Simkins, former saleslady for AMA;
3. Sandra Serkin, former saleslady for AMA;
4. Mrs. Merle Urban, a housewife of Pennsauken, New Jersey, who signed up to purchase respondents' product and then cancelled her contract;
5. John Urban, the husband of Mrs. Merle Urban;
6. Mrs. Shirley R. Harrington, a housewife of Glassboro, New Jersey, who signed up to purchase respondents' product and later cancelled her contract;
7. Edward J. Wolfe, the principal of Brainard Elementary School, Cherry Hill, New Jersey, whom Mrs. Harrington telephoned to verify representations made to her by respondents' salesladies;
8. Miss Mary Ann Kowalczyk, former saleslady for AMA;
9. Miss Monica Stefanelli, former saleslady for AMA;
10. Dr. Barbara Lowery of Valley Forge, Pennsylvania, whose testimony was stricken:
11. Miss Linda Train of Patchogue, New York, former saleslady for AMA;
12. Mrs. Irene Scioli, a housewife of Philadelphia, Pennsylvania, who purchased respondents' product and later cancelled her contract;
13. Miss Gail M. Gordon, of Alden, Pennsylvania, former saleslady for AMA;
14. Miss Debra Ann Oliver, Philadelphia, Pennsylvania, former saleslady for AMA;
15. Stephen LaCheen, an attorney practicing law in Philadelphia, who prepared the papers of incorporation for AMA, minutes of the first meeting of the stockholders, and directors, the employment contracts, sales contracts, and all other legal documents used by the corporate respondent in its business;
16. Stanley Kessler, individual respondent, one of the organizers of the corporate respondent, an officer and director of the corporate respondent, and one of the persons who contributed part of the capital with which the corporate respondent initially started business. Kessler owns 20 out of 90 issued shares of the corporate respondent. He is and has been, since May 1965, responsible for the day-to-day operations of the business;
17. Benjamin Fishbein, a certified public accountant in Philadelphia, who arranged for a substantial part of the initial financing for AMA, an officer and director of AMA, who testified that he is the president in fact of the corporation;
18. Miss Mary Lou Harris, of Philadelphia, Pennsylvania, office manager of AMA since December 1964;
19. Mrs. Marlene Caesar of Philadelphia, Pennsylvania, a former saleslady for AMA;

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20. Malcolm Hay, of West Philadelphia, Pennsylvania, a former salesman for AMA;
21. Mrs. Malcolm (Barbara) Hay, wife of Malcolm Hay, a former saleslady for AMA;
22. Miss Phillippa Stein, Philadelphia, Pennsylvania, a former saleslady for AMA;
23. Miss Elaine Pollack, a former saleslady for AMA;
24. Mrs. Susie White Wilkerson, the head of her own marketing research firm in Philadelphia, Pennsylvania, a member of the American Marketing Association for more than 20 years and a former officer and director of the Philadelphia chapter of the American Marketing Association;
25. Miss Dee Moran, a former employee of AMA.

The hearing examiner heard and observed the witnesses in the hearing room and on the witness stand. He observed their demeanor and their manner of answering questions. He was able to, and did, form an opinion as to their reliability and credibility. He was also able to, and did, form a judgment as to the weight and probative value of the testimony of each of the witnesses. He has considered the reliability, credibility and probative value of each witness' testimony, as well as their respective interests in the outcome of this proceeding, in determining the weight to be given to the witness' testimony.

The corporate respondent is but a small part² of an industry which is nationwide and whose annual sales exceed \$209,692,000.³

Some of the better known encyclopedias and similar reference books which are sold by door-to-door solicitation include, according to Mr. Kessler (Tr. 583, *et seq*):

Book of Knowledge
 American Peoples Encyclopedia
 International Encyclopedia
 Americana Encyclopedia
 Richards Encyclopedia
 Comptons Encyclopedia
 Encyclopedia Britannica
 Wonderland of Knowledge
 American Educator
 New Wonderland Encyclopedia
 New Standard Encyclopedia
 American Educator
 New Wonderworld Encyclopedia
 Colliers Encyclopedia
 The World Book
 Childcraft
 Grolier Encyclopedia

² Its sales for the year 1965 as reported in U.S. Treasury forms 1120 were \$106,656.96 (CX 18).

³ Bureau of the Census, Annual Survey of Manufacturers (1965), p. 22, Sec. 323.2 (Page 14) "Subscription Reference Books."

Art Linkletter Encyclopedia
The Children's Classics Library
Child Horizons
Science Library

Mr. Kessler testified that these encyclopedias are usually sold at a price which represents a very substantial markup of (four to five times) their original cost to the company selling them (Tr. 586). "The Book of Knowledge is approximately \$24, and it is sold for \$199.50" (Tr. 586). He further testified that 99 percent of all encyclopedias and reference books are sold directly to the consumer by means of the door-to-door soliciting technique, and that efforts to sell this type of product through regular retail establishments have been unsuccessful. Sales of encyclopedias are usually made on a monthly payment basis (Tr. 588).

The size of the industry and the fact that it reaches a large segment of the American public and solicits the American citizen in his or her home, makes it imperative that the technique employed by those engaged in the door-to-door selling of encyclopedias, be, like Caesar's wife, above reproach. The fact that this industry endeavors to create the impression that the purchase of encyclopedias is an inescapable parental obligation to their children makes it vital that the sales techniques employed be free of any deception—legal or otherwise.

The Federal Trade Commission, with full realization of the industry's importance and scope, has devoted extraordinary resources and energy to policing it. See:

- Americana Corporation et al.*, Docket 5085, 45 F.T.C. 32, 46 F.T.C. 253, U.S.D.C., Balt. Civil 16630;
- Basic Books Inc.*, Docket 7016, 56 F.T.C. 69;
- B. B. Bessemer, trading as American Academic Research Society*, Docket 2101, 17 F.T.C. 419;
- L. A. Bell, trading as the Cooperative Book Co.*, Docket 1551, 15 F.T.C. 169;
- Book-A-Week Club, Inc.*, Docket 4877, 39 F.T.C. 171;
- Book Give-Away Plan*, Docket 4913, 49 F.T.C. 1560;
- Charles V. Branch, doing business as National Surveys, Educational Development Co., United Acceptance Co.*, Docket 5632, 47 F.T.C. 888;
- Consumer Products of America, Inc.*, Docket 8679, 72 F.T.C. 533;
- Melvin Hines, trading as Cooperative Library Company*, Docket 3349, 27 F.T.C. 772;
- Crowell-Collier Publishing Company and P. F. Collier & Son Corp.*, Docket 7751, 70 F.T.C. 977;
- Crowell-Collier Publishing Company and P. F. Collier & Son Corp.*, Docket 4372, 32 F.T.C. 1640;
- P. F. Collier & Son Corp.*, Docket 3687, 32 F.T.C. 1639;
- Consolidated Book Publishers, Inc.*, Docket 4440, 32 F.T.C. 1003;
- Consolidated Book Publishers, Inc.*, Docket 1538, 14 F.T.C. 13, 15 F.T.C. 292;

- David B. Clarkson Company*, Docket 1540, 13 F.T.C. 117;
Educators Assn. Inc., Docket 3139, 28 F.T.C. 1006, 33 F.T.C. 708;
Encyclopaedia Britannica, Inc., Docket 5384, 48 F.T.C. 1416;
Encyclopaedia Britannica, Inc., Docket 7137, 59 F.T.C. 24;
Arthur A. Gache, Morton Gache and Irving Greenwood, d/b/a Encyclopedia Educational Service, Docket 5513, 45 F.T.C. 491;
General Surveys, Inc., and John H. Thies and G. J. Doucette, Docket 4554, 34 F.T.C. 1157;
R. M. Barnett, trading as Home and School Education Society, Docket 2721, 24 F.T.C. 1378, 24 F.T.C. 1389;
Bernard P. Holst Publishing Company, Bertram P. Holst, Docket 2652, 24 F.T.C. 404;
Charles E. Knapp, trading as Modern American Company, Charles E. Knapp, Inc., Modern American Corporation, A. J. Rosenbark, Jr., Cleo Samdahl, and A. B. Landrum and Blanche Wynne, Docket 3503, 28 F.T.C. 1204;
W. R. Maxwell, d/b/a International Publishing Co., Docket 1331, 11 F.T.C. 73;
Midwest Publishing Co. and Walter H. Gorham, Docket 2893, 26 F.T.C. 939, 27 F.T.C. 556;
Mutual Publishing Company, C. J. Shelton, H. A. Bufton, Publishers Acceptance Corporation, P. I. Neergaard, T. E. Thompson, Carl Critzinger, Educators Service Association, A. C. Thomas, H. A. Bufton, Docket 1571, 15 F.T.C. 402;
National Educators, Inc., Docket 5975, 49 F.T.C. 1358;
New Standard Publishing Company, Inc., Julius B. Lewis, and Doubleday-Doran & Co., Inc., Docket 4697, 47 F.T.C. 1350, 49 F.T.C. 1567;
Parke Austin & Lipscomb, Inc., Smithsonian Institution Series, Inc., Docket 4465, 34 F.T.C. 591;
Perpetual Encyclopedia Corp., North American Publishing Co., Inc., Docket 1371, 16 F.T.C. 443;
Progressive Education Society, Inc., I. R. Jacobsen, Docket 2132, 19 F.T.C. 242, 22 F.T.C. 916, 27 F.T.C. 755;
Sears Roebuck & Co., Docket 7081, 55 F.T.C. 147;
Standard Distributors, Inc., Docket 5580, 48 F.T.C. 1435, 51 F.T.C. 677;
Standard Education Society, Docket 1574;
Standard Education Society, Docket 994, 7 F.T.C. 20;
The Times Sales Co., Docket 2351, 21 F.T.C. 749, Docket 2801, 25 F.T.C. 464;
Joseph L. Morse, Moe Gache, Gertrude Morse and Rose Gache, d/b/a Unicorn Press, Docket 5488, 47 F.T.C. 258;
United Educators, Inc., General Research Foundation, Inc., Publishers Finance Co., Inc., Docket 3428, 29 F.T.C. 551;
James H. Christie, d/b/a United Surveys, Docket 5730, 47 F.T.C. 532;
Universal Educational Guild, Docket 5718, 47 F.T.C. 1678, Docket 5938, 51 F.T.C. 452;
World Library Guild, Inc., Docket 2511, 23 F.T.C. 598.

In the *Literary Market Place Directory of American Book Publishing* for the year 1966-1967, the publishers of encyclopedia listed on page 145 are:

- The Americana Corporation*, a subsidiary of Grolier, Inc. ;
Books, Inc., a subsidiary of Publishers Co., Inc. ;

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Columbia University Press;
The Crowell Collier Educational Corporation;
Encyclopedia Britannica, Inc.;
Field Enterprises Educational Corporation;
The Frontier Press;
Grolier, Inc.;
McGraw-Hill Book Co.;
The Macmillan Co., a division of Crowell Collier and Macmillan, Inc.;
The New Wonder World, Inc.;
Oxford University Press, Inc.;
Parents' Magazine's Cultural Institute;
Philosophical Library, Inc.;
Richards Co., a subsidiary of Grolier, Inc.;
SETI Publishers, Ltd.;
Spencer International Press, a subsidiary of Grolier, Inc.;
United Educators, Inc.;
William H. Wise & Co., Inc.

On page 25, Under *Crowell Collier & Macmillan, Inc.*, the following are listed:

1. *Crowell Collier & Macmillan, Inc.*, the vendor of and/or operator of Collier's Encyclopedia and other reference books, textbooks, trade books, book clubs, retail bookstores, home study courses, supplementary educational materials and *Grade Teacher* magazine. See also The Macmillan Company, Free Press, The Glencoe Press, Glencoe, P. F. Collier, Inc., and other references below.
2. *Crowell Collier Institute of Continuing Education*, a division of Crowell Collier & Macmillan, Inc., the vendors of educational services for professionals and executives.
3. *The Berlitz Schools of Languages of America, Inc.*, a subsidiary of Crowell Collier & Macmillan, Inc., the vendors of language instruction.
4. *Berlitz Publications, Inc.*, a subsidiary of Crowell Collier & Macmillan, Inc., the vendor of language books and records.
5. *P. F. Collier, Inc.*, a subsidiary of Crowell Collier & Macmillan, Inc., the vendors of Collier's Encyclopedia, The Harvard Classics, Collier's Junior Classics and other reference works.
6. *P. F. Collier & Son, Inc.*, a subsidiary of P. F. Collier, Inc.
7. *Collier Services, Inc.*, a subsidiary of P. F. Collier, Inc., engaged in the mail order sales of books and general merchandise.
8. *La Salle Extension University*, a subsidiary of Crowell Collier & Macmillan, Inc., the vendor of home study courses in business management, law, accounting and other business and vocational fields, and high school completion for adults.
9. *Crowell Collier Educational Corporation*, a subsidiary of Crowell Collier & Macmillan, Inc., the vendor of Collier's Encyclopedia and other reference book sets.
10. *Teachers Publishing Corporation*, a subsidiary of Crowell Collier & Macmillan, Inc., the vendor of elementary classroom teaching aids and professional books and *Grade Teacher* magazine.
11. *The Macmillan Co.*, a subsidiary of Crowell Collier & Macmillan, Inc., publisher of trade books in all fields; elementary, high school, college and graduate school textbooks; professional books.

12. *The Free Press*, a division of The Macmillan Co., the vendor of college textbooks and professional books, primarily in social sciences and humanities.

13. *Glencoe Press*, a division of The Macmillan Co., the vendor of books for junior and community college markets.

14. *Collier-Macmillan Library Service*, engaged in the sales of all Crowell Collier, Macmillan and Free Press titles to libraries.

15. *Collier-Macmillan International*, the vendor of textbooks and tapes in English as a second language.

16. *Professional & Technical Programs, Inc.*, a subsidiary of Crowell Collier & Macmillan, Inc., the vendor of specialized book clubs: Library of Science, Behavioral Science Book Service, Natural Science Book Club, The Executive Program, Nurse's Book Society, Grade Teacher Book Club, The Folio Society of London, Library of Computer and Information Sciences, Library of Urban Affairs, Lawyers' Literary Guild.

17. *Brentano's Inc.*, a subsidiary of Crowell Collier & Macmillan, Inc.

On page 45 of the *Literary Marketplace Directory*, under Grolier, Incorporated, the following are shown:

1. *Grolier Incorporated*, publisher of The Encyclopedia Americana, The Book of Art, The Book of Knowledge, Encyclopedia International, Grolier Universal Encyclopedia, The American Peoples Encyclopedia, Our Wonderful World, Richards Topical Encyclopedia, The Book of Popular Science, Lands & Peoples, The Australian Encyclopedia, Encyclopedia Canadiana, The Children's Encyclopedia, New Education Library, Modern Library of Knowledge, L'Encyclopedie de la Jeunesse, La Science pour Tous, Pays et Nations, other encyclopedias, educational reference works, and programmed learning materials.

2. *Americana Corporation*, a subsidiary of Grolier Incorporated, engages in sales of The Encyclopedia Americana and other educational reference works and programmed learning materials.

3. *Grolier International, Inc.*, a subsidiary of Grolier Incorporated, engages in international sales of Grolier publications and programmed learning materials.

4. *The Grolier Society, Inc.*, a subsidiary of Grolier Incorporated, engages in the sale of The Book of Knowledge and other educational reference works and programmed learning materials.

5. *R. H. Hinkley Co.*, a subsidiary of Grolier Incorporated, engages in sales of educational reference works of Grolier Incorporated.

6. *Franklin Watts, Inc.*, a subsidiary of Grolier Incorporated, vendor of juvenile and adult non-fiction.

7. *Grolier Educational Corporation*, a subsidiary of Grolier, Incorporated, engages in the development and sales of educational materials and the sales of Grolier publications in the educational field.

8. *The Americana Interstate Corporation*, a subsidiary of Grolier Incorporated—"mail order."

9. *American Peoples Press, Inc.*, a subsidiary of Grolier Incorporated—"mail order."

10. *Grolier Enterprises, Inc.*, a subsidiary of Grolier Incorporated—"mail order."

11. *The Grolier Society, Ltd.*, a subsidiary of Grolier Incorporated, conducts sales of The Childrens Encyclopedia, New Education Library, Modern Library of Knowledge, and programmed learning materials.

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12. *The Richards Company, Inc.*, a subsidiary of Grolier Incorporated, engages in the sale of *The American Peoples Encyclopedia* and other educational reference works.

13. *The Career Institute*, a subsidiary of Grolier Incorporated, sells correspondence courses and makes mail order sales.

On page 77 of the *Literary Marketplace Directory Parents' Magazine Press* shows:

(1) That it is a Division of *Parents' Magazine Enterprises, Inc.*, 52 Vanderbilt Avenue, New York, New York.

(2) *Parents' Magazine Cultural Institute*, a Division of *Parents' Magazine Enterprises, Inc.*, promotes subscription, reference, mail order, school, library and home sales of *The Cultural Library; Columbia Encyclopedia; Classics To Grow On; Better Living Encyclopedia; Young Years Library* (13 Titles).

Moody's Industrial Manual for June 1967 shows net sales for the year ending December 31, 1967, for

<i>Grolier, Inc.</i> (page 743)-----	\$152, 371, 385
and for	
<i>Crowell Collier & Macmillan, Inc.</i> (page 2496)-----	\$148, 903, 014

In a consent judgment filed December 9, 1965, in the United States District Court for the District of Maryland, Civil Action 16638. *The Americana Corporation* (a subsidiary of Grolier, see *supra*) by stipulation, agreed to pay \$100,000 penalties for its violation of a Federal Trade Commission order which had previously been entered against it.

It may be helpful to mention some of the more familiar criteria which the courts and the Commission have articulated for determining what constitutes deceptive and unfair acts and practices under Section 5 of the Federal Trade Commission Act:

The hearing examiner may find deception proven in this record without evidence that the public was deceived, on the basis of his visual examination of exhibits. *Double Eagle Lubricants, Inc. v. Federal Trade Commission*, 360 F. 2d 268, 270 (10th Cir. 1965), *certiorari denied*, 384 U.S. 434 (1966). The examiner may, by visual examination of the exhibits, ascertain what representations respondents are making to the banks with whom they do business; the governmental offices with which they file various documents as required by law; to the persons whom they solicit to become door-to-door sales persons for their encyclopedia and reference books; to the householders to whom they endeavor to sell their product; and to the public generally.

"* * * Capacity to deceive and not actual deception is the criteria by which practices are tested under the Federal Trade Commission Act," *Goodman v. Federal Trade Commission*, 244 F. 2d 584, 604 (C.A. 9, 1957). "To tell less than the whole truth is a well-known

method of deception; and he who deceives by resorting to such method cannot excuse the deception by relying upon the truthfulness per se of the partial truth by which it has been accomplished." *P. Lorillard Co. v. F.T.C.*, 186 F. 2d 52, 58 (C.A. 4 1950). "A statement may be deceptive even if the constituent words may be literally or technically construed so as to not constitute a misrepresentation. * * * The buying public does not weigh each word in an advertisement or a representation. It is important to ascertain the impression that is likely to be created upon the prospective purchaser * * *," *Kalwajtys v. Federal Trade Commission*, 237 F. 2d 654, 656, *certiorari denied*, 352 U.S. 1025. "Moreover, advertisements are not to be judged by their effect upon the scientific or legal mind, which will dissect and analyze each phrase, but rather by their effect upon the average member of the public who more likely will be influenced by the impression gleaned from a quick glance at the most legible words," *Ward Laboratories, Inc., et al. v. Federal Trade Commission*, 276 F. 2d 952, 954 (C.A. 2 1960), *certiorari denied*, 364 U.S. 827. In determining the meaning of representations made by respondents, the hearing examiner must concern himself not only with the express language of respondents' representations but also with the overall impression which such representations convey, *American Home Products Corporation*, Docket No. 8641 (Commission opinion, December 16, 1966, p. 8) [70 F.T.C. 1524, 1610]. "The law is not made for the protection of experts, but for the public—that vast multitude which includes the ignorant, the unthinking, and the credulous, who, in making purchases, do not stop to analyze, but are governed by appearances and general impressions," *P. Lorillard Co. v. F.T.C.*, 186 F. 2d 52, 58; *Aronberg v. F.T.C.*, 132 F. 2d 165, 167.

"The law is violated if the first contact or interview is secured by deception (*F.T.C. v. Standard Education Society, et al.*, 302 U.S. 112), even though the true facts are made known to the buyer before he enters into the contract of purchase (*Progress Tailoring Co. v. F.T.C.*, 7 Cir. 153 F. 2d 103, 104, 105)." *Carter Products, Inc. v. F.T.C.*, 186 F. 2d 821, 824, 7 Cir. 1951; *Exposition Press v. F.T.C.*, 295 F. 2d 869.

In establishing the unfair and/or deceptive character of respondents' acts and practices, complaint counsel need not have proven that any particular number of persons were misled thereby. In representing and protecting "that vast multitude which includes the ignorant, the unthinking and the credulous," it is sufficient for complaint counsel to have proven that there would be some members of the public who would be misled by respondents' practices (*Prima Products, Inc. v. F.T.C.*, 209 F. 2d 405, 409 (C.A. 2 1954)).

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Findings of fact not made in the form submitted by counsel, or in substantially that form, are hereby rejected for the reasons, among others, that they may not be material to an adjudication of the issues, or they may be otherwise incorporated herein in substance, or the adoption of such proposed findings in the form submitted may not convey semantically the meaning which the hearing examiner desires to convey.

All motions made and not heretofore ruled upon are hereby overruled and denied.

FINDINGS OF FACT

1. The Federal Trade Commission has jurisdiction over the parties to and the subject matter of this proceeding. This proceeding is in the public interest.

2. Respondents are engaged in commerce as "commerce" is defined in the Federal Trade Commission Act.

3. In the conduct of their business, respondents have been, and now are, in substantial competition, in commerce, with other persons, firms and/or corporations who sell books of the same general kind and character as those sold by respondents.

4. Respondents sell their books in commerce at retail to the general public. The sales are made by respondents' agents, representatives and/or employees.

5. Respondents' acts and practices herein set forth constituted and now constitute unfair methods of competition of commerce, and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

6. The first witness for counsel supporting the complaint was Dr. Charles S. Goodman. Dr. Goodman testified that he is a professor of marketing at Wharton School of Finance and Commerce at the University of Pennsylvania. He started as a lecturer, became assistant professor in 1948, and associate professor in 1953. He became a full professor in 1957 (Tr. 15). Dr. Goodman, born in Detroit, Michigan, on April 5, 1916, has a bachelor's degree in Business Administration from the University of California, Los Angeles; a master's degree in Economics from the University of California, Los Angeles; and a Ph.D. in Business Administration from the University of Michigan. He has been full-time with the University of Pennsylvania since 1946 (Tr. 17). As a professor, Dr. Goodman has done outside research and consulting work in order to maintain his efficiency and competency.

7. In 1940 Dr. Goodman went to the University of Michigan where he was employed as a research associate by the Bureau of Business

Research. In 1942 he went on active duty in the United States Naval Reserve until 1946, at which time he returned to the University of Michigan in January to finish work on his Ph.D. degree. Dr. Goodman then went to work at the University of Pennsylvania on a full-time basis in the fall of 1946 (Tr. 18).

8. Dr. Goodman's publications include: *The Control of Customer Returns*, University of Michigan Press (1942), coauthored with a gentleman named Galt; *Location of Fashion Industries*, University of Michigan Press (1948); *Campus Shopping Patterns*, published (1954) in the *Journal of Retailing* and coauthored with Professors Ralph Bryer and Donald Blenkerts; *Channels and Flows in Marketing Household Materials*, a three-volume research project coauthored with Professor Cox, financed by the Housing and Home Research Finance Agency, and published in the *Journal for Marketing* for July 1956 (Tr. 19).

9. The Distribution and Services section in the *Historical Statistics of the United States from Colonial Times to 1957*, published by the Department of Commerce, prepared by Doctors Goodman and Cox at the request of the Social Science Research Council, was published in 1957. Dr. Goodman's article, *Significance of Marketing Data in the Business Censuses* is in the proceedings of the American Marketing Association for June 1960. *The Producers' Council Distribution Study* (1960 Progress Report) and *The Role of Marketing in a Private Enterprise Economy* appear in proceedings of the Sixth Annual Conference of the Association of Canadian Schools of Commerce and Business Administration held in Toronto in April 1963. *Supply Support Requirements of Non-Residential Construction* was published in 1962. *Supply Support Requirements of Homebuilders* was produced at about the same time by the Producers' Council. *Adaptation to Markets in the Distribution of Building Materials*, prepared in collaboration with Doctors Cox and Root, was published by the Producers Council in 1963. *Distribution in a High Level Economy* coauthored by Doctor Goodman with Doctors Cox and Thomas C. Fishindler (Tr. 21) is a textbook primarily for use at the graduate level, and was published by Prentice-Hall in 1965. Dr. Goodman has been a participant, since 1956, in the Marketing Theory Seminar.

10. Dr. Goodman had been a member of the Industrial Advisory Committee of the American Marketing Association for three or four years; proceedings editor of the American Marketing Association since 1959; and a member of the Association's Census Advisory Committee from 1957 to 1966 (Tr. 20-22). Dr. Goodman was second vice president of the Philadelphia chapter of the American Marketing

Association from 1963-1964; vice president of the Philadelphia chapter from 1964 to 1965; president of the Philadelphia chapter from 1965 to 1966. He has been a director of the Philadelphia chapter of the American Marketing Association since 1961, and a national director of the American Marketing Association since 1961. Dr. Goodman has been a member of the American Marketing Association for twenty years (Tr. 23).

11. The American Marketing Association is the most widely recognized and respected professional association in the field of marketing (Tr. 24). CX 100, a directory of the Philadelphia chapter of the American Marketing Association for the year 1967, contains the names, addresses, business affiliations, and telephone numbers of the Philadelphia chapter of the American Marketing Association. It would unduly prolong this initial decision to list all the well-known businesses whose personnel are members of the Philadelphia chapter. The Philadelphia chapter of the American Marketing Association was the first of the sixty chapters now affiliated with the Association.

12. The American Marketing Association was organized by 27 marketing pioneers in December 1931. It was the first affiliate of the American Marketing Society. The Society was the Association's predecessor organization. In 1937 the American Marketing Society merged with the National Association of Marketing Teachers to form the American Marketing Association (Tr. 27).

13. The American Marketing Association is incorporated as a non-profit organization in the State of Illinois, has its principal office at 230 North Michigan Boulevard, Chicago, Illinois, but is authorized to do business in other States (Tr. 28). The Association has 60 local chapters in various cities and regions in the United States and Canada, including one in Montreal and one in Toronto. The national Association operates through a board of directors. As of April 30, 1967, the national Association had 14,133 members (Tr. 29-30). Fifteen percent of the members are "essentially academic" in the sense of having their primary affiliation with faculties of colleges or universities; eighty-five percent of the members are in business or government. Not more than two percent of the membership "would be" government (Tr. 31).

14. The principal office of the Association in Chicago serves the various local chapters. It is under the management of a full-time executive director who has been with the Association for several years (Tr. 31). The staff of the national office has approximately a dozen employees (Tr. 32). The bulk of the Association work is done through the contributed efforts of its members (Tr. 33).

15. The Philadelphia chapter of the American Marketing Association had 460 members as of April 30, 1967 (Tr. 34). It does not have a permanent office address. The office is usually run from the address of the then current chapter secretary. The Philadelphia chapter has its own officers and directors (CX 100). One may not be a member of any local chapter of the Association unless he is also a national member (Tr. 36), although it is permissible to be a member of the national Association and not affiliate with a local chapter (Tr. 36-37). Dues for the national Association and for the local chapter are billed separately, but they are paid jointly. Among others, the purpose of the American Marketing Association is to foster the development of and the study of marketing research, marketing development, and the application of scientific methodology to marketing techniques (Tr. 37).

16. In January or February 1965, Dr. Goodman was first made aware of the fact that the respondent, American Marketing Associates, Inc., was being mistaken for, and confused with, American Marketing Association (Tr. 38). This confusion was caused, either deliberately, or inadvertently, when Benjamin Fishbein, Stanley Kessler, Stephen LaCheen, and Stanley Drizzen selected the corporate name. The hearing examiner is impelled by the undisputed facts in this record, and the natural inferences to be drawn from such facts, to find, and does find, that Benjamin Fishbein, Stanley Kessler, Stanley Drizzen and Stephen LaCheen intended that their corporation, the respondent herein, should pass itself off as the American Marketing Association. The American Marketing Association had occupied too prominent a position in the city of Philadelphia for too long a time to have escaped the notice of Messrs. Fishbein, an auditor; LaCheen, an attorney; and Kessler, a long time resident of the city, who majored in marketing at Temple University (Tr. 457).

17. Complaint counsel's witness, Mrs. Susie White Wilkerson (Tr. 735, *et seq.*), who had been a member of the Philadelphia chapter of the American Marketing Association for more than twenty years, testified that the weekly meetings of the Philadelphia chapter were publicized in the Philadelphia newspapers with the time, place, and speaker usually mentioned. Annually the Philadelphia chapter of the Association has a public presentation of the Parlin Award which receives wide publicity. Assuming, *arguendo*, that all this publicity had escaped the attention of Messrs. Fishbein, Kessler, LaCheen, and Drizzen, Mrs. Wilkerson's uncontradicted testimony is that on January 5, 1965, she personally telephoned the offices of the corporate respondent and told someone there that its corporate name was being confused with the American Marketing Association (Tr. 739). When

Mrs. Wilkerson telephoned the offices of the corporate respondent on January 5, 1965, the phone was answered, "American Marketing"—not with the full corporate name (Tr. 741, *et seq.*). Mrs. Wilkerson, as an officer and director of the Philadelphia chapter of the American Marketing Association, received many complaints resulting from the Fishbein-Kessler-LaCheen-Drizzen corporation using an almost identical name. Dr. Goodman also testified to a number of complaints (Tr. 48, Tr. 65, *et seq.*). On January 5, 1965, American Marketing Associates, Inc., was a very young enterprise.⁴ Its principals could have changed the corporate name with a minimum of effort and no adverse effects. Mrs. Wilkerson testified that the person at the corporate respondent's offices, who spoke to her over the phone on January 5, 1965, was reluctant to tell her the precise business of the corporation (see Tr. 748, 749, 750). "He acted like I was trying to steal something from him, just by trying to find out what he was doing" (Tr. 749).

18. Messrs. Fishbein and Kessler should cease immediately doing business as American Marketing Associates, Inc., or under any other name, corporate or otherwise, which is misleading and confusing, and, thereby, deceptive.

19. Messrs. Fishbein's and Kessler's intention to deceive is demonstrated further by the fact that the minutes of the first meeting of the shareholders and of the directors (CX 3), apparently were never signed; no such meeting was held; and Benjamin Fishbein, according to his own testimony, withheld from the bank with which AMA was doing business, the knowledge that he, Fishbein, was, and is, president, *de facto*, of the corporate respondent (see *infra* p. 237). This is most unusual in view of Mr. Fishbein's profession—accountancy—where truth, candor, precision, and accuracy are *sine qua non*.

20. The Articles of Incorporation of American Marketing Associates, Inc. (AMA) (CX 1 *et seq.*), were prepared by Stephen Robert LaCheen, a practicing attorney in Philadelphia, who shared office space with Benjamin Fishbein and Robert Coles, an accounting firm (Tr. 528). Minutes of the first meeting of shareholders of the corporation allegedly held on December 18, 1964 (CX 3), are not signed. These minutes show the following shareholders present: Stanley Kessler—20 shares; Robert Coles—35 shares; and Benjamin Fishbein—35 shares.

21. Robert Coles and Benjamin Fishbein were and are partners in the practice of accountancy in Philadelphia. The accounting firm's investment in AMA was made upon Fishbein's initiative. Fishbein testified that Coles accepted his, Fishbein's, advice in investing in

⁴ Its charter was issued on November 30, 1964 (CX 1).

AMA. Coles did not participate in the preincorporation conferences nor did Coles participate actively in AMA operations.

22. The minutes of the first meeting of shareholders of AMA allegedly held on December 18, 1964, are not signed, nor are the minutes of the first directors' meeting, allegedly held the same day (CX 3). The directors' minutes show the following directors present: Stanley Kessler, Robert Coles, and Benjamin Fishbein.

23. In a letter dated January 21, 1965, from Stanley Kessler to the Better Business Bureau of Greater Philadelphia (CX 99 A, B, C), the statement is made that the officers of AMA then were:

Mr. B. Fishbein, President,
Mr. R. Coles, Sec.-Treas.,
There is no Vice-President.

24. A corporate resolution (CX 95) authorizing the making of bank loans from Lincoln National Bank by AMA names Stanley Kessler as president, and Mary Lou Harris as secretary-treasurer of AMA. The AMA corporate resolution authorizing the corporate bank account (CX 96) names Kessler as president and Mary Lou Harris as secretary-treasurer. A corporate loan resolution for the Lincoln National Bank names Kessler as president and Mary Lou Harris as secretary-treasurer (CX 97). A resolution dated February 15, 1965, authorizing a corporate bank account (CX 98) lists the corporate officers as:

Stanley Kessler, President, and Mary Lou Harris, Secretary-treasurer.

25. Benjamin Fishbein testified (Tr. 528, *et seq.*) that he is a graduate of Temple University in accounting, and has been a certified public accountant for the last 18 years. In addition to the practice of accounting, Fishbein had engaged in a second mortgage business, a truck business, several loan companies, and in AMA (Tr. 529). Fishbein testified he does not participate in the "actual running" of the business:

The actual running of the business? No, I am engaged in these other business [businesses] to the extent to which I am concerned with financial information. The extent to which I am concerned with the financial information is whether the business is making a profit, in what direction is it headed, and whether, in my opinion, my investment is a secure one and whether I make money or not. (Tr. 529.)

26. Fishbein, also a director of Frankfort Paper Box Company, and McLean Packaging Corporation, testified (Tr. 530-533):

Oh, about three or four years ago or five years ago, as the case may have been, Stanley Kessler and I were talking, and he said that the book business was a very good business, and I had discussed in rathy [rather] lengthy detail as to

what could be expected as a return if I were able to provide the means and wherewithal to create such a business.

We discussed this at great length, and I said, "Well, what the hell, we will take a shot and go into business."

However, I wanted to create a corporation because I in no way wanted to have any personal liability in the event the business did not take off as was projected.

Steve LaCheen, who is now in my office, was consulted by me, and I told Steve to set up a corporation, and from that point on, we got rolling.

* * * * *

I have had no previous experience in almost any of the businesses I have gone into. I just had to determine by my own feel whether they were worthwhile to invest in or not. The only experience I have had is in the accounting business. These other things, in which I got involved, were purely because I thought these businesses would give me an opportunity of earning extra money.

Q. Would it be fair to say that your interest in American Marketing Associates is a financial venture?

A. Yes.

Q. Would you say it is limited to that?

A. Very—limited to this extent: I am not actively engaged in the running of the business. I am concerned with, however, whether the business is running profitably or whether it is not running profitably. I have certain guides that I use. I want to determine the profitability of the sales, and I get a report on a regular basis, so I make my own valuation as to whether the business is profitable and to the extent it is profitable I am happy with the business. If it is not profitable, I would no longer be happy with it.

* * * * *

The financing end of it is my primary responsibility. Insofar as running the business is concerned, day-to-day management, I have had nothing to do with it.

Q. Who does that?

A. Stanley Kessler. It is his job to make sure that the books are received, and to make sure that the monies are collected, to make sure the bills are paid, and, then, they have two girls in the office who have other functions: one collects the money, and the other, I think she trains the sales people to go out into the field to sell the books.

* * * * *

Robert Coles came into this corporation as a direct result because he was my partner in the accounting business. He knows nothing. He does not handle anything at all in the business. Everything is handled directly through me. He knows nothing about the business.

* * * * *

Q. How much stock do you hold?

A. I am not sure of this, I am not sure of this, but I think between Bob and myself we hold 70 percent of the stock. (Tr. 533.)

27. AMA does not hold formal stockholder meetings and has not declared dividends on its stock. Fishbein receives a \$100 per week "management fee" from AMA (Tr. 533 *et seq.*). He testified:

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Q. What do you know of your own knowledge of the designation of the name American Marketing Associates?

A. I have no idea what it means; *I was not interested.* (Tr. 534) [Emphasis supplied].

* * * * *

Fishbein further testified:

I am truly President of the company. The only time, in some of our relationships with the bank, I did not want them to know that I was an officer of the company. I did not care who used the name as an officer of the company—It is a very flexible kind of thing. It was really not my concern who used their name as President, but I, by and large, was. So, from that point of view, anyone depending on who we needed as President could have signed it. In any of our relationships with the banks, I have tried not to be President of the company because as a practicing CPA and one who has some contacts with the banks it would not be a very good business idea. (Tr. 535.)

HEARING EXAMINER GROSS: AS TO YOUR PARTNER, MEANING YOUR CPA PARTNER, DO YOU CONSIDER HIM AS ONE OF THE OFFICERS AND DIRECTORS OF THE COMPANY?

THE WITNESS: AS A PRACTICAL THING, REDUCING IT TO VERY PRACTICAL THINGS, MANY OF THE THINGS I AM IN HE IS IN WITH ME IN ONE FORM OR ANOTHER.

* * * * *

* * * So, I say, "We are going to do it," and he never says "No." (Tr. 536.)

28. Stanley Kessler, the individual respondent in this proceeding is 41 years old. He graduated from Temple University, Philadelphia, on February 15, 1950, with a B.S. degree in marketing; attended Rittenhouse College in Philadelphia, Martin College in Philadelphia, and Wright Junior College, Chicago, Illinois. During his business career, Mr. Kessler has driven a taxicab (Tr. 454); worked in Lite Brothers Department Store as an executive trainee in bathrobes; worked for Pioneer Custom Upholstering Company (Tr. 458); been in the slip-cover business, in the drapery business, in the furniture business (during which time he became engaged in the financing business) and worked in the statistical department of the United States Signal Corps in Philadelphia (Tr. 457). As a partner in National Custom Upholstering Company, Kessler handled the financing of furniture. As a partner in Customcraft Upholstering and Slip Cover Company Kessler handled the financing of accounts (Tr. 459-460). Kessler worked for the Grolier Society, Inc. for one day (Tr. 460). The Grolier Society (see *supra* pp. 227-228) then sold education materials through the mails, manufactured bookcases, and was in the financing business. Kessler opined that Grolier then did approximately \$150 million worth of business a year on an international basis (Tr. 461). Kessler stayed at Grolier for only one day because he did not like the door-to-door sale of books (Tr. 461).

29. After leaving Grolier, Kessler accompanied a gentleman named Harvey Walden in order to learn the correct technique for the door-to-door selling of books and encyclopedias. Harvey was then selling the American Education Encyclopedia and the Humanity Library (Tr. 462). Kessler was "on my own" as far as compensation was concerned.

30. Thereafter, Kessler was with the Publishers Agency for four to six months (Tr. 464). Then he went back to the Grolier Society as a "procurement manager." Among his other functions at Grolier, Kessler took salesmen into the field and trained them in the techniques of door-to-door selling (Tr. 466). He was with Grolier for two and one-half years. Then he went with a Grolier subsidiary, Richards Company—Book of Knowledge Division (Tr. 468) (see *supra*, pp. 227–228). At the Richards Company Kessler sold the Book of Knowledge and other "educational materials" (Tr. 468).

31. From Grolier, Kessler went to the Martin-Murray Corporation, Lake Bluff, Illinois, the United Educators Division, where he did "lead selling," being compensated on an "overwrite" basis. Kessler also worked for New Wonder World, Inc., and with Parents Magazine Cultural Institute (Tr. 471) (*supra*, p. 228). At Parents Magazine, Kessler's job was "the sale of educational materials" (Tr. 472). Kessler also worked for Automatic Superettes, Inc., which changed its name to "Vendtronics." He was vice president of Vendtronics Corporation. This company sold automatic vending machines. Kessler was with Vendtronics, Inc., until June 1, 1967 (Tr. 473), although the company had ceased to be active in 1963 or 1964.

32. Kessler was acquainted with Benjamin Fishbein who knew of Kessler's background. One day Kessler and Fishbein talked in Fishbein's office about forming a company for the door-to-door selling of books and encyclopedias (Tr. 475). After Kessler mentioned the difficulty of obtaining financing for such a company Fishbein undertook to obtain the financing. With that understanding, Fishbein and Kessler agreed to form the corporation now known as American Marketing Associates, Inc., the corporate respondent.

33. Kessler, and a friend whom he had known from his bookselling experiences, Stanley Drizzen (Drake), proposed ten possible names for the corporation to Robert LaCheen, the attorney selected by Fishbein to handle the legal work involved (Tr. 476). "American Marketing Associates" was the "fourth or fifth" name suggested. This name "American Marketing Associates" was cleared through the office of the Pennsylvania Secretary of State in Harrisburg.

34. The confusion caused by the selection of "American Marketing Associates, Inc.," as the corporate name was made known to respondents as early as January 5, 1965, by Mrs. Susie White Wilkerson (Tr. 735-740), who had been a 20-year member of the American Marketing Association, and was an officer and director of the Philadelphia chapter of the Association.

35. On January 5 and January 6, 1965, Mrs. Wilkerson informed someone at American Marketing Associates of the confusion (Tr. 739-740) only 35 days after its charter had been issued by the Commonwealth of Pennsylvania. Thereafter, Mrs. Wilkerson endeavored, without success, to talk to Kessler personally about the confusion created by use of the name "American Marketing Associates." Neither Kessler, Fishbein, Drizzen nor LaCheen had done anything up to the time of the hearings in May and June 1967 to remove this confusion.

36. Mary Lou Harris was secretary and Stanley Drizzen (Drake) was general manager of AMA (Tr. 479). Drizzen's responsibility was to work out the educational program that the corporation was to sell, the forms of contracts to be used, and the basis upon which AMA salesmen would be compensated (Tr. 479). Kessler devoted his efforts chiefly to the area of collections and credit (Tr. 480). Kessler put up approximately \$3000 to get AMA started and Fishbein furnished approximately \$15,000. Benjamin Fishbein received 35 shares, Robert Coles 35 shares, and Kessler 20 shares out of one hundred shares authorized (Tr. 481).

37. Drizzen (Drake) had no proprietary interest in AMA (Tr. 482). Benjamin Fishbein negotiated the lease for AMA's business premises at 1422 Chestnut Street, Philadelphia (Tr. 482). Drizzen (Drake) was in charge of sales; Kessler was in charge of credits and collections (Tr. 484). "Pricing" of the "educational material" was submitted to Fishbein for his approval (Tr. 484-485).

38. The employment and sales contracts and all other legal papers used by AMA were prepared by Drizzen and LaCheen (Tr. 486). The Research Service Certificate (CX 73) which is furnished by AMA to its purchasers is issued by Standard Information Service, 130 North Wells Street, Chicago, Illinois (Tr. 487), and permits the owner of the certificate to obtain research service on an unlimited basis over a period of ten years (Tr. 488). AMA purchasers receive a similar information service along with the Child Horizons Library (Tr. 488).

39. AMA buys the encyclopedias it sells from Eastern Guild Inc., Philadelphia (see *infra*, par. 86), who, in turn, purchases them from a major distributor. The publisher of the encyclopedia guarantees the

"research service" which respondents offer to the purchasers of the encyclopedias.

40. Kessler cleared AMA's corporate activities with Fishbein. He did not speak to Coles "too often." (Tr. 499.) Kessler was responsible for Drizzen (Drake) being hired as an employee of AMA (Tr. 499). He had known Drizzen at Parents' Magazine Cultural Institute, The Automatic Vendronics Corporation, New Wonder World, Inc., and Grolier, for two years before Drizzen was employed by AMA (Tr. 500). Drizzen's responsibilities and duties at these other companies were chiefly in the sales area (Tr. 501). It was Drizzen's responsibility to "develop" and place advertising for AMA (Tr. 503). After Drizzen left AMA, Joanne Del Buono was responsible for AMA's advertising.

41. AMA received Better Business Bureau complaints about its advertisements (Tr. 505). Kessler testified, "I do not remember the substance of the complaints." Kessler's working title with AMA is "Regional Director."

42. Drizzen left AMA in May 1965 for reasons which are not developed in the record. Thereafter, Kessler "took over the overall day-to-day operation of the business" (Tr. 509). Kessler had Miss Joanne Del Buono replace Drizzen in "placing advertising, hiring, training and overall supervision of the solicitors. Again, her job became autonomous. She had the complete right to do whatever she chose so long as she showed us orders" (Tr. 507-508). Miss Del Buono had worked for AMA before Drizzen left and after Drizzen left, she "took over his duties" (Tr. 508). AMA never had more than six salaried employees, including Kessler (Tr. 511).

43. Counsel for both sides represented to the hearing examiner that they wished to call Stanley Drizzen (Drake) as a witness. The closing of the record was postponed to afford counsel an opportunity to put Drizzen on the witness stand. Counsel represented to the hearing examiner that they were unable to locate Drizzen.

44. One of the charges in the complaint is that respondents' sales persons, upon first knocking at a prospect's front door, conceal the fact that they are selling encyclopedias and represent, contrary to the fact, that they are making "surveys." This charge in the complaint is supported by the evidence, and the hearing examiner so finds.

45. Dr. Charles Goodman testified that using phony surveys as a sales gimmick is very harmful to bona fide surveys and survey takers (see Tr. 52 *et seq.*). On the basis of Dr. Goodman's uncontradicted expert testimony (Tr. 73-77), the hearing examiner finds that respondents are not engaged in making market surveys as those terms are used and understood by the average lay person (Tr. 76, 77). When respond-

ents' door-to-door sales person represents, contrary to fact, that he or she is making a survey, such deception has a deleterious effect upon the bona fide survey, and the bona fide survey taker. People who have been deceived by the phony survey approach are thereafter reluctant to respond to or cooperate with the bona fide survey (Tr. 80, 82). Injury is done to the bona fide survey even though the householder responding to a phony survey taker did not buy anything. If the housewife has spent several hours of her time with a sales person when she initially thought she was being interviewed for a survey, she resents having been deceived into giving up the time under false pretenses. The housewife's time is valuable to her. She acquires a bad mental attitude toward surveys. Thereafter, this housewife may refuse to respond to the inquiries of a bona fide survey taker, and a segment of the public whose opinions would be valuable to a bona fide survey are foreclosed. All bona fide surveys are impaired by using the false survey device, as is done by respondents, for obtaining an initial audience to make a sale (Tr. 88).

46. Dr. Goodman testified that the use of a "survey" or "research program" as an opening approach by a door-to-door salesman:

* * * has been a long-standing problem, without reference to the particular case at all, the use of a survey gimmick as an entree for sales has led prospective respondents to refuse to answer questions of legitimate surveyors—

* * * * *
 Door-to-door selling under the guise of data collecting has an adverse effect on door-to-door data collecting. This is not a new problem. It is of sufficiently long-standing at the association level.

The testimony of other witnesses in support of the complaint may be summarized:

47. *Bonnie Ruth Simkins*, a high school graduate, went to work for AMA in June 1965, after graduating from high school; was 17 years old at the time; responded to an advertisement in the Philadelphia Inquirer, and worked for approximately one and a half months. The ad to which Miss Simkins responded asked for girls over 17 years old, and promised a weekly salary of \$89 (Tr. 105). Miss Simkins was interviewed by "Jo Dee" (Joanne Del Buono). Miss Simkins testified that after her application had been accepted, "Well, after a brief talk with Jo Dee, I was introduced to a crowd of other fellows and girls, and they were playing records and it looked like kind of fun to me because I did not know that this was work for \$89 a week" (Tr. 106). The nature of Miss Simkins' employment—that it involved the door-to-door sale of books—was made clear to Miss Simkins on her first day of training.

After her training period an AMA district manager transported Miss Simkins and other sales personnel of AMA into the field in his car, into the States of New Jersey, Maryland, Delaware and Pennsylvania (Tr. 135).

48. The AMA ad to which Miss Simkins responded misrepresented the nature of the employment for which applicants were being solicited. The ad was intended to convey and did convey the impression that persons responding to the ad would be considered for jobs with a research organization, educators, and recognized educational institutions. Respondents' deceptive representation of the jobs they were attempting to fill are seen in CX 19-CX 41, CX 42, CX 43-CX 48 inclusive. Jobs which respondents were attempting to fill were simply jobs to engage in the door-to-door sale of encyclopedias and reference books.

49. Miss Simkins spent June 30, July 1, 2 in AMA's training program (Tr. 144), and started to work in the field on July 5, 1965 (Tr. 145). After her training period was completed, Miss Simkins reported to the AMA office at 8:30 a.m., "we sat in the classroom, we either danced or sang and by quarter to nine our managers took us to various places by car. We were left to solicit in the area of five to six city blocks" (Tr. 134-135). Dee Moran was Miss Simkins' field manager. In order to earn the \$89 per week guaranteed salary advertised in their ads, AMA sales personnel had to make 88 presentations of AMA products in a thirty-day period (Tr. 146). The alternate method of compensation was \$35 commission for each complete set of encyclopedias sold (Tr. 146). Miss Simkins understood the compensation options which were available to her (Tr. 146-159). She sold six sets of encyclopedias while she was at AMA (Tr. 141). She was not sure whether she had been fully compensated for the sets she sold (Tr. 153).

50. *Sandra Serkin* (Tr. 170 *et seq.*) was called principally to verify her handwriting on some training material which AMA gave Bonnie Ruth Simkins during her training period. One day Miss Simkins left her glasses at home and Miss Serkin made notes of the lecture for Miss Simkins. Miss Serkin assumed that the name of the company for which she was working was "well, I assumed it was Association because that is what I copied down" (Tr. 172).

51. *Mrs. Merle Urban* (Tr. 174-Tr. 183), a housewife of Pennsauken, New Jersey, was called upon at her home by two representatives of AMA in the spring of 1965. The AMA representatives "said they were conducting a survey for preschoolers. Immediately I let them in under the assumption that they possibly were from the Board of Education."

"They asked me if they could ask a few questions, and I said 'of course' * * *" (Tr. 175). Mrs. Urban testified: "* * * then they slowly started to present the books that they were selling, or said that they were not selling but were introducing and that I would not be purchasing the books just endorsing them; that the purchase price was almost a thousand dollars but that I would be just paying the royalties, not the purchase price * * *" (Tr. 175-176). "To my knowledge, they said they were taking a survey of preschoolers" (Tr. 179). The price quoted to Mrs. Urban for the AMA product was \$249 (Tr. 179). Mrs. Urban was asked by the AMA representative whether she was aware that all preschool children were required to take a test prior to entering the first grade and * * * that their vocabulary should consist of at least 2200 words or associates of words (Tr. 180).

When Mrs. Urban realized that evening that she had been tricked into buying respondents' product she discussed the matter with her husband, and, at a later time phoned respondents, and respondents cancelled the contract for the purchase of the books.

52. *John Urban* (Tr. 183-Tr. 189), the husband of Mrs. Merle Urban, verified what his wife said she had told him about the manner in which the AMA representative conducted themselves in her presence and while in their home.

53. *Mrs. Shirley Anne Harrington* (Tr. 190-Tr. 201) of Glassboro, New Jersey, testified that on Saturday, February 6, 1965, a representative of AMA knocked on her door at home and the representative "said she was taking a census of children in schools, and I invited her in" (Tr. 192). The AMA saleslady represented to Mrs. Harrington, contrary to the fact, that a Mr. Edward J. Wolfe, the principal of Memorial School in Pittman, New Jersey, "was endorsing the science volumes which was part of these encyclopedias" which she, the AMA representative, was selling. Mrs. Harrington was tricked into buying a set of the encyclopedias. Later, Mrs. Harrington called Mr. Wolfe by telephone and Mr. Wolfe denied any knowledge of the specific set of science books, and further denied that he had endorsed such set or any other product. When Mrs. Harrington complained to AMA, her contract for the purchase of the books was cancelled (Tr. 200). Later, someone from AMA tried to deliver the books to Mrs. Harrington, but she refused to accept them. The contract was cancelled to Mrs. Harrington's satisfaction (Tr. 200-201).

54. *Edward J. Wolfe* (Tr. 202-Tr. 206), the principal of the Memorial School, Pittman, New Jersey, verified the facts to which Mrs. Harrington had testified. Mr. Wolfe testified in substance that he told Mrs. Harrington that he had never endorsed the set of books which the AMA

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representative had said that he had endorsed, nor had he ever endorsed any other product.

55. *Maryann Kowalczyk* (Tr. 206-Tr. 237), of Roslyn, Pennsylvania, responded in March of 1966 to an AMA ad in the Philadelphia Inquirer, which advertised a salary of \$89 a week to start (Tr. 209). After an interview with Miss Del Buono, of AMA, Miss Kowalczyk left her job as a sales accountant in the Naval Air Station in Willow Grove and started her training with AMA on March 22, 1966 (Tr. 208-209):

Did she indicate to you what you were going to be trained for?

A. Gee, I had no idea. I had no idea what marketing was, what it was, exactly. I did not think I would be selling door-to-door.

Q. Did she indicate to you what you were going to be trained for initially?

A. No (Tr. 210).

* * * * *

A. Well, for four days classes started around 10:00 o'clock in the morning, and the first day Joe Dee [Miss Del Buono] showed us broadsides (CX 68, CX 70, CX 71, CX 72) of a product that we were supposed to present for *endorsement* [emphasis supplied] (Tr. 210).

CX 64, CX 66-CX 68 and CX 70 are specimens of the "broadsides" to which Miss Kowalczyk testified. All of the broadsides in evidence were shown to the trainees (Tr. 211). To assist her in making sales AMA gave Miss Kowalczyk sets of the broadsides, a company manual (CX 52(a)-(v)), and "a pad of guarantees that we were supposed to get the *endorsing mother* [emphasis supplied] to sign and get certain information about her family that we wrote on these guarantees" (Tr. 221). At first, Miss Kowalczyk did not realize that she had been handed a pad of sales contracts and credit applications (Tr. 211-Tr. 212). Miss Kowalczyk's training period lasted "3 or 4 days." The trainees were told to be in the AMA office at 8:30 in the morning so they could meet their managers. " * * * we were told that we could do anything we wanted, we could dance to records, talk, or anything * * *" (Tr. 212). Miss Kowalczyk's manager, Stan Madden, drove her into the field in a two-door sports coupe in which there were 9 people (Tr. 213). While Miss Kowalczyk was working for AMA, its sales personnel were driven to New Jersey, Maryland, and Delaware for the purpose of making sales.

56. After Miss Kowalczyk was driven back from the field at the end of the day "we waited for a meeting; we usually had a little session with Mr. Kessler before we went home at night and he would look over our guarantees" (Tr. 215). Miss Kowalczyk did not receive any compensation from AMA as salary or commission for her

work (Tr. 217). She had not sold any books, nor had she made the required 88 presentations in a thirty-day period. Miss Kowalczyk testified that AMA sales persons were instructed that if asked if they were selling anything they should reply "That we were just getting opinion on a product that was to be marketed" (Tr. 218).

57. Miss Kowalczyk terminated her employment with AMA because Stan Madden, her sales manager, returned to an impecunious prospect upon whom Miss Kowalczyk had previously called, and pressured the impecunious prospect into buying a set of encyclopedias (Tr. 218-219). "* * * I did not think it was fair to the woman. I did not think she had the money to take it. So I got my kit together, all my materials, my broadsides, my manual, everything, and I handed them in, and Mr. Kessler and Stan tried to talk me out of leaving * * *" (Tr. 219-220). Miss Kowalczyk did not think her job involved selling when she started (Tr. 223), "I thought I was getting endorsements and opinions on a product" (Tr. 223). Miss Kowalczyk learned that her job was selling encyclopedias for the first time after she went out into the field (Tr. 235). Miss Kowalczyk knew she would be paid a commission for every "endorsement," but it was never referred to as a "sale."

58. *Monica Stefanelli* (Tr. 239-Tr. 265) of Glenside, Pennsylvania, who was then 18 years old (Tr. 259), responded to an AMA ad for "college students" (Tr. 240) and worked for AMA from June 15, 1966, to July 7, 1966. Miss Stefanelli was in the AMA training class for 3 or 4 days. She understood that if she made 88 presentations during the 30-day period she would be paid \$360. During her training period it was represented that she would be engaged in obtaining endorsements. "It was called an 'endorsement,' but actually, it was selling books" (Tr. 242). When asked what she thought the job involved, Miss Stefanelli testified, "I asked what the job was about when I went in for the interview, and they said it is too long to explain—'We will tell you if you get the job.'" So then, when we went in, when I got the job then it was explained to me what it was about" (Tr. 243). Miss Stefanelli worked for about three weeks, including her training period, in Allentown, Mount Penn, and Windgap, Pennsylvania, and Rosita, New Jersey (Tr. 244). The witness did not understand that she was being compensated on a commission basis. "I understood that this was not on a commission basis" (Tr. 262).

59. *Linda Train* (Tr. 297), 18 years old, responded in October 1966, to an AMA newspaper ad for a person to train as a "manager" (Tr. 298). Her original application for the job is dated October 3, 1966

(RX 15, RX 17; Tr. 320). The name, "American Marketing Associates, Inc.," was not mentioned in the ad. The witness called a telephone number given in the ad; went to the AMA offices on Chestnut Street; and was told that if she were hired she would be trained as a manager and earn \$87 a week (Tr. 300). Miss Train was interviewed by "Joanne" who said, "We would be working for Parents' Enterprises" (Tr. 301) * * * "that they sponsored something like that, and she asked our names, to introduce each other to each other" (Tr. 301). "Joanne" conducted the training (Tr. 302). Miss Train described the training procedure:

A. Well, she told us—the way she read it off it was like we were talking to the mother or father or both, and—we would go to a house, and we would say: "We are interviewing mothers in the neighborhood about the new methods of teaching," and we would ask if they had children under 10, and if they said "Yes", we asked them if we could come in and ask them a few questions. When we got in, we would ask them a few questions, and find out if they had a phone, and if they did, we would ask them some more questions, and we got down to the endorsement campaign, and asked them if they would like to see it. (Tr. 303.)

AMA trainees were required to memorize the presentations which they gave to prospective customers (Tr. 305).

Miss Train had originally been told she was going to work for the Parents' Enterprises but on the second day of training, while returning from lunch, Miss Train saw the AMA sign in the building directory and asked Miss Del Buono about the discrepancy in names. Miss Del Buono said that "they had just moved out and they had not had time to take the sign down." Miss Train thought that she was working for Parents' Enterprises.

We were never told we were selling; we were told that we were introducing a product and I never realized that we were selling until the day I went out with my manager to their homes (Tr. 306).

60. On her first day in the field Miss Train was driven to Columbia, Pennsylvania, in the car of her manager, "Mark," last name not known (Tr. 308). The first day in the field Miss Train, then 18 years old, was with the field manager. The second day she was with another girl. The third day she was by herself (Tr. 309). AMA instructed Miss Train that when the door was opened by a prospective customer she should represent that AMA wanted the customer's opinion about "a program" (Tr. 310).

61. AMA sales persons were in the field from approximately 10 o'clock in the morning until approximately 4:30 p.m. Then they were driven back to the AMA offices in Philadelphia (Tr. 312). The witness received the impression "we were to receive \$25 for three days' training,

and \$35 for any endorsements that we got." Joanne Del Buono was Miss Train's "boss" (Tr. 315). Miss Train was in the field for three days. She quit because she "did not like the job" (Tr. 316).

62. *Mrs. Irene Scioli* (Tr. 330-Tr. 348), a housewife, of Philadelphia, was called upon by the AMA saleswoman, Anunziata Devine, on June 14, 1965. Miss Devine told Mrs. Scioli to call her "Nancy." " * * * She said she was taking a survey of the teachings in the public school system * * *" (Tr. 332). Mrs. Scioli testified:

Q. Did you ask her if she was selling anything or were going to try to sell you anything?

THE WITNESS. No, I believed she was taking the survey. I never thought she was a salesperson because in my estimation, if she was selling something she would have had at least a briefcase. In fact, that was the only reason I let her in, because I did not think she was a salesperson (Tr. 336).

Mrs. Scioli signed up to buy a set of AMA encyclopedias from Miss Devine for \$240, and gave a five dollar check as a deposit on the order. Upon reflection later, Mrs. Scioli called the AMA offices and spoke to a man who identified himself as the company lawyer (Tr. 342-343). When she did not get any satisfaction from the man on the telephone, Mrs. Scioli called the Better Business Bureau. Later she filled out a form from the Better Business Bureau setting forth her experience with AMA (Tr. 343).

63. Nancy Devine represented to Mrs. Scioli that she was getting a special price (Tr. 344-345); and that when the encyclopedias were later advertised nationally the price would be substantially higher than that for which they were being offered to Mrs. Scioli. Mrs. Scioli stopped payment on the \$5 check that she had given Miss Devine. AMA never got any of Mrs. Scioli's money; Mrs. Scioli never received the encyclopedias.

64. *Gail Gordon* (Tr. 348-Tr. 378) of Alden, Pennsylvania, graduated from Temple University in June 1965. She first contacted AMA in June 1965 because a friend of hers showed her an AMA "flyer" (CX 24) offering summer jobs to engage in market research. The flyer directed interested persons to ask for a "Mr. Thurston." (Respondents admit that no Mr. Thurston was ever in their employ.) When Miss Gordon went for her first interview at AMA she was told that Mr. Thurston was not in. She was ushered in to see respondent Kessler (Tr. 351).

Q. Would you describe the interview with Mr. Kessler? This is your first interview at the company.

A. Mr. Kessler spoke first of all, and told us that the University of California had engaged them to do, the American Marketing Associates, to do a research

program on education—a research project on an educational program, and they had the finances to hire approximately 100 people that summer. He also said that the previous summer they had hired 75 people but the University had allowed them a larger grant for this summer and that they were able to hire approximately 100 people this summer to do, in effect, market research on an educational program that was developed by the University of California, and that my job, if I were hired, would be to interview young housewives and, in effect, to get them to endorse this program, just as a famous person would endorse any kind of a program that you saw on TV, and then these people would be allowed to use this program if we could use their names as an endorsement for the program (Tr. 352).

* * * I was led to believe that there was no money involved, but that I would be interviewing young housewives just to get them, well, get them to endorse the program * * * I have to use that word again (Tr. 353).

During Miss Gordon's training period with AMA she was required to memorize a special mimeographed sales presentation (Tr. 357). Miss Gordon "understood Mr. Kessler to be my boss" (Tr. 352). Miss Gordon was taken into the field by Phillippa Stein. It was the witness' understanding that the prospects upon whom she was to call had been contacted earlier and had been alerted to the visit from the AMA representative (Tr. 361).

65. Phillippa Stein told the housewife upon whom she called with Miss Gordon that she was not selling anything (Tr. 362). When a housewife was reluctant to let the salespeople into her house and inquired whether she were selling anything, Miss Stein said "no, we definitely are not selling anything at all" (Tr. 362). Upon being admitted to the house, Miss Gordon went through the sales presentation as she had learned to do in the training session (Tr. 362). Such presentation required approximately an hour (Tr. 363).

66. After a few calls Miss Gordon realized that her calls upon prospects had not been prearranged. Miss Gordon testified "each successive day in the training period I found that it [the job] was not exactly as I thought it was to be and that the job was not exactly as they represented" (Tr. 364).

67. *Deborah Oliver* (Tr. 381-Tr. 414), 17 years old, a high school graduate with one year of college at Temple University (Tr. 382), at the time she testified was a receptionist at the Bell Telephone Company in Philadelphia. She initially responded to an AMA ad in the paper in April 1966 (Tr. 353), and worked for AMA for about five days beyond the initial three-day training period (Tr. 408). She sold one set of encyclopedias, and was paid \$35 commission on that sale, the final payment of \$25 being received in May 1967. During her training period at AMA Miss Oliver was instructed to tell prospective custom-

ers, upon her initial contact with them, that she was conducting a "survey" (Tr. 410). AMA misrepresented to Miss Oliver that her calls upon prospective customers would be prearranged (Tr. 409).

68. *Stephen Robert LaCheen* (Tr. 416-Tr. 450), a member of the bar of Pennsylvania, was and is in the private practice of law in Philadelphia. He prepared the articles of incorporation for AMA, Inc. At the time, LaCheen had been a long time personal friend of, and shared office space with Benjamin Fishbein and Robert Coles, who were carrying on the practice of accountancy (Tr. 525). LaCheen prepared the Articles of Incorporation of AMA and the corporate papers which usually are required to complete such incorporation. Copies of the corporate minutes including the waivers of notice of the first meeting of the stockholders and of the directors (which were produced in response to complaint counsel's request) are not signed. The minutes recite the following shareholders present at the first meeting: Stanley Kessler—20 shares; Robert Coles—35 shares; and Benjamin Fishbein—35 shares (CX 3).

Respondents' witnesses testified, in pertinent part:

69. *Marlene Petchon Caesar* (Tr. 609-Tr. 636), 31 years old, had previously worked with Stanley Drizzen (Drake) at the Grolier Society, selling encyclopedias on a door-to-door, commission basis. She wanted to resume the selling of encyclopedias and got in touch with Stanley Drizzen at AMA in March 1965 (Tr. 610). She was with AMA until May 1965; was paid \$35 Commission for each "package" of encyclopedias sold for \$249.50. Miss Caesar had been trained in the door-to-door selling technique by Drizzen when she was at Grolier. At Grolier she sold *The Book of Knowledge* (Tr. 620). After leaving Grolier the witness worked for a year and a half selling wigs on a door-to-door basis (Tr. 619). At AMA Mrs. Caesar solicited sales in Pennsylvania, New Jersey, and Delaware (Tr. 625). During her two months at AMA she earned between \$700 or \$800 in commissions (Tr. 626) and left AMA because of "a personal problem that had nothing to do with the company" (Tr. 630). In making her presentations of the AMA products the witness did not use the word "sale" (Tr. 630) but the word "endorsement" (Tr. 631).

70. *Malcolm Hay* (Tr. 637-Tr. 666), an insurance salesman at the time of his testimony, had formerly been a district manager for AMA. He was a high school graduate and after he got out of the Navy in September 1958 he went to an IBM school for about 16 months. Thereafter, he worked for Leeds and Winthrop, a precision instrument company, assembling precision instruments for more than four years (Tr. 646). Thereafter, Mr. Hay went to work for Parents' Magazine sell-

ing books on a door-to-door basis and stayed with Parents' Magazine from April until October 1964. Mr. Hay received his training in door-to-door selling of books at Parents' Magazine. He started to work for AMA in January 1965 (Tr. 650) and did not go through a training period. He received a \$50 commission on each sale he made plus a \$10 overwrite for each set sold by the salespeople whom he transported to the field in his automobile. Mr. Hay traveled to New Jersey, Delaware and Maryland to solicit orders (Tr. 655). AMA had "four or five" district managers when Hay was there (Tr. 657).

71. *Barbara (Mrs. Malcolm) Hay* (Tr. 667-683) worked for "approximately six months" (Tr. 670). She originally established contact with AMA by responding to an AMA advertisement in a newspaper (Tr. 674). Previously, she had been "involved" in selling in Louisiana (Tr. 675). CX 43 looked "familiar" to the witness as the type of ad to which she responded (Tr. 678-679). She solicited orders for AMA in Delaware, Maryland, New Jersey, and Pennsylvania (Tr. 682).

72. *Phillippa Stein* (Tr. 684-709) had graduated from Pennsylvania State University in December 1966, worked one summer for Mr. Drizzen at "Parents Association" (Tr. 700) doing door-to-door selling of books. Drizzen (Drake) trained Miss Stein in the door-to-door selling technique at Parents (Tr. 700). The witness worked for AMA during the summer of 1966; was a district manager; was paid \$50 commission on each set of books she sold, plus a \$10 overwrite on sets sold by the salespersons whom she transported to the field. Although Miss Stein was a teacher in the public schools, she testified that she had never seen a "reading readiness" test⁵ (Tr. 696-697). The witness' reference to "reading readiness" tests in her sales presentation was only "hearsay" (Tr. 697). Miss Stein did not go through the usual training period at AMA (Tr. 701). She worked one summer as a waitress for Rich Pike Delicatessen (Tr. 703). During the period she was with AMA she solicited orders in New Jersey and Pennsylvania (Tr. 704-705).

73. Miss Stein testified that in her presentation to prospective purchasers of AMA products she never said she was selling encyclopedias (Tr. 707). The prospective customers were not made aware that they were going to have to pay out money until *after* Miss Stein gave the product talk (Tr. 708). If a prospective customer asked "what are you selling?" * * * "I told her I was not selling anything" (Tr. 708-709). Miss Stein "might" have said: "we just want to talk to [you] about the education of your children" (Tr. 709).

⁵ See *supra*, p. 243.

74. *Elaine Pollack* (Tr. 710–Tr. 733), 23 years old, responded to an AMA ad in the Philadelphia Inquirer in March 1965 and was interviewed at AMA by Drizzen (Drake) (Tr. 712); trained by Drizzen (Tr. 713) and then “went out and sold books” (Tr. 713). She used a foot shuffling technique for gaining admission into the house of a prospective customer (Tr. 714). The “product” was sold for “\$249.50, \$10 for shipment” (Tr. 715). She was with AMA a little bit less than three months. After graduation from high school, she worked for a year as a clerk in a bank and then went to Temple University (Tr. 716). The feature about the AMA ad which attracted Miss Pollack was its statement that no typing was required (Tr. 717). Miss Pollack was compensated on a commission basis by AMA. She could not remember precisely how much money she earned in the two and a half months she was with AMA but estimated that she earned more than \$300 for the two and a half month period (Tr. 719). Initially, Miss Pollack did not tell a prospective customer that she was selling (Tr. 722, Tr. 725, Tr. 726). She called upon prospective customers in Pennsylvania, New Jersey, and Delaware (Tr. 724).

75. *Dee Moran* (Tr. 751–Tr. 795), 20 years old, became associated with AMA in December 1964 (Tr. 751). She had previously worked for Stanley Drizzen (Drake) at Parents’ Magazine Cultural Institute. Drizzen (Drake) telephoned the witness and asked her to come to work for him after he had become associated with AMA (Tr. 752). Miss Moran went to AMA as a district manager and stayed for 8 or 9 months (Tr. 752). She was paid a \$50 commission on every set of books she sold plus a \$10 overwrite on sets sold by the salespeople whom she drove to the field. Miss Moran’s recital of the modus operandi of the AMA sales force did not differ in any material aspect from the stories testified to by the other AMA district managers. Miss Moran testified in substance that the sales talk which was utilized by AMA personnel was essentially the same that Miss Moran had been taught by Drizzen at Parents’ Magazine except that the books being sold were different (Tr. 755–756). The witness had received CX 55 and 56(a)–(h) from another AMA district manager, Georgine Scott (Tr. 765). The witness denied that she was fired from AMA “for using unauthorized materials” (Tr. 770). The witness attempted to make sales in Philadelphia, New Jersey, Maryland, and Delaware (Tr. 771). At AMA, Miss Moran met other persons who had left Parents’ Magazine and came to AMA to work (Tr. 774) including the witness, Georgine Scott and Cathy Paoli (Tr. 774). Drizzen introduced Miss Moran to Kessler. At AMA, Drizzen “was in charge of the office. He did the hiring, the training, and so forth” (Tr. 775).

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Drizzen told Miss Moran that Kessler was in charge of "collections and debits [debts]" (Tr. 775).

76. Drizzen left AMA and went to "Parents" in Baltimore before Miss Moran left AMA (Tr. 776). The witness never underwent any training at AMA (Tr. 778).

77. *Stanley Kessler, respondent*, testified in his own behalf (Tr. 789-795). This portion of Mr. Kessler's testimony does not support additional, material findings of fact which are not summarized elsewhere in this initial decision.

THE EXHIBITS

Exhibits in this record fall into the following rough categories: A Corporate proceedings, B. AMA advertisements for help, C. Training material, D. Contracts used in the business, E. Sales material and F. Miscellaneous.

A. Corporate Proceedings

78. Some corporate proceedings are reflected in CX 1, CX 2(a) (b), CX 3-8, and CX 95-98. These exhibits show and it is found that AMA was chartered by the State of Pennsylvania to do business on November 30, 1964. When respondents were notified by Mrs. Wilkerson on January 5, 1965, that the corporate name was creating confusion, respondents, and Benjamin Fishbein, and LaCheen, could have eliminated the confusion by changing the corporate name after less than 26 working days since the issuance of the corporate charter. As far as the record shows, no effort was ever made to eliminate this confusion.

The corporate proceedings in evidence support a finding that Benjamin Fishbein, Stephen LaCheen and Stanley Kessler were careless of, or indifferent to, the necessity of conducting their business affairs in the usual and customary manner for such enterprises. Small "closed" corporations, such as AMA, abound in American business—but such businesses do not ordinarily represent to their business associates one list of corporate officers in one set of papers and a different list in a different set of papers. If Benjamin Fishbein, the largest capital contributor, wanted to keep his name out of the corporate proceedings, for business reasons, there is no good reason why he should not have done so. It is interesting to speculate why Fishbein, an accountant, did not insist upon a meticulous adherence to the facts, and consistency in the way the facts were represented to outsiders. AMA's corporate officers named in The Lincoln National Bank resolution

authorizing the bank account, and the making of loans (CX 95) are Stanley Kessler, president, and Mary Lou Harris, secretary-treasurer. The corporate officers named in Kessler's January 21, 1965, letter to the Better Business Bureau of Greater Philadelphia (CX 99) are Mr. B. Fishbein, President and Mr. R. Coles, Secretary-Treasurer. There is no Vice-President" (CX 99(a)). In CX 84, a short statement describing the American Marketing Associates, Inc., prepared for the Federal Trade Commission, at its request, it was represented that the officers of the corporation are:

Mr. Leonard Fishbein, President, 10225 Selmer Plaga, Philadelphia, Pa.

Mr. Albert Gordon, Secretary-Treasurer, 1110 Princeton Avenue, Philadelphia, Pa.

There is no Vice President (CX 84).

Benjamin Fishbein testified that he really didn't think it made any difference who was represented to be the corporate officers—that he, Fishbein, was the president in fact (see Ante p. 237). The examiner finds that Benjamin Fishbein, Stanley Kessler and Stephen LaCheen's actions in representing to interested parties who the corporate officers were and are—when evaluated along with—and as part of the other deceptions proven in this record, constitute deceptive acts and practices which violate Section 5 of the Federal Trade Commission Act.

79. The hearing examiner has previously found, and now reiterates his finding (*supra*), that the first act of Messrs. Benjamin Fishbein, Stanley Kessler, and Stephen LaCheen—the selection of the corporate name—was and is a deceptive act and practice and violates Section 5 of the Federal Trade Commission Act.

B. Advertisements for Help

80. In their advertisements for help (CX 19-35, inclusive, and CX 37-48, inclusive), respondents have represented, and do represent, contrary to the fact:

- (a) That they conduct marketing research;
- (b) That they conduct marketing surveys;
- (c) That they are a "large, international marketing corporation" (CX 29);
- (d) That they have an "anthology" department (CX 31, CX 32, CX 33);
- (e) That being hired as an AMA door-to-door salesperson could "lead to a career in personnel management and supervision" (CX 33);
- (f) That they had in their employ a "Mr. Disney" (CX 21); a "Miss Marlo" (CX 23); a "Mr. Thurston" (CX 24); a "Mr. Von Savage" (CX 39); a "Miss Gayle" (CX 41); a "Mr. Baxter" (CX 47); a "Dr. Arthur West" (CX 59);

(g) That AMA is a "world-famous industrial publishing corporation" (CX 40); is "an international organization that does market research, advertising, sales" (CX 42).

C. Training Material

81. The exhibits characterized as "training material" include CX 52, CX 62, and CX 63. Based upon his examination of these exhibits and other evidence in the record, the examiner finds that respondents have represented, and do represent, contrary to the fact:

(a) That they had an "educational director" (CX 59); and "educational coordinator" (CX 62) on their staff:

(b) That their products had been endorsed by "the former Superintendent of Schools, Chicago, Illinois" (CX 60); "the United States Department of Education" (CX 60); Angelo Patri, "leading authority on child psychology" (CX 61); Dr. Spock (CX 63).

82. CX 52-58, inclusive, and other evidence in this record support a finding, and the examiner finds, that respondents trained their sales personnel to give "canned" sales presentations, but this fact did not and does not constitute a deceptive act or practice. The fact that respondents' sales personnel were required to commit their sales presentations to memory does not constitute a deceptive act or practice. It was, and is the representations that were and are made in the sales presentations themselves that may or may not be deceptive. It was, and is a deceptive act and practice for respondents to instruct their sales personnel, in sales presentations, to represent that such sales personnel are conducting surveys and that they are engaged in market research; and to deny that they are selling books, or selling anything (see testimony of Mary Ann Kowalczyk, p. 244, Linda Train, p. 246, Gail Gordon, p. 247, Deborah Ann Oliver, p. 248, Phillippa Stein, p. 250); to infer that the purchase of their products was essential for a child to pass the reading readiness test required for admission to the public schools; and/or to infer directly, or by innuendo, contrary to the fact, that respondents' products have the endorsements of any well-known person or organization, including the former Superintendent of Schools of Chicago, Illinois; Angelo Patri; Dr. Spock, the United States Department of Education, or the University of California.

D. Contracts

83. Respondents' format for their employment agreements, sales agreements, and credit applications, is intended to, and does, disguise the fact that such documents are employment contracts, purchase contracts, and/or credit applications. The exhibits with the words

"Products Acceptance Division" (CX 4-17, CX 72, CX 76) as the predominant printing at the top, are purchase agreements. Respondents violate the Federal Trade Commission Act by attempting to cause their customers to believe at the outset, that the customer is not buying something for which he or she must pay money. The Federal Trade Commission Act was and is violated if respondents' first interview or contract is secured by deception, even though the true facts are made known to the buyer before he or she enters into the contract of purchase. (Paraphrased from *Exposition Press v. FTC* 295 F. 2d 869 at 873 which quoted the principle, with approval from *Carter Products*, 186 F. 2d 821, 824.) This principle is especially significant with reference to the opening leads which respondents' sales personnel use when they first knock upon a prospective customer's front door, or first ring the front door bell, and represent that they, the salespersons, are not selling anything but are taking a survey, or doing something other than that which they actually are doing—selling books.

STIPULATED FACTS

The following findings of fact are made *in haec verba* the prehearing stipulation filed in this record on May 10, 1967:

84. a. The corporate respondent, American Marketing Associates, Inc., was incorporated under the laws of the State of Pennsylvania on November 30, 1964. Its "registered address" for State purposes is that of its Attorney, Stephen R. LaCheen, Esq., Suite 3100, Lewis Tower Building, 225 15th Street, Philadelphia, Pennsylvania.

b. Its principal office and only place of business is located at Suite 702, 1422 Chestnut Street, Philadelphia, Pennsylvania. The corporate respondent does not have any other branch offices or places of business. (CX-1.)

c. The application for incorporation shows that the incorporators of the corporate respondent were:

Mr. Benjamin Fishbein, 517 Mermaid Lane, Windmoor, Pennsylvania.

Mr. Robert Coles, 1116 East Slocum Street, Philadelphia, Pennsylvania.

Miss Cecilia J. Bartolino, 1120 North 20th Street, Camden, New Jersey.

d. The said application for incorporation shows that each incorporator had one share of common stock. (CX-2.)

e. The officers of the corporate respondent are:

Benjamin Fishbein—president.

Robert Coles—secretary and treasurer.

There is no vice president.

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f. The directors of the corporate respondent are Benjamin Fishbein, Robert Coles and Stanley Kessler. (CX-3.)

g. Stock of the corporate respondent consists of 100 shares of common stock with a par value of \$10 per share.

85. The corporate respondent for some time last past has been, and at the time of issuance of the subject complaint and for some time thereafter, has been engaged in the business of advertising, offering for sale, sale and distribution of encyclopedias and other educational books to the public.

The principal books and encyclopedias sold and distributed by the corporate respondent are :

The New Standard Encyclopedia (14 Volumes).
Child Horizons (5 Volumes).
Science Library (7 Volumes).
Children's Classics Library (10 Volumes).

and supplements thereto.

86. In the course and conduct of its business, the corporate respondent now causes, and for some time last past has caused, the said books and encyclopedias, when sold, to be shipped from its place of business in the State of Pennsylvania and from the place of business of its supplier, Eastern Guild Inc., 1315 Vine Street, Philadelphia, Pennsylvania, to purchasers thereof located in States of the United States other than the State in which said shipments originate. Purchasers of the said books and encyclopedias reside in the States of Pennsylvania, New Jersey, Delaware and Maryland. (CX-4 through CX-17.)

87. In the course and conduct of its business, the corporate respondent for some time last past and at the time of issuance of the subject complaint and for some time thereafter has been in competition in commerce with corporations, firms and individuals in the sale of books of the same general kind and nature as those sold by the corporate respondent.

Companies engaged in the sale and distribution of encyclopedias and books in the Greater Philadelphia area include the major publishers of encyclopedias as well as distributors and retailers. Among these are Grolier, which, through subsidiaries and divisions publishes the Book of Knowledge, Encyclopedia Americana, Grolier Encyclopedia, Richards Encyclopedia and International Encyclopedia among other publications. The Richards Encyclopedia is distributed through the Richards Company and through two Grolier subsidiaries, Spencer Press and R. H. Hinkley Company. Spencer Press also publishes and distributes the International Encyclopedia.

Other companies that engage in retail door-to-door sales of encyclopedias in the Greater Philadelphia Metropolitan area are Parent's, Encyclopedia Britannica, Great Books and Collier's.

88. In the course and conduct of its business the corporate respondent sells said books at retail to the general public. Sales are made by the corporate respondent's agents, representatives or employees, who contact prospective purchasers in their homes or at their place of business. From the date of its incorporation on November 30, 1964, through December 31, 1965, the gross sales of the corporate respondent, less returns and allowances, amounted approximately to \$106,656.96. (CX-18.)

89. The corporate respondent has formulated, developed and carried out a plan for the purpose of attracting and acquiring sales employees and/or representatives and for the purpose of selling said books to the public.

In furtherance of said plan the corporate respondent has disseminated or caused to be disseminated, and now disseminates classified advertisements in newspapers of general and interstate circulation and in other advertising media and have made statements and representations designed and intended to induce individuals to apply for employment and training in respondent's organization in reliance thereon.

Typical and illustrative of the foregoing but not all inclusive thereof, are the following:

- CX-19—Philadelphia Inquirer—March 7, 1965.
- CX-20—Philadelphia Inquirer Sunday—August 29, 1965.
- CX-21—Philadelphia Inquirer Sunday—February 21, 1965.
- CX-22—Philadelphia Inquirer Sunday—August 29, 1965.
- CX-23—Philadelphia Inquirer Sunday—September 19, 1965.
- CX-24—Advertising Flyer.
- CX-25—Advertisement in the Yellow Pages.
- CX-4 through CX-17—Contracts of Sale.

In addition to the foregoing exhibits of advertising, the corporate respondent also placed the following advertisements:

- CX-26—Philadelphia Inquirer—Sunday, August 22, 1965.
- CX-27—Philadelphia Inquirer—Sunday, August 22, 1965.
- CX-28—Philadelphia Inquirer—Sunday, August 29, 1965.
- CX-29—Philadelphia Inquirer—Sunday, Sept. 19, 1965.
- CX-30—Philadelphia Inquirer—Sunday, Oct. 17, 1965.
- CX-31—Philadelphia Inquirer—Sunday, Oct. 17, 1965.
- CX-32—Philadelphia Inquirer—Sunday, Oct. 17, 1965.
- CX-33—Philadelphia Inquirer—Sunday, Jan. 3, 1965.
- CX-34—Philadelphia Inquirer—Sunday, Feb. 7, 1965.
- CX-35—Philadelphia Inquirer—Sunday, Feb. 14, 1965.
- CX-36—Philadelphia Inquirer—Sunday, Feb. 21, 1965.

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CX-37—Philadelphia Inquirer—Sunday, Feb. 28, 1965.
CX-38—Philadelphia Inquirer—Sunday, Mar. 14, 1965.
CX-39—Philadelphia Inquirer—Sunday, Mar. 28, 1965.
CX-40—Philadelphia Inquirer—Sunday, May 23, 1965.
CX-41—Philadelphia Inquirer—Sunday, May 23, 1965.
CX-42—Philadelphia Inquirer—Sunday, May 30, 1965.
CX-43—Philadelphia Inquirer—Sunday, Sept. 26, 1965.
CX-44—Philadelphia Inquirer—Sunday, Oct. 3, 1965.
CX-45—Philadelphia Inquirer—Sunday, Oct. 10, 1965.
CX-46—Philadelphia Inquirer—Sunday, Oct. 10, 1965.
CX-47—The Sunday Bulletin—May 1, 1966.
CX-48—Philadelphia Inquirer—Jan. 29, 1967.

The telephone number listed in the aforesaid advertisements as LO 4-4345 or 564-4345 is the telephone number of the corporate respondent American Marketing Associates Inc.

The "flyer" advertisement (CX-24) was circulated on the Campus of Temple University, Philadelphia, Pennsylvania.

90. The screening and training of applicants at the company usually extends from Monday through Friday of one week. The initial interview is conducted on Monday and a second group interview is conducted on Tuesday, both of which are handled by Miss Joanne Del Buono, who is the company's "Personnel and Staff Training Director." The Training periods are also conducted by her on Wednesday, Thursday and Friday.

There are three documents that are executed by the company and its sales representatives during the training period, these being the initial agreement of understanding regarding compensation agreements (CX-49), a written "test" of the trainee's understanding of his working relationship with the company (CX-50) and lastly the independent contractor's agreement (CX-51).

91. In furtherance of that part of the aforesaid plan to sell their books to prospective customers the corporate respondent supplies its agents, representatives or employees with a "printed sales pitch" and material connected therewith and instructs them to use and follow the same. Typical, but not all inclusive of such material are the following:

CX-61—The Child.

CX-62—One Page form letter of "Educational Co-ordinator."

Note: CX-62 is left by the solicitor after the sale of the program has been accomplished.

CX-63—Child Horizons Library Introduction.

CX-64—Child Horizons Library "Broadside."

CX-65—Child Classics Introduction.

CX-66—Child Classics "Broadside."

CX-67—New Standard Reference Library Introduction.

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CX-68—New Standard Encyclopedia "Broadside."

CX-69—Information Service Introduction.

CX-70—Information Service "Broadside."

CX-71—The Science Library "Broadside."

CX-72—Products Acceptance Division Blank Contract.

CX-73—Standard Information Service Certificate.

CX-74—Standard Quarterly Review Service Guarantee Certificate.

Note: CX-73 and CX-74 are mailed to the purchasers of the program by the Eastern Guild Inc., distributor of New Standard Encyclopedia Inc.

92. The corporate respondent, through the use of such statements and representations and others similar thereto, but not specifically set forth herein, separately and in connection with the oral sales presentation of respondent's salesmen, as used variously by the respondent in the advertisements and promotion of their products, admits that it has represented directly or by implication:

a. That it is recruiting young men and women as trainees for career positions as junior executives in marketing research, sales, advertising, credits, public relations, personnel supervision and management, to fill positions created by promotions.

b. That trainees will be paid \$70 or \$89 a week, \$360 a month or \$4,628 a year as starting salaries with no previous experience required.

c. That respondent's representatives were making a "survey" of a select group of mothers to solicit "endorsements" of the aforesaid educational program.

d. That some of respondent's representatives were mothers with children or teachers who volunteered their services solely out of interest in the aforesaid educational program at no compensation or at a nominal compensation.

93. The corporate respondent admits in truth and in fact:

a. That the corporate respondent is not associated nor affiliated in any manner with the American Marketing Association or any other organization and is not an association of persons, firms or corporations, having a common interest. The corporate respondent is a simple corporate entity engaged in business as hereinabove described.

b. The corporate respondent is not an international corporation with branch offices in major cities and its home office in Chicago, Illinois. The corporate respondent maintains a single office in Philadelphia, Pennsylvania, and is engaged in the door-to-door sale of encyclopedias and other educational books. At no time did their annual sales ever total \$100,000,000.

c. The corporate respondent does not have in its employ experts in the educational field possessing skills and qualifications such as doctoral degrees nor does it maintain a staff of company psychologists.

d. The corporate respondent does not represent Parent's-Children's Institute, nor are they affiliated with Parent's Magazine nor any agency of the United States Government.

e. The corporate respondent has not engaged in market research or any other research in conjunction with the University of California or any other organization or institution.

f. The corporate respondent has not developed an educational program in conjunction with the University of California, at the request of leading educators.

g. The corporate respondent admits that its representatives were not necessarily mothers with children or teachers who volunteered their services with little or no compensation but solely out of an interest in the aforesaid educational program. Corporate respondent's representatives, as aforesaid were salesmen or saleswomen, married or single working for moneys or income to be realized from the sale of respondent's books.

Stanley Kessler, individual respondent, must be included and joined in the order being entered, in order to stop the deceptions which have been proven in this record and to prevent their future recurrence. Had Benjamin Fishbein been named as a respondent, he too would be included in the order. Joining Kessler in the order is inescapable if we apply the facts found herein to the rationale of legal precedents which establish the criteria for determining whether individual respondents should be named in Commission cease and desist orders. The examiner has read the language of the Fifth Circuit in the *Doyle* case, 356 F. 2d 381, 383, and of the Ninth Circuit in the *Flotill* case, 358 F. 2d 224, 233, as well as the precedents which sustain the inclusion of individual respondents in an order. (See Docket No. 8697, *Coran Bros. Corporation. et. al.*, opinion of the Commission dated July 11, 1967, at pages 2, 3 and 4 [72 F.T.C. 1, 24-25]). Benjamin Fishbein and Stanley Kessler could, merely by changing the corporate name, continue the same deceptions under a new name, unless Kessler at least (Fishbein is not a respondent) is under a personal interdiction to conduct any and all door-to-door selling businesses in which he now is, or hereinafter may be engaged free of all deception proscribed by Section 5 of the Federal Trade Commission Act.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction over the parties to and the subject matter of this proceeding. This proceeding is in the public interest;

2. The respondents, and each, and both of them, have violated Section 5 of the Federal Trade Commission Act in the manner set forth in this initial decision;

3. In order to prevent the current and possible future deceptive acts and practices of respondents an appropriate order must be entered. Such an order should bind both respondents.

The Benjamin Fishbein-Stanley Kessler-Robert Coles-American Marketing Associates, Inc.—operation is so permeated with deception that the usual and customary form of order entered in adjudicative proceedings before the Federal Trade Commission may not reach all of the deceptions which have to be remedied in this specific factual situation. It is, therefore,

ORDER

Ordered, That respondents Stanley Kessler and American Marketing Associates, Inc., a Pennsylvania corporation, their agents, representatives, and nominees, and/or all other persons acting for, with, or on behalf of, said respondents cease and desist forthwith from:

1. Doing business under the corporate name, "American Marketing Associates, Inc.," or any other name, corporate or otherwise, which can, directly or by innuendo, cause confusion in the minds of the public, or any specific segment of the public, and/or create a false or deceptive impression of the true purposes of the enterprise;

2. Representing, directly or by innuendo, that they are carrying on market research and/or making surveys: *Provided, however*, That it shall be a good defense in any enforcement proceeding for respondents to demonstrate that they are in fact carrying on market research and/or making surveys as those terms are generally understood;

3. Misrepresenting who are the actual officers and directors of the corporate respondent;

4. Representing in their advertisements for help, and in their sales presentations: (a) that they are an international corporation; (b) that they employ certain categories of persons (such as "educational director") who in fact are not in their employ; (c) that they are affiliated, in a business way, or otherwise, with any institution of higher learning or with any other business or institution with which they are not in fact so affiliated; (d) that they train their employees to become junior executives or to become personnel managers, or for any other position for which such employees are not in fact so trained;

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5. Misrepresenting in their advertisements, and otherwise, the true nature of the job being proffered to the applicants for employment who are solicited;
6. Using a format for their employment contracts, sales agreements, and other legal documents, which format does not label such documents precisely as to what they are;
7. Using the names of fictitious persons and/or fictitious titles in their advertisements and other representations;
8. Denying that they are engaged in the sale of a product;
9. Representing that they are engaged in any activity other than that in which they are in fact engaged;
10. Representing to any prospective customers, directly, or by innuendo, that the price quoted for their products represents a saving from the price at which the products are usually and customarily sold in the recent regular course of business in the trade area involved;
11. Any and all other practices which are found in this initial decision, to be false, misleading or deceptive as described herein.

OPINION AND FINAL ORDER OF THE COMMISSION

In this proceeding, initiated by a complaint issued January 17, 1967, complaint counsel have appealed from the initial decision rendered by the hearing examiner on August 24, 1967. While respondents filed a notice of intention to appeal, they did not perfect their appeal by filing an appeal brief as required by Section 3.52 of the Rules of Practice. Complaint counsel do not challenge the findings of fact and conclusions made by the examiner. Their appeal is limited to the form of the order. They assert that the form of order adopted by the hearing examiner is, in certain respects, unclear and inadequate to assure discontinuance of the illegal acts and practices found.

After careful consideration of the entire record, the Commission has determined that the evidence fully supports the findings of fact and conclusions contained in the initial decision, and they are hereby adopted by the Commission. We have also determined that complaint counsel's objections to the form of the order are well taken. The order we are entering is designed to overcome the deficiencies noted by complaint counsel. It is tailored to prohibit, in clear and specific terms, the unlawful acts and practices in which the record establishes that respondents have engaged. Accordingly,

It is ordered, That respondents American Marketing Associates, Inc., a corporation, and its officers, and Stanley Kessler, individually

and as a director of the 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 encyclopedias or other books or publications, or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Marketing" or "Associates" or any other word or words, or abbreviations thereof, of similar import or meaning as a part of respondents' trade or corporate name or in any other manner in their sales, promotional, or advertising activities; or representing, directly or by implication, that respondents are an association of persons, firms or corporations having a common interest;
2. Representing, directly or by implication, that:
 - (a) Respondents are associated or affiliated with the American Marketing Association; or misrepresenting, in any manner, respondents' trade or business, associations, affiliations or identity;
 - (b) Respondents are an international corporation or have branch offices or have annual sales of \$100,000,000 or any other amount in excess of respondents' actual annual gross sales; or misrepresenting, in any manner, the size, scope, extent, amount or volume of respondents' business or operation;
 - (c) Respondents are engaged in the business of marketing research and analysis or advertising credits, or public relations; or misrepresenting, in any manner, the nature of respondents' business;
 - (d) Jobs are available or applicants are sought as trainees for junior executive positions in market research and analysis, advertising credits, public relations, personnel supervision or management; or misrepresenting, in any manner, the type or kind of employment offered;
 - (e) A salary or income is being paid for any job or position when only a commission is paid to those accepting the employment; or misrepresenting, in any manner, the amount or method of compensating employees;
 - (f) Respondents' business organization consists of separate functional departments or divisions such as Editorial, Research, Educational or Product Acceptance; or using any

fictitious or misleading organizational descriptions or designations;

(g) Respondents have in their employ experts in the educational field possessing special skills, qualifications or doctoral degrees or employ their own company psychologists; or misrepresenting, in any manner, the number, kind or qualifications of the persons employed by respondents;

(h) Respondents represent "Parents'-Children's Institute" or are affiliated with Parents Magazine or any agency or instrumentality of the U.S. Government or any local or state government; or that respondents have engaged in research in conjunction with the University of California or any other organization or institution; or misrepresenting, in any manner, respondents' trade or business associations, affiliations or representations of any other organizations;

(i) Respondents have developed an educational program in conjunction with the University of California at the request of leading educators; or misrepresenting, in any manner, the persons or organizations which assisted or participated in the formulation of the program by respondents to prospective purchasers;

(j) Respondents' program was or is approved or endorsed by leading educators; or that it contains all the required reading materials of a child's assigned school work; or that it will enable a preschool child to pass the "Reading Readiness Test" or any test for entrance to elementary school;

(k) Respondents' representatives are making or conducting a survey; or are soliciting only a select group of mothers for the purpose of obtaining an endorsement of the aforesaid educational program or for any purpose other than the sale of books; or that respondents' representatives are mothers or teachers who have volunteered their services solely because of interest in the aforesaid educational program or for any other reason at no compensation or only at a nominal compensation; or misrepresenting, in any manner, the purpose of the call or interview by respondents' representatives with prospective purchasers;

(l) Under a "Mother's Club Plan" or any other plan, selected groups of mothers or any other class or group of purchasers are afforded the opportunity of obtaining the aforesaid educational program or any of respondents' prod-

ucts, either singly or in combination at a special price, below the regular price, which special price is sufficient only to cover the cost of production such as paper, printing, bindings and royalties; or that the regular price of said educational program would amount approximately to \$1,000 or that the regular price of optional annual supplements to said program is \$14.98; or that the regular price of any of respondents' goods or services, whether offered or sold singly or in combination, is any amount which is in excess of the price at which said goods or services have actually been sold or offered for sale in good faith for a reasonably substantial period of time by respondents in the recent regular course of their business;

(m) Any price at which respondents' books, supplements, publications, programs or any other products are offered for sale, is a "sale," bargain, special, or reduced price: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that said "sale," bargain, special, or reduced price constituted a substantial reduction from the regular price at which such books, supplements, publications or programs or other products were actually sold or offered for sale in good faith for a reasonably substantial period of time by respondents in the recent regular course of their business;

(n) Respondents have donated or supplied, or will donate or supply, to any orphanage or other organization, without charge, respondents' whole educational program or parts thereof: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that such donations were actually made in every instance in the manner represented.

3. Falsely representing, in any manner, that savings are available to purchasers or prospective purchasers of respondents' merchandise at retail; or misrepresenting, in any manner, the amount of savings available to purchasers or prospective purchasers of respondents' merchandise at retail.

It is further ordered, That 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 of their compliance with this order.

Commissioner Nicholson not participating.

Complaint

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IN THE MATTER OF

HAWAIIAN CASUALS, LIMITED, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS*Docket C—1294. Complaint, Feb. 5, 1968—Decision, Feb. 5, 1968*

Consent order requiring a Hawaiian manufacturer of ladies' dresses and sportswear, to cease importing, manufacturing, or selling dangerously flammable wearing apparel.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Hawaiian Casuals, Limited, a corporation, and Shirley R. Hicks and Karl H. Heyer, individually and as officers of said corporation, hereinafter referred to as respondents have violated the provisions of said Acts and the Rules and Regulations promulgated under the Flammable Fabrics Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Hawaiian Casuals, Limited, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Hawaii. Respondent Shirley R. Hicks is the president of said corporate respondent and respondent Karl H. Heyer is the vice president of the corporate respondent. They formulate, direct and control the acts, practices and policies of said corporation.

Respondents are engaged in the manufacture, sale and distribution of textile fiber products, including wearing apparel in the form of ladies' dresses and sportswear, with their office and principal place of business located at 1311 Kamaile Street, Honolulu, Hawaii.

PAR. 2. Respondents, now and for some time last past, have manufactured for sale, sold and offered for sale, in commerce; have imported into the United States; and have introduced, delivered for introduction, transported and caused to be transported, in commerce; and have transported and caused to be transported for the purpose of sale or delivery after sale in commerce; as "commerce" is defined in the Flammable Fabrics Act, articles of wearing apparel, as the term "article of wearing apparel" is defined therein, which articles of wearing

apparel were, under Section 4 of the Flammable Fabrics Act, as amended, so highly flammable as to be dangerous when worn by individuals.

Among the articles of wearing apparel mentioned hereinabove were ladies' dresses.

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

Among the articles of wearing apparel mentioned above were ladies' dresses.

PAR. 4. The aforesaid acts and practices of respondents herein alleged were and are in violation of the Flammable Fabrics Act and of the Rules and Regulations promulgated thereunder, and as such constitute unfair 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 Flammable Fabrics 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 respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have vio-

lated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Hawaiian Casuals, Limited, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Hawaii, with its office and principal place of business located at 1311 Kamaile Street, Honolulu, Hawaii.

Respondents Shirley R. Hicks and Karl H. Heyer 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 the respondents Hawaiian Casuals, Limited, a corporation, and its officers, and Shirley R. Hicks and Karl H. Heyer, individually, and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

1. (a) Importing into the United States; or

(b) Manufacturing for sale, selling, offering for sale, introducing, delivering for introduction, transporting or causing to be transported in commerce, as "commerce" is defined in the Flammable Fabrics Act; or

(c) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce;

any article of wearing apparel which, under the provisions of Section 4 of the Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

2. Manufacturing for sale, selling, or offering for sale any article of wearing apparel made of fabric, which fabric has been shipped or received in commerce, and which under Section 4 of the Act as amended, is so highly flammable as to be dangerous when worn by individuals.

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
HELEN WONG, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS*Docket C-1295. Complaint, Feb. 5, 1968—Decision, Feb. 5, 1968*

Consent order requiring a Los Angeles, Calif., distributor of wearing apparel and fabrics to cease importing and selling dangerously flammable fabrics and furnishing false guaranties to customers.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Helen Wong, Inc., a corporation, and Jacob Chang, 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 Flammable Fabrics Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Helen Wong, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Respondent Jacob Chang is the president of the said corporate respondent. He formulates, directs and controls the acts, practices and policies of said corporation.

The respondents are engaged in the importation, sale and distribution of wearing apparel and fabrics, with their office and principal place of business located at 127 East 9th Street, Los Angeles, California.

PAR. 2. Respondents, now and for some time last past, have sold and offered for sale, in commerce; have imported into the United States; and have introduced, delivered for introduction, transported, and caused to be transported, in commerce; and have transported and caused to be transported for the purpose of sale or delivery after sale, in commerce; as "commerce" is defined in the Flammable Fabrics Act, fabric, as that term is defined therein, which fabric was, under Section 4 of the Flammable Fabrics Act, as amended, so highly flammable as to be dangerous when worn by individuals.

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PAR. 3. Respondents furnished false guaranties under Section 8(b) of the Flammable Fabrics Act with respect to certain of their products by falsely representing in writing that respondents had a continuing guaranty on file with the Federal Trade Commission when respondents in furnishing such guaranties had reason to believe that the products so falsely guaranteed would be introduced, sold, transported, and distributed in commerce, in violation of Rule 10(d) of said Rules and Regulations under the Flammable Fabrics Act and Section 8(b) of said Act.

PAR. 4. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act and the Rules and Regulations promulgated thereunder, and as such 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 Flammable Fabrics 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 respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby

issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Helen Wong, 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 127 East 9th Street, Los Angeles, California.

Respondent Jacob Chang 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 Helen Wong, Inc., a corporation, and its officers, and Jacob Chang, 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:

(a) Importing into the United States; or

(b) Selling, offering for sale, introducing, delivering for introduction, transporting, or causing to be transported, in commerce, as "commerce" is defined in the Flammable Fabrics Act; or

(c) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce,

any fabric which, under the provisions of section 4 of the said Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

It is further ordered, That respondents Helen Wong, Inc., and its officers, and Jacob Chang, 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 fabric is not so highly flammable as to be dangerous when worn by individuals when respondents have reason to believe such fabric may be introduced, sold, or transported 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.

CERTIFICATION OF RECORD

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IN THE MATTER OF

DEVCON CORPORATION ET AL.

MODIFIED ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-607. Complaint, Oct. 11, 1963—Decision, Feb. 6, 1968*

Order modifying a consent order of October 11, 1963, 63 F.T.C. 1034, by allowing the respondent company to use the trade name "Plastic Steel": *Provided*, That its use in advertising or on labels has qualifying language that it is "A Steel-Filled Epoxy Resin" and will not withstand extreme heat nor conduct electricity.

Mr. Frank P. Dunn for the Commission.

Mr. William Warfield Ross, of Wald, Harkrader and Rockefeller, Washington, D.C., for respondents.

CERTIFICATION OF RECORD BY WILLIAM K. JACKSON, HEARING EXAMINER

MAY 12, 1967

Preliminary Statement

This proceeding derives from a Consent Order issued by the Commission on October 11, 1963 [63 F.T.C. 1034], requiring in pertinent part that respondents cease and desist from:

1. (a) Using the words "steel" or "aluminum" or any other word or words denominating metallic substances in brand names to designate, describe or refer to a product that consists principally of non-metallic ingredients: *Provided, however*, That if a product contains a metallic substance in some form, the percentage thereof may be stated.

On October 25, 1965, the Commission issued its order to show cause why the October 11, 1963, cease and desist order should not be modified so that the thrust of the order provision is to the metallic properties of the products rather than to their metallic content and thus in pertinent part should read as follows:

1. (a) Using the words "steel" or "aluminum" or any other word or words denominating metallic substances in brand names to designate, describe or refer to a product which, after application, does not have the same physical and chemical properties of metal and of any particular metal represented: *Provided, however*, That nothing herein contained shall prohibit truthful representations in advertising and labeling of the percentage of content of any metallic substances in such products.

Thereafter on February 21, 1966, respondents filed their answer requesting a full evidentiary hearing on the issues raised by the Commission's order to show cause, and on April 7, 1966, the Commission issued an order directing hearings "* * *" for the purpose of receiving evidence in support of and in opposition to the question whether the public interest requires that the Commission's order to cease and desist of October 11, 1963, be altered, modified, or set aside in accordance with the Commission's order to show cause dated October 25, 1965." It was further ordered that the hearing examiner, "* * *" upon conclusion of the hearings, certify the record together with his recommendation to the Commission for final disposition of this matter."

Evidentiary hearings were conducted in accordance with Part 3, Subparts C, D, E, and F of the Commission's Rules of Practice as specified in the Commission's Order Directing Hearings dated April 7, 1966, and the record has been closed by the hearing examiner. At the close of the hearings, the hearing examiner permitted the parties to file proposed findings of fact, conclusions, and proposals, if any, for modification of the order, which would be made a part of the record in this proceeding and certified to the Commission with the transcript of proceedings and exhibits received in evidence.

Summary of the Proceedings

The record in this proceeding consists of 867 pages of testimony, one (1) exhibit for the Commission (CX-1A through 1L) and twenty-four (24) exhibits for respondents (RX-1-RX-24 inclusive). Counsel for the Commission called one witness:

Dr. Robert D. Stiehler (Tr. 59-64) : formerly Chief of the Polymer Evaluation Section and since 1964 Chief of the Evaluation Criteria Section, National Bureau of Standards, recipient of Ph. D. degree in chemistry from Johns Hopkins University in 1933, author of numerous publications in technical and scientific journals dealing with original research on the development of methods for the evaluation of materials or the physical properties of materials, and a member of numerous scientific societies including the American Society for Testing Materials. Respondents stipulated that the witness "is certainly well qualified as an expert in this general area" (Tr. 63-64). Dr. Stiehler conducted laboratory tests of respondents' products, the results of which are included in the record as CX-1A through CX-1L.

Respondents called five witnesses whose backgrounds and qualifications are as follows:

1. *Mr. Constant Sakakini* (Tr. 178-180) : a marine engineer employed at the Norfolk Naval Shipyard, Design Division, Portsmouth, Virginia, for over 30 years. A graduate of Maury High School, he served an apprenticeship as a blacksmith at the Norfolk Naval Shipyard from 1935 to 1938, transferred in 1938 to the Design Division and proceeded through the steps of drafting to marine engineer in 1941. He attended night school at VPI and the University of Virginia Extension taking courses in engineering, mathematics, metallurgy, engineering design and diesel engines. In 1949 he was qualified by the Civil Service Commission as a master forger in the smith shop of the shipyard. His present duties are concerned with the installation, testing and operation of main propulsion and auxiliary machinery in Naval vessels and in the integral design features of internal combustion engines and their repair.

2. *Mr. Walter Fischman* (Tr. 246-262) : for the past six months one of the principals and editorial director of Projects Publications, a specialty publication house putting out a line of program teaching courses and technical magazines; for a little over a year prior to that, editorial director of Popular Mechanics magazine; and for fourteen years before that, a free-lance writer specializing in articles on do-it-yourself material, building, fixing, repairing, modeling, remodeling, housekeeping, crafts and hobbies. As a free-lance writer his articles appeared in such consumer magazines as Good Housekeeping, American Home, House and Garden, Better Homes and Gardens, Colliers, Saturday Evening Post, True, and Argosy. He is also the author of five books dealing with these subjects and has acted as a consultant to such companies as U.S. Plywood, Du Pont, Reynolds Aluminum, and Borden on the subject of consumer merchandising and marketing of products. He has appeared on numerous radio and television shows as an expert in the do-it-yourself and home repair fields, and for 12 years wrote a newspaper column entitled, "You Can Do It" appearing in the New York Daily News on Sundays. During this period he used a procedure which came to be known as "in-use testing" of the products he wrote about: that is, he distributed such products to homeowners, craftsmen, hobbyists, etc., who were on the staff of the New York Daily News or the various magazines for which he wrote, to be used and evaluated by them. He has attended trade shows, the National Association of Home Builders show, houseware shows, and followed closely the home repair product field and was on the mailing list of several thousand companies manufacturing various home repair and do-it-yourself products. On cross-examination, it was brought out he does not hold a college or university degree and had conducted no

laboratory tests of Devcon's Plastic Steel, Liquid Aluminum or Devcon Steel (Tr. 255).

3. *Dr. Paul Bruins* (Tr. 323-327) : presently a Professor of Chemical Engineering, Polytechnic Institute of Brooklyn, received a Ph. D. in chemical engineering from Iowa State University, Ames, Iowa, in 1930, taught chemical engineering from 1926 to 1930 at Iowa State, from 1930 to 1935 was employed in private industry as a chemical engineer and since 1935 has been on the staff of Polytechnic Institute of Brooklyn. He has specialized in the field of materials; teaching plastics, chemistry of epoxy resins and metallurgy. His writings appear in about 25 technical publications, and he has written a book entitled, "Plasticizer Technology." He does consulting work for numerous corporations in the field of materials and considers himself an expert in the field of "thermoset plastics." He is also familiar with epoxy resins and filled epoxy resins including metal-filled epoxies, but has done no research on metal-filled epoxy resins. His familiarity with metal-filled epoxy resins is based on seeing them used in industry, reading in the field and teaching. His familiarity with epoxy resins commenced in 1953 when they first came on the market. Since that time he has been studying the literature produced by epoxy resin manufacturers, working with epoxy resins in the laboratory and serving as a consultant for several companies. His familiarity with metals is based in large part on his industrial experience, both full time and as a consultant. On cross-examination, Dr. Bruins stated he had never conducted any laboratory tests of Devcon's Plastic Steel, Liquid Aluminum or Devcon Steel (Tr. 327).

4. *Mr. Albert M. Creighton, Jr.* (Tr. 400, 406-410) : president of Devcon Corporation and one of the respondents herein. A 1941 graduate of Harvard University, he spent his summers during college going through various factories, textile mills, chemical plants, etc. During World War II he worked for the Office of Production Management (War Production Board) for three years serving for a time in the Boston office as manager of the Plastic and Rubber Section, and later served in the Office of Strategic Services in China advising on various factories in North China and Manchuria which might be important for strategic bombing. He also took night courses while he was with the War Production Board at Massachusetts Institute of Technology on polymer chemistry and colloids. He is the inventor of plastic steel and did much of the basic laboratory work in its development.

5. *Mr. Robert B. Russell* (Tr. 449-454) : a patent and trademark attorney and a senior partner in the firm of Russell, Chittick and Pfund, Boston, Massachusetts. He graduated from Harvard with an

A.B. degree in 1941 and Harvard Law School in 1948 and has lectured at Harvard Business School, Suffolk Law School, and while it existed, at Northeastern Law School. From 1948-1952 he served on the staff of MIT in the Division of Industrial Cooperation dealing with metallurgy, steel fabrication, steel alloying for the preparation of gas turbine rotor blades, etc. In his patent law practice he has gained an intimate knowledge of steel fabrication in steel mills, of the plastics industry particularly from Devcon, of sprayed steel in connection with work for the D. S. Kennedy Company, a manufacturer of radio antennas, of powdered steel for Perryman Company, and of molds made of filled epoxy resins. He is an inventor holding patents in the fields of engine starting and thermographic copying and has published an article on trademarks.

Recommendation

In accordance with the Commission's Order Directing Hearings dated April 7, 1966, and pursuant to Part 3, Subpart H, Section 3.28(b) (3) of the Rules of Practice, the hearing examiner makes the following recommendation:

That the Commission's Order of October 11, 1963 [63 F.T.C. 1034], in the instant matter be altered to clarify the intent, meaning and purpose of Paragraph 1(a), and be modified to set aside Paragraph 1(b) thereof, and as so altered and modified, read:¹

It is ordered, That respondent Devcon Corporation a corporation, and its officers, and Albert M. Creighton, Jr., and E. Leslie Hall. 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 "Plastic Steel," "Devcon Steel," "Devcon Liquid Aluminum," "Devcon '2 Ton' The Epoxy 'Super Glue'" or any other products in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. (a) Using the words "steel" or "aluminum" or any other word or words denominating metallic substances in brand names to designate, describe or refer to a product which, after application, does not have the same physical and chemical properties of metal and of any particular metal represented: *Provided, however*, That nothing herein contained shall prohibit truthful representations

¹ Respondents. in their brief at pages 1-2, "do not contest the applicability of the proposed order to two of the three products herein involved: 'Devcon Steel' and 'Devcon Liquid Aluminum' ". In addition, they state at page 2 of their brief "that the only product now in issue in this proceeding is 'Plastic Steel' ".

in advertising and labeling of the percentage of content of any metallic substances in such products.

2. Representing, directly or by implication, that:

(a) The product designated "Plastic Steel" or any other product of similar composition or characteristics forms a hardened metal or a substance that has the effectiveness or intrinsic characteristics of a hardened metal or of steel or that is not adversely affected by heat or chemicals;

(b) The products designated "Devcon Steel" and "Devcon Liquid Aluminum" or any other product of similar composition or characteristics are liquid metals or that when used they form hardened metals or substances that have the effectiveness or intrinsic characteristics of hardened metals;

(c) One drop of the product designated "Devcon '2 Ton' The Epoxy 'Super Glue'" has an adhesive strength of 2 tons or an adhesive strength in any amount in excess of the true facts.

3. Misrepresenting in any manner the nature, composition, effectiveness or characteristics of their products.

4. Furnishing or otherwise placing in the hands of others means and instrumentalities by and through which they may mislead the public as to any of the matters and things herein prohibited.

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

Reasons for Recommendation

1. The public interest requires that the Commission's Order of October 11, 1963, be altered and modified.

2. "Plastic Steel," "Devcon Liquid Aluminum," and "Devcon Steel" do not after application have the same physical and chemical properties of metal or of the particular metal represented.

3. The use of the brand or trade names "Plastic Steel," "Devcon Liquid Aluminum," and "Devcon Steel," by respondents has the capacity and tendency to mislead and deceive consumers into the belief that such products after application have the same physical and chemical properties of metal or of the particular represented metal.

4. The capacity and tendency of such trade names to deceive consumers cannot be adequately cured by any remedy other than excision.

Opinion

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The qualifying language or affirmative disclosures proposed by respondents are limited in scope, incomplete and would not suffice to render harmless otherwise deceptive trade names. Enumeration of all the significant differences in the physical and chemical properties of "Plastic Steel" and "Steel" cannot be meaningfully achieved by a few qualifying words and any such remedy would not be feasible in this case.

5. The trade names "Plastic Steel," "Devcon Liquid Aluminum," and "Devcon Steel," have not acquired a secondary meaning.

Certification

The record consisting of 867 pages of testimony, exhibits CX-1A through CX-1L for the Commission, RX-1 through RX-24 for the respondents, together with the briefs, proposed findings and conclusions submitted by the parties are hereby certified to the Commission.

OPINION OF THE COMMISSION

By ELMAN, *Commissioner*:

The question before the Commission is whether a consent order issued on October 11, 1963 [63 F.T.C. 1034], is inadequate to protect consumers against deception and should be modified in the public interest.

The consent order, in pertinent part, requires respondents to cease and desist from:

Using the words "steel" or "aluminum" or any other word or words denominating metallic substances in brand names to designate, describe or refer to a product that consists principally of non-metallic ingredients: *Provided, however*, That if a product contains a metallic substance in some form, the percentage thereof may be stated.

On October 25, 1965, the Commission issued an order directing respondents to show cause why this provision should not be modified to read as follows:

Using the words "steel" or "aluminum" or any other word or words denominating metallic substances in brand names to designate, describe or refer to a product which, after application, does not have the same physical and chemical properties of metal and of any particular metal represented: *Provided, however*, That nothing herein contained shall prohibit truthful representations in advertising and labeling of the percentage of content of any metallic substances in such products.

On April 7, 1966, the Commission referred this matter to a hearing examiner to receive evidence on the question whether the public interest requires modification of the consent order. The record has now been

certified by the hearing examiner to the Commission, together with his recommendation that the consent order be modified.

It is clear, as the examiner has found, that respondents' products, "Plastic Steel," "Devcon Liquid Aluminum," and "Devcon Steel," do not, after application, have the same physical and chemical properties as these metals. Nor do respondents have any quarrel with the examiner's recommendation for excision of the trade names of the latter two products, "Devcon Liquid Aluminum" and "Devcon Steel," both of which are single-stage filled vinyl products. The controversy, in its present posture, has been narrowed to the single question whether respondents should be required to excise the trade name of "Plastic Steel," which is a two-stage filled epoxy product.

The issue before us is, thus, one of determining the proper remedy. In dealing with such a question, the public interest comes first. Whatever private loss may be suffered through excision of a trade name, paramount consideration must be given to the need for protecting consumers against deception. While excision should not be ordered if a less drastic remedy will accomplish the same result, it cannot be avoided where "a clear and unambiguous false representation [is] implicit in the product's name, and, because of this, the addition of a qualifying phrase denying the truth of that representation would lead to a confusing contradiction in terms * * *." *Continental Wax Corp. v. F.T.C.*, 330 F. 2d 475, 479-80 (2d Cir. 1964). See *F.T.C. v. Royal Milling Co.*, 288 U.S. 212, 217 (1933); *Country Tweeds, Inc., v. F.T.C.*, 326 F. 2d 144, 148 (2d Cir. 1964).

There is no substantial dispute as to the performance characteristics of "Plastic Steel." As its name suggests, the product contains both plastic and steel. To be precise, it is a steel-filled epoxy resin, containing 20 percent epoxy resin and 80 percent powdered steel by weight. Metal-filled epoxy resins like "Plastic Steel" were developed following World War II. "Plastic Steel" was the first such product to go on the market, and respondents assert that it is probably the world's largest selling steel-filled epoxy.

Since 1953, "Plastic Steel" has been sold in large volume to industrial users and do-it-yourselfers for use in bonding, sealing, and filling rigid materials, including metals, wood, plastics, and glass. According to the testimony of respondents' experts, which is substantially uncontradicted, "Plastic Steel" does in fact possess, on application, those characteristics of steel which are important and significant to consumers in the uses for which the product is recommended and sold. Upon application, it has a tensile or breaking strength of 2500 to 3000 pounds per square inch. Unlike steel, however,

"Plastic Steel" does not conduct electricity and cannot withstand the heat of a direct flame.

"Plastic Steel" has unquestionably found widespread consumer acceptance. The Navy Department, which has evaluated "Plastic Steel" in laboratory and use tests, has approved it for use in the construction of naval vessels. The Department also uses it in a great variety of metal-to-metal repair applications, including the repair of high-speed cam shafts in diesel engines. In some of its applications, "Plastic Steel" is superior to a metal weld and can be used where welding would be impossible. Approximately one-half of respondents' sales of "Plastic Steel" are to the United States Government and industrial users.

We readily agree with the hearing examiner that the term "Plastic Steel," standing alone, could confuse or mislead some consumers, especially those not knowledgeable in matters of chemistry, engineering, and the like. A housewife shopping in a hardware store may be misled where an expert technician would not; and it is for her protection, no less than his, that "truth-in-labeling" must be strictly enforced. Conceivably, the trade name "Plastic Steel" might mislead some people into believing that the product consists entirely of steel which has somehow been reduced to plastic form. In other words, such people—if there be any—would read "Plastic" as an adjective, qualifying "Steel"—and not, as is the case, that the product is a mixture of plastic (epoxy resin) and steel.

We think the proper, and a sufficient, remedy for any possible deception arising out of the trade name "Plastic Steel" is for respondents to make clear, both on labels and in advertising, exactly what their product is and does. Respondents have offered to make whatever disclosures the Commission believes to be necessary as a safeguard against confusion or deception of the consuming public. At the oral argument before us, respondents agreed to use, in the same or larger size type and in close proximity therewith, the words, "A Steel-Filled Epoxy Resin," wherever and whenever they use the trade name "Plastic Steel." They also agreed that the labeling of their product should plainly disclose its limitations, *i.e.*, that it does not conduct electricity and cannot withstand a direct flame or prolonged heat in excess of 300° F. In view of these stipulations, as well as the other unique circumstances of this case, the Commission does not believe that the public interest requires excision of a long-established trade name for what appears to be a useful and inexpensive household product.

The attached final order embodies the views set forth in this opinion. Commissioner Nicholson did not participate for the reason that oral argument was heard prior to his taking the oath of office.

FINDINGS OF FACT, CONCLUSIONS, AND FINAL ORDER

The Commission having reopened this proceeding and having issued its order of October 25, 1965, to show cause why the consent order issued on October 11, 1963 [63 F.T.C. 1034], should not be modified, and

The hearing examiner pursuant to Commission direction having conducted hearings and having certified the record of said hearings to the Commission together with his recommendation that the consent order of October 11, 1963, be modified, and

The Commission having determined, for the reasons stated in the accompanying opinion, that the public interest requires modification of the consent order of October 11, 1963, in the respects described in the opinion, now enters its Findings of Fact, Conclusions, and Final Order.

FINDINGS OF FACT AND CONCLUSIONS

1. "Plastic Steel," "Devcon Liquid Aluminum," and "Devcon Steel" do not, after application, have the same physical and chemical properties of metal or of the particular metal represented.

2. There has been no showing that "Devcon Rubber" does not possess the essential characteristics of rubber.

3. Respondents have agreed to the entry of an order requiring discontinuance of their trade names "Devcon Liquid Aluminum" and "Devcon Steel."

4. Use of the trade name "Plastic Steel," standing alone, to describe respondents' steel-filled epoxy product may have the capacity and tendency to deceive. Any such reception, however, may be remedied by the use, in the same or larger size type and in close proximity therewith, of the words "A Steel-Filled Epoxy Resin," wherever and whenever the trade name "Plastic Steel" appears in respondents' labeling or advertising, together with a disclosure of the product's limitations in comparison to steel.

5. The public interest requires modification of the consent order of October 11, 1963 [63 F.T.C. 1034], in accordance with the above findings of fact.

Final Order

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FINAL ORDER

It is ordered, That respondent Devcon Corporation, a corporation, and its officers, and Albert M. Creighton, Jr., and E. Leslie Hall, 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 "Plastic Steel," "Devcon Steel," "Devcon Liquid Aluminum," "Devcon '2 Ton' The Epoxy 'Super Glue,'" or any other products in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "steel" or "aluminum" or any other word or words denominating metallic substances in brand names to designate, describe or refer to a product which, after application, does not have the same physical and chemical properties of metal and of any particular metal represented: *Provided, however,* That nothing herein contained shall prohibit truthful representations in advertising and labeling of the percentage of content of any metallic substances in such products: *And provided, further,* That respondents' continued use in advertising and labeling of their trademark "Plastic Steel" to designate their steel-filled epoxy resin product shall not be deemed a violation of the requirements of this paragraph so long as the qualifying language "A Steel-Filled Epoxy Resin," and "will not conduct electricity or withstand a direct flame or prolonged heat in excess of 300° F." appears clearly and conspicuously in conjunction therewith.

2. Representing, directly or by implication, that

(a) The product designated "Plastic Steel" or any other product of similar composition or characteristics forms a hardened metal or a substance that has the effectiveness or intrinsic characteristics of a hardened metal or of steel or that is not adversely affected by heat or chemicals;

(b) The products designated "Devcon Steel" and "Devcon Liquid Aluminum" or any other product of similar composition or characteristics are liquid metals or that when used they form hardened metals or substances that have the effectiveness or intrinsic characteristics of hardened metals;

(c) One drop of the product designated "Devcon '2 Ton' The Epoxy 'Super Glue'" has an adhesive strength of 2 tons or an adhesive strength in any amount in excess of the true facts.

3. Misrepresenting in any manner the nature, composition, effectiveness or characteristics of their products.

4. Furnishing or otherwise placing in the hands of others means and instrumentalities by and through which they may mislead the public as to any of the matters and things herein prohibited.

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

Commissioner Nicholson not participating for the reason that oral argument was heard prior to his taking the oath of office.

IN THE MATTER OF
DEDHAM MILLS, INC.

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

Docket C-1296. Complaint, Feb. 8, 1968—Decisions, Feb. 8, 1968

Consent order requiring a Dedham, Mass., manufacturer of woolen and other types of yarn, to cease misrepresenting the fiber content of its 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 Dedham Mills, Inc., a corporation, hereinafter referred to as respondent, has 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 Dedham Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts.

Respondent is a manufacturer of wool products with its office and principal place of business located at 90 Milton Street, Dedham, 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 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 respondent 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 constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were certain yarns stamped, tagged, labeled or otherwise identified as containing "100% acrylic" and "65% wool, 20% orlon, 15% fur" whereas in truth and in fact, said "100% acrylic" yarn contained a substantial amount of woolen fibers and said "65% wool, 20% orlon, 15% fur" yarn contained substantially different amounts of woolen fibers 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, were certain yarns 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 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 and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 6. In the course and conduct of their business, respondent now causes and for some time last past, has caused its products, when sold, to be shipped from their place of business in the Commonwealth of Massachusetts to purchasers located in various other States of the

United States, and 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 their business, as aforesaid, has made statements on invoices and shipping memoranda to its customers misrepresenting the fiber content of certain of its said products.

Among such misbranded wool products, but not limited thereto, were certain yarns which were invoiced as containing "100% acrylic" and "65% wool, 20% orlon, 15% fur" whereas in truth and in fact, said "100% acrylic" yarn contained a substantial amount of woolen fibers and said "65% wool, 20% orlon, 15% fur" yarn contained substantially different amounts of woolen fibers than represented.

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

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 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 respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939; 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 respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

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The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Dedham 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 90 Milton Street, in the town of Dedham, Commonwealth 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 Dedham Mills, Inc., a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, 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 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 respondent Dedham Mills, Inc., a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of yarn or any other textile products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from

misrepresenting the character or amount of constituent fibers contained in yarn or any other textile products on invoices or shipping memoranda applicable thereto or in any other manner.

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 HOUSEWARES, INC., ET AL.

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

Docket 8733. Complaint, Mar. 13, 1967—Decision, Feb. 12, 1968

Consent order requiring a Salt Lake City, Utah, distributor of appliances and other merchandise to cease representing falsely that it conducts surveys and contests, that its prospective customers will receive prizes or free merchandise, that its customers are especially selected, and that the prices of its products are special or reduced.

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 Housewares, Inc., a corporation, and Easy Pipella, Keith Bigler, David Bigler, Michael Pipella and Edward Gilson, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent National Housewares, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Utah, with its principal office and place of business located at 1260 East Vine Street, Salt Lake City, Utah.

Respondents Easy Pipella, Keith Bigler, David Bigler, Michael Pipella and Edward Gilson are officers of said corporation. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Respondent Michael Pipella's business address is 3645 Tenth Avenue

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South, Great Falls, Montana. Edward Gilson's address is 1624 West Anaheim, Harbor City, California. The address of the other officers is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of household appliances, books, tools and other merchandise to dealers who in turn resell such items to the public.

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

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their said products by the consuming public, respondents supply printed sales presentations and promotional sales materials including brochures, form letters, questionnaires, cards, and other oral and printed information, to said dealers for distribution and for their use in making oral sales presentations, all of which they use, in promoting the sale of said products to the consuming public.

Based on the information and suggested representations and other data contained in the aforesaid sale presentations and promotional sales material, said dealers and their salesmen are enabled to represent, and do represent to their prospective customers, among other things:

1. That the dealers selling respondents' merchandise to the public are conducting surveys and that the prospective customers' names will be entered in a drawing or contest to be held in connection with the surveys.

2. That prospective customers have won prizes in the drawing or contest and must make an appointment with one of the dealers' representatives in order to receive such prizes.

3. That customers are especially selected in order to promote the sale of respondents' products handled by said dealers.

4. That customers of the aforesaid dealers are receiving reduced prices or a special introductory offer in order to promote the trade names of the merchandise sold by respondents and that savings are thereby afforded to purchasers from respondents' regular prices.

5. That customers making an initial purchase from the aforesaid dealers may thereafter purchase respondents' merchandise at a 50 percent discount from the dealers' regular prices.

6. That when customers purchase one item from the aforesaid dealers, other items are awarded to such customers as a gift or "at no extra cost" or that they are "free."

PAR. 5. In truth and in fact:

1. The aforesaid dealers are not conducting surveys and the prospective customers' names are not entered in a drawing or contest to be held in connection with said surveys or otherwise. Said dealers are only seeking information about prospective customers' appliance needs and credit ratings which is used as a basis to determine whether an attempt shall be made to sell such customers merchandise.

2. Persons do not win prizes at drawings or any other type of contest but are so notified because such persons appear to be good prospects for the sale of merchandise and this means is used to induce prospective customers to make an appointment with one of the dealers' sales representatives.

3. The aforesaid dealers' customers are not especially selected. On the contrary, said merchandise is available to anyone with the money or credit rating to take advantage of it.

4. Customers of the aforesaid dealers do not receive reduced prices or a special introductory offer but are offered the same prices at which said dealers sold respondents' merchandise in the past and savings are not thereby afforded to such purchasers.

5. Customers making purchases from the aforesaid dealers will not thereafter be able to buy merchandise at a 50 percent or any other substantial discount from dealers' regular prices.

6. Customers of the aforesaid dealers do not receive merchandise as a gift or "at no extra cost" or "free," but the price of any additional items of merchandise is included in the price that such customers pay for the item sold by said dealers, and the item required to be purchased has never been sold separately in substantial quantities at such prices.

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

PAR. 6. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their merchandise by the consuming public, said respondents supply the dealers who handle their merchandise with leaflets and other data containing retail pricing representations.

Complaint

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Typical and illustrative of the aforesaid representations are the following:

WALTHAM, Sea Fall, Value \$69.50
[Picture of the watch]

* * * * *

Air-way Sanitizer 88, Value \$295.85
[Picture of the assembled machine and the separate parts]

* * * * *

7" HEAVY DUTY POWER SAW
[Picture of saw]
Value \$59.50

PAR. 7. Through the use of the aforesaid representations, and others similar thereto but not specifically set forth herein, and for the purpose of effecting their retail pricing policy, respondents have represented and placed in the hands of said dealers the means and instrumentalities for representing, directly or indirectly, that said stated prices, accompanied by the word "VALUE" are not appreciably in excess of the highest prices at which substantial sales of such merchandise have been made in the recent regular course of business in the trade area where such representations are made.

PAR. 8. In truth and in fact:

The aforesaid stated prices accompanied by the word "VALUE" are appreciably in excess of the highest prices at which substantial sales of such merchandise have been made in the recent regular course of business in the trade area where such representations are made.

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

PAR. 9. By reason of the aforesaid practices respondents place in the hands of others means and instrumentalities by and through which they may mislead and deceive the public as to the prices, methods of sale and other practices followed in offering for sale and in selling their said merchandise.

PAR. 10. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 11. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said state-

ments and representations were and are true and into the purchase of substantial quantities of respondents' appliances, books and other merchandise.

PAR. 12. The aforementioned acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having issued its complaint in this proceeding on March 13, 1967, charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with a copy of that complaint; and

Upon motion of respondents and for good cause shown, the Commission, having on October 24, 1967, pursuant to § 2.34(d) of its Rules, withdrawn the matter from adjudication and granted respondents opportunity to negotiate, under Subpart C of Part 2 of its Rules, a settlement by the entry of a consent order; and

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

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of 30 days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order to cease and desist in disposition of the proceeding:

1. Respondent National Housewares, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Utah, with its office and principal place of business located at 1260 East Vine Street, in the city of Salt Lake, State of Utah.

Respondents Easy Pipella, Keith Bigler, David Bigler, Michael Pipella and Edward Gilson are officers of said corporation. Respondent Edward Gilson's address is 24100 South Vermont Avenue, Harbor

City, California. The address of the other officers is the same as that of the said corporation.

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

ORDER

It is ordered, That respondents National Housewares, Inc., a corporation, and its officers, and Easy Pipella, Keith Bigler, David Bigler, Michael Pipella and Edward Gilson, 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 household appliances, books, tools, or any other articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, or furnishing any dealer, distributor, retailer, franchisee, licensee, agent, employee or others with any means, instrumentalities, directions or instructions which, directly or by implication, represent the things hereinafter set forth or by and through which such person may mislead or deceive the public, in the manner or as to any of the things hereinafter set forth:

1. That they are conducting a survey, drawing or contest in connection with the sale of merchandise.

2. That prospective customers' names will be entered in a drawing or contest held in connection with a survey.

3. That prospective customers have won prizes or "free" merchandise: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that such customers have in fact won prizes or free merchandise in a bona fide contest or drawing.

4. That prospective purchasers of any merchandise sold by respondents or their dealers are especially selected.

5. That any offer or price constitutes an introductory offer or price; or representing that any price is a special or reduced price: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for the respondents to establish that such price constitutes a significant reduction from the price at which such merchandise has been sold in substantial quantities or offered for sale in good faith for a reasonably substantial period of time, by respondents in the recent, regular course of their business.

6. That customers making initial purchases from respondents or their dealers or others will thereafter be able to buy merchandise from respondents or such dealers or others at a 50 percent discount or at any other substantial discount from respondents' dealers' or others' regular prices.

7. That any item of merchandise which is sold or offered for sale in conjunction or combination with other merchandise is a gift or without extra cost or is free.

B. Falsely representing, in any manner, that savings are available to purchasers or prospective purchasers of respondents' merchandise or misrepresenting in any manner the amount of savings available to purchasers or prospective purchasers of respondents' merchandise at retail.

C. 1. Using the word "value" or any word or words of similar import to refer to any amount which is appreciably in excess of the highest price at which substantial sales of such merchandise have been made in the recent regular course of business in the trade area where such representations are made; or otherwise misrepresenting the price at which such merchandise has been sold in the trade area where such representations are made.

2. Furnishing any dealer, distributor, retailer, franchisee, licensee, agent, employee or others with any means, instrumentalities, directions or instructions whereby the public may be misled or deceived as to any of the matters or things prohibited by Paragraph C. 1. of this order.

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

IN THE MATTER OF

NEW CENTURY ENTERPRISES, INC., ET AL.

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

Docket 8734. Complaint, Mar. 13, 1967—Decision, Feb. 12, 1968

Consent order requiring a Salt Lake City, Utah, distributor of appliances and other merchandise to cease representing falsely that it conducts surveys and contests, that its prospective customers will receive prizes or free merchandise, that its customers are especially selected, and that the prices of its products are special or reduced.

Complaint

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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 New Century Enterprises, Inc., a corporation, formerly known as Northwest Housewares, Inc., and David Bigler and Keith Bigler, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent New Century Enterprises, Inc., formerly known as Northwest Housewares, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Utah, with its principal office and place of business located at 1260 East Vine Street, Salt Lake City, Utah.

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of household appliances, books, tools and other merchandise to the public.

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

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their merchandise, the respondents and their salesmen and other representatives have made numerous statements and representations to prospective customers, orally and otherwise, with respect to their said products and the methods employed by them in promoting the sale thereof.

*Reported as amended by Hearing Examiner's order of Mar. 27, 1967, by substituting the word "respondents" for the word "dealers" in Paragraph 4.2. and substituting the word "respondents" for the words "the aforesaid dealers" in Paragraph 4.6.

Typical and illustrative of the foregoing statements and representations are the following:

1. That respondents are conducting a survey and that prospective customers' names will be entered in a drawing or contest to be held in connection with the survey.

2. That prospective customers have won prizes in a drawing or contest and must make an appointment with one of the respondents' representatives in order to receive such prizes.

3. That customers are especially selected in order to promote the sale of respondents' products.

4. That customers are receiving reduced prices or a "special introductory offer" in order to promote the trade names of the merchandise sold by respondents and that savings are thereby afforded to purchasers from respondents' regular prices.

5. That customers making an initial purchase from the respondents may thereafter purchase their merchandise at a 50 percent discount from the respondents' regular prices.

6. That when customers purchase one item from respondents, other items are awarded to such customers as a gift or "at no extra cost" or that they are "free."

PAR. 5. In truth and in fact:

1. The respondents are not conducting a survey and prospective customers' names are not entered in a drawing or contest to be held in connection with a survey or otherwise. Respondents are only seeking information about prospective customers' appliance needs and credit ratings which is used by respondents as a basis to determine whether an attempt shall be made to sell such customers merchandise.

2. Persons do not win prizes at drawings or any other type of contest but are so notified because such persons appear to be good prospects for the sale of merchandise. Appointments are made with prospective customers only for the purpose of selling them merchandise.

3. Respondents' customers are not especially selected. On the contrary, said merchandise is available to anyone with the money or credit rating to take advantage of it.

4. Respondents' customers do not receive reduced prices or a "special introductory offer" but are offered the same prices at which said respondents sold their merchandise in the past and savings are not thereby afforded to such purchasers.

5. Customers making purchases from respondents will not thereafter be able to buy merchandise at a 50 percent or any other substantial discount from said dealers' regular prices.

6. Customers of the aforesaid respondents do not receive additional merchandise as a gift or "at no extra cost" or "free," but the price of any additional items of merchandise is included in the price that such customers pay for the major or principal item sold by said respondents, and the major item required to be purchased has never been sold separately in substantial quantities at such prices.

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

PAR. 6. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their said merchandise, the respondents circulate among the consuming public leaflets and other data containing retail pricing representations.

Typical and illustrative of the aforesaid representations are the following:

WALTHAM, Sea Fall, Value \$69.50
[Picture of the watch]

Air-Way Sanitizer "SS", Value \$259.85
[Picture of the assembled machine and the separate parts]

7" HEAVY DUTY POWER SAW
[Picture of the saw]
Value \$59.50

PAR. 7. Through the use of the aforesaid representations, and others similar thereto but not specifically set forth herein, respondents have represented, directly or indirectly, that said stated prices, accompanied by the word "VALUE" are not appreciably in excess of the highest prices at which substantial sales of such merchandise have been made in the recent regular course of business in the trade area where such representations are made.

PAR. 8. In truth and in fact:

The aforesaid stated prices accompanied by the word "VALUE" were appreciably in excess of the highest prices at which substantial sales of such merchandise have been made in the recent regular course of business in the trade area where such representations appeared.

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

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 housewares products of the same general kind and nature as that sold by respondents.

PAR. 10. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' said appliances, books and other merchandise.

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

DECISION AND ORDER

The Commission having issued its complaint in this proceeding on March 13, 1967, charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with a copy of that complaint; and

Upon motion of respondents and for good cause shown, the Commission, having on October 24, 1967, pursuant to § 2.34(d) of its Rules, withdrawn the matter from adjudication and granted respondents opportunity to negotiate, under Subpart C of Part 2 of its Rules, a settlement by the entry of a consent order; and

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

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of 30 days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order to cease and desist in disposition of the proceeding:

1. Respondent New Century Enterprises, Inc., formerly known as Northwest Housewares, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Utah,

with its principal office and place of business located at 1260 East Vine Street, Salt Lake City, Utah.

Respondents David Bigler and Keith Bigler 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 New Century Enterprises, Inc., formerly known as Northwest Housewares, Inc., a corporation, and its officers, and David Bigler and Keith Bigler, 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 household appliances, books, tools or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication:

1. That they are conducting a survey, drawing or contest in connection with the sale of merchandise.

2. That prospective customers' names will be entered in a drawing or contest held in connection with a survey.

3. That prospective customers have won prizes or "free" merchandise: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that such customers have in fact won prizes or free merchandise in a bona fide contest or drawing.

4. That prospective purchasers of any merchandise sold by respondents are especially selected.

5. That any offer or price constitutes an introductory offer or price; or representing that any price is a special or reduced price: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for the respondents to establish that such price constitutes a significant reduction from the price at which such merchandise has been sold in substantial quantities or offered for sale in good faith for a reasonably substantial period of time, by respondents in the recent, regular course of their business.

6. That customers making initial purchases from respondents will thereafter be able to buy merchandise from re-

spondents at a 50 percent discount or at any other substantial discount from respondents' regular prices.

7. That any item of merchandise which is sold or offered for sale in conjunction or combination with other merchandise is a gift or without extra cost or is free.

B. Falsely representing, in any manner, that savings are available to purchasers or prospective purchasers of respondents' merchandise or misrepresenting in any manner the amount of savings available to purchasers or prospective purchasers of respondents' merchandise at retail.

C. Using the word "value" or any word or words of similar import to refer to any amount which is appreciably in excess of the highest price at which substantial sales of such merchandise have been made in the recent regular course of business in the trade area where such representations are made; or otherwise misrepresenting the price at which such merchandise has been sold in the trade area where such representations are made.

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

CHARLES S. SCOTT TRADING AS THE KEY SHOP

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

Docket C-1297. Complaint, Feb. 12, 1968—Decision, Feb. 12, 1968

Consent order requiring a Houston, Texas, furrier to cease misbranding and falsely advertising its fur products and failing to maintain required records.

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 Charles S. Scott, an individual trading as The Key Shop, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Com-

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mission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complain stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Charles S. Scott is an individual trading as The Key Shop. Respondent is a retailer of fur products with his address and principal place of business located at 6800 South Main, Houston, Texas.

PAR. 2. Respondent is now, and for some time last past has been engaged in the introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and has sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in violation of Section 4(1) of the Fur Products Labeling Act in that they were falsely and deceptively labeled or otherwise falsely and deceptively identified in that labels affixed to fur products, contained representations, either directly or by implication that the prices of such fur products were reduced from respondent's former prices and the amount of such purported reduction constituted savings to purchasers of respondent's fur products. In truth and in fact, the alleged former prices were fictitious in that they were not actual, bona fide prices at which respondent offered the products to the public on a regular basis for a reasonably substantial period of time in the recent regular course of business and the said fur products were not reduced in price as represented and savings were not afforded purchasers of respondent's said fur products, as represented.

PAR. 4. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder inasmuch as 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. 5. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that certain advertisements intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of such fur products were not in accordance with the provisions of Section 5(a) of the said Act.

Among and included in the aforesaid advertisements, but not limited thereto, were advertisements of the respondent which appeared in issues of the Houston Chronicle, a newspaper published in the city of Houston, State of Texas and having wide circulation in Texas and other States of the United States.

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

1. To show the true animal name of the fur used in any such fur product.
2. To show that the fur contained in such fur products was bleached, dyed, or otherwise artificially colored, when such was a fact.
3. To show the country of origin of imported furs contained in such fur products.

PAR. 6. Respondent falsely and deceptively advertised fur products by affixing labels thereto which represented either directly or by implication that prices of such fur products were reduced from respondent's former prices and the purported reductions constituted savings to purchasers of respondent's fur products. In truth and in fact, the alleged former prices were fictitious in that they were not the actual bona fide prices at which respondent offered the fur products to the public on a regular basis for a reasonably substantial period of time in the recent regular course of business and the said fur products were not reduced in price as represented and the represented savings were not thereby afforded to purchasers, in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of the Rules and Regulations.

PAR. 7. In advertising fur products for sale the aforesaid respondent represented through such statements as "DEDUCT AN ADDITIONAL 25% OFF THE ALREADY REDUCED PRICE" that prices of fur products were reduced in direct proportion to the percentage stated and that the amount of said reduction afforded savings to purchasers of respondent's products when in fact such prices were not reduced in direct proportion to the percentage stated and the representative savings were not thereby afforded to purchasers, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 8. In advertising fur products for sale as aforesaid respondent represented, directly or by implication, through such statements as "A representative from one of Americas oldest and foremost furriers will display and sell over \$150,000 in mink stoles, suits, jackets and coats in all lengths" that the quantity and value of the inventory of mink products to be displayed and offered for sale was as represented when in truth and in fact the quantity and value of mink products thus

advertised was substantially less than represented, in violation of Section 5(a) (5) of the Fur Products Labeling Act.

PAR. 9. In advertising fur products for sale of the aforesaid, respondent made pricing claims and representations of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations under the Fur Products Labeling Act. Respondent in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based, in violation of Rule 44(e) of the said Rules and Regulations.

PAR. 10. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein respondent falsely and deceptively advertised fur products in violation of the Fur Products Labeling Act in that the said fur products were not advertised in accordance with the Rules and Regulations, promulgated thereunder inasmuch as the term "natural" was not used to describe fur products which were not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Rule 19(g) of the said Rules and Regulations.

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

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Charles S. Scott is an individual trading as The Key Shop, with his office and principal place of business located at 6800 South Main, Houston, Texas.

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

A. Misbranding any fur product by:

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

2. Misrepresenting in any manner on a label or other means of identification the savings available to the purchaser of any fur product from respondent.

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

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

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

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

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

3. Represents, directly or by implication, that any price, whether accompanied or not by descriptive terminology is the respondent's former price of such fur product when such price is in excess of the price at which such fur product has been sold or offered for sale in good faith by the respondent in the recent regular course of business, or otherwise misrepresents the price at which any such fur product has been sold or offered for sale by respondent.

4. Falsely or deceptively represents, that savings are afforded to the purchaser of any such fur product or misrepresents in any manner the amount of savings afforded to the purchaser of such fur product.

5. Falsely or deceptively represents that the price of any such fur product is reduced.

6. Misrepresents, directly or by implication, through percentage savings claims that the price of any such fur product is reduced to afford the purchaser of such fur product from respondent the percentage of savings stated.

7. Misrepresents in any manner, directly or by implication, the quantity or value of the inventory of fur products displayed or offered for sale.

C. Failing to maintain full and adequate records disclosing the facts upon which pricing claims and representations of the

types described in subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act, are based.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon 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

NORJACK INCORPORATED, ET AL.

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

Docket C-1298. Complaint, Feb. 15, 1968—Decision, Feb. 15, 1968

Consent order requiring a Milwaukee, Wis., distributor of automotive parts and automobile trailers, to cease failing to disclose that its products are made from old, used, and reconditioned parts and neglecting to disclose that some of its advertised products are not available for immediate shipment.

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 Norjack Incorporated, a corporation, and Norman D. Glicksman and George L. Glicksman, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Norjack Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its office and place of business located at 600 South 108th Street, in the city of Milwaukee, State of Wisconsin.

Respondents Norman D. Glicksman and George L. Glicksman are individuals and are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of automotive parts, automobile trailers designed for camping and hauling purposes and related accessories to the public and to retailers for resale to the public.

PAR. 3. 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 Wisconsin 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 the said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, respondents purchase certain used automotive parts which they rebuild or recondition and use in the construction of certain of their automobile trailers and sell such rebuilt or reconditioned parts and such trailers to the public and to retailers for resale to the public. The said parts and trailers, when offered for sale and sold, as aforesaid, have the appearance of being new and unused, but they bear no label, marking or other disclosure stamped thereon or attached thereto and the invoices, used by respondents in connection with such sales, contain no disclosure showing that such products are in fact constructed entirely or partially of rebuilt or reconditioned parts. The cartons or packages in which the said parts are offered for sale disclose the name of the parts contained therein but fail to disclose in any manner that said parts are rebuilt or reconditioned.

When parts are rebuilt or reconditioned or when products are partially constructed of such parts in a manner that they have the appearance of being assembled or manufactured from new and unused materials, in the absence of any disclosure to the contrary, or in the absence of an adequate disclosure, such parts and products are understood to be and are readily accepted by the public as new in their entirety, a fact of which the Commission takes official notice.

PAR. 5. In the course and conduct of their aforesaid business, respondents advertise their products in magazines and other promotional matter transmitted in commerce. Such matter and the said product invoices contain no disclosure of the fact that certain of respondents' parts are rebuilt or reconditioned, that certain of their products are partially constructed of used and rebuilt parts or that in many instances shipment of automobile trailers, when sold, are subject to lengthy delays in shipment and delivery, so as thereby to rep-

resent and imply that said products are new and unused and readily available.

PAR. 6. In truth and in fact, certain of respondents' products represented in such advertisements, other promotional matter and invoices are constructed entirely or partially of rebuilt or reconditioned used parts and shipment and delivery of respondents' trailers may be delayed beyond a reasonable period of time.

Therefore, the said advertisements, other promotional matter and invoices were and are, false, misleading and deceptive.

PAR. 7. By failing to disclose the facts as set forth in Paragraphs Four and Five hereof, respondents place in the hands of others the means and instrumentalities whereby they may mislead and deceive the public as to the nature, composition and availability of their products.

PAR. 8. In the course and conduct of their aforesaid business, at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of automotive parts and automobile trailers of the same general kind and nature as those sold by respondents.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that all of respondents' automotive parts and automotive trailers are constructed entirely from new and unused materials, that all deliveries of respondents' products will be made within a reasonable time and into the purchase of substantial quantities of respondents' products by reason of such erroneous and mistaken belief.

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

DECISION AND ORDER

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

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

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of 30 days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Norjack Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its office and place of business located at 600 South 108th Street, in the city of Milwaukee, State of Wisconsin.

Respondents Norman D. Glicksman and George L. Glicksman 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 Norjack Incorporated, a corporation, and its officers, and Norman D. Glicksman and George L. Glicksman, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of automotive parts, automobile trailers or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale, selling or distributing any used automotive part or any automotive part, automobile trailer or any other product containing a used component part or parts, unless a clear and conspicuous disclosure of such prior use is made on the product in a location most readily noticeable to the purchaser and with sufficient permanency to remain thereon until consummation of a consumer sale thereof, and in such manner that said dis-

closure cannot be easily removed or obliterated; and unless a clear and conspicuous disclosure that said automotive part is a used part or contains a used component part or parts is printed or marked on the box, carton, wrapper or other container in which said automotive part is sold or offered for sale.

2. Failing to disclose, clearly and conspicuously, in advertisements, other promotional matter and invoices that their products, which are constructed or assembled from rebuilt or reconditioned parts, are composed of used materials.

3. Advertising or otherwise offering any product for sale which is not available for immediate shipment and delivery without clearly and conspicuously revealing in connection with each such representation that there will be a delay in shipment and delivery and the approximate time of such delay.

4. Furnishing any means or instrumentality to others by and through which they may mislead or deceive the public as to any of the matters hereinabove prohibited.

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

IN THE MATTER OF

CONGRESS SPORTSWEAR COMPANY, INC., ET AL.

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

Docket C-1299. Complaint, Feb. 16, 1968—Decision, Feb. 16, 1968

Consent order requiring a Boston, Mass., clothing manufacturer to cease misbranding and falsely guaranteeing its textile fiber products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Congress Sportswear Company, Inc., a corporation, and Norman F. Grossman, 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 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 Congress Sportswear Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts.

Respondent Norman F. Grossman is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth.

Respondents are manufacturers of textile fiber products with their office and principal place of business located at 135 Lincoln Street, Boston, Massachusetts.

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

PAR. 3. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name or amount of constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products with labels which set forth the fiber content of quilted material contained in ski jackets as "100% Bonded Acrylic" whereas, in truth and in fact, said products contained different fibers and amounts of fibers.

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

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

1. To disclose the true generic names of the fibers present; and
2. To disclose the percentage of such fibers.

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

PAR. 6. The acts and practices of the respondents as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts 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 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 respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the ex-

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ecuted consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Congress Sportswear Company, 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 135 Lincoln Street, in the city of Boston, Commonwealth of Massachusetts.

Respondent Norman F. Grossman 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 Congress Sportswear Company, Inc., a corporation, and its officers, and Norman F. Grossman, 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 of causing to be transported in commerce, or the importation into the United States of textile fiber products; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber products, which have 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 products, whether 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, do forthwith cease and desist from 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 labels to such textile fiber products showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

It is further ordered, That respondents Congress Sportswear Company, Inc., a corporation, and its officers, and Norman F. Grossman, 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 with this order.

IN THE MATTER OF

VIVIANO MACARONI COMPANY

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

Docket 8666. Complaint, Sept. 21, 1965—Decision, Feb. 19, 1968

Order requiring a Carnegie, Pa., manufacturer of macaroni and other food products to cease discriminating in prices, promotional allowances and services in sales to competing retailers who resell its products.

COMPLAINT*

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

COUNT I

PARAGRAPH 1. Respondent, Viviano Macaroni Company is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located on Noblestown Road, Collier Township, Pennsylvania. Mail addressed to respondent is directed

*Reported as amended by Hearing Examiner's order of Dec. 21, 1965, by changing the name of respondent from Vimco Macaroni Products Company to Viviano Macaroni Company.