

Complaint

10. Failing to forward compensation owing to an establishment, furnishing reservations or services, when due.

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

GIMBEL'S UPHOLSTERING CO., INC., ET AL.

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

Docket C-1330. Complaint, May 3, 1968—Decision, May 3, 1968

Consent order requiring a Washington, D.C., upholstering and refinishing firm to cease deceptively guaranteeing its services and failing to disclose that its conditional sales contracts may be assigned to a finance company.

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 Gimbel's Upholstering Co., Inc., a corporation, and William Lessey and Thelma Lessey, 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 Gimbel's Upholstering Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 1534 7th Street, NW., Washington, D.C.

Respondents William Lessey and Thelma Lessey 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 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 advertising, offering for sale, sale and distribution of slip covers, draperies and furniture upholstering and refinishing services to the public.

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

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their products and services, the respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers of substantial interstate circulation with respect to the guarantee of said products and services.

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

Satisfaction guaranteed.

* * * * *

All work fully guaranteed.

* * * * *

Written guarantees on all workmanship.

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, separately and in connection with the oral statements and representations of their salesmen and representatives, the respondents have represented, and are now representing, directly or by implication, that their products and services are unconditionally guaranteed.

PAR. 6. In truth and in fact, respondents' products or services are not unconditionally guaranteed. Such guarantee as they give is subject to conditions and limitations not disclosed in respondents' advertising or otherwise made known to the customer prior to sale.

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

PAR. 7. In the course and conduct of their business as aforesaid, respondents have failed to disclose to purchasers that, at respondents' option and without notice to the purchaser, any conditional sales contract, promissory note, or other instrument of indebtedness executed by such purchasers in connection with their credit purchase agreements may be, and in a substantial number of instances has been, dis-

counted, negotiated or assigned to a finance company or other third party to whom the purchaser is thereby indebted.

Therefore respondents' failure to disclose such material fact, as aforesaid, was and is false, misleading and deceptive, and constituted, and now constitutes, an unfair or deceptive act or practice.

PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale and distribution of slip covers, draperies and furniture upholstery and refinishing services 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 said statements and representations were and are true and into the purchase of substantial quantities of respondents' products and services by reason of said erroneous and mistaken belief.

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

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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

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The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, 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 Gimbel's Upholstering Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at 1534 7th Street, NW., in the city of Washington, District of Columbia.

Respondents William Lessey and Thelma Lessey 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 Gimbel's Upholstering Co., Inc., a corporation, and its officers, and William Lessey and Thelma Lessey 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 slip covers, draperies, upholstering or refinishing services, or any other products or services, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any merchandise or service is guaranteed, unless the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

2. Making any direct or implied representations that any of respondents' products are guaranteed unless in each instance a written guarantee is given to the purchaser containing provisions substantially the same as those contained in such representations.

3. Failing to orally disclose prior to the time of sale, and in writing on any conditional sales contract, promissory note or other instrument of indebtedness executed by a purchaser, and

with such conspicuousness and clarity as is likely to be observed and read by such purchaser, that any such instrument, at respondents' option and without notice to the purchaser, may be discounted, negotiated or assigned to a finance company or other third party to which the purchaser will thereafter be indebted and against which the purchaser's claims or defenses may not be available.

4. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of respondents' products or services, and failing to secure from each such salesman or other person a signed statement acknowledging receipt of said order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

NATIONAL WORK-CLOTHES RENTAL ET AL.

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

*Docket 8742. Complaint, July 27, 1967—Decision, May 7, 1968**

Consent order requiring 15 linen-rental companies doing business in New Jersey, Louisiana, Tennessee and Arkansas to cease fixing prices and allocating customers.

COMPLAINT

The Federal Trade Commission has reason to believe that the parties listed in the caption hereof, and hereinafter more fully described, have violated and are now violating the provisions of Section 5 of the Federal Trade Commission Act, 15 U.S.C. Sec. 45, and it appears to the Commission that a proceeding by it in respect thereof would be in the public interest. Accordingly, the Commission hereby issues its complaint, stating its charges with respect thereto as follows:

*Order withdrawing complaint as to respondent Jack Shields Bew, p. 834.

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PARAGRAPH 1. Respondent National Work-Clothes Rental, hereinafter referred to as National Work-Clothes, is a corporation organized and doing business under the laws of the State of New Jersey, with its office and principal place of business located at 1100 Sherman Avenue, Elizabeth, New Jersey. National Work-Clothes is engaged in the linen rental business nationally. In 1964, National Work-Clothes had a volume of business in excess of \$16,000,000.

Mechanics Work-Clothes Rental, previously Mechanics Overall Service and hereinafter referred to as MOS, is a Division of National Work-Clothes. The office and principal place of business of MOS is located at 2211 Broadway Street, Alexandria, Louisiana. MOS is engaged in the linen rental business in Louisiana, Arkansas and Mississippi. In 1964, MOS had a volume of business in excess of \$600,000.

Respondent Wilmes Investment Co., Inc., hereinafter referred to as Wilmes, is a corporation organized and doing business under the laws of the State of Delaware, with its office and principal place of linen rental business located at 3321 Youree Drive, Shreveport, Louisiana. Wilmes is engaged in the linen rental business in Louisiana, Texas and Arkansas under the trade names Associated Rental Services and American Linen Service Company. Wilmes also engages in the linen rental business in Louisiana, Texas and Arkansas, through wholly owned subsidiary corporations.

Prior to September 30, 1966, the business of Wilmes was owned and operated by Associated Rental Services, Inc., a Louisiana corporation. On September 30, 1966, Wilmes purchased all the stock of Associated Rental Services, Inc. On October 3, 1966, Associated Rental Services, Inc., and its wholly owned subsidiary corporations were liquidated and dissolved. Wilmes formed new corporations to carry on these businesses. The continuity of Associated Rental Services, Inc., and its subsidiaries as going businesses has been uninterrupted to the present time. Wilmes has continued to operate these businesses with substantially the same management personnel and policies employed by Associated Rental Services, Inc., and its subsidiaries.

Respondent Alexandria Linen Service Corporation, hereinafter referred to as Alexandria Linen, is a wholly owned subsidiary of Wilmes. Alexandria Linen is a corporation organized and doing business under the laws of the State of Louisiana, with its office and principal place of business located at 800 Jackson Street, Alexandria, Louisiana. Alexandria Linen is engaged in the linen rental business in Louisiana. In 1964, Alexandria Linen's predecessor corporation, Alexandria Linen Service Co., Inc., a Louisiana corporation, had a volume of business in excess of \$146,000.

Respondent Clean Linen Service Corporation, hereinafter referred to as Clean Linen, is a wholly owned subsidiary of Wilmes. Clean Linen is a corporation organized and doing business under the laws of the State of Louisiana, with its office and principal place of business located at 1304 Hollywood Avenue, Shreveport, Louisiana. Clean Linen is engaged in the linen rental business in Louisiana, Texas and Arkansas. In 1963, Clean Linen's predecessor corporation, Clean Linen Co., Inc., a Louisiana corporation, had a volume of business in excess of \$264,000.

Respondent Community Uniform Service Corporation, hereinafter referred to as Community Uniform, is a wholly owned subsidiary of Wilmes. Community Uniform is a corporation organized and doing business under the laws of the State of Missouri, with its office and principal place of business located at 600 South Fredonia, Longview, Texas. Community Uniform is engaged in the linen rental business in Louisiana, Texas and Arkansas. In 1964, Community Uniform's predecessor corporation, Community Uniform Service of Longview, Inc., a Texas corporation, had a volume of business in excess of \$152,000.

Respondent Friedel Towel Service Corporation, hereinafter referred to as Friedel Towel, is a wholly owned subsidiary of Wilmes. Friedel Towel is a corporation organized and doing business under the laws of the State of Louisiana, with its office and principal place of business located at 1304 Hollywood Avenue, Shreveport, Louisiana. Friedel Towel is engaged in the linen rental business in Louisiana, Texas and Arkansas. In 1963, Friedel Towel's predecessor corporations, Friedel Towel Service, Inc., a Louisiana corporation, and Friedel Industrial Uniform Service, Inc., a Louisiana corporation, had a combined volume of business in excess of \$100,000.

Respondent Shreveport Industrial Uniform & Towel Service Corporation, hereinafter referred to as Shreveport Industrial, is a wholly owned subsidiary of Wilmes. Shreveport Industrial is a corporation organized and doing business under the laws of the State of Delaware, with its office and principal place of business located at 1304 Hollywood Avenue, Shreveport, Louisiana. Shreveport Industrial is engaged in the linen rental business in Louisiana and Arkansas. In 1964, Shreveport Industrial's predecessor corporation, Shreveport Industrial Uniform and Towel Service, Inc., a Louisiana corporation, had a volume of business in excess of \$420,000.

Respondent Lafayette Linen Service Corporation hereinafter referred to as Lafayette Linen, is a wholly owned subsidiary of Wilmes. Lafayette Linen is a corporation organized and doing business under

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the laws of the State of Louisiana with its office and principal place of business located at 417 North Buchanan Street, Lafayette, Louisiana. Lafayette Linen is engaged in the linen rental business in Louisiana. In 1964, Lafayette Linen's predecessor corporation, Lafayette Linen Service Co., Inc., a Louisiana corporation, had a volume of business in excess of \$237,000.

Respondent Monroe Linen Service Corporation, hereinafter referred to as Monroe Linen, is a wholly owned subsidiary of Wilmes. Monroe Linen is a corporation organized and doing business under the laws of the State of Louisiana, with its office and principal place of business located at 405 South Grand Street, Monroe, Louisiana. Monroe Linen is engaged in the linen rental business in Louisiana and Arkansas. In 1963, Monroe Linen's predecessor corporation, Monroe Linen Service Company, Inc., a Louisiana corporation, had a volume of business in excess of \$328,000.

Respondent All-State Linen Service Company, Inc., hereinafter referred to as All-State, is a corporation organized and doing business under the laws of the State of Tennessee, with its office and principal place of business located at 941 Jefferson Avenue, Memphis, Tennessee. All-State is engaged in the linen rental business in Texas, Arkansas, Mississippi and Tennessee under its own name and through wholly owned subsidiary corporations.

Respondent Independent Linen Service Company of Arkansas, Inc., hereinafter referred to as Independent of Arkansas, is a wholly owned subsidiary of Memphis Steam Laundry, a corporation which is in turn wholly owned by All-State. Independent of Arkansas is a corporation organized and doing business under the laws of the State of Arkansas, with its office and principal place of business located at 1901 Woodrow, Little Rock, Arkansas. Independent of Arkansas is engaged in the linen rental business in Texas and Arkansas. Business is also done under the trade name All-State Linen Service Co., Inc. In 1963, Independent of Arkansas had a volume of business in excess of \$2,000,000.

Respondent Arkansas Industrial Uniform Service Company, Inc., hereinafter referred to as Arkansas Industrial, is a corporation organized and doing business under the laws of the State of Arkansas, with its office and principal place of business located at 723 South Broadway, Little Rock, Arkansas. Arkansas Industrial is engaged in the linen rental business in Texas, Arkansas and Mississippi. Arkansas Industrial also does business under the trade name Arkansas Linen Service. In 1964, Arkansas Industrial had a volume of business in excess of \$676,000.

Respondent Industrial Towel & Uniform Supply, hereinafter referred to as Industrial Towel, is a trust organized to carry on business for its own profit or that of its members. Industrial Towel is organized and does business under the laws of the State of Arkansas, with its office and principal place of business located at 323 Sherman Street, Little Rock, Arkansas. Industrial Towel is engaged in the linen rental business in Louisiana and Arkansas. It is also known as White Rose. In 1963, Industrial Towel had a volume of business in excess of \$823,000.

Respondent New Way Laundry and Dry Cleaning Corporation, hereinafter referred to as New Way, is a corporation organized and doing business under the laws of the State of Louisiana with its office and principal place of business located at 1921 Market Street, Shreveport, Louisiana. New Way is engaged in the linen rental business in Louisiana and Texas. Business is also done under the trade names Louisiana Industrial Towel & Uniform and Shreve City. In 1963, New Way had a volume of business in excess of \$457,000.

Respondent Monroe Uniform Service, Inc., hereinafter referred to as Monroe Uniform, is a corporation organized and doing business under the laws of the State of Louisiana, with its office and principal place of business located at 2600 South Grand Street, Monroe, Louisiana. Monroe Uniform is engaged in the linen rental business in Louisiana and Arkansas. Prior to April 1, 1967, the business of Monroe Uniform was owned and operated by respondent Monroe Linen. On or about April 1, 1967, Monroe Uniform purchased part of respondent Monroe Linen's going linen rental business and related operating assets. The continuity of the said business has been uninterrupted to the present time. In 1966, the business which is now Monroe Uniform had a volume of business in excess of \$350,000.

Respondent Clarence A. Buss is president of respondent Monroe Uniform, and his address is the same as that of Monroe Uniform. He was coowner and president of respondent Wilmes' predecessor corporation, Associated Rental Services, Inc., during a substantial part of the time in which the acts and practices charged herein occurred. During such time, he was primarily responsible for the formulation and carrying out of the policies and practices of Associated Rental Services, Inc., and actively participated therein. Following Wilmes' purchase of the stock of Associated Rental Services, Inc., Clarence A. Buss became a vice president of Wilmes, and of each of the predecessor corporations of the respondent wholly owned subsidiaries of Wilmes. In addition, he became the manager of the industrial division of Wilmes' Monroe, Louisiana, operation. He has a ten year con-

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sultant agreement with Wilmes, running from 1966 to 1976. Clarence A. Buss, for many years and continuing to the present time, has initiated, directed, encouraged, promoted, adopted, and acquiesced in, the acts and practices charged herein.

Respondent Hollis Yearwood is president and general manager of respondent Independent of Arkansas, and his address is the same as that of Independent of Arkansas. He is primarily responsible for the formulation and carrying out of the policies and practices of Independent of Arkansas, and actively participates therein. Hollis Yearwood, for many years and continuing to the present time, has initiated, directed, encouraged, promoted, adopted, and acquiesced in, the acts and practices charged herein.

Respondent Nathaniel Cohen is president and a director of respondent National Work-Clothes, and his address is the same as that of National Work-Clothes. He is primarily responsible for the formulation and carrying out of the policies and practices of National Work-Clothes, and actively participates therein. Nathaniel Cohen, for many years and continuing to the present time, has initiated, directed, encouraged, promoted, adopted, and acquiesced in, the acts and practices charged herein.

Respondent Douglas Parrish is president of respondent Arkansas Industrial, and his address is the same as that of Arkansas Industrial. He is primarily responsible for the formulation and carrying out of the policies and practices of Arkansas Industrial, and actively participates therein. Douglas Parrish, for many years and continuing to the present time, has initiated, directed, encouraged, promoted, adopted, and acquiesced in, the acts and practices charged herein.

Respondent W. W. Watson is manager of respondent Industrial Towel, and his address is the same as that of Industrial Towel. He is primarily responsible for the formulation and carrying out of the policies and practices of Industrial Towel, and actively participates therein. W. W. Watson, for many years and continuing to the present time, has initiated, directed, encouraged, promoted, adopted, and acquiesced in, the acts and practices charged herein.

Respondent Walter B. Klyce is president of White Rose Industrial Laundry, 803 Vance Avenue, Memphis, Tennessee, and his address is the same as that of White Rose Industrial Laundry. He created respondent trust, Industrial Towel. He controls the formulation and carrying out of the policies and practices of Industrial Towel, and actively participates therein. Walter B. Klyce, for many years and continuing to the present time, has initiated, directed, encouraged, pro-

moted, adopted, and acquiesced in, the acts and practices charged herein.

Respondent Ben Levy, Jr., is president of respondent New Way, and his address is the same as that of New Way. He is primarily responsible for the formulation and carrying out of the policies and practices of New Way, and actively participates therein. Ben Levy, Jr., for many years and continuing to the present time, has initiated, directed, encouraged, promoted, adopted, and acquiesced in, the acts and practices charged herein.

Respondent Jack Shields Bew is president of nonrespondent conspirator Little Rock Towel & Linen Supply Company, 1501 Main Street, Little Rock, Arkansas, and his address is the same as that of Little Rock Towel & Linen Supply Company. He was president and general manager of respondent Independent of Arkansas, during a substantial part of the time in which the acts and practices charged herein occurred. During such time, he was primarily responsible for the formulation and carrying out of the policies and practices of Independent of Arkansas, and actively participated therein. Jack Shields Bew, for many years and continuing to the present time, has initiated, directed, encouraged, promoted, adopted, and acquiesced in, the acts and practices charged herein.

PAR. 2. Various corporations not made respondents herein participated as coconspirators with respondents in the agreement, understanding, combination, conspiracy or planned common course of action or course of dealing charged herein, and performed acts and made statements in furtherance thereof. Said coconspirators will hereinafter be referred to as nonrespondent conspirators.

These nonrespondent conspirators include, but are not limited to, the following: City Laundry, McGehee, Arkansas; Howlett Laundry, Hot Springs, Arkansas; Knoll Laundry, Stuttgart, Arkansas; Craighead Laundry, Hot Springs, Arkansas; Acme Industrial Laundry, Fort Smith, Arkansas; Nelson-Huckins Laundry, Texarkana, Texas; City Laundry, Camden, Arkansas; Little Rock Towel & Linen Supply Company, Little Rock, Arkansas; Lucky Laundry, Crossett, Arkansas; List Laundry, Pine Bluff, Arkansas; Acme Laundry, Harrison, Arkansas; East Arkansas Linen, Jonesboro, Arkansas; Industrial Uniform & Towel, Tulsa, Oklahoma; Tri-State Service, Springfield, Missouri; City Laundry, Malvern, Arkansas; Tyler Industrial Uniform, Tyler, Texas; Industrial Towel & Uniform Service, Beaumont, Texas; and Mantell's Cleaners, Jackson, Mississippi.

PAR. 3. For the purpose of this complaint, the linen rental business is the service of renting and delivering clean linens at recurrent inter-

vals, generally of one week or less. The clean linens are rented and delivered to users located in the States of Louisiana, Texas, Arkansas and Mississippi, among other States. The service includes the recurrent removal and laundering of soiled linens for which clean linens are replacements. Linen rental users are commercial and industrial establishments, including, but not limited to, motels, restaurants, service stations and factories. Linen rental articles include, but are not limited to, tablecloths, towels, uniforms, wiping cloths and fender covers.

PAR. 4. In the course of their linen rental business, respondents and nonrespondent conspirators regularly cause clean and soiled linens to be transported to and from their customers' places of business located in the States of Louisiana, Texas, Arkansas, and Mississippi, among other States, to and from processing plants or laundries located in the same and other States.

Accordingly, there has been and is now a constant, and continuous current and flow in interstate commerce of linen supplies by and between respondents and their customers located in the States of Louisiana, Texas, Arkansas and Mississippi, among other States. Respondents, therefore, are engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act.

In the course and conduct of their business in commerce respondents and nonrespondent conspirators have been and are now in active competition with one another in the linen rental business, except to the extent that competition has been lessened, hindered, restrained or eliminated as alleged herein.

PAR. 5. For many years, and continuing to the present time, respondents and nonrespondent conspirators have and do now maintain effectuate and carry out, an agreement, understanding, combination, conspiracy, or planned common course of action or course of dealing, hereinafter referred to collectively as the conspiracy, in the linen rental business in the States of Louisiana, Texas, Arkansas and Mississippi, among other States, as more fully set out below. Respondents and nonrespondent conspirators entered into the conspiracy at various times and contributed to carrying it out and to its effects by various means and methods.

PAR. 6. As part of, pursuant to, and in furtherance of the conspiracy, respondents and nonrespondent conspirators for many years and continuing to the present time, have agreed, conspired, combined, acquiesced and cooperated, between and among themselves and others, to allocate linen rental customers by various means and methods of which the following are examples:

1. Agreed not to solicit the customers of one another;

2. Instructed their salesmen, route salesmen and routemen not to solicit the customers of one another;

3. Refused, directly or indirectly, to service customers seeking to change suppliers;

4. Furnished certain customers dirty, torn or old linens, wrong sizes, short orders, late deliveries, and generally bad service to cause such customers to return to their former suppliers, where such customers were obtained by mistake or contrary to the conspiracy;

5. Requested and secured permission to service the customers of one another;

6. Traded customers;

7. Warned one another of customers seeking to change suppliers, to give one another an opportunity to hold customers.

PAR. 7. As part of, pursuant to, and in furtherance of the conspiracy, respondents and nonrespondent conspirators, for many years and continuing to the present time, have agreed, combined, conspired, acquiesced and cooperated, between and among themselves and others, to increase, fix and maintain linen rental service prices.

In furtherance of said price fixing, and in furtherance of the customer allocation agreement set forth in Paragraph Six herein, respondents and nonrespondent conspirators have met in person in various hotels, motels, clubs, restaurants, and offices, among other places, and have communicated with one another by telephone and letter.

The meeting places include, but are not limited to, the following: Lafayette Hotel, Riverdale Country Club, both in Little Rock, Arkansas; El Dorado Restaurant, Oak Tree Restaurant, both in El Dorado, Arkansas; Delta Inn Cafe, Dumas, Arkansas; Evangeline Hotel, Lafayette, Louisiana; Washington-Youree Hotel, Pedro's Restaurant, Sands Motel, all in Shreveport, Louisiana; Penn Hotel, Village Restaurant, Rendezvous Restaurant, Saddle & Spur Restaurant, Frances Hotel, all in Monroe, Louisiana.

PAR. 8. Contributing to the conspiracy and to its effects, is the utilization, by respondents and nonrespondent conspirators, of:

1. *Customer Service Contracts*. Such contracts provide for the furnishing of linen rental service. They contain unreasonably long initial terms and unreasonably long automatic renewal terms, with inadequate provision for cancellation by the customer;

2. *Covenants Not to Compete in Employee Contracts*. Such provisions prohibit employees, after termination of employment, from competing with their former employers by working for themselves or by working for any other linen rental business. Such prohibitions are unreasonable in duration of time and in scope of territory: and

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3. *Covenants Not to Compete in Sales Contracts.* Such provisions prohibit sellers from competing with buyers by working for themselves or by working for any other linen supply business. They also prohibit such sellers from encouraging anyone else from engaging in the linen rental business. Such prohibitions are unreasonable in duration of time and in scope of territory.

PAR 9. The conspiracy and the acts and practices of respondents as alleged herein, have had and do now have the tendency or effect of unduly hindering, lessening, restraining or eliminating competition in the rental of linen supplies; have deprived linen rental customers of the benefits of full and free competition and have hampered their free choice in the selection of suppliers; are all to the prejudice and injury of the public; and constitute unfair methods of competition and unfair acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

LETTER X

(DATE).

DEAR : The Federal Trade Commission has ordered this company and others to stop the illegal practices of allocating customers and fixing prices. A copy of this Order is enclosed.

Under the Order, all outstanding service contracts between your company and this company are unenforceable. We are prohibited from entering into new contracts with customers. You are free to select or change your linen rental supplier at your own discretion. However, at the end of six months from your receipt of this letter, we may again enter into customer contracts, but only for terms up to six months.

Very truly yours,

(President, Owner or Responsible Official).

LETTER Y

(DATE).

DEAR : The Federal Trade Commission has ordered this company and others to stop the illegal practices of allocating customers and fixing prices. A copy of this Order is enclosed.

Under the Order, your covenant not to compete with this company on termination of employment is unenforceable. We are prohibited from entering into new employee covenants. However, at the end of one year from your receipt of this letter, we may again enter into employee covenants, but only for periods up to six months. These covenants may prohibit employees from serving, using or divulging the names and addresses of customers served by them, during the six months immediately prior to termination of employment.

Very truly yours,

(President, Owner or Responsible Official).

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LETTER Z

(DATE.)

DEAR : The Federal Trade Commission has ordered this company and others to stop the illegal practices of allocating customers and fixing prices. A copy of this Order is enclosed.

Under the Order, your restrictive covenant not to compete with this company is unenforceable.

Very truly yours,

(*President, Owner or Responsible Official.*)

DECISION AND ORDER IN DISPOSITION OF THIS PROCEEDING AS TO ALL
RESPONDENTS EXCEPT RESPONDENT JACK SHIELDS BEW

The Commission having issued its complaint in this proceeding on July 27, 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 November 17, 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

The respondents (except respondent Jack Shields Bew *) and counsel supporting complaint having thereafter signed an agreement containing a consent order to cease and desist as to all respondents except respondents Nathaniel Cohen, Walter B. Klyce and Jack Shields Bew, an admission by the signatory 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 said signatory 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 which agreement also contemplates, and provides for, dismissal of the complaint as to signatory respondents Nathaniel Cohen and Walter B. Klyce; and

The Commission, having considered the agreement and having accepted same, and the agreement 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 in disposition of the proceeding as to all respondents except respondent Jack Shields Bew:

*Order withdrawing complaint as to respondent Jack Shields Bew, p. 834.

1. Respondent National Work-Clothes Rental is a corporation organized and doing business under the laws of the State of New Jersey, with its office and principal place of business located at 1100 Sherman Avenue, Elizabeth, New Jersey.

Mechanics Work-Clothes Rental is a Division of National Work-Clothes Rental. Its office and principal place of business is located at 2211 Broadway Street, Alexandria, Louisiana.

Respondent Wilmes Investment Co., Inc., sometimes hereinafter referred to as Wilmes, is a corporation organized and doing business under the laws of the State of Delaware, with its office and principal place of linen rental business located at 3321 Youree Drive, Shreveport, Louisiana.

Respondent Alexandria Linen Service Corporation is a wholly owned subsidiary of Wilmes. It is a corporation organized and doing business under the laws of the State of Louisiana, with its office and principal place of business located at 800 Jackson Street, Alexandria, Louisiana.

Respondent Clean Linen Service Corporation is a wholly owned subsidiary of Wilmes. It is a corporation organized and doing business under the laws of the State of Louisiana, with its office and principal place of business located at 1304 Hollywood Avenue, Shreveport, Louisiana.

Respondent Community Uniform Service Corporation is a wholly owned subsidiary of Wilmes. It is a corporation organized and doing business under the laws of the State of Missouri, with its office and principal place of business located at 600 South Fredonia, Longview, Texas.

Respondent Friedel Towel Service Corporation is a wholly owned subsidiary of Wilmes. It is a corporation organized and doing business under the laws of the State of Louisiana, with its office and principal place of business located at 1304 Hollywood Avenue, Shreveport, Louisiana.

Respondent Shreveport Industrial Uniform & Towel Service Corporation is a wholly owned subsidiary of Wilmes. It is a corporation organized and doing business under the laws of the State of Delaware, with its office and principal place of business located at 1304 Hollywood Avenue, Shreveport, Louisiana.

Respondent Lafayette Linen Service Corporation is a wholly owned subsidiary of Wilmes. It is a corporation organized and doing business under the laws of the State of Louisiana, with its office and principal place of business located at 417 North Buchanan Street, Lafayette, Louisiana.

Respondent Monroe Linen Service Corporation is a wholly owned subsidiary of Wilmes. It is a corporation organized and doing business under the laws of the State of Louisiana, with its office and principal place of business located at 405 South Grand Street, Monroe, Louisiana.

Respondent All-State Linen Service Company, Inc., sometimes hereinafter referred to as All-State, is a corporation organized and doing business under the laws of the State of Tennessee, with its office and principal place of business located at 941 Jefferson Avenue, Memphis, Tennessee.

Respondent Independent Linen Service Company of Arkansas, Inc., is a wholly owned subsidiary of Memphis Steam Laundry, a corporation which is in turn wholly owned by All-State. Independent Linen Service Company of Arkansas, Inc., is a corporation organized and doing business under the laws of the State of Arkansas, with its office and principal place of business located at 1901 Woodrow, Little Rock, Arkansas.

Respondent Arkansas Industrial Uniform Service Company, Inc., is a corporation organized and doing business under the laws of the State of Arkansas, with its office and principal place of business located at 723 South Broadway, Little Rock, Arkansas.

Respondent Industrial Towel & Uniform Supply is a trust organized to carry on business for its own profit or that of its members. It is organized and does business under the laws of the State of Arkansas, with its office and principal place of business located at 323 Sherman Street, Little Rock, Arkansas.

Respondent New Way Laundry and Dry Cleaning Corporation is a corporation organized and doing business under the laws of the State of Louisiana, with its office and principal place of business located at 1921 Market Street, Shreveport, Louisiana.

Respondent Monroe Uniform Service, Inc., is a corporation organized and doing business under the laws of the State of Louisiana, with its office and principal place of business located at 2600 South Grand Street, Monroe, Louisiana.

Respondent Clarence A. Buss is president of respondent Monroe Uniform Service, Inc., and his address is the same as that of said corporation. He was coowner and president of respondent Wilmes' predecessor corporation, Associated Rental Services, Inc.

Respondent Hollis Yearwood was president and general manager of respondent Independent Linen Service Company of Arkansas, Inc., and his address is the same as that of said corporation.

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Respondent Douglas Parrish is president of respondent Arkansas Industrial Uniform Service Company, Inc., and his address is the same as that of said corporation.

Respondent W. W. Watson is manager of respondent Industrial Towel & Uniform Supply, and his address is the same as that of Industrial Towel & Uniform Supply.

Respondent Ben Levy, Jr., is president of respondent New Way Laundry and Dry Cleaning 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 signatory respondents, and the proceeding is in the public interest.

ORDER

I. *It is ordered*, That respondents, National Work-Clothes Rental, a corporation, Wilmes Investment Co., Inc., a corporation, Alexandria Linen Service Corporation, a corporation, Clean Linen Service Corporation, a corporation, Community Uniform Service Corporation, a corporation, Friedel Towel Service Corporation, a corporation, Shreveport Industrial Uniform & Towel Service Corporation, a corporation, Lafayette Linen Service Corporation, a corporation, Monroe Linen Service Corporation, a corporation, All-State Linen Service Company, Inc., a corporation, Independent Linen Service Company of Arkansas, Inc., a corporation, Arkansas Industrial Uniform Service Company, Inc., a corporation, Industrial Towel & Uniform Supply, a trust, New Way Laundry and Dry Cleaning Corporation, a corporation, Monroe Uniform Service, Inc., a corporation, their subsidiaries, successors, assigns, officers, directors, agents, representatives, or employees, directly or through any corporate or other device, Clarence A. Buss, individually, and as an officer of Monroe Uniform Service, Inc., Hollis Yearwood, individually, and as an officer of Independent Linen Service Company of Arkansas, Inc., Douglas Parrish, individually, and as an officer of Arkansas Industrial Uniform Service Company, Inc., W. W. Watson, individually, and as manager of Industrial Towel & Uniform Supply, and Ben Levy, Jr., individually, and as an officer of New Way Laundry and Dry Cleaning Corporation, in connection with the linen rental business in commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from entering into, maintaining, effectuating, carrying out, cooperating in or continuing any agreement, understanding, combination, conspiracy, or planned common course of action or course of dealing, between or among any two or more of the said respondents or between any one or

more of the said respondents and one or more of any others not parties hereto, to do or perform any of the following:

1. Allocating customers by any means or methods including but not limited to the following:

- a. Agreeing not to solicit customers;
- b. Instructing employees, including salesmen, route salesmen and routemen, not to solicit customers of competitors;
- c. Refusing to service customers seeking to change suppliers;
- d. Furnishing customers dirty, torn or old linens, wrong sizes, short orders, late deliveries and generally bad service, to cause such customers to return to former suppliers;
- e. Requesting permission to service customers of competitors;
- f. Trading customers;
- g. Warning competitors about customers seeking to change suppliers;
- h. Holding or attending any meeting for the purpose of agreeing upon, discussing, exchanging, distributing, relaying, or considering allocation of customers; and
- i. Exchanging, distributing, discussing, or relaying, by telephone, telegram, letter or in person, or by any other means or device, information relating directly or indirectly to allocation of customers.

2. Fixing prices by any means or methods including but not limited to the following:

- a. Increasing or maintaining prices, terms, or conditions of rental services, or adhering to or promising to adhere to prices, terms or conditions of rental services so increased or maintained;
- b. Holding or attending any meeting for the purpose of agreeing upon, discussing, exchanging, distributing, relaying, or considering prices or price policy of any respondent or of one or more of any others not parties hereto; and
- c. Exchanging, distributing, discussing, or relaying, by telephone, telegram, letter, or in person, or by any other means or device, information relating directly or indirectly to prices, terms or conditions of rental services.

II. It is further ordered, That the respondents herein, their subsidiaries, successors and assigns, individually or concertedly, and their officers, directors, agents, representatives or employees, directly, or

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through any corporate or other device, in connection with the linen rental business in commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith:

1. Notify every customer served by any processing plant or other operation located in the States of Louisiana or Arkansas, who is subject to a customer service contract containing a term provision, that he may, during the one hundred eighty (180) days following receipt of Letter X attached hereto, cancel, in writing, the term provision in any outstanding customer service contract. In the event any such customer so cancels his customer service contract, respondents will not seek any legal remedies based upon such cancellation. The cancellation of any term provision, as provided for herein, is not intended to, and shall not, affect any cause of action between customers and respondents as to contractual provisions not related to the said term provision;

2. Cease and desist from enforcing any automatic renewal provision in any customer service contract in effect on the date of service of this Order, with any customer served by any processing plant or other operation located in the States of Louisiana or Arkansas, not cancelled pursuant to Part II, Paragraph 1., herein;

3. Cease and desist, for a period of ten (10) years from the date of service of this Order, from entering into any customer service contract with any customer served by any processing plant or other operation located in the States of Louisiana or Arkansas, the term of which is in excess of one (1) year: *Provided, however, For* a period of one (1) year from the date of service of this Order, said one (1) year customer service contracts shall not be automatically renewable, and the term provision may be cancelled by the customer upon thirty (30) days written notice: *Provided further, That* upon the expiration of the said one (1) year period, customer service contracts may contain automatic renewal periods which do not exceed thirty (30) days: *Provided further, That* upon the expiration of the said one (1) year period, formal and written customer service contracts for special articles (not usable by other customers), and specifically negotiated with an executive or official of the customer, may be entered into for terms which do not exceed two (2) years: *Provided further, That nothing* herein shall prohibit a respondent from complying with the term provision set forth in an Invitation to Bid issued by a state or federal government agency;

4. Notify every salesman, route salesman, and routemen employed in any processing plant or other operation located in the States of Louisiana or Arkansas, that he is free to solicit the business of any and all accounts, including customers of competitors;

5. Cease and desist from enforcing any restrictive covenant in effect on the date of service of this Order which prohibits any employee who has been or is now employed in any processing plant or other operation located in the States of Louisiana or Arkansas, from engaging in the linen rental business for himself or for others: *Provided, however,* That respondents may enforce a restrictive covenant which prohibits the employee, for a period of one (1) year subsequent to the termination of his employment, from serving, using or divulging the names and addresses of customers served by the employee during the six (6) month period immediately preceding termination of employment;

6. Cease and desist, for a period of ten (10) years from the date of service of this Order, from entering into any contract containing a restrictive covenant which prohibits, for a period exceeding one (1) year, any employee employed in any processing plant or other operation located in the States of Louisiana or Arkansas, upon termination of employment, from serving, using or divulging the names of customers not served by said employee during the six (6) month period immediately preceding termination of employment;

7. Cease and desist, for a period of ten (10) years from the date of service of this Order, from entering into any contract containing a provision which prohibits any seller of a linen rental business with one or more processing plants or other operations located in the States of Louisiana or Arkansas, from engaging in the linen rental business for himself or for others, for a period exceeding three (3) years, or in an area extending beyond the linen rental routes of the seller at the time of execution of the said contract;

8. Cease and desist from enforcing or entering into any contractual provision which prohibits any seller of a linen rental business from encouraging anyone else to engage in the linen rental business.

III. *It is further ordered,* That each of the respondents herein shall, within sixty (60) days after service upon them of this Order, serve by mail or in person:

1. On every customer served by any processing plant or other operation located in the States of Louisiana or Arkansas, who is subject to a customer service contract containing a term provision, the following: (a) a copy of this Order and (b) a copy of Letter X attached to this Order, signed by the president, or owner, or other responsible official;

2. On all of its present salesmen, route salesmen and routemen employed in any processing plant or other operation located in the States of Louisiana or Arkansas, and on all of its former employees who were employed in any processing plant or other operation located in the States of Louisiana or Arkansas and subject to a restrictive covenant imposed by said respondent, in effect on the date of service of this Order, the following: (a) a copy of this Order and (b) a copy of Letter Y attached to this Order, signed by the president, or owner, or other responsible official.

IV. *It is further ordered*, That each of the respondents herein shall, within sixty (60) days after service upon them of this Order, post at all its processing plants and other operations located in the States of Louisiana and Arkansas, copies of the Notice attached hereto marked Appendix. Copies of said Notice shall, after being signed by the president, or owner, or other responsible official of respondent, be posted and maintained for a period of one hundred eighty (180) consecutive days in prominent, conspicuous places, including all places where notices to salesmen, route salesmen, and routemen, are customarily posted. Reasonable steps shall be taken by respondent to insure that said Notices are not altered, defaced, or covered by any other material.

V. *It is further ordered*, That the complaint be, and it hereby is, dismissed as to respondents Nathaniel Cohen and Walter B. Klyce.

VI. *It is further ordered*, That respondent corporations herein shall forthwith distribute a copy of this Order to all of their operating divisions.

VII. *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.

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Letter X

(Company Letterhead)

(DATE.)

DEAR : This company and certain other companies engaged in the linen and industrial uniform rental business in the States of Louisiana and Arkansas have entered into a consent Order with the Federal Trade Commission, which, among other things, prohibits the allocation of customers and fixing of prices. Our agreement with the Commission is for settlement purposes only and does not constitute an admission by us that the law has been violated. We are enclosing a copy of the Order for your information.

As provided by this Order, you may at any time during the next six months, cancel the term provision in any contract you now have with this company for linen or uniform service. This means you are free to change your linen or uniform supplier. Should you cancel, however, you will not be relieved of other obligations which may exist under the contract.

Very truly yours,

(President, Owner or Responsible Official.)

Enclosure.

Letter Y

(Company Letterhead)

(DATE.)

DEAR : This company and certain other companies engaged in the linen and industrial uniform rental business in the States of Louisiana and Arkansas have entered into a consent Order with the Federal Trade Commission which, among other things, prohibits the allocation of customers and fixing of prices. Our agreement with the Commission is for settlement purposes only and does not constitute an admission by us that the law has been violated. We are enclosing a copy of the Order for your information.

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Employees presently employed by this company are free under this Order to solicit the business of any and all accounts, including customers of competitors of this company.

Any restrictive covenant this company may enforce or enter into, is limited by the Order to one year following termination of employment and to the customers served during the last six months of your employment with our company.

Very truly yours,

(President, Owner or Responsible Official.)

Enclosure.

APPENDIX

N O T I C E

TO ALL SALESMEN, ROUTE SALESMEN AND ROUTEMEN

PURSUANT TO a Consent Order Agreement between this company
and the Federal Trade Commission

THIS COMPANY IS PROHIBITED, among other things, from having any arrangement, agreement or understanding with any other linen rental or industrial rental company, about the servicing of any customer or about prices or rates of rentals to any customer.

YOU ARE FREE to solicit the business of any and all accounts, including customers of competitors of this company.

(Employer.)

Dated:

By _____
(Representative.) (Title.)

This notice must remain posted for 180 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

ORDER WITHDRAWING COMPLAINT AS TO RESPONDENT BEW

MAY 7, 1968

The Commission having simultaneously herewith issued its decision and order in disposition of this proceeding as to all respondents except respondent Jack Shields Bew; and it appearing to the Commission that it would not be in the public interest to adjudicate the issues raised as to this individual respondent:

It is ordered, That the complaint be, and it hereby is, withdrawn as to respondent Jack Shields Bew without prejudice to the right of the Commission to bring a new proceeding if the facts should so justify.

Complaint

IN THE MATTER OF

MAX ADELMAN FURS, INC., ET AL.

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

Docket C-1331. Complaint, May 7, 1968—Decision, May 7, 1968

Consent order requiring a New York City manufacturing furrier to cease misbranding and falsely invoicing its fur products.

COMPLAINT

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

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

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

Respondents are manufacturers of fur products with their office and principal place of business located at 330 Seventh Avenue, New York, New York.

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

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PAR. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled to show that fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Section 4(1) of the Fur Products Labeling Act.

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

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

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

(a) The term "blended" was used on labels as part of the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe the pointing, bleaching, dyeing, tip-dyeing, or otherwise artificial coloring of furs, in violation of Rule 19(f) of said Rules and Regulations.

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

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

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

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

1. To show the true animal name of the fur used in any such fur product.
2. To disclose that the fur contained in the fur product was bleached, dyed, or otherwise artificially colored, when such was the fact.

3. To show the country of origin of imported fur used in any such fur product.

PAR. 7. Certain of said fur products were falsely and deceptively invoiced with respect to the name or designation of the animal or animals that produced the fur from which the said fur products had been manufactured in violation of Section 5(b)(2) of the Fur Products Labeling Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products which were invoiced as "Sable" when, in fact, the fur contained in such products was not "Sable."

PAR. 8. Certain of said fur products were falsely and deceptively invoiced in that said fur products were invoiced to show that the fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 9. Certain of said fur products were falsely and deceptively invoiced with respect to the name of the country of origin of imported furs used in such fur products, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products invoiced to show the name of the country of origin of furs contained in such fur products as the United States when the country of origin of such furs was, in fact, Norway.

PAR. 10. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

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

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

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

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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 Max Adelman Furs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 330 Seventh Avenue, New York, New York.

Respondent Max Adelman 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 Max Adelman Furs, Inc., a corporation, and its officers, and Max Adelman, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into com-

merce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce; as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding any fur product by:

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

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

3. Setting forth the term "blended" or any term of like import on a label as part of the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe the pointing, bleaching, dyeing, tip-dyeing, or otherwise artificial coloring of furs contained in such fur product.

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

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

B. Falsely or deceptively invoicing any fur product by:

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

2. Setting forth on an invoice pertaining to such fur product any false or deceptive information with respect to the

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name or designation of the animal or animals that produced the fur contained in such fur product.

3. Representing, directly or by implication, on an invoice that the fur contained in such fur product is natural when such fur product is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

4. Misrepresenting in any manner, on an invoice, directly or by implication, the country of origin of the fur contained in such fur product.

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

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

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this Order to each of its operating divisions.

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

AMERICAN MOTORS CORPORATION ET AL.

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

Docket 7357. Complaint, Jan. 13, 1959—Decision, May 8, 1968

Order setting aside, pursuant to a decision of United States Court of Appeals, Sixth Circuit, 384 F. 2d 247, an amended order dated October 7, 1965, 68 F.T.C. 87, and dismissing the complaint therein.

ORDER DISMISSING COMPLAINT

Respondent having filed in the United States Court of Appeals for the Sixth Circuit a petition to review and set aside the amended order

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to cease and desist issued herein on October 7, 1965 [68 F.T.C. 87]; and that court on September 29, 1967 [8 S.&D. 556], having issued its opinion and order remanding the proceeding to the Federal Trade Commission for dismissal of the complaint; and the Supreme Court having denied a petition for a writ of certiorari on April 8, 1968, 390 U.S. 1012;

It is ordered, That the complaint in this matter be, and it hereby is, dismissed.

 IN THE MATTER OF

 AMERICAN SAVINGS LIFE INSURANCE COMPANY
 ET AL.

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

Docket C-1332. Complaint, May 8, 1968—Decision, May 8, 1968

Consent order requiring a Phoenix, Ariz., mail-order insurance firm to cease misrepresenting its insurance policies by using "Military Life Insurance Policy," "Military Department" and similar terms in its advertising, failing to disclose that the insurance offered is not government sponsored or approved, and using application forms which indicate the policy is already in force.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as that Act is applicable to the business of insurance under the provisions of Public Law 15, 79th Congress (Title 15, U.S. Code, Sections 1011 to 1015, inclusive), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that American Savings Life Insurance Company, a corporation, and Frihoff N. Allen, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent American Savings Life Insurance Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arizona, with its principal office and place of business at 3336 North 7th Street, in the city of Phoenix, State of Arizona.

Respondent Frihoff N. Allen is an officer of said corporation. He formulates, directs and controls the acts and practices of said corpora-

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tion, including the acts and practices hereinafter set forth. His address is the same as that of said corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged as insurers in the business of insurance in commerce, as "commerce" is defined in the Federal Trade Commission Act. As a part of said business in "commerce," said respondents have entered into insurance contracts with insureds located in various States of the United States other than the State of Arizona in which States the business of insurance is not regulated by State law to the extent of regulating the practices of said respondents alleged in this complaint to be illegal.

PAR. 3. Respondents, in conducting the aforesaid business, have sent and transmitted, and have caused to be sent and transmitted, by means of the United States mails and by various other means, letters, application forms, contracts, checks, completed preendorsed policy forms and papers and documents of a commercial nature from their place of business in the State of Arizona to purchasers and prospective purchasers located in various other States of the United States and have thus maintained a substantial course of trade in said insurance contracts, policies and other papers and documents of a commercial nature in commerce between and among the several States of the United States.

PAR. 4. Respondent American Savings Life Insurance Company is licensed, as provided by State law, to conduct the business of insurance only in the States of Arizona and Utah. Said respondent is not now and for some time last past has not been, licensed as provided by State law to conduct the business of insurance in any State other than the ones designated in this paragraph.

PAR. 5. Respondents have solicited business by mail in various States of the United States in addition to the States named in Paragraph Four above. As a result thereof, they have entered into insurance contracts with insureds located in many States in which they are not licensed to do business. Said respondents' business practices are, therefore, not regulated by State law in any of those States in which respondents are not licensed to do business as they are not subject to the jurisdiction of such States.

PAR. 6. In the course and conduct of the said business, and for the purpose of inducing the purchase of said policies, respondents have made numerous statements and representations concerning said policies by means of circular letters, policy forms, ownership certificates, allotment forms and other advertising material disseminated throughout various States of the United States. Three mailings were used to elicit purchases of policies. The original mailing of said advertising

material consisted of a transmittal window envelope with the name and address of the beneficiary as printed on the policy form plainly visible, as follows.*

The envelope described and pictured above contained a "Dear Parent" type form letter, what purported to be a valid completed insurance policy, a so-called ownership certificate and a postage paid self-addressed return envelope directed to the company's "Military Department" as shown below.*

The form letter was addressed to and contained the names and home address of the parents or other relatives of newly inducted servicemen. The name of the serviceman appeared as the "insured" on the face of the policy form, together with the name of the beneficiary, a policy number, dispatch date, face amount of the policy, and signatures and titles of the secretary and president of the corporation.

The second mailing did not involve the use of a preendorsed completed policy form but did include a transmittal envelope, "Dear Parent" letter, a return envelope bearing the designation "Military Department," and a copy of a form titled "Allotment Certificate," as shown below.*

The third mailing was substantially the same as the second except for a slight difference in the "Allotment Certificate" form.

PAR. 7. By and through the use of the aforesaid acts, practices, statements and representations and others of a similar nature and import, respondents have represented, directly or by implication:

1. That the insurance offered for sale by respondents was being made available to servicemen by the United States Government; or that said insurance had been approved, endorsed or recommended by the United States Government.

2. That the insurance offered for sale by respondents was initiated by the serviceman named as the "insured" therein or was issued with his knowledge and consent.

3. That the policy form offered and sent to the addressees was a valid, completed insurance policy in force at the time of its receipt.

4. That the insurance offered for sale by respondents would be issued regardless of the military status or duty assignment of the insured.

PAR. 8. In truth and in fact:

1. The insurance offered for sale by respondents was not being made available to servicemen by the United States Government nor had

*Pictorial material omitted in printing.

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said insurance been approved, endorsed or recommended by the United States Government.

2. The insurance offered for sale by respondents was not initiated by the serviceman named as the "insured" therein and it was not issued with his knowledge or consent.

3. The policy form offered and sent to the addressees was not an insurance policy in force at the time of its receipt; on the contrary, said policy form was merely a proposed or sample policy which did not become effective until the required premium and certificate were received from the addressee.

4. The insurance offered for sale by respondents was not issued regardless of the military status or duty assignment of the insured.

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

PAR. 9. In the conduct of its business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of insurance of the same general kind and nature as that sold by respondents.

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

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, were all to the prejudice and injury of the public and of respondents' competitors and constituted 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.

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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 Act, 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 American Savings Life Insurance Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arizona, with its principal office and place of business located at 3336 North 7th Street, in the city of Phoenix, State of Arizona.

Respondent Frihoff N. Allen 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 American Savings Life Insurance Company, a corporation, and its officers, and Frihoff N. Allen, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or indirectly through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of any insurance policy or policies, in commerce, as "commerce" is defined in the Federal Trade Commission Act, except in those states where respondents are licensed and regulated by State law to conduct the business of insurance, do forthwith cease and desist from:

1. Using the expressions "Special \$10,000 Military Life Insurance Policy," "Allotment Certificate," "Military Department,"

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"No Military Restrictions" or any other words or terms of similar import or meaning.

2. Using any letter or other solicitation material in contacting parents or other relatives of members of the Armed Forces of the United States which does not reveal in a prominent place, in clear language and in type at least as large as the largest type used on said material; (a) that the insurance offered for sale by respondents is in addition to, and separate from, the insurance made available to servicemen by the United States Government; (b) that said insurance has not been approved or recommended by the United States Armed Forces or any agency of the United States Government; and (c) that said insurance is being offered without the knowledge or consent of the serviceman who appears as the insured therein.

3. Using any policy form or similar document, prior to the receipt by respondents of the required premium, which contains the name of the insured, designation of the beneficiary, policy number, or signature of any representative of respondents; or which contains any indicia of an executed, inforce insurance policy.

4. Representing, directly or by implication, that the insurance offered for sale by respondents has been made available by, or has been approved, endorsed or recommended by, the United States Government or any agency or office thereof.

5. Misrepresenting in any manner the conditions or circumstances under which such insurance was initiated or issued.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

ARK-LA-TEX WAREHOUSE DISTRIBUTORS, INC., ET AL.

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

Docket 7592. Amended complaint, Mar. 8, 1969—Decision, May 9, 1968

Order terminating a proceeding against nine distributors of automotive parts for allegedly inducing discriminatory prices from their suppliers, principal respondent has been dissolved.

AMENDED COMPLAINT

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

PARAGRAPH 1. Respondent Ark-La-Tex Warehouse Distributors, Inc., hereinafter sometimes referred to as respondent Ark-La-Tex, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 310 Grand Avenue, Paris, Texas.

Respondent Ark-La-Tex, although using corporate form, is a membership organization, organized, maintained, managed, controlled and operated by and for its members. The membership of respondent Ark-La-Tex is composed of corporations, partnerships, and individuals whose business consists of the jobbing of automotive products and supplies.

Respondent Ark-La-Tex, as constituted and operated, is known and referred to in the trade as a buying group.

PAR. 2. The following respondent corporations and individuals, sometimes hereinafter referred to as respondent jobbers, constitute respondent Ark-La-Tex:

Respondent Automotive Appliance Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 1820 Canton Street, Dallas, Texas.

Respondent Auto Parts & Equipment Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oklahoma, with its principal office and place of business located at 18 North Ninth Street, Duncan, Oklahoma.

Respondent Ferguson Auto Supply Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 1710 Avenue J, Lubbock, Texas.

Respondent Harold, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its principal office and place of business located at 1112 Oak Avenue, Lafayette, Louisiana.

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Respondent Ada Motor Sales, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oklahoma, with its principal office and place of business located at 209 East Main, Ada, Oklahoma.

Respondent Standard Parts Co. of Houston, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 1602 McKinney, Houston, Texas.

Respondent Tri-State Automotive Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its principal office and place of business located at 953 Louisiana Avenue, Shreveport, Louisiana.

Respondent Westbrook Supply Co., Inc.,¹ is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Arkansas, with its principal office and place of business located at 3rd and Hazel Streets, Texarkana, Arkansas.

Respondents Rezi J. Cogdell, Louis W. Barnett,² and Eleanor R. Bradshaw are copartners doing business under the firm name and style of Cogdell Auto Supply Co., a partnership, with their office and principal place of business located at 301 Calhoun Street, Fort Worth, Texas.

Respondents Leo H. Bradshaw, Sr., and Eleanor R. Bradshaw are copartners doing business under the firm name and style of Cogdell Auto Supply Co., a partnership, with their office and principal place of business located at 1004 Franklin Avenue, Waco, Texas.

Respondents John A. Scarborough and R. Leon Hodges are copartners doing business under the firm name and style of Grand Auto Parts, a partnership, with their office and principal place of business located at 310 Grand Avenue, Paris, Texas.

Respondents Gene Mahanay and F. W. Mahanay are copartners doing business under the firm name and style of Mahanay Brothers Auto Parts, a partnership, with their office and principal place of business located at 215 Frisco Avenue, Clinton, Oklahoma.

Respondents H. R. Wilson, Patrick Ferchill, and Jack W. Durrett, Sr., are copartners doing business under the firm name and style of Mt. Pleasant Service Parts Company, a partnership, with their office and principal place of business located at 312-14 North Jefferson, Mt. Pleasant, Texas.

¹ The correct name of respondent is Westbrook Supply, Inc., as noted in the initial decision.

² The correct name of respondent is Louie W. Barnett, as noted in the initial decision.

Respondents Henry C. Nichols and Percy E. Nichols are copartners doing business under the firm name and style of Nichols Brothers, a partnership, with their office and principal place of business located at 310-12 Kansas, Chickasha, Oklahoma.

Respondents Wallace M. Fontaine and Patrick Ferchill are copartners doing business under the firm name and style of Reliable Motor Supply Company, a partnership, with their office and principal place of business located at 301 East Broadway, Gladewater, Texas.

Respondents Patrick Ferchill, Vic Ferchill, and Joe Ferchill are copartners doing business under the firm name and style of Reliable Motor Supply Company, a partnership, with their office and principal place of business located at 201 South High, Longview, Texas.

Respondents Sam Bonham and Charles Strickland are copartners doing business under the firm name and style of Sulphur Springs Parts Company, a partnership, with their office and principal place of business located at Main Street, Sulphur Springs, Texas.

Respondent Aubrey W. Byrd³ is a sole proprietor doing business under the firm name and style of Byrd Service Parts, with his principal office and place of business located at 605 East Erwin Street, Tyler, Texas.

Respondent Wilfred L. Smith is a sole proprietor doing business under the firm name and style of The Motor Supply, with his principal office and place of business located at 124 North Lafayette, Marshall, Texas.

Respondent W. E. Sells is a sole proprietor doing business under the firm name and style of Sells Auto Supply, with his principal office and place of business located at 519-23 East Kleberg, Kingsville, Texas.

Respondent James E. Walker is a sole proprietor doing business under the firm name and style of Walker Auto Parts, with his principal office and place of business located at 407-411 East Third Street, Big Spring, Texas.

Respondent Dee White is a sole proprietor doing business under the firm name and style of White Auto Supply Company, with his principal office and place of business located at 107 Charlevois Street, Henderson, Texas.

PAR. 3. The respondent jobbers set forth in Paragraph Two have purchased and now purchase in commerce from suppliers engaged in

³The correct name of respondent is William Aubrey Byrd, as noted in the initial decision.

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commerce numerous automotive products and supplies for use, consumption, or resale within the United States. Respondent jobbers and said suppliers cause the products and supplies so purchased to be shipped and transported among and between the several States of the United States from the respective State or States of location of said suppliers to the respective different States of location of the said respondent jobbers.

PAR. 4. In the purchase and the resale of said automotive products and supplies, respondent jobbers are in active competition with independent jobbers not affiliated with respondent Ark-La-Tex; and the suppliers selling to respondent jobbers and to their independent jobber competitors are in active competition with other suppliers of similar automotive products and supplies.

PAR. 5. Respondent Ark-La-Tex, since its formation in 1948, has been and is now maintained, managed, controlled, and operated by and for the respondent jobbers set forth in Paragraph Two and each said respondent has participated in, approved, furthered, and cooperated with the other respondents in the carrying out of the procedures and activities hereinafter described.

In practice and effect, respondent Ark-La-Tex has been and is now serving as the medium or instrumentality by, through, or in conjunction with, which said respondent jobbers exert the influence of their combined bargaining power on the competitive suppliers hereinbefore described. As a part of their operating procedure, said respondent jobbers direct the attention of said suppliers to their aggregate purchasing power as a buying group and, by reason of such, have knowingly demanded and received, upon their individual purchases discriminatory prices, discounts, allowances, rebates, and terms and conditions of sale. Suppliers not acceding to such demands are usually replaced as sources of supply for the commodities concerned and such market is closed to them in favor of such suppliers as can be and are induced to afford the discriminatory prices, discounts, allowances, rebates, and terms and conditions of sale so demanded.

Respondent jobbers demand that those suppliers who sell their products pursuant to a quantity discount schedule shall consider their several purchases in the aggregate as if made by one purchaser and grant quantity discounts, allowances, or rebates on the resultant combined purchase volume in accordance with said suppliers' schedule. This procedure effects a discrimination in price on goods of like grade and quality between respondent jobbers and competing independent jobbers whose quantity discounts, allowances, or rebates from such suppliers are based upon only their individual purchase volumes. From

other suppliers the respondent jobbers demand the payment or allowance of trade discounts, allowances, or rebates which such suppliers do not ordinarily pay or allow to jobber customers. This procedure effects a discrimination in price on goods of like grade and quality between respondent jobbers and competing independent jobbers who are not afforded such trade discounts, allowances, or rebates.

When and if a demand is acceded to by a particular supplier, the subsequent purchase transactions between said supplier and the individual jobber respondents have been and are billed to, and paid for through, the aforesaid organizational device of respondent Ark-La-Tex. Said corporate organization thus purports to be the purchaser when in truth and in fact it has been and is now serving only as agent for the several respondent jobbers and as a mere bookkeeping device for facilitating the inducement and receipt by the aforescribed respondent jobbers of the price discriminations concerned.

PAR. 6. Respondents have induced or received from their suppliers, in the manner aforescribed, favorable prices, discounts, allowances, rebates, terms and conditions of sale which they knew or should have known constituted discriminations in price prohibited by subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

PAR. 7. The effect of the knowing inducement or receipt by respondents of the discriminations in price as above alleged has been and may be substantially to lessen, injure, destroy, or prevent competition between suppliers of automotive products and supplies and between respondent jobbers and independent jobbers.

PAR. 8. The foregoing alleged acts and practices of respondents in knowingly inducing or receiving discriminations in price prohibited by subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, are in violation of subsection (f) of Section 2 of said Act.

Mr. Hugh B. Helm and Mr. Roy C. Palmer, Jr., supporting the complaint.

Fisher, McLaughlin & Harrison, Paris Texas, by *Mr. J. D. McLaughlin*, originally counsel for all respondents except respondents *Mr. Jack W. Durrett, Sr.*, *Mr. Dee White*, *Westbrook Supply, Inc.*, and *Mr. Leo H. Bradshaw, Sr.*

Goodwin & Cavin, Tyler, Texas, for respondent *Mr. Jack W. Durrett, Sr.*

Mr. Gordon R. Wellborn, Henderson, Texas, for respondent *Mr. Dee White*.

Smith & Sanderson, Texarkana, Arkansas, for respondent *Westbrook Supply, Inc.*

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INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

FEBRUARY 18, 1965

The Federal Trade Commission on September 22, 1959, issued its original complaint and on March 8, 1960, its amended complaint against the respondents herein, charging them with knowingly inducing or receiving discriminations in price prohibited by subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, in violation of subsection (f) of Section 2 of the Clayton Act, as amended. The complaint charged specifically that the respondent jobbers induced manufacturer-suppliers of automotive products and supplies to grant preferential prices to them for the commodities they purchased through their wholly owned and controlled organization, Ark-La-Tex Warehouse Distributors, Inc. The complaint alleged that the effect has been and may be to adversely affect competition between suppliers of automotive products and supplies, and between respondents and competing independent jobbers.

After the answers were filed, the case was tried and an initial decision was issued October 13, 1961, which included an order prohibiting respondents from inducing or receiving price discriminations. On June 5, 1963 [62 F.T.C. 1557], the Commission vacated the initial decision and remanded the case to the hearing examiner, ordering that the hearing examiner further consider this matter in the light of the opinion of the Court of Appeals in *Alhambra Motor Parts, et al. v. F.T.C.*, 309 F. 2d 213 (1962), which was issued subsequent to the initial decision herein, and that the new initial decision include specific findings and references to the evidence relied upon with respect to all issues, including five specified issues, and provide for the reception of such further evidence as may be necessary. A prehearing conference and hearings were thereafter held and the record was closed October 23, 1964.

Thereafter, proposed findings of fact, conclusions of law, and order were filed by the parties on December 10, 1964, and replies thereto were also filed. Such proposals, including supporting briefs, have been considered, and those findings not herein adopted either in form or in substance, are rejected as not being supported by the record or as involving immaterial matters, and the hearing examiner, having considered the entire record herein, makes the following findings of fact, conclusions drawn therefrom, and order :

FINDINGS OF FACT

In this industry, which includes respondents and is sometimes referred to as the automotive aftermarket industry, manufacturers gener-

ally sell to wholesalers, wholesalers sell to dealers, and dealers sell to motorists. There are two levels of wholesalers; one is the warehouse distributor who generally sells only to the other level of wholesalers known as jobbers, and both levels of wholesalers buy from manufacturers.

Respondent Ark-La-Tex Warehouse Distributors, Inc., hereinafter sometimes referred to as Ark-La-Tex, was a Texas corporation with its principal office and place of business located at 310 Grand Avenue, Paris, Texas. This corporation was dissolved on May 1, 1963, under the Texas laws and no longer exists. (Exhibit A to motion filed August 31, 1964.)

At the time of the issuance of the complaint in this proceeding, or for a substantial period of time after its organization, the members of Ark-La-Tex were as follows:

Respondent Automotive Appliance Company, Inc., a Texas corporation, with its principal office and place of business located at 1820 Canton Street, Dallas, Texas.

Respondent Auto Parts & Equipment Co., Inc., an Oklahoma corporation, with its principal office and place of business located at 18 North Ninth Street, Duncan, Oklahoma.

Respondent Ferguson Auto Supply Co., Inc., a Texas corporation, with its principal office and place of business located at 1710 Avenue J, Lubbock, Texas.

Respondent Harold, Inc., a Louisiana corporation, with its principal office and place of business located at 1112 Oak Avenue, Lafayette, Louisiana.

Respondent Ada Motor Sales, Inc., an Oklahoma corporation, with its principal office and place of business located at 209 East Main, Ada, Oklahoma.

Respondent Standard Parts Co. of Houston, Inc., a Texas corporation, with its principal office and place of business located at 1602 McKinney, Houston, Texas.

Respondent Tri-State Automotive Co., Inc., a Louisiana corporation, with its principal office and place of business located at 953 Louisiana Avenue, Shreveport, Louisiana.

Respondent Westbrook Supply, Inc. (erroneously named in the complaint as Westbrook Supply Co., Inc.), an Arkansas corporation, with its principal office and place of business located at Third and Hazel Streets, Texarkana, Arkansas.

Respondents Rezi J. Cogdell, Louie W. Barnett (erroneously named in the complaint as Louis W. Barnett), and Eleanor R. Bradshaw, copartners, doing business under the firm name and style of Cogdell

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Auto Supply Co., with their office and principal place of business located at 301 Calhoun Street, Fort Worth, Texas.

Respondents Leo H. Bradshaw, Sr., and Eleanor R. Bradshaw, copartners, doing business under the firm name and style of Cogdell Auto Supply Co., with their office and principal place of business located at 1004 Franklin Avenue, Waco, Texas.

Respondents John A. Scarborough and R. Leon Hodges, copartners, doing business under the firm name and style of Grand Auto Parts, with their office and principal place of business located at 310 Grand Avenue, Paris, Texas.

Respondents Gene Mahanay and F. W. Mahanay, copartners, doing business under the firm name and style of Mahanay Brothers Auto Parts, with their office and principal place of business located at 215 Frisco Avenue, Clinton, Oklahoma.

Respondents H. R. Wilson, Patrick Ferchill, and Jack W. Durrett, Sr., copartners, doing business under the firm name and style of Mt. Pleasant Service Parts Company, with their office and principal place of business located at 312-14 North Jefferson, Mt. Pleasant, Texas.

Respondents Henry C. Nichols and Percy E. Nichols, copartners, doing business under the firm name and style of Nichols Brothers, with their office and principal place of business located at 310-12 Kansas, Chickasha, Oklahoma.

Respondents Wallace M. Fontaine and Patrick Ferchill, copartners, doing business under the firm name and style of Reliable Motor Supply Company, with their office and principal place of business located at 301 East Broadway, Gladewater, Texas.

Respondents Patrick Ferchill, Vic Ferchill, and Joe Ferchill, copartners, doing business under the firm name and style of Reliable Motor Supply Company, with their office and principal place of business located at 201 South High, Longview, Texas.

Respondents Sam Bonham and Charles Strickland, copartners, doing business under the firm name and style of Sulphur Springs Parts Company, with their office and principal place of business located at Main Street, Sulphur Springs, Texas.

Respondent William Aubrey Byrd (erroneously named in the complaint as Aubrey W. Byrd), a sole proprietor, doing business under the firm name and style of Byrd Service Parts, with his principal office and place of business located at 605 East Erwin Street, Tyler, Texas.

Respondent Wilfred L. Smith, a sole proprietor, doing business under the firm name and style of The Motor Supply, with his principal office and place of business located at 124 North Lafayette, Marshall, Texas.

Respondent W. E. Sells, a sole proprietor, doing business under the firm name and style of Sells Auto Supply, with his principal office and place of business located at 519-23 East Kleberg, Kingsville, Texas.

Respondent James E. Walker, a sole proprietor, doing business under the firm name and style of Walker Auto Parts, with his principal office and place of business located at 407-411 East Third Street, Big Spring, Texas.

Respondent Dee White, a sole proprietor, doing business under the firm name and style of White Auto Supply Company, with his principal office and place of business located at 107 Charlevoix Street, Henderson, Texas. (Answers, CXs 4, 602.)

Ark-La-Tex was maintained, managed, controlled, and operated by and for the members above-named, and each member actively participated in, approved, furthered, and cooperated with the other members in carrying out the acts and practices hereinafter found which were knowingly designed and intended to induce the granting of discriminatory and illegal prices, discounts, allowances, rebates, terms, and conditions of sale to the members. Such participation included service as officers and directors of Ark-La-Tex and as members of various committees of said group organization. (CXs 4-29-C; Tr. 19, 112, 595, 821, 835.)

At all times, the jobber-members had complete control of their central organization, Ark-La-Tex. Each member of Ark-La-Tex was a director of Ark-La-Tex, and all of the business of Ark-La-Tex was conducted by its board of directors. The membership, as a whole, approved the acceptance of new lines of merchandise and the terms and conditions with respect thereto; and approved the admission of new members. The members retained the right to withdraw from the group at any time and to dissolve the corporation. The members of Ark-La-Tex were corporations, partnerships, and individuals whose business consisted principally of the jobbing of automotive products and supplies. Ark-La-Tex, as constituted and operated, was known and referred to in the trade as a buying group. (CXs 1, 2, 9, 172-C.)

The members of Ark-La-Tex purchased in interstate commerce from suppliers engaged in interstate commerce numerous automotive products and supplies for resale within their trade areas. (CXs 36-143, 144-50, 601, 608.) One situation which shows that the members were, in fact, the buyers from suppliers rather than Ark-La-Tex, and that Ark-La-Tex, the members of Ark-La-Tex, and the suppliers all recognized this fact, was a dispute which arose regarding the acceptance of a new group member as a customer of one of the suppliers. In a

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letter from the supplier to Ark-La-Tex, dated March 11, 1954, it was stated:

Acceptance of a new group member is at our discretion, and until we can talk with the Ferguson Auto Supply, we will not accept Ark-La-Tex purchase orders for this new member. (CX 183-A.)

In a letter of March 16, 1955, the member wrote to this supplier:

Enclosed is our signature on your form #4427.

We want to protest again the fact that we are not allowed to buy through Ark-La-Tex Warehouse Distributors, Inc., our buying group.

Your line is included in our group and we are buying your merchandise and have been for years. There is no real reason why we should not be allowed to buy through our group in order to obtain the better rebates that are extended to others. (CX 183-B.)

On March 18, 1955, the president of Ark-La-Tex wrote to this supplier:

I have a copy of the letter Mr. Fred Pinkston, of Ferguson Auto Supply, Lubbock, Texas, wrote you on March 16, with reference to buying Federal-Mogul through Ark-La-Tex.

As you know, Mr. Pinkston has been a member of our organization for quite some time, and I am at a loss to understand why you do not honor Ark-La-Tex purchase orders issued by him.

Since I am completely in the dark on this situation, I shall appreciate your bringing me up to date. (CX 183-C.)

The members and suppliers caused the automotive products and supplies, so purchased, to be shipped and transported among and between the several States of the United States from the respective State or States of location of the suppliers to the respective different States of location of the members. (CXs 5, 150.)

The members of Ark-La-Tex, in the purchase and resale of automotive products and supplies, were in active and substantial competition with other corporations, partnerships, firms, and individuals who were also engaged in the purchase and resale of such automotive products and supplies of like grade and quality, in interstate commerce, which automotive products and supplies had been purchased from the same and competing sellers. It is apparent from the nature of the automotive jobbing business and from the testimony of jobbers that automotive jobbers located in the same towns and even those located in cities as large as Dallas are in competition with each other in such towns and cities selling to dealers and fleets. (Tr. 129, 599, 648, 704, 754, 782, 820, 1503, 1548.) The suppliers selling to the members and to their competitors were also in active and substantial competition with other suppliers of like or similar automotive products and supplies in interstate commerce. (Tr. 212, 368, 445, 537, 585.)

The member-owners organized, maintained, controlled, and operated Ark-La-Tex for the purpose of inducing the granting or allowance of lower and more favorable prices by manufacturers and sellers of automotive products and supplies. It was a membership corporation serving only members. Participation of the members in the net income of Ark-La-Tex was based on a percentage of their individual purchases through the group organization. (CX 2; Tr. 1241.)

Ark-La-Tex had no capital stock, and the purpose of its organization was not to make a profit as a corporation but, as stated in the bylaws, "The purpose of this association shall be to purchase from manufacturers goods, wares and merchandise for such of its members who desire the same, in order to receive quantity-purchase discounts or prices." It was referred to in its bylaws as an association and was referred to by its members as an association, and its directors were referred to as members. (CXs 1, 2.) The ownership of Ark-La-Tex was not a transferable asset of its members, and membership in Ark-La-Tex was not subject to sale or transfer. (CX 2-A.)

The members paid an entrance fee, which was sometimes referred to as a "deposit," and such funds were used by Ark-La-Tex to pay for the products ordered by its members. One result of this method of inventory financing was that the products ordered by the members were paid for in advance. (CX 2-F.)

In accordance with its bylaws, Ark-La-Tex did not order products except upon previous order from its members, until after it had established a warehouse. After it commenced warehousing products, some orders were sent by Ark-La-Tex to the suppliers. (CX 2-I.) Ark-La-Tex did not enter into a contract for the purchase of products from suppliers unless at least 75 percent of its members voted to accept the contract and unless at least 75 percent of its members voted to support the line. Ark-La-Tex did not enter into contracts until it had the agreement just stated (CX 2-D), and, in accordance with the bylaws, the members became bound by such contracts. (CX 2-I.) Ark-La-Tex did not deal with or sell to any jobbers except its own member-owners. (Tr. 149, 1812.)

Certain suppliers granted annual volume discounts to jobber-customers. At the end of the year a discount was rebated to these customers based on their volume of purchases during the preceding year. It had been one of the original purposes in organizing Ark-La-Tex to enable its members to receive the benefit of the aggregate quantity of purchases made by all of its members from suppliers who granted volume discounts or who could be persuaded to grant such discounts. (CX 2-A.) Through the operation of Ark-La-Tex as their buying

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agent, the members were granted a volume discount by certain suppliers based on the total volume of purchases of all the members. This percentage discount was greater than the percentage discount which would have been granted by the suppliers based on the individual volume of purchases made by each member and was greater than the percentage discounts granted to independent jobbers who competed with the members of Ark-La-Tex. (CXs 79, 127, 150-A to 150-Z-3, 151, 276-79; Tr. 105.)

It was the regular procedure for the members, acting through Ark-La-Tex, to either notify or allow competing manufacturers of various lines of automotive products and supplies to submit prices and to appear before the members of the group. The so-called "product committee" of Ark-La-Tex first investigated the lines. If the lines were acceptable to this committee, it related its approval to the president of Ark-La-Tex, who in turn, notified the suppliers to appear before the group members and explain their group deals. The members then considered the offers and voted to accept certain of the lines to the exclusion of the lines of these manufacturers' competitors. A majority vote of 75 percent was necessary before the lines were approved and adopted as group lines. Although it was not a rigid requirement that the members handle all of the group lines, in actual practice almost all of the members of the group purchased and sold the particular manufacturers' lines accepted and handled by the group. (CXs 6-29.)

When and if a demand was acceded to by a particular supplier, the subsequent purchase transactions between the supplier and the individual members were billed to and paid for through the organizational device of Ark-La-Tex which purported to be the purchaser, when in fact it had been, and was, serving only as agent for the several members and as a device for facilitating the inducement and receipt by the members of the price discriminations concerned. In effect, the members were pooling their bargaining power to obtain better deals than they could obtain separately. (CXs 1, 2.)

The members ordered the lines, which were billed to Ark-La-Tex, from their suppliers by using a standard form of order blank. The suppliers granted to the respondents discounts and rebates on their purchases in various ways. Some suppliers deducted the discount and billed Ark-La-Tex at "net price"; some gave the discounts on the face of the invoice; and some allowed rebates at various intervals of time. Ark-La-Tex, in turn, billed its members monthly and remitted the rebates due the members semiannually. (CXs 2, 3, 35; Tr. 50-60, 91, 103, 1228.)

After a seller's line was accepted by Ark-La-Tex, notice was sent to all members giving full information as to the contract terms agreed upon. These notices were in the form of "Approval Sheets" which were supplied to the members. Each member was supplied with a discount book in which all these group arrangements were kept. When purchasing lines not handled by Ark-La-Tex, the members dealt directly with the suppliers. (CXs 36-143, 185-C; Tr. 45, 72, 79, 113, 124, 625, 772, 799, 1166, 1186, 1199, 1218.)

There were approximately 115 suppliers that sold the group lines to respondents, and the purchases of the members of group lines through or from Ark-La-Tex were substantial. (Tr. 1211.) The rebates and discounts received from the various suppliers by respondents on these purchases were also substantial. For the years 1955 through 1960, they were as follows:

Years	Group purchases	Group rebates in dollars	Group rebates as percentage of purchases
1955.....	\$696, 157. 59	\$87, 713. 58	12. 6
1956.....	704, 484. 60	86, 091. 65	12. 2
1957.....	759, 203. 67	103, 235. 72	13. 6
1958.....	1, 057, 324. 60	147, 538. 42	13. 9
1959.....	1, 515, 597. 91	222, 623. 95	14. 6
1960.....	1, 443, 360. 12	219, 498. 88	15. 2

(CXs 30-4, 145-50-A, 597, 599, 604.)

The figures for several months of 1961 showed a comparable volume and percentage rebate. (CXs 607-09.)

A substantial number of lines accepted by the group were not stocked in the group warehouse. When a member wished to purchase products from the warehouse, an order was sent to Ark-La-Tex, which either procured the merchandise from the supplier or filled the order from its own warehouse stock. When a delivery had been made, Ark-La-Tex billed the member receiving the merchandise. Many suppliers also "drop shipped" directly to the members. Approximately 48 percent of the members' purchases through Ark-La-Tex were "drop shipped" to the members. Each member settled monthly with Ark-La-Tex for his own individual purchases. The group office, in turn, made monthly settlements with the suppliers for the aggregate purchases of all members and semiannually distributed to the members all discounts and rebates received, less operating expenses, in proportion to

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the amount of each member's individual purchases. (CXs 2, 3; Tr. 50-58, 91-94, 147, 1226, 1241.)

The members demanded that those suppliers who sell their products pursuant to a quantity discount schedule consider their several purchases in the aggregate, as if made by one purchaser, and grant quantity discounts, allowances, or rebates on the resultant combined purchase volume in accordance with said suppliers' schedules. This procedure effected a discrimination in price on goods of like grade and quality between members of Ark-La-Tex and competing independent jobbers whose quantity discounts, allowances, or rebates received from such suppliers were based upon only their individual purchase volumes. From other suppliers, the members demanded the payment or allowance of trade discounts, allowances, or rebates which such suppliers did not ordinarily pay or allow to jobber-customers. The members demanded that Ark-La-Tex be classified as a warehouse distributor. This procedure effected a discrimination in price on goods of like grade and quality between the members and competing independent jobbers who were not afforded such trade discounts, allowances, or rebates. (CXs 6-29.)

Almost all of the lines handled by Ark-La-Tex were purchased at the equivalent of warehouse distributor prices. (Tr. 1229.)

The volume rebate granted by certain suppliers to members was a retroactive volume rebate based upon the aggregate purchases of all the members. Typical of such practices was the agreement with Standard Motor Products, Inc., which generally maintained a sliding scale of volume rebates on net amount purchased per year as follows:

Under:	Percent
\$1,800.....	3
\$2,800.....	5
\$4,200.....	10
\$7,200.....	12
\$9,000.....	13
\$12,000.....	15
\$25,000.....	16
\$50,000.....	17
\$75,000.....	18
\$100,000.....	20

In the case of Ark-La-Tex, these rebates were not based on the purchases of the individual member, but instead were based upon the total purchases of all the members of the group organization. (CXs 273-4, 276-8.)

When Ark-La-Tex made payment to this supplier for purchases made during the month by the members, it was permitted to deduct the maximum rebate of 20 percent on paying the invoices. While the aggregate purchases of the members reached the maximum volume of

\$100,000 required for the 20 percent discount, no individual member purchased near this amount. In fact, in 1959 the purchases of only two members reached the 16 percent bracket, two reached the 15 percent bracket, one member earned no discount whatever, and yet all members received the maximum 20 percent volume rebate. In the same trading area there were competitors of respondent members purchasing merchandise of like grade and quality from Standard Motor Products, Inc., who received no discount, or a lower discount, based upon the actual amount of their own individual purchases as provided by Standard's volume rebate discount schedule. (CXs 276, 278: Tr. 463-502.)

Certain manufacturer-suppliers sold their products on a two-price basis. Jobbers were sold at a price that is generally termed as the jobber price. A discount of approximately 20 percent was offered to a class of customers generally termed warehouse distributors. Members of Ark-La-Tex, purchasing through Ark-La-Tex, purchased at a price approximately 20 percent lower than the normal jobber price, said price being termed the warehouse distributor price. (CXs 36-148, 150-A through 150-Z-3, 203, 231, 278-79, 284, 292, 626-1492.)

Independent jobbers, competing with members of Ark-La-Tex and purchasing products of like grade and quality as those purchased by members of Ark-La-Tex, purchased at the normal jobber price. Independent jobbers purchased said products at the jobber prices during the same time period that members of Ark-La-Tex purchased said products through Ark-La-Tex at 20 percent discount off the jobber prices. (CXs 202, 231, 256, 276-77, 285, 291, 294.)

One of the matters that was of concern to the Court of Appeals in the *Alhambra* case, which the Commission referred to in its remand order, was whether the jobber-members of the buying-group organization involved in that case were, in fact, the buyers from the manufacturers and were, accordingly, the recipients of the redistribution discount, or whether the group-buying organization should be considered under the statute to be the buyer. In this case, it is clear from the original plan of the buying organization, as well as the methods employed in its operation, that the members of the organization were the buyers. It is not necessary to disregard the fiction of the separate corporate entity of Ark-La-Tex, which could be done, because it is obvious that it was organized solely as a buying agent for the members. Originally, the orders were actually sent by the members to the suppliers and the goods were ordered in the name of the members. So by any standard, since the goods were bought by the members and the

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discriminatory discounts were paid to the members after subtracting expenses, it is clear that the members were, in fact, the buyers. (CX 2.)

Another issue which concerned the court in the *Alhambra* case was whether the price differentials before the court were cost justified within the meaning of the first proviso of Section 2(a) of the Clayton Act. In this case the costs to be compared are the costs of suppliers in manufacturing, selling, or delivering to independent jobbers who competed with the members of Ark-La-Tex and the costs incurred by these suppliers in selling the members of Ark-La-Tex. There is no indication that any goods were manufactured specially for either group of customers, since both purchased suppliers' regular lines. The evidence does not indicate any substantial difference in the costs of selling to the classes of buyers. In some instances it appears that the suppliers' salesmen called on the members less frequently than other jobbers, but this applied only to a few suppliers. The suppliers maintained sales representatives to call on members purchasing through Ark-La-Tex, and to call on direct-buying, competing jobbers. These sales representatives generally treated these two classes of customers about the same way. Since Ark-La-Tex did not employ salesmen, all sales work, stock checking, explaining, and other missionary work, that was done had to be done by the suppliers' salesmen who were in many instances also required to call regularly on Ark-La-Tex in Paris, Texas, as well as to attend to the sales and promotional meetings held for the members of Ark-La-Tex. (Tr. 1631, 1701-03, 1756, 2006.)

Respondents contend that the furnishing of catalogs to the group members through the group-buying organization resulted in a savings. Ark-La-Tex neither printed nor caused to be printed any price lists or catalogs for its manufacturer-suppliers' products. All price lists and catalogs relating to products that members purchased through Ark-La-Tex were provided by the manufacturer-suppliers. In many cases the manufacturer-suppliers distributed the price lists and catalogs directly to members of Ark-La-Tex. (Tr. 672, 1635, 1703-04, 1756, 1801-04, 1857, 2007.)

It is contended with regard to the portion of purchases which was warehoused by Ark-La-Tex that such warehousing resulted in a savings to suppliers as opposed to shipments made directly to the independent jobbers. While it might appear at first blush that this is true, an analysis of the jobber agreements with suppliers, in the record, will show that when the jobber buys a smaller quantity than the seller will ship from the factory or when for some other reason the buyer desires not to receive direct shipments he pays a higher price—usually about 5 percent—for the privilege of buying through a factory

warehouse or through a commercial warehouse so that the granting of the privilege of buying in small quantities from the suppliers does not result in additional costs to the suppliers.

It is also contended that there was a difference in transportation costs to the suppliers, but if the independent jobber purchased sufficient quantities to obtain a supplier's prepayment of freight, which was in many instances 200 pounds, the independent jobber had the freight paid by the supplier the same as the members of Ark-La-Tex, regardless of whether the shipment went to the Ark-La-Tex warehouse or directly to the member. If the independent jobber bought less than the minimum amount required to obtain freight, then the jobber paid the freight which, of course, was not a cost to the supplier. (Tr. 1638-39, 1706-07, 1759-60, 1849-52, 1856.) Bills were sent to Ark-La-Tex and were paid by Ark-La-Tex, but copies of all bills were sent to the members who ordered the merchandise. It would thus appear that there was no saving in billing costs to the suppliers by virtue of the bills having been paid by Ark-La-Tex.

It appears from the foregoing that there is little, if any, difference between costs of selling and delivering to independent jobbers and to members of Ark-La-Tex. In any event, such difference could not approximate the discounts—usually about 20 percent—which were granted to the members of Ark-La-Tex. Even if all of the costs which Ark-La-Tex incurred, including its payments to members for attending meetings, could be considered as costs which suppliers would have borne but for the existence of Ark-La-Tex, the costs would still not have approached the amount of the discounts, because approximately 11 to 12 percent of net purchases was rebated to the members. There are references in this decision, and contentions by the parties, with respect to the similarity of the functions of Ark-La-Tex to the functions of a so-called legitimate warehouse distributor. This is brought about, in part, because many of the discounts received by the members of Ark-La-Tex were referred to by the suppliers and by the members as warehouse distributor discounts. It is also true that some of Ark-La-Tex's functions were similar to the functions of the warehouse distributor, but the relevant comparison of costs were those which the sellers incurred in dealing with independent jobbers and with respondents because the complaint alleged that the independent jobbers who pay higher prices were the competitors of respondents.

The members of Ark-La-Tex at all times had complete knowledge or had access to complete knowledge of every detail of the operations of Ark-La-Tex. Ark-La-Tex furnished each member with a monthly report, showing purchases of each member from each supplier. Twice

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a year Ark-La-Tex furnished each member with a statement showing Ark-La-Tex's expenses and each member's "profit" on the lines which the member had purchased through Ark-La-Tex during the preceding six-month period. Twice a year Ark-La-Tex rebated to each member the difference between the discriminatory and preferential warehouse distributor functional allowance granted to members on the product lines which they purchased through Ark-La-Tex and the normal jobber price, less the member's proportionate share of Ark-La-Tex's expenses. Each year Ark-La-Tex furnished each member with a certified audit of its operations for the year. (CXs 2-I; Tr. 92-94, 1785-87, 1880-84, 9092, 2075-76.)

From time to time each member of Ark-La-Tex was provided in writing with a complete description of the terms and conditions of sale on the items that the members purchased through Ark-La-Tex. The prices were described in terms of discounts off the jobber prices. Therefore, each member of Ark-La-Tex knew not only the prices paid on purchases through Ark-La-Tex, but also exactly how much more advantageous these prices were than the prices generally paid by non-affiliated, competing jobbers. (CXs 13-143; Tr. 79, 87, 88, 1810.)

Approximately 48 percent of the members' purchases through Ark-La-Tex did not pass through Ark-La-Tex's warehouse in Paris, Texas. These products were shipped directly from the suppliers to the members. This type of shipping is sometimes called drop shipping. Independent, competing, direct-buying jobbers were also shipped directly, although they could in some instances take delivery at a warehouse. Dealing with the members of Ark-La-Tex did not save these suppliers money in warehousing, handling, or shipping because Ark-La-Tex neither warehoused, handled nor shipped these products. (CXs 36-143, 604-06; Tr. 145-49, 1898.)

Ark-La-Tex did not maintain delivery trucks. All products purchased by the members through Ark-La-Tex were either drop shipped directly from the manufacturer or sent as commercial freight from Ark-La-Tex's building in Paris, Texas. (Tr. 19, 20, 1215, 31.)

The members of Ark-La-Tex were experienced operators in the automotive parts aftermarket and were generally aware of market conditions and prevailing jobber and dealer prices in their trade areas. The members knew that the prices they paid for the products purchased through Ark-La-Tex were lower than the prices charged the jobbers who competed with them. They knew this because they had previously purchased as jobbers themselves, because the catalogs they received from the suppliers showed current jobber prices, and because the presentations made to them by the suppliers' representa-

tives spelled out the advantages they were obtaining, which jobbers did not normally obtain. They knew that the quantity rebates allowed them were not based upon the quantities or other factors involved in a particular sale and were not based upon the quantities sold by them to other jobbers; but they were based on the combined dollar amount of all sales to all of them, because of their membership in Ark-La-Tex without any regard to the actual cost of production, sale, or delivery. The members knew or should have known that the discounts which they received, which were comparable to warehouse distributor discounts, did not represent a savings in like amount to the sellers, because some of them had previously bought comparable quantities directly from the same suppliers at jobber prices. They knew that the discounts which they received resulted in profits to warehouse distributors who received the same or comparable discounts after warehousing and sales expenses were incurred, and they knew that they had no sales expense. They knew that the penalty payment for drop shipments directly to them, instead of to the Ark-La-Tex warehouse, was frequently 5 percent, and they knew or should have known that the suppliers who charged this percentage considered this to approximate their difference in cost between selling and delivering to jobbers generally and to warehouse distributors. (CXs 6-29-C, 13-143, 172, 173, 181-83, 186-A; Tr. 87, 730, 1173, 1197, 1229-36, 1810-11, 2074-77; See *American Motor Specialties Co., Inc., et al. v. F.T.C.*, 278 F. 2d, 225 (2d Cir.).)

The automotive parts industry is a highly competitive business, involving small margins of profit. The net margin of profit of a number of member witnesses, as well as nonmember witnesses, who testified, was from 2 percent to 4 percent after taxes. (Tr. 48, 123, 133, 615, 645, 720, 734, 755, 840, 860, 892, 922.) The importance of the discriminatory prices allowed by the various suppliers is pointed up by the importance given by the witnesses to the 2 percent cash discount they received from their suppliers which, they testified, increased their margin of profit and reduced the cost of acquisition of their merchandise. This 2 percent discount was considered by the jobber witnesses to be an important factor in determining their profit margins, and they took advantage of this discount when their financial position permitted them to do so. Through the lower cost of merchandise resulting from such discriminatory prices, the members obtained a substantial competitive advantage over their competitors who sell the same or comparable merchandise in the same trade areas and who receive discounts or rebates based only upon their own individual purchases. (Tr. 47, 124, 133-34, 618, 770, 800, 817, 860, 892-93, 923, 957, 979, 1004, 1020, 1048, 1067, 1118.)

The Commission's reasoning *In the Matter of National Parts Warehouse et al.*, Docket No. 8039 [63 F.T.C. 1692, 1728], seems appropriate here. In that case the Commission said:

Those who receive price concessions of this magnitude can use the money they pocket in a host of ways, *e.g.*, by the opening of "branch" stores, to gain competitive advantages that cannot fail to make them, in the end, victors over their nonfavored competitors. The amended Clayton Act, unlike the Sherman Act, looks not merely to results that have already come to pass, but also to those that can be reasonably anticipated in the future. "The statute is designed to reach such discriminations 'in their incipiency,' before the harm to competition is effected. It is enough that they 'may' have the prescribed effect." *Corn Products Refining Co. v. Federal Trade Commission*, *supra*, 324 U.S. at 738. See also *Federal Trade Commission v. Morton Salt Co.*, 334 U.S. 37, 46 (1948); *Forster Mfg. Co., Inc.*, Dkt. 7207, Opinion of the Commission, 21-22 (January 3, 1963) [62 F.T.C. 888, 904]. We do not see how a price advantage of 11.43% in an industry where net profit margins rarely exceed 3 percent, could fail to injure competition over a sufficient period of time.

Ark-La-Tex performs several of the functions of an automotive warehouse distributor. It warehouses a portion of the products purchased by its members; this portion grew from nothing up to about 52 percent of the total volume of purchases. It also billed its members and collected from them.

The principal function of a warehouse distributor, for which suppliers usually pay about 20 percent, is the selling function, and this is a function which Ark-La-Tex did not perform. The sellers sold their product lines to the members of Ark-La-Tex at regular meetings, and the warehouse distributor discounts and quantity discounts were granted in anticipation of large sales. (Tr. 149, 1041, 1056, 1063, 1078, 1089, 1104, 1226, 1845, 1936, 1937, 1943, 1970, 2041, 2042, 2064; CXs 605, 606.)

One important function of a warehouse distributor was to keep up to date the catalogs used by the jobbers by making necessary changes in the products as well as in the prices. This function was not performed by Ark-La-Tex for its members.

Another function normally performed by a warehouse distributor was the delivery of goods from the warehouse to the jobber-customer's place of business. This function was not performed by Ark-La-Tex.

The importance of the functions performed by a warehouse distributor was shown by the fact that it normally spends approximately 17 percent of its 20 percent discount in selling and servicing its jobber accounts. The cost of operating Ark-La-Tex was about 8 percent; the remaining profit was paid to the members in the form of a rebate based on their volume of purchases. The effect of this was for the members to

receive an extra 11 or 12 percent discount from the suppliers which their jobber-competitors did not receive. (CXs 36-143, 144-50, 603, 608; Tr. 1042, 1064, 1090, 1825, 1964, 2054-57, 2075.) This extra discount, added to their normal profit, enabled the members to net a profit of 14 to 15 percent on their purchases through Ark-La-Tex, as compared to the net profit of 2 to 4 percent earned by their independent jobber-competitors. The result of the members' purchasing through Ark-La-Tex was that they were able to produce a net profit several times greater than that of their direct-buying jobber-competitors who purchased the same lines during the same period of time. (Tr. 6-7, 644, 701, 753, 807, 819, 859-60, 892-93, 922, 956-57, 979, 1388-91, 1447-50, 1506-08, 1548-50, 1600-02, 1660-62.)

Respondents have contended that since warehouse distributors own or have a major financial interest in jobbers, and sell through such jobbers, goods bought at warehouse distributor prices, to dealers at jobber selling prices (which apparently occurs in the trade areas of some of the respondent jobbers), the law should permit jobbers to own a warehouse distributorship like Ark-La-Tex and purchase the goods which they resell to dealers at warehouse distributor prices. The fault with this argument is that under normal circumstances warehouse distributors cannot lawfully buy at warehouse distributor prices the goods which they resell in competition with jobbers. (See *The Sherwin Williams Co., et al.*, 36 F.T.C. 25.)

Evidence received since the remand shows that the jobbers who were members of Ark-La-Tex became members or customers of a new organization which was incorporated under the name of Alto Warehouse, Inc. (Tr. 1807.) This organization acquired all of the assets of Ark-La-Tex for the sum of \$156,000, which sum was pledged by notes of Alto Warehouse, Inc., to each of the stockholders of Ark-La-Tex in the sum of \$6,500, bearing interest from September 1, 1961. While there may have been some changes, the members of Ark-La-Tex became customers or members of the new organization which apparently has been engaged in business as a buying organization for its members or customers and has operated in a manner similar to the manner in which Ark-La-Tex had been operated. The former manager and president of Ark-La-Tex became president of the new organization. (CX 1493.)

The questions on which the Commission requested specific findings are included generally in the foregoing in some detail, but additional findings are also made at this point.

1. Respondents' suppliers discriminated between respondents and other customers in the sale of goods of like grade and quality, and

such sales were sufficiently contemporaneous to be compared for purposes of determining whether the discriminations and proscribed effects on competition existed. The total purchases in selected cities were prepared by certain suppliers on an annual basis, but all the evidence points to the conclusion that jobbers maintained representative stocks to keep their dealer-customers adequately supplied with parts needed for popular makes of automobiles and trucks. (CXs 202, 231, 256, 276-77, 285, 291.)

2. Respondents and nonfavored jobber-customers of their suppliers competed in the sale of the products which were the subject of the alleged price discriminations. (Tr. 129, 704, 820, 1503, 1548; CXs 202, 231, 256, 276-77, 285, 291.)

3. The direct-buying, independent competitors of the members of Ark-La-Tex were not able to purchase the same products at the preferential prices charged the members, either from Ark-La-Tex or as a member of it or from a similar group or as member of a similar group. This is not to say, however, that it would have been impossible for these independent competitors to form a similar group or groups to buy directly from manufacturers at warehouse distributor prices or to join one of the buying groups already in existence. Some of these independents could have joined or formed such a group if they had chosen to do so, although it is doubtful that enough groups could have secured sources of supply to accommodate all of the independents. They were not able to purchase from Ark-La-Tex, because Ark-La-Tex acted only as an agent for its members in the purchase of merchandise and did not sell to others at any price. They could not have joined Ark-La-Tex, because Ark-La-Tex was selective about whom it admitted to membership, and its membership committee was composed of those located near the applicant. The original bylaws limited the membership in Ark-La-Tex to 20 members, but there was an amendment to the bylaws on February 19, 1955, abolishing this limitation, and in 1960 there were about 27 members. (CXs 5, 602.) During the period 1955 through 1959, only a few jobbers were admitted to membership in Ark-La-Tex. (Tr. 1802; CX 2-E.) There is no evidence from which it can be concluded that at least some of these independent jobbers could not have joined or formed a buying group which would have enabled them to purchase the same products at prices charged the respondents. There is testimony that some jobbers were not offered an opportunity to join a buying-group organization. (Tr. 1403-05, 1458, 1515, 1608, 1664.)

4. Ark-La-Tex was not a legitimate wholesale distributor entitled, as such, to a wholesale distributor discount, as the term is ordinarily used, because, as hereinabove found, it did not perform the usual function of selling. It was merely a sham and the alter ego of its jobber-members, who should be viewed as the actual purchasers of the products involved for purposes of Section 2(f) of the Robinson-Patman Act. (CXs 6-29.) It is clear from the articles of incorporation and by-laws of the organization that the sole reason for the existence of Ark-La-Tex was to induce lower prices for its members and it is clear from the entire record that it operated solely for this purpose. (CXs 1, 2.)

5. As hereinabove found, "respondents knew or should have known that the quantity and warehouse distributor discounts" induced and received by them could not be cost justified. (Tr. 87, 1810-11, 2074-77; CXs 13-143.)

CONCLUSIONS

1. The manufacturer-suppliers of members of Ark-La-Tex discriminated in price in the sale of goods of like grade and quality, in interstate commerce, by selling said goods to the members of Ark-La-Tex, through Ark-La-Tex, at lower prices than the prices charged direct-buying, competing jobbers, during the same period of time.

2. The effect of the receipt by the members of Ark-La-Tex of discriminatory prices was or may have been substantially to lessen, injure, destroy, or prevent competition between the members of Ark-La-Tex and competing, nonfavored jobbers in trade areas served by respondents. The evidence does not support the allegation that competition between suppliers was or may have been substantially affected.

3. The members of respondent Ark-La-Tex, purchasing through Ark-La-Tex, knew or should have known that the quantity discounts and warehouse distributor discounts induced and received by them were not differentials which made only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities were sold or delivered to them.

4. The acts and practices of respondent members of respondent Ark-La-Tex in knowingly inducing or receiving discriminations in price prohibited by subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, were in violation of subsection (f) of Section 2 of said Act, as amended.

5. Ark-La-Tex Warehouse Distributors, Inc., a corporation, was dissolved under the provisions of the laws of Texas, and a Certificate

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of Dissolution was issued May 1, 1963, by the Secretary of the State of Texas.

ORDER

It is ordered, That respondents Automotive Appliance Company, Inc., a corporation; Auto Parts & Equipment Co., Inc., a corporation; Ferguson Auto Supply Co., Inc., a corporation; Harold, Inc., a corporation; Ada Motor Sales, Inc., a corporation; Standard Parts Co., of Houston, Inc., a corporation; Tri-State Automotive Co., Inc., a corporation; Westbrook Supply, Inc., a corporation; Rezi J. Cogdell, Louie W. Barnett, and Eleanor R. Bradshaw, copartners doing business under the firm name and style of Cogdell Auto Supply Co. (Fort Worth); Leo H. Bradshaw, Sr., and Eleanor R. Bradshaw, copartners doing business under the firm name and style of Cogdell Auto Supply Co. (Waco); John A. Scarborough and R. Leon Hodges, copartners doing business under the firm name and style of Grand Auto Parts; Gene Mahanay and F. W. Mahanay, copartners doing business under the firm name and style of Mahanay Brothers Auto Parts; H. R. Wilson, Patrick Ferchill, and Jack W. Durrett, Sr., copartners doing business under the firm name and style of Mt. Pleasant Service Parts Company; Henry C. Nichols and Percy E. Nichols, copartners doing business under the firm name and style of Nichols Brothers; Wallace M. Fontaine and Patrick Ferchill, copartners doing business under the firm name and style of Reliable Motor Supply Company (Gladewater); Patrick Ferchill, Vic Ferchill, and Joe Ferchill, copartners doing business under the firm name and style of Reliable Motor Supply Company (Longview); Sam Bonham and Charles Strickland, copartners doing business under the firm name and style of Sulphur Springs Parts Company; William Aubrey Byrd, doing business under the firm name and style of Byrd Service Parts, a sole proprietorship; Wilfred L. Smith, doing business under the firm name and style of The Motor Supply, a sole proprietorship; W. E. Sells, doing business under the firm name and style of Sells Auto Supply, a sole proprietorship; James E. Walker, doing business under the firm name and style of Walker Auto Parts, a sole proprietorship; Dee White, doing business under the firm name and style of White Auto Supply Company, a sole proprietorship; and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering to purchase or purchase of any automotive products

or supplies in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

(1) Knowingly inducing or knowingly receiving or accepting, any discrimination in the price of such products and supplies, by directly or indirectly inducing, receiving, or accepting from any seller a net price which respondents know or should know is below the net price at which said products and supplies of like grade and quality are being sold by such seller to other customers who compete with respondents.

(2) Maintaining, operating, or utilizing any organization as a means or instrumentality to induce or receive discounts or rebates which result in a net price respondents know or should know is below the net price at which said products of like grade and quality are being sold by such seller to other customers who compete with respondents in the resale and distribution of such products.

For the purpose of determining "net price" under the terms of this order, there shall be taken into account discounts, rebates, allowances, deductions or other terms and conditions of sale by which net prices are effected.

It is further ordered. That the complaint be, and it hereby is, dismissed as to Ark-La-Tex Warehouse Distributors, Inc., a corporation, which has been dissolved.

ORDER TERMINATING PROCEEDING

Because of the pendency of related proceedings, the disposition of this case—in which the amended complaint was issued on March 8, 1960—was held in suspense by the Commission. It now appears that the principal respondent, Ark-La-Tex Warehouse Distributors, Inc., has been dissolved; that many of the individual respondents are deceased or no longer in business; and that the acts and practices challenged in the complaint have been discontinued with no likelihood of resumption. In these circumstances, no useful purpose would be served by continuation of the proceeding. Accordingly,

It is ordered. That this proceeding be, and it hereby is, terminated. Commissioner MacIntyre not participating.

Complaint

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IN THE MATTER OF

CAPITOL MANUFACTURING CORPORATION ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT*Docket 8748. Complaint, Nov. 21, 1967*—Decision, May 9, 1968*

Order requiring a Providence, R.I., distributor of watches to cease preticketing its watches with fictitiously high retail prices, simulating nationally known brand names, falsely guaranteeing, and concealing indicia regarding composition or quality of its products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Capitol Manufacturing Corporation, a corporation, and Louis Rafanelo, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Capitol Manufacturing Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its principal office and place of business located at 672½ Broadway, in the city of Providence, State of Rhode Island.

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in offering for sale, sale and distribution of watches, appliances, novelties and other articles of merchandise to retailers for resale to the public.

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

*Reported as amended by Hearing Examiner's order of Jan. 25, 1968, by changing the name of the respondent to "Capitol Manufacturing Corporation." The name of respondent was incorrectly stated as "Capital Manufacturing Corporation."

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

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their watches, the respondents have engaged in the practice of attaching, or causing to be attached, price tickets to their said watches upon which certain amounts are printed.

Respondents thereby represent, directly or by implication, that said amounts are a good faith estimate of the actual retail price, which does not appreciably exceed the highest price at which substantial sales of said watches are made in respondents' trade area.

PAR. 5. In truth and in fact, said prices appearing on the respondents' price tags are not their good faith estimate of the actual retail prices at which substantial sales of respondents' watches are and have been made in their trade area, but appreciably exceed the highest price at which substantial sales are made in respondents' trade area.

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

PAR. 6. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their watches, the respondents have used names which simulate the letters, sound and appearance of names of nationally known and advertised watches to describe the inexpensive watches sold and distributed by them in commerce.

Typical and illustrative of the aforesaid names are the following:

Hormelton
Grumen

PAR. 7. By and through the use of the above-quoted names and others of similar import not specifically set out herein, the respondents represented that their said watches were "Hamilton" and "Gruen" watches, manufactured by the Hamilton Watch Company, Lancaster, Pennsylvania and the Gruen Watch Company, 20 West 47th Street, New York, New York, respectively.

PAR. 8. In truth and in fact, respondents are not selling and distributing either "Hamilton" or "Gruen" watches, but an inexpensive pin-lever type of watch.

Therefore, the statements and representations as to the names of the watches as set forth in Paragraphs Six and Seven hereof were and are false, misleading and deceptive.

Complaint

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PAR. 9. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their aforesaid watches, the respondents have made numerous statements on guarantee certificates enclosed with their watches.

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

Electra Two Year Service Guarantee Certificate
Two Years
Service Guarantee

We guarantee this watch for 2 years from date of purchase against defects in material and workmanship. * * *

PAR. 10. By and through the use of the above-quoted statements and representations and others of similar import and meaning, but not specifically set out herein, the respondents represent, and have represented, directly or by implication:

a. That the guarantor is an organization identified as "Electra."

b. That all of the obligations and requirements under the terms of the guarantee are fully, satisfactorily and promptly performed by the guarantor.

c. That the said watches will operate properly for at least the two year period represented in the guarantee.

PAR. 11. In truth and in fact:

a. The guarantor is the respondent, so that respondent has thereby failed to identify the guarantor.

b. All of the obligations and requirements under the terms of the guarantee are not fully, satisfactorily and promptly performed by the guarantor.

c. Few, if any of said watches will operate properly for at least the two year period represented in the guarantee.

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

PAR. 12. Certain of the watches offered for sale and sold by respondents are in cases which consist of two parts, that is, a back and bezel. The back part has the appearance of stainless steel. The bezel is composed of base metal which has been treated or processed to simulate or have the appearance of precious metal. Such bezels are finished in a color simulating gold or gold alloy. Said watchcases are marked with the term "Base Metal" on the back which indicates that the entire watch is base metal. However, respondents have caused to be affixed to the backs of their watches gummed stickers which conceal the fact that the watchcases are composed of base metal.

PAR. 13. The practice of respondents in offering for sale and selling watches the cases of which are composed of base metal treated or processed to simulate or have the appearance of precious metal or stainless steel as aforesaid and concealing the fact that such watchcases are made of base metal by the use of gummed labels which cover the markings on the backs is misleading and deceptive and has a substantial tendency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that said bezels are composed of precious metal or stainless steel.

Therefore, the acts and practices set forth in Paragraph Twelve hereof, were and are false, misleading and deceptive.

PAR. 14. In addition to the aforesaid fictitious price tags, guarantees, representations of two year durability, metal content and brand names, respondents on the tags, labels and markings attached to said watches have imprinted phrases such as "Lifetime Mainspring," "Electronically Timed," "Swiss Precision Craftsmanship" and other similar expressions, and various numerals which, under the circumstances, could be taken for statements of the number of jewels in the watch. Respondents have thereby combined various representations so as to create, and have created, the impression that said watches are expensive, delicately designed, high quality, brand name watches.

PAR. 15. In truth and in fact, said watches are not expensive, delicately designed, high quality, brand name watches but, on the contrary, are cheap, nondescript, pin lever watches.

Therefore, the acts and practices set forth in Paragraph Fourteen hereof, were and are false, misleading and deceptive.

PAR. 16. By and through the use of the aforesaid acts and practices respondents place in the hands of jobbers, retailers, dealers and others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove alleged.

PAR. 17. In the conduct of their business, at all time mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms, and individuals in the sale of watches of the same general kind and nature as that sold by respondents.

PAR. 18. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

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PAR. 19. 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.

Mr. Harry E. Middleton, Jr., supporting the complaint.

Mr. Saul Friedman, and *Mr. Fergus J. McOsker*, Providence, R.I., for respondents.

INITIAL DECISION BY WILLIAM K. JACKSON, HEARING EXAMINER

JANUARY 31, 1968

This proceeding was commenced by the issuance of a complaint on November 21, 1967, charging the corporate respondent¹ and Louis Rafanelo, individually and as an officer of said corporation, with unfair and deceptive acts and practices and unfair methods of competition in commerce, in violation of Section 5 of the Federal Trade Commission Act by making certain false, misleading and deceptive claims in connection with the sale of watches and other merchandise sold by them.

The initial hearing scheduled in the complaint for January 8, 1968, was canceled by order of the undersigned on motion of counsel supporting the complaint due to the inability to obtain service of the complaint on respondents by registered mail. Personal service of the complaint was thereafter made upon said respondents on December 22, 1967.

Respondents have failed to file answer to the complaint within thirty (30) days, as set forth in the Notice served with said complaint and as provided by Section 3.12(a) of the Commission's Rules of Practice for Adjudicative Proceedings, and they are now in default under Section 3.12(c) of said rules.

By reason of such default, respondents have waived their right to appear and contest the allegations of the complaint and the hearing examiner under Section 3.12(c) of the rules is authorized, without further notice to the respondents, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions and order.

¹ The complaint as originally issued incorrectly spelled the name of the corporate respondent as "Capital Manufacturing Corporation." An Order issued by the Hearing Examiner of January 25, 1968, amended the complaint to substitute the correct name of the corporate respondent "Capitol Manufacturing Corporation" wherever the corporate name appeared in the complaint.

FINDINGS

1. Respondent Capitol Manufacturing Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its principal office and place of business located at 672½ Broadway, in the city of Providence, State of Rhode Island.

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

2. Respondents are now, and for some time last past have been, engaged in offering for sale, sale and distribution of watches, appliances, novelties and other articles of merchandise to retailers for resale to the public.

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

4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their watches, the respondents have engaged in the practice of attaching, or causing to be attached, price tickets to their said watches upon which certain amounts are printed.

Respondents thereby represent, directly or by implication, that said amounts are a good faith estimate of the actual retail price, which does not appreciably exceed the highest price at which substantial sales of said watches are made in respondents' trade area.

5. In truth and in fact, said prices appearing on the respondents' price tags are not their good faith estimate of the actual retail prices at which substantial sales of respondents' watches are and have been made in their trade area, but appreciably exceed the highest price at which substantial sales are made in respondents' trade area.

Therefore, the statements and representations as set forth in Finding 4 hereof were, and are, false, misleading and deceptive.

6. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their watches, the respondents have used names which simulate the letters, sound and appearance of names of nationally known and advertised watches to describe the inexpensive watches sold and distributed by them in commerce.

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Typical and illustrative of the aforesaid names are the following:

Hormelton
Grumen

7. By and through the use of the above-quoted names and others of similar import not specifically set out herein, the respondents represented that their said watches were "Hamilton" and "Gruen" watches, manufactured by the Hamilton Watch Company, Lancaster, Pennsylvania, and the Gruen Watch Company, 20 West 47th Street, New York, New York, respectively.

8. In truth and in fact, respondents are not selling and distributing either "Hamilton" or "Gruen" watches, but an inexpensive pin-lever type of watch.

Therefore, the statements and representations as to the names of the watches as set forth in Findings 6 and 7 hereof were and are false, misleading and deceptive.

9. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their aforesaid watches, the respondents have made numerous statements on guarantee certificates enclosed with their watches.

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

Electra Two Year Service Guarantee Certificate
Two Years
Service Guarantee

We guarantee this watch for 2 years from date of purchase against defects in material and workmanship. * * *

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

- a. That the guarantor is an organization identified as "Electra."
- b. That all of the obligations and requirements under the terms of the guarantee are fully, satisfactorily and promptly performed by the guarantor.
- c. That the said watches will operate properly for at least the two year period represented in the guarantee.

11. In truth and in fact:

- a. The guarantor is the respondent, so that respondent has thereby failed to identify the guarantor.
- b. All of the obligations and requirements under the terms of the guarantee are not fully, satisfactorily and promptly performed by the guarantor.

c. Few, if any, of said watches will operate properly for at least the two year period represented in the guarantee.

Therefore, the statements and representations as set forth in Findings 9 and 10 hereof were and are false, misleading and deceptive.

12. Certain of the watches offered for sale and sold by respondents are in cases which consist of two parts, that is, a back and bezel. The back part has the appearance of stainless steel. The bezel is composed of base metal which has been treated or processed to simulate or have the appearance of precious metal. Such bezels are finished in a color simulating gold or gold alloy. Said watchcases are marked with the term "Base Metal" on the back which indicates that the entire watch is base metal. However, respondents have caused to be affixed to the backs of their watches gummed stickers which conceal the fact that the watchcases are composed of base metal.

13. The practice of respondents in offering for sale and selling watches the cases of which are composed of base metal treated or processed to simulate or have the appearance of precious metal or stainless steel as aforesaid and concealing the fact that such watchcases are made of base metal, by the use of gummed labels which cover the markings on the backs, is misleading and deceptive and has a substantial tendency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that said bezels are composed of precious metal or stainless steel.

Therefore, the acts and practices set forth in Finding 12 hereof, were and are false, misleading and deceptive.

14. In addition to the aforesaid fictitious price tags, guarantees, representations of two year durability, metal content and brand names, respondents on the tags, labels and markings attached to said watches have imprinted phrases such as "Lifetime Mainspring," "Electronically Timed," "Swiss Precision Craftsmanship" and other similar expressions, and various numerals which, under the circumstances, could be taken for statements of the number of jewels in the watch. Respondents have thereby combined various representations so as to create, and have created, the impression that said watches are expensive, delicately designed, high quality, brand name watches.

15. In truth and in fact, said watches are not expensive, delicately designed, high quality, brand name watches but, on the contrary, are cheap, nondescript, pin-lever watches.

Therefore, the acts and practices set forth in Finding 14, hereof, were and are false, misleading and deceptive.

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16. By and through the use of the aforesaid acts and practices respondents place in the hands of jobbers, retailers, dealers and others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove found.

17. 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 watches of the same general kind and nature as that sold by respondents.

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

CONCLUSIONS

1. The aforesaid acts and practices of respondents, as herein found, 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.

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

3. The complaint herein states a cause of action and this proceeding is in the public interest.

ORDER

It is ordered. That respondents Capitol Manufacturing Corporation, a corporation, and its officers, and Louis Rafanelo, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of watches or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Disseminating or distributing any list, preticketed or suggested retail price that is not established in good faith as an honest estimate of the actual retail price or that appreciably ex-

ceeds the highest price at which substantial sales are made in respondents' trade area.

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

3. Using the names "Hormelton" or "Grumen" or any other names which simulate the letters, sound or appearance of the names of nationally known and advertised watches as descriptive of respondents' watches; or misrepresenting in any manner the make, model, brand, source, origin or manufacture of respondents' products.

4. Representing, directly or by implication, that any product is guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously set forth in immediate connection therewith.

5. Representing, directly or by implication, that respondents' products are guaranteed unless respondents fully, satisfactorily and promptly perform all of their obligations and requirements under the terms of the guarantee.

6. Representing, directly or by implication, that respondents' watches will operate properly for two years or for any other period of time: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that said watches will operate properly in normal use for the period of time represented.

7. Offering for sale or selling watches, the cases of which are in whole or in part composed of base metal which has been treated to simulate precious metal or stainless steel without clearly and conspicuously disclosing on such cases the true metal composition of such treated cases or parts.

8. Obliterating, concealing, or obscuring any markings or legends regarding the quality, composition, source or origin of respondents' products.

9. Representing, directly or by implication, that respondents' watches are expensive, high quality, delicately designed or brand name watches: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that said watches are of the value, quality, design or source represented.

10. Misrepresenting, in any manner, the grade, quality, class or type of any of respondents' products.

Complaint

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11. Placing in the hands of agents, salesmen, distributors or retail dealers, or any other person or persons, means and instrumentalities by and through which they may deceive or mislead the purchasing public as hereinabove prohibited.

FINAL ORDER

No appeal from the initial decision of the hearing examiner having been filed, and the Commission having determined that the case should not be placed on its own docket for review and that pursuant to Section 3.51 of the Commission's Rules of Practice (effective July 1, 1967) the initial decision should be adopted and issued as the decision of the Commission:

It is ordered, That the initial decision of the hearing examiner shall, on the 9th day of May, 1968, become the decision of the Commission.

It is further ordered, That Capitol Manufacturing Corporation, a corporation, and Louis Rafanelo, individually and as an officer of said corporation, shall, within sixty (60) days after service of this order upon them, file with the Commission a report in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF

C. ITOH & CO. (AMERICA) INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket C-1833. Complaint, May 9, 1968—Decision, May 9, 1968

Consent order requiring a New York City importer and distributor of fabrics to cease importing and selling any fabric so highly flammable as to be dangerous when worn.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that C. Itoh & Co. (America) Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Flammable Fabrics Act, as amended, and it appearing to the Com-

mission 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 C. Itoh & Co. (America) Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

The respondent is engaged in the importation, sale and distribution of fabric. Its office and principal place of business is located at 320 Park Avenue, New York, New York.

PAR. 2. Respondent, now and for some time last past, has sold and offered for sale, in commerce; has imported into the United States; and has introduced, delivered for introduction, transported, and caused to be transported, in commerce; and has 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, as amended, "fabric," as that term is defined in said Act, which fabric failed to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

PAR. 3. The aforesaid acts and practices of respondent were and are in violation of the Flammable Fabrics Act, as amended, 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 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 Flammable Fabrics 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

Decision and Order

73 F.T.C.

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 C. Itoh & Co. (America) Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 320 Park Avenue, in the city of New York, State of New York.

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

ORDER

It is ordered, That respondent C. Itoh & Co. (America) Inc., a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

(a) Importing into the United States;

(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;

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

any fabric which fails to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of the Order to each of its operating divisions.

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

Complaint

IN THE MATTER OF

DIVISION WEST CHINCHILLA CORPORATION ET AL.

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

Docket C-1334. Complaint, May 9, 1968—Decision, May 9, 1968

Consent order requiring an Omaha, Nebr., seller of chinchilla breeding stock to cease misrepresenting the profits to be made in chinchilla breeding, the fertility of its stock, and making other false claims.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Division West Chinchilla Corporation, a corporation, and Richard G. Wood and Craig Moody, individually and as officers of said corporation, and James R. Holyfield, individually and as a former officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Division West Chinchilla Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its principal office and place of business located at 7230 North Pershing Drive, Omaha, Nebraska.

Respondents Richard G. Wood and Craig Moody are individuals and officers of Division West Chinchilla Corporation. Respondent James R. Holyfield is an individual and former officer of Division West Chinchilla Corporation. Together they formulated, directed and controlled the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Respondents Richard G. Wood and Craig Moody continue to formulate, direct, and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. The address of respondents Richard G. Wood and Craig Moody is the same as that of the corporate respondent. The address of respondent James R. Holyfield is 908 Milford Lane, Louisville, Kentucky.

Complaint

73 F.T.C.

PAR. 2. Respondents are now, and for some time last past, have been engaged in the advertising, offering for sale, sale and distribution of chinchilla breeding stock to the public. Respondent James R. Holyfield is not engaged in the advertising, offering for sale, sale and distribution of chinchilla breeding stock to the public at the present time. He was engaged in the aforementioned activities at the time the acts and practices hereinafter set forth occurred.

PAR. 3. In the course and conduct of their aforesaid business, respondents caused, and for some time last past have caused, and respondents Richard G. Wood, Craig Moody, and Division West Chinchilla Corporation continue to cause, their said chinchillas, when sold, to be shipped from their place of business in the State of Nebraska to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned hereinafter have maintained, a substantial course of trade in said chinchillas in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the sale of their chinchillas, the respondents made, and respondents Richard G. Wood, Craig Moody, and Division West Chinchilla Corporation continue to make, numerous statements and representations by means of television broadcasts, direct mail advertising and through the oral statements and display of promotional material to prospective purchasers by salesmen, with respect to the rate of reproduction of chinchillas, the expected rate of return from their pelts, their quality, their hardiness and freedom from disease.

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

First of all, they deal only in high-quality chinchillas.

We have a complete program of service and herd-improvement. Service? An information bulletin delivered to your ranch every month for two years.

* * * the Chinchilla is a healthy, hardy, disease-free animal that needs only NUTRITION to build its immunity against disease.

* * * a herd purchased from Division West will be the finest grade of animals available for the price.

Well, after five years, successful ranchers can look forward to an income of six thousand dollars a year or more, increasing each year.

An average rate of growth is three offspring *per* female, *per* year. And it's the growth of the herd that's the key to making substantial profits in this business. Now under a good growth of herd program, it can be accomplished on a six-year plan. A chinchilla rancher starts out with six females plus one male, for a total of seven. Each female should average two litters per year with an

average of almost two offspring. So, at the end of one year the chinchilla rancher should have a herd of about 25 animals, including the newborn, of course, and the original herd. Now this number should include about sixteen females. During the second year, these females should produce approximately 33 new offspring. And this multiplying process continues into the third and fourth years until a real profit-making herd is acquired. Now you need only a relatively few males to increase the size of the herd, so excess males are sold for pelting profit. Now, in recent years, this average pelt price was well over \$21.00. So, for every one hundred males sold off each year it will bring over two thousand dollars to the rancher. So, after four or five years, the rancher who has followed this growth-of-herd program will be earning substantial annual income which will grow each year thereafter to just as much as he cares to make it.

* * * a successful rancher, just by building his herd for five years, will probably have an income of six thousand dollars a year * * * maybe more.

And space? Well, you probably have it already. Successful chinchilla ranches have been housed in basements * * * garages * * * closed-in porches * * * spare buildings and barns, and even your own home.

PAR. 5. By and through the use of said statements and representations made by respondents in their advertising and promotional material, and in oral representations made by their salesmen, and others of similar import and meaning, but not expressly set out herein, respondents represented, and respondents Richard G. Wood, Craig Moody, and Division West Chinchilla Corporation continue to represent, directly or by implication, that:

1. It is commercially feasible to breed and raise chinchillas in homes, basements, garages, closed-in porches, spare buildings or barns and large profits can be made in this manner.

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

3. Chinchillas are hardy animals, and are not susceptible to diseases.

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

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

6. The breeding stock of six females and one male chinchilla purchased from respondents will result in live offspring as follows: 18 the first year, 33 the second year, 69 the third year, 144 the fourth year, and 303 the fifth year.

7. Pelts from the offspring of respondents' breeding stock sell for an average price of \$21.60 per pelt.

8. A purchaser starting with six females and one male of respondents' chinchilla breeding stock will have an income of \$5,076 from the sale of pelts in the sixth year.

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9. Purchasers of respondents' breeding stock would receive service calls from respondents' service personnel four times a year for two successive years after purchase of the animals.

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

PAR. 6. In truth and in fact:

1. It is not commercially feasible to breed or raise chinchillas in homes, basements, garages, closed-in porches, spare buildings or barns and large profits cannot be made in this manner. Such quarters or buildings, unless they have adequate space and the requisite temperature, humidity, ventilation, and other necessary environmental conditions are not adaptable to or suitable for the breeding or raising of chinchillas on a commercial basis.

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

3. Chinchillas are not hardy animals and are susceptible to pneumonia and other diseases.

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

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

6. The initial chinchilla breeding stock of six females and one male purchased from respondents will not result in the number specified in subparagraph (6) of Paragraph Five above since these figures do not allow for factors which reduce chinchilla production such as those born dead or which die after birth, the culls which are unfit for reproduction, fur chewers and sterile animals.

7. A purchaser of respondents' chinchillas could not expect to receive an average price of \$21.60 for each pelt but substantially less than that amount.

8. A purchaser starting with six females and one male of respondents' breeding stock will not have an income of \$5,076 from the sale of pelts in the sixth year but substantially less than that amount.

9. Purchasers of respondents' breeding stock do not receive the represented number of service calls from respondents' service personnel but generally less than that number.

10. Purchasers of respondents' breeding stock are given little if any guidance in the care and breeding of chinchillas.

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

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

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

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

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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 Act, and that complaint should issue stating

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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 Division West Chinchilla Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its office and principal place of business located at 7230 North Pershing Drive, Omaha, Nebraska.

Respondents Richard G. Wood and Craig Moody are officers of said corporation and their address is the same as that of said corporation. Respondent James R. Holyfield is a former officer of said corporation and his residence address is 908 Milford Lane, Louisville, Kentucky.

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 Division West Chinchilla Corporation, a corporation, and its officers, and Richard G. Wood and Craig Moody, individually and as officers of said corporation, and James R. Holyfield, individually and as a former officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of chinchilla breeding stock or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that:

1. It is commercially feasible to breed or raise chinchillas in homes, basements, garages, closed-in porches, spare buildings, barns or other quarters or buildings or that large profits can be made in this manner: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented quarters or buildings have the requisite space, temperature, humidity, ventilation and other environmental conditions which would make them adaptable to and suitable for the breeding and raising of chinchillas on a commercial basis and that large profits can be made in this manner.

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

3. Chinchillas are hardy animals or are not susceptible to disease.

4. Purchasers of respondents' chinchilla breeding stock will receive select or choice quality chinchillas or any other grade or quality of chinchillas: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that purchasers do actually receive chinchillas of the represented grade or quality.

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

6. The number of live offspring produced per female chinchilla is any number: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented number of offspring are usually and customarily produced by female chinchillas purchased from respondents or the offspring of said chinchillas.

7. The breeding stock of six females and one male chinchilla purchased from respondents will produce live offspring of 18 the first year, 33 the second year, 69 the third year, 144 the fourth year and 303 the fifth year.

8. The number of live offspring produced by respondents' chinchilla breeding stock is any number: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented number of offspring are usually and customarily produced by chinchillas purchased from respondents or the offspring of said chinchillas.

9. Offspring of chinchilla breeding stock purchased from respondents will produce pelts selling for the average price of \$21.60 each.

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

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

11. A purchaser starting with six females and one male will have, from the sale of pelts, an annual income, earnings or profits of \$5,076 in the sixth year after purchase.

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

13. Purchasers of respondents' chinchilla breeding stock will receive service calls from respondents' service personnel four times a year for two successive years after purchase of the animals or at any other interval or frequency: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented number of service calls are actually furnished.

14. Purchasers of respondents' chinchilla breeding stock are given guidance in the care and breeding of chinchillas or are furnished advice by respondents as to the breeding of chinchillas: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that purchasers are actually given the represented guidance in the care and breeding of chinchillas or are furnished the represented advice by respondents as to the breeding of chinchillas.

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

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

C. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of the respondents' products or services and failing to secure from each such salesmen or other person a signed statement acknowledging receipt of said 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.

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IN THE MATTER OF

NED R. BASKIN DOING BUSINESS AS
HOLLYWOOD FILM STUDIOSMODIFIED ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT*Docket 4902. Complaint, Feb. 8, 1943—Decision, May 10, 1968*

Order modifying a cease and desist order dated January 26, 1951, 47 F.T.C. 913, which charged a Hollywood, Calif., mail-order seller of photo enlargements with certain false advertising practices by adding prohibitions against deceptively representing that customers will receive color enlargements without added cost, will receive two enlargements forthwith and unconditionally, and that cash will be paid for using customer photos in advertising.

CERTIFICATION OF RECORD,
REPORT, AND RECOMMENDATION

OCTOBER 17, 1967

This is a report, recommendation and certification of the record pursuant to order of the Federal Trade Commission dated December 30, 1966 [70 F.T.C. 1851], made in accordance with Section 3.28(b)(3) of the Commission's Rules of Practice effective August 1, 1963,¹ and referred to the undersigned on July 24, 1967. It deals with the question of whether or not the Commission's order to cease and desist, issued against respondent January 26, 1951² should be reopened and modified in the manner proposed.

This proceeding to reopen was commenced September 9, 1966, by the Commission issuing its Show Cause Order as to why the original proceeding should not be reopened and the outstanding order modified by adding certain paragraphs that were set forth in the order of Sep-

¹ Under rules effective July 1, 1967, 32 F.R. 8456, the pertinent section is § 3.72(b)(3). The rule § 3.28(b)(3) reads as follows:

"Whenever an order to show cause or petition to reopen is not opposed, or if opposed but the pleadings do not raise issues of fact to be resolved, the Commission, in its discretion, may decide the matter on the order to show cause or petition and answer thereto, or it may serve upon the parties a notice of hearing, setting forth the date when the cause will be heard. In such a case, the hearing will be limited to the filing of briefs and may include oral argument when deemed necessary by the Commission. When the pleadings raise substantial factual issues, the Commission will direct such hearings as it deems appropriate, including hearings for the receipt of evidence by it or by a hearing examiner. Unless otherwise ordered and insofar as practicable, hearings before a hearing examiner to receive evidence shall be conducted in accordance with Subparts C, D, E and F of these rules. Upon conclusion of hearings before a hearing examiner, the record and the hearing examiner's recommendations shall be certified to the Commission for final disposition of the matter."

² 47 F.T.C. 913.

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tember 9, 1966. On October 28, 1966 [70 F.T.C. 1131], the Commission issued its order reopening the original proceeding and modifying the order to cease and desist in the respects indicated in that order for it appeared at the time that respondent had not responded to the Show Cause Order within the time specified. Later, the Commission determined from a telegram from respondent dated November 9, 1966, that a response had, in fact, been made on September 22, 1966. The Commission, accordingly, treated respondent's telegram as a request to reconsider its October 23, 1966, order and it thereafter vacated and set aside that order. Complaint counsel then filed his answer on December 7, 1966. The Commission by its December 30, 1966 [70 F.T.C. 1851], order determined that hearings should be held for the purpose of receiving evidence in support of or in opposition to the question of whether or not the public interest requires that the Commission reopen its original proceeding and modify the issued order to cease and desist to read the same as the order proposed in the Commission's Show Cause Order of September 9, 1966.

The Hearings

Hearings were held at Los Angeles, California, on August 10 and 11, 1967. Sheldon Feldman acted as counsel supporting the complaint and respondent Ned R. Baskin appeared on his own behalf, without counsel. In addition to respondent, complaint counsel called three witnesses to testify: Robert D. Mott (Tr. 125-146)³ merchandising manager of the Los Angeles Better Business Bureau; Frank A. Orr, United States postal inspector (Tr. 147-154); and Don Mark Hicks, advertising representative for the T.V. Guide magazine (Tr. 157-197). Twenty-seven exhibits were marked on behalf of complaint counsel, and two on behalf of respondent.

At the conclusion of the hearing on August 11, 1967, both sides were given until September 18, 1967, to prepare and exchange proposed findings, conclusions and recommendations and until September 25, 1967, to serve and file with the hearing examiner such proposals and counterproposals (Tr. 217-220).

Complaint counsel submitted his proposals on September 13, 1967. Respondent filed counterproposals in the form of a letter dated September 20, 1967, with two testimonial letters as enclosures. All pro-

³ References are:

Tr. = Transcript page

CX = Commission Exhibit

RX = Respondent's Exhibit

CPF = Findings proposed by counsel supporting complaint

RPF = Findings proposed by respondent.

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posals not adopted in terms or in substance are denied as irrelevant, immaterial, or erroneous. At the conclusion of the case for complaint counsel a motion to dismiss was made and argued (Tr. 203-10). Decision was then reserved (Tr. 210). The motion is now denied.

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The record herein consists of 220 pages of stenographic transcript attested by Kenneth R. Feick, the shorthand reporter, and twenty-nine exhibits bound in accordance with the practice of the Records Section of the Commission. Such record as corrected by order of the hearing examiner dated September 14, 1967, and Proposed Findings are hereby certified to the Commission.

Basis for Recommendation

This report, recommendation and certification of the record is based on the entire record and, while principal items of evidence relied upon are cited, no effort has been made to cite all references possibly applicable. Consideration also has been given to the demeanor of the witnesses in determining their credibility. The following findings of fact, conclusions, and recommendations are made accordingly:

Findings of Fact

1. Respondent, Ned R. Baskin, resides at 5847 North Corteen Place, North Hollywood, California, and conducts his business as a photographer at 7021 Santa Monica Boulevard, Los Angeles, California (Tr. 5).
2. Respondent, as sole proprietor, does business under the name Hollywood Film Studios (Tr. 5, 198), but in some current advertisements he uses the name Hollywood Enlargements and the address 7471 Melrose Avenue, Hollywood, California, for the purpose of having certain mail delivered to the Dane Advertising Agency under an arrangement whereby the agency secures 40 cents for every order in response to advertising it places. This permits the agency to check the amount of fees owed to it (Tr. 198-200).
3. Respondent makes enlargements of photographs or negatives, has a hand-coloring service to tint black and white enlargements, and an arrangement to send color photographs to a photofinishing laboratory that specializes in color (Tr. 6).
4. The principal source of respondent's income is mail-order business (Tr. 6). He uses direct-mail solicitation and advertising in newspapers

and magazines (Tr. 6-7). Magazines are now his principal medium of advertising, but he uses some newspapers (Tr. 8). The magazines include movie magazines, McFadden Publications and Ideal Publications (Tr. 7). At one time, he used other media, including matchbook covers and radio (Tr. 7-8).

5. Respondent has been in the mail-order business for approximately 30 years (Tr. 6). Except for two periods, respondent has written the advertising copy or has overseen the writing of it, and in both cases has had authority to change the advertising copy (Tr. 9). The first such period was from 1948 to 1959, when he left the business to work in Chicago (Tr. 23-24). The second period was from December 1964 until September 10, 1965 (CX 10B, Tr. 9, 54), when Albert L. Wolins owned the business and gave full authority to his own advertising agency (Tr. 9).

6. In December 1964, respondent was adjudged a bankrupt and his business and equipment was purchased by Albert L. Wolins (Tr. 9-10). The business was later repurchased by respondent, who had remained as manager during Wolins' ownership. Wolins still owns the equipment, uses it under an arrangement to pay for it in installments. He has been unable to keep up promised payments (Tr. 11-12). Respondent is now responsible for formulating the acts and practices of the business (Tr. 11-12).

7. Respondent employs 10 persons in the business and receives an approximate average of 1,500 responses to his advertisements each week (Tr. 12-13). The responses consist of one or two pictures and ten cents or twenty cents or no money at all (Tr. 63). The pictures may be negatives, color slides or positives (Tr. 13-14).

8. Respondent was recently visited by an attorney named R. Keith Van Hoff and had previously been visited by Gerald Rosenblatt, both from the Federal Trade Commission (Tr. 14-15, 38-39). He was also visited by complaint counsel during the week preceding the hearing and was shown documents relating to a previous compliance hearing in federal court (Tr. 15, 34).

9. During the period from January 1951 to November 1951 respondent and his attorney William A. Romanek had correspondence with the Division of Compliance of the Federal Trade Commission. The letters and other documents which passed between that division and respondent or his counsel are contained in Commission Exhibit 1. (See Tr. 17-34. CX 1 was received solely for the purpose of showing the correspondence and other documents that were passed back and forth and it has not been considered in making this recommendation for any other purpose.)

10. On July 5, 1957, the United States District Court for the Northern District of Illinois Eastern Division issued an order holding respondent not in compliance with the cease and desist order of the Commission (CX 2B-F; see also Tr. 36-38 for limitation on receipt of exhibit and respondent's position regarding the same).

11. During 1965, respondent supplied Gerald Rosenblatt of the Federal Trade Commission with copies of literature utilized by respondent at about that time. These copies were an envelope and a business reply card (CX 3A-C); a form letter from Hollywood Studios (CX 4A-B); a rush order blank, a self-addressed envelope, and a card (CX 5A-C); and a form letter (CX 6). Respondent also supplied Mr. Rosenblatt with an advertisement (CX 7C-D; Tr. 44-48). This advertisement was used at the time and was placed by Mr. Wolins' agency when he owned the business (Tr. 46). The advertisement appeared to be respondent's advertising, but respondent could not identify the magazine in which it appeared (Tr. 49; see explanation of hearing examiner at Tr. 54).

12. Respondent also identified a card that he had used in his business in the past but was not currently using (CX 8; Tr. 48).

13. On August 27, 1965, respondent sent to complaint counsel a letter regarding compliance in which he enclosed a notice of bulk transfer from Mr. Wolins to himself (CX 10 A-B; Tr. 55). Respondent testified, however, that the statement he had made in his letter—"We are using the same advertising we have used the past 10 years"—was incorrect (Tr. 55-57). The advertising is changed and has different pictures (Tr. 57).

14. Respondent supplied Commission's attorney Keith Van Hoff with a current advertisement (CX 11), a form letter (CX 12 A-B), three form cards (CX 13 A-F), and a rush order blank (CX 14). These are currently in use (Tr. 60-61). When a customer responds to the advertisement (CX 11) he is sent routinely a form letter (CX 12 A-B) and also a business reply card (CX 13 A-F without the handwriting; Tr. 57-67). Sometimes the customer also receives another form letter (CX 14; Tr. 68). If the picture cannot be made into a good enlargement, as determined later by the laboratory man, a form (CX 5C) is sent to the customer (Tr. 69-70).

15. Respondent admitted that he had received a few complaints expressing surprise at the offer sent to sell coloring services (Tr. 71-72) and that he had used the card (CX 8) in the distant past (Tr. 72). It was his recollection that the card had not been used "in many many years" (Tr. 72). He agreed that the card (CX 8) could be used in connection with his current advertising (CX 11; Tr. 74-75). He argued that there was no reason to incorporate the information on Commission

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Exhibit 8 into Commission Exhibit 11 for a fraction of one percent of the viewers that possibly don't have a third grade education and do not understand the advertisement (Tr. 75). He added that "Lucky Strike don't tell you on television that if you buy their cigarettes, it may cause cancer. They just tell you it tastes good" (Tr. 75).

16. A bound volume of correspondence selected from the Commission's consumer complaint file by complaint counsel (CX 15) covering the period March 5, 1951, through May 24, 1967, was received, with respondent's acquiescence, for the limited purpose of indicating the dates on which respondent's advertisements and other forms were used and not for the truth of the statements of facts made by the complainants (Tr. 91, 92).

17. Respondent estimated that about 50 percent of the persons who responded to his advertisements did not use the business reply card (CX 13 A-F) and that about 30 percent returned the cards marked "Do not color" (Tr. 93). There is presently a block or square on Commission Exhibit 13 A-F for the customer to check to permit respondent on payment of \$100 each to use the pictures submitted, for advertising (CX 13 A-F; Tr. 92). A number of customers check this block. A number of customers check this block, although they must write in "Do not Color." However, respondent does not feel it is necessary to put a similar block or square for the customers to check if they do not desire to have the photographs hand colored (Tr. 93). If customers do not send in the card with their pictures, they automatically get a black and white enlargement, usually within two weeks, although it could be thirty days (Tr. 94-95). Respondent fell behind on one occasion when a camera breakdown occurred (Tr. 95). If the consumer moves there also may be further delay (Tr. 95).

18. Pictures entrusted to respondent are often irreplaceable (Tr. 95-96). Respondent offers two free enlargements to compete with the hundreds of thousands of drugstores (Tr. 97). Respondent claims that he gives to customers precisely what he advertises (Tr. 97) and, in return for the free enlargements, all he asks is the privilege of sending the customer the information regarding the hand-coloring service that he offers (Tr. 98-99). He does not feel it is necessary to show in his advertisement how much the coloring service will cost (Tr. 98).

19. Respondent does not send out pictures that have been hand colored unless the customer authorizes it in writing on a form like Commission Exhibit 13 A-F, because of Post Office regulations (Tr. 94). He sends out two, three, or four hundred c.o.d. packages with hand-colored enlargements per week at his peak (Tr. 100), and an average of 200 (Tr. 101). The price is \$2.50 per picture (Tr. 100). About 50

to 100 people pay in advance to save c.o.d. charges (Tr. 102). About 10 percent of the persons who are sent hand-colored pictures c.o.d. reject them (Tr. 103), and respondent recalled that rejections had at times run as high as 20 percent for various reasons (Tr. 103-04). In case of a rejection of a c.o.d., respondent returns the customer's original photographs and offers to sell the already produced hand-colored enlargements at a reduced rate (RX 1; Tr. 105-16).

20. Respondent testified that he did not intend to deceive his customers because a satisfied customer could be expected to return for many, many years (Tr. 105). He made changes in his advertisements because of the objections of the Division of Compliance of the Federal Trade Commission (Tr. 104).

21. The cost to respondent of making the "free" enlargements exceeds the handling charge in each case and where a negative has to be made the cost is greater than when the customer submits a negative (Tr. 107-12).

22. Respondent's literature (CX 12 B and also CX 15) has photographs of two children with a statement that they received \$100 each. The business reply card (CX 13 A-F) contains a box that, when checked, grants permission to respondent to use the photographs sent by the customer for advertising if \$100 is paid. The same photographs have appeared for many years and no one since that time has ever been paid \$100 (Tr. 113-15).

23. Respondent's reply cards (like CX 13 A-F) contain a box to indicate by a check what color of free frame is desired. Respondent produced 39 cards where colored photographs were not ordered showing the use customers made of this card. Of 39 such cards 15, although not ordering hand-colored photographs, checked the box. One card had written in handwriting "No Color, No Frames" (RX 2; Tr. 118-22).

24. The Los Angeles Better Business Bureau evaluates complaints received and processes them by asking the company complained about for an explanation. Then, the Bureau reports to complainant (Tr. 126, 130-31). It also receives inquiries from other better business bureaus (Tr. 131). In the past two and one-half years, the Los Angeles Better Business Bureau received between 30 and 35 complaints, which are more than the usual number in cases involving mail-order houses, that concerned the Hollywood Film Studios (Tr. 127); and it also received some inquiries from other bureaus (Tr. 131). Primarily, these came from out of the state (Tr. 126). The pattern of the complaints received by the Bureau was: a response to an advertisement for a specific service, a notification from the company complained about

of an additional offer of a service, a failure to respond to that offer, and a failure to receive the initial service (Tr. 127, 129-30, 133-34). The possibility exists that some of those complaints were because of the consumers' failure to state their names (Tr. 138-39) or because the consumers moved (Tr. 140). Some may also have been because of delay in the processing (Tr. 137-38). In the most recent case received by the Better Business Bureau, the complaint was concerning the quality of the color and the frame (Tr. 144-45). Although the witness for the Better Business Bureau originally testified that he uniformly received no response from the respondent (Tr. 134), later in his testimony, after looking at his file, he stated that it had received unsigned responses (Tr. 136). He estimated that, on the basis of cases had in the past, the complaints received constituted only one or two percent of the persons who had complaints to make (Tr. 128). Although he stated that the pattern did not vary in the case of Hollywood Film Studios (Tr. 133-34), the latest complaint differed from the pattern described in that it related to bad results (Tr. 144). Respondent in his case-in-chief explained that if a poor picture was sent to him, he could not improve it, and he used his form letter Commission Exhibit 6 to explain that to the customer (Tr. 211).

25. The United States Post Office Department has received 229 complaints about Hollywood Film Studios since January 1962 (Tr. 148). There is a pattern to these complaints (Tr. 148). The complainants thought that they were going to get free colored enlargements and free frames for the 20 cents they sent or that they were going to receive \$100 for use of the pictures they sent in (Tr. 149). Other complaints were that the colors were not in oils; that the frames were not the same as indicated in the advertising; or that they were not able to get back their negatives or to get the free enlargements promised by the advertisement (Tr. 149). Mr. Frank A. Orr, the experienced witness from the Post Office Department, estimated that there were about a hundred complaints that could be located, if all leads were developed, for every unsolicited complaint received (Tr. 151). The Post Office Department on June 12, 1963, transmitted to the Federal Trade Commission a letter of complaint, which included enclosures (Tr. 151-52; CX 16 A-G). This letter was received in evidence with the acquiescence of respondent (Tr. 153). Mr. Orr on questioning by respondent stated that he was sure respondent had authorization cards on file for all c.o.d. orders (Tr. 154) and that third-class mail was not forwarded but destroyed in the absence of instructions (Tr. 153).

26. Respondent used T.V. Guide magazine on one occasion. It is a national publication with 79 regional editions in every major market

where there are television stations with different programming (Tr. 157-59). A regional edition is circulated in the area covering the signal strength of the major television stations located there. Advertising is sold both nationally and by edition (Tr. 159-60). Similarly, there are two distinct sections of the book—one, the national editorial section and the other the local editorial and local programming section (Tr. 162).

27. Respondent through his advertising agency purchased space in four different regional editions of T.V. Guide (CX 17 A-D; Tr. 167-68). The same one-eighth of a page advertisement (CX 18), with the exception of a department or key number indicating the location of the advertisement, was inserted in the January 21st issue of T.V. Guide in the San Diego, California, Georgia, Iowa, and New York Metropolitan Area editions (Tr. 189-92; CX 17 A-D, CX 18). The total cost of the advertising was \$823 (Tr. 192). The cost of the one-eighth of a page insertion differed in the New York area from the other localities owing to the size of the circulation (Tr. 193-94).

28. T.V. Guide magazine has a regular procedure of handling complaints received from persons who have responded to advertisements (Tr. 172). Complaints first go to the director of advertising services at headquarters for the magazine (Tr. 171). He then forwards the complaint to the T.V. Guide office involved with instructions to check it out and to get a satisfactory answer to complainant. At the same time, the director of advertising acknowledges the complaint. The correspondence is retained in the normal course until the complaint is satisfied (Tr. 172). About 20 complaints regarding respondent were referred to the attention of T.V. Guide's Los Angeles representative, Don Mark Hicks (Tr. 175). Commission Exhibits 19-24 are correspondence forwarded to Mr. Hicks pursuant to the procedure above outlined (Tr. 172). These complaints were received in evidence as records kept by T.V. Guide in the regular course of business, not for the truth of the facts stated by the persons complaining, but for the fact that complaints had been made (Tr. 177-80). Following receipt of the documents, Mr. Hicks took up the matter with respondent and with his advertising agency. Mr. Baskin told Mr. Hicks that he had had equipment failure and that he would explain it to the complainants (Tr. 182). The T.V. Guide representative never received a copy of any letter of explanation and on one occasion he got a second complaint from the same complainant (Tr. 176-77). It was brought out by respondent on cross-examination that he had told the T.V. Guide representative his camera had to be sent to the manufacturer in Minneapolis and that it would take 30 days to get it back (Tr. 182). He also told the

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representative about the volume of response and the length of time it would take to get the material out (Tr. 183). Respondent had invited Mr. Hicks, the T.V. Guide representative, to visit the plant, but although Mr. Hicks said he would try to come, he never did (Tr. 183). He explained that he did not believe anything would be accomplished by such a visit (Tr. 185) and that the breakdown of the equipment had no bearing on the complaints received (Tr. 184, 186). This was respondent's first advertisement in T.V. Guide (Tr. 186, 211), but T.V. Guide was aware that respondent was advertising in McCall's magazine (Tr. 187). An advertisement in the McCall's July 1967 issue, which was substantially identical to Commission Exhibit 11, was identified by respondent and received in evidence (CX 26; Tr. 198). The representative for T.V. Guide recognized that it was possible, in cases where only one letter was received, that the person complaining later might have received all he was supposed to receive (Tr. 189). But Mr. Hicks could not estimate what response was to be expected (Tr. 195-96).

29. In his case-in-chief respondent testified that while he had had complaints from other publications, he had used such other publications, leaders in their fields, for over 27 years without ever having an experience such as the one he had with T.V. Guide (Tr. 211-12). When a communication from the National Better Business Bureau to the Federal Trade Commission (CX 27) was drawn to his attention, the respondent testified that he attempted to satisfy complainants by writing to them in handwriting and did not have time to send copies to the T.V. Guide and to the better business bureaus, nor did he desire to incur the expense of hiring an additional typist to take care of it (Tr. 215-16).

30. Respondent's advertising and the form letters and cards, which he has used during the past several years, have, except for changes not important here, followed the same pattern. (Compare CXs 3-7 E-D, inclusive, with CXs 11-14, inclusive, and CX 18. Compare Tr. 73, lines 9-10 with lines 14-19. See also CX 15 received for limited purpose; Tr. 87, lines 11-20; and CPF pp. 11-12.)

31. The basic plan through which respondent seeks to obtain responses is very similar to the plan found to be unlawful in the original proceeding. (See 47 F.T.C. 915-21, 923-26.) References to motion picture stars have been eliminated, but the new scheme of holding out possible use of submitted photographs for advertising at a fee of \$100 has been added (CXs 12 A-B, 13 A-F).

32. Respondent's recent advertising and the form letters and cards, which he used, are misleading in the following respects:

(a) The advertisement—that is the initial contact with the prospective customer—is calculated to lead the customer to believe that he will obtain color enlargements free, although read literally the advertisement does not so state (CXs 11, 18). It states in large print “GET 2 FREE ENLARGEMENTS of Your Favorite Photos, 5 x 7” Size.” Then it asks for two color or black and white photos or snapshots and says, “State color of hair, eyes, clothes, for prompt information for finishing, in color with FREE frames.” Respondent states that this means: you are to state this if you desire information. Readers, however, may well interpret it to mean: you are to give this information to us to use in finishing the free enlargements. The fact that color snapshots are solicited as well as black and white strengthens this impression.

(b) The form letter that respondent sends to the customer is also calculated to mislead. There is no mention at all of a charge on the face of the letter (CX 12 A). It merely asks for the return of the reply card enclosed and states, “If you do not wish your enlargements finished in color, mark card Do Not Color.” On the face of the letter in a handwritten postscript, respondent refers to the reverse side, to “a few pictures selected from our customers. These people received \$100 for the use of their picture. Your picture may also be selected, so be sure to return the enclosed card.” This “p.s.” directs the customer's attention away from the first paragraph of the reverse side (CX 12 B). Even this paragraph, however, does not state the charges, only “at very little cost” and “for the small charge we make.” The size of type used by the respondent captures the customer's interest and directs his attention to the photographs and testimonials on the reverse side.

(c) The form of business reply card (CX 13 A-F) enclosed with the form letter (CX 12 A-B) is likewise calculated to direct the customer's attention away from the fact that he is authorizing a charge for \$2.60. In a box at the top of the card, in large print with ample space between lines, the statement appears: “YOUR PICTURE IS BEING CONSIDERED TO BE USED IN OUR ADVERTISEMENTS. YOU WILL RECEIVE \$100 IF YOUR PICTURE IS SELECTED. CHECK BELOW AND RETURN.” At the bottom of the card there is a box that if checked gives respondent permission to use the picture for \$11. On the left in large type appears the word “FREE” followed by the headings “Frames with Colored Enlargements” and “Check Color You Wish.” Then, follows a statement in smaller type that describes the frames, and below this are two boxes

to be checked located opposite frame colors. All of these, plus the statement in an arrow directing attention to the file number, distract the customer's attention from the real reason for the card, which is the statement: "I Will Be Glad to Help with the Few Cents c.o.d. Fees as Well as \$2.60 Which Includes Artist's Labor for Each Oil Painting, Sent to me on Five Day Approval." This sentence in turn appears after another sentence which reads: "I Have Checked the Free Frame You Are to Include for the 'Deluxe' 5 x 7 Inch Enlargements That You Are Having Your Artist Hand Color in Natural Oil Colors." Thus, attention is directed away from the charge and toward the very dubious possibility of a payment of \$100 for use of the photographs submitted and toward the free frames.

33. Respondent had a number of complaints drawn to his attention, and at one time he had a card prepared to explain his advertisement. This card was to be used when complaints were received (CX 8). Thus, respondent knew that the literature he was using was being misinterpreted by prospective customers. Moreover, in a number of cases, prospective customers checked the free frame option when they did not order hand-colored photographs, so respondent could see that such customers had misunderstood the offer (Tr. 117-19). Respondent's apparent reasoning may be gleaned from two statements he made during questioning by the Hearing Examiner. Respondent, after making a critical statement of Lucky Strike advertisements, said, "But, as writing my advertising, I aim it at the average intelligence, which is the masses, and actual figures put out by mail order people, show the masses is less than fifth grade intelligence." (Tr. 87.) In the other passage, after stating that he must give a bargain to get people to send their pictures all the way to California when they could go to a drugstore or supermarket, he claimed that his advertisement was clear and that people got what was advertised. Then he said " * * * and that's the reason we do the business that we do, because there's certainly no shortage of drugstores across the United States and Canada" (Tr. 111-12). The impression created was that he was forced to use the type of advertising he did or he would not be able to get people to send their pictures to him rather than to the local drugstore and that anyone of fifth grade intelligence could understand the nature of his offer, so the fact that anyone else might misunderstand was unimportant.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction over respondent and the acts and practices herein described. Respondent's advertise-

ments and the literature used in connection therewith have been false and misleading as those terms are used in the Federal Trade Commission Act.

2. The changes in respondent's practices made following the decision of the Federal Trade Commission issued January 26, 1951, have not been sufficient to remedy the misleading character of his practices.

3. Respondent's current advertising and the current literature used in connection therewith are false and misleading within the meaning of Section 5 of the Federal Trade Commission Act.⁴

4. It is immaterial that respondent's business is not a profitable one or that on critical analysis his advertising supplies what is specifically offered, because the advertising and other literature used in connection therewith are misleading in character.

5. In order to prevent the misleading nature of respondent's practices it is necessary and in the public interest that the outstanding order of the Federal Trade Commission dated January 26, 1951, be reopened and modified to provide more specifically against the misleading practices that are continuing.

6. There has been no competent evidence offered at the current hearings sufficient to establish the necessity for clauses (b) and (c) of paragraph 1 of the further order proposed in the Show Cause Order, dated September 9, 1966 (p. 5). Accordingly, such clauses should be deleted and paragraphs (a) and (d) combined.

7. It was contemplated by paragraph 4 of said further order proposed by the order to show cause (p. 6) that other misrepresentations be prohibited. Accordingly, the misrepresentation in the advertisements utilizing the name Hollywood Enlargements and the misrepresentation by respondent that photographs sent free by him were being considered for use in his advertisements should be specifically prohibited. Moreover, the business reply card sent by respondent is so susceptible of misconstruction in its present form that its use should be prohibited unless it is recast in a form that will no longer be misleading.

8. The following recommendations should be adopted:

Recommendations

It is recommended that:

(1) The Federal Trade Commission reopen the proceeding against respondent concluded by decision dated January 26, 1951 (47 F.T.C. 913) and issue the order set forth in the order to show cause, dated

⁴ 15 U.S.C. sec. 45.

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September 9, 1966, as in the public interest, with appropriate modification; and,

(2) The order as modified read as follows:

It is ordered, That the respondent, Ned R. Baskin, an individual trading under the name of Hollywood Film Studios, or trading under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of plain or colored photographs, or enlargements thereof, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing, directly or by implication, that any photograph or enlargement, colored, or black and white, framed or unframed, will be made and delivered for a stipulated price, unless such photograph or enlargement will in fact be made and delivered for the stipulated price without the imposition or attempted imposition of any condition not clearly disclosed in the representation.

(2) Representing, directly or by implication, that any offer is for a limited time only, when such offer is not in fact limited in point of time, but is made by respondent in the regular course of business.

(3) Using the words "free" or "given," or any other word or term expressly or impliedly importing a like meaning, in advertising, to designate, describe or refer to any article or merchandise which is not in fact a gift or gratuity or which is not given without requiring the purchase of other merchandise or the performance of some service inuring directly or indirectly to the benefit of the respondent.

(4) Using the name "Hollywood Film Studios," together with pictures of motion picture celebrities, on letterheads or in advertising matter; or otherwise representing that the respondent has any connection whatsoever with the motion picture industry.

It is further ordered, That respondent Ned R. Baskin, an individual doing business as Hollywood Film Studios, Hollywood Enlargements, or under any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, furnishing, offering for sale, sale or distribution of photographs, photographic enlargements, photographic coloring or enlargement services, or any other products or services in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Offering to furnish any photograph or any enlargement of a picture, photograph, print, snapshot, negative, slide, color slide, or similar article, either free of cost or for any stated amount or compensation, unless the offered photograph or enlargement is in every instance furnished upon the request therefor, when accompanied by the stated amount or compensation, if any, without first sending to the requesting person any form of communication offering to sell respondent's coloring services or any other services.

(2) Offering to furnish a black and white photograph or enlargement of a picture, photograph, print, snapshot, negative, slide, color slide, or similar article, either free of cost or for any stated amount or compensation, unless in immediate conjunction with such offer, in letters of equal size and prominence, the disclosure is made that the offered photograph or enlargement is black and white.

(3) Requesting information for having any photograph, enlargement, or similar article colored, in any advertisement or in any form of communication, unless in each instance in which such request for information is made:

(a) There is clear and conspicuous disclosure that forthcoming is an offer to sell respondent's coloring services; and

(b) There is clear and conspicuous disclosure of the full amount of respondent's charge for such coloring services.

(4) Falsely stating that photographs submitted to respondent are being considered for use as advertisements and that a fee of \$100 each will be paid for those selected when such is not the case.

(5) Utilizing a business reply card for return by persons who have submitted a photograph or photographs for free enlargement unless such business reply card is recast to:

(a) Delete all reference to consideration of photographs for use in advertisements except a simple statement with a box to check as follows: " If you pay me \$100.00 each you have my permission to use a copy of any of my pictures for your advertising."

(b) Delete all reference to free frames except the statement, "If you desire to authorize our charge of \$2.60 (or other amount) for hand-coloring service please check the color frame desired" preceded by boxes opposite the frame colors available.

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(c) Delete all other statements except the admonition to use the file number and blank for name and address.

(d) Add statements (all of which must be in type of equal size to the largest used and in as prominent a position as any other statement on the card) to the following effect:

(i) Return of this card signed by you is an agreement to pay \$2.60 (or other specified charges) for hand-coloring each photograph; and an agreement to pay the c.o.d. charges; and,

(ii) Identification of each photograph by enclosure or reference to file number.

(6) Misrepresenting in any manner the terms of any offer or the services provided by respondent.

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.

OPINION OF THE COMMISSION

MAY 10, 1968

By MACINTYRE, *Commissioner*:

The Commission, on September 9, 1966, issued an order requiring respondent herein to show cause why this matter should not be reopened and the Commission's order to cease and desist issued against respondent on January 26, 1951 [47 F.T.C. 913], should not be amended in conformity with the terms set forth in the show cause order.¹ Thereafter respondent responded to such show cause order, and the Commission, in the circumstances and pursuant to its Rules of Practice, referred the matter to a hearing examiner for the purpose of receiving evidence in support of and in opposition to the question of whether or not the public interest requires that the Commission reopen this proceeding and the modification of the order to cease and desist in the manner indicated.

The hearing examiner, on October 17, 1967, after holding the hearings conducted pursuant to the Commission's direction, certified to the Commission the record in the matter, his report thereon and his recom-

¹The order to cease and desist contained in the show cause order is reproduced in Appendix A, attached hereto. The first part of such order, up to the asterisks separating the two parts, is the original order to cease and desist. (See *In the Matter of Ned R. Baskin*, 47 F.T.C. 913, 928-929 (1951).) The second part of such order constitutes the proposed modification of the original order to cease and desist.

mendation. The examiner made express findings on the issues presented and he recommended that the Commission reopen the proceeding against respondent and issue an order as set forth in the show cause order with "appropriate modification" as in the public interest.

This matter is now before the Commission for its findings and conclusions on the basis of the hearings held and for an appropriate order in the light thereof.

The Commission issued the show cause order in this proceeding because it believed there was reasonable doubt that the language of the order to cease and desist would, as intended by the Commission, remedy all the misleading and deceptive advertising practices found to have been engaged in by the respondent. In particular, the Commission believed the order inadequate to prevent respondent from representing in an advertisement that it would furnish colored 5x7 enlargements for a nominal amount or no charge when, in fact, the purpose of such advertisement was to gain the opportunity to send sales literature to prospective customers to induce them to purchase respondent's photographic coloring and enlarging services.

The Commission therefore indicated in its show cause order that it would amend the order to cease and desist by adding provisions thereto which in part would require respondent to cease and desist from offering to furnish a photograph or enlargement unless he, in fact, furnishes the enlargement (or photo) upon the meeting by the customer of the terms of the initial offer and unless he returns simultaneously the negative, slide or photograph without the imposition or attempted imposition of any condition and without first sending to the requesting party a communication offering to sell respondent's coloring services. The provisions to be added would also include certain requirements as to disclosures in connection with the offering of a black and white photograph or enlargement and in connection with the request for information as to the supplying of coloring services. Finally, the new provisions would include a prohibition against misrepresenting in any manner the terms of any offer or services provided by respondent.²

Respondent engages in, and has engaged in, for many years, the business, which it conducts by mail order in interstate commerce, of making and selling enlargements of photographs (or negatives or slides) supplied by customers in response to his advertisements. Respondent's pattern of doing business has not changed in any basic manner from that used at the time of the original proceeding herein. His principal advertising representations are now, and have been through

² For the exact terms of the provisions to be added to the order to cease and desist under the show cause order, see Appendix A attached hereto.

the intervening years, essentially the same as those previously considered. The changes are primarily in the details as to the offer made and do not go to the substance of the scheme.

Current advertising materials of the respondent were received into the record. These include a magazine advertisement (attached to the findings of fact as Attachment A), a form letter sent to the customer who responds to the advertisement (attached to the findings as Attachment B-1 and -2), and the business reply card (attached to the findings as Attachments C and D).

A typical magazine or periodical advertisement of the respondent, used at the present time, reads as follows:

Get 2 FREE ENLARGEMENTS of your favorite photos. 5x7" size. Send 2 color or black and white photos or snapshots (returned unharmed). State color of hair, eyes, clothes, for prompt information for finishing, in color with FREE frames. Enclose 20¢ for handling. Hollywood Enlargements, 7471 Melrose Avenue, Dept. 4069, Hollywood, California 90046. (CX 11.)

This advertisement states or implies that respondent will forthwith, upon receipt of photos or snapshots, supply free color enlargements upon the enclosure of 20 cents for handling and without any further conditions or consideration.³ The fact is, however, and the hearings clearly establish, that the offer is not available unconditionally and the enlargements will not be sent forthwith. The condition is that customers must first receive advertising literature essentially offering respondent's coloring services and seeking the return of a business reply card filled out by the customer. It is not until after this further solicitation that a customer will receive his enlargements. Respondent, although he appears to offer enlargements free and without further obligation, something in the nature of a get-acquainted offer, is in reality gaining the opportunity to sell his coloring services.

While the delay for further solicitation may seem to be only a temporary inconvenience to the customer, it is more than that. The opportunity which is thus obtained by respondent is used as the occasion to further mislead and deceive his customers. The pieces of advertising literature attached to the findings of fact themselves testify to the possibility of confusion and deception from their use. See the examiner's findings, pages 902-904 of his certification, and the discussion below. Moreover, the testimony taken shows that respondent's advertis-

³ While the ad instructs: "State color of hair, eyes, clothes, for prompt information for finishing, in color with FREE frames," this does not, on its face, purport to be a condition to the sending of the advertised enlargements, nor does it indicate delay in the receipt of the enlargements for the purpose of further solicitation. Moreover, even if this sentence can be construed as suggesting the condition to the furnishing of the advertised items, it is ambiguous and has the tendency to mislead and deceive. The representation as to furnishing colored photographs will be covered in the subsequent discussion.

ing is misleading and that it has the tendency and capacity to mislead and deceive.⁴

The deception here is not lessened by the fact that respondent eventually sends the enlargements as offered without further cost to the customer even where the customer does not return the business reply card. That is because the customer is not getting that which the initial advertising promises to give him, *i.e.*, the prompt and unconditional receipt of the enlargements upon the meeting of the terms of the offer. *Cf. Federal Trade Commission v. Algoma Lumber Co.*, 291 U.S. 67, 78 (1934).

Respondent's advertisements are otherwise false and deceptive, as the examiner found in his finding numbered 32. The initial advertisement appearing in a magazine or periodical implies, at least, that the customer will obtain color enlargements. It requests the return of information as to color of hair, eyes and clothes for finishing in color, and it also mentions submitting color snapshots. All of this could lead the unsophisticated and the credulous to believe that pictures to be furnished would be in color without further payment.

The form letter (Attachment B-1 and -2 of findings), as well as the business reply card (Attachments C and D of findings), has the capacity and tendency to mislead a customer into unknowingly or unintentionally ordering colored photographs for which he is authorizing a charge of \$2.50. This is done, as the examiner finds, by the use of ambiguous language and by the clever referring of the reader to other items in the advertising literature. The juxtaposition and prominent type of such statements as "Free Frames With Colored Enlargements," "Check Color You Wish" and other statements distract the customer's attention from the real reason for the card, which is to sell respondent's coloring services. The emphasis on the claim that there is a possibility (not true) of receiving \$100 for the use of the customer's pictures would tend to increase returns of the business reply card and the chances of the customer unintentionally ordering coloring services.

⁴ Robert D. Mott, merchandising manager of the Los Angeles Better Business Bureau (tr. 124, *et seq.*); Frank A. Orr, United States Postal Inspector (tr. 147, *et seq.*); and Don Mark Hicks, advertising representative of *TV Guide* magazine (tr. 157, *et seq.*), all testified concerning the general nature of the complaints received as to respondent's practices and advertising. For instance, Frank Orr testified that "Generally, the complaints followed the same basic pattern. First of all, we receive most of our complaints from people who say that they have answered an advertisement and they thought they were going to get photographs enlarged, and free frames and color, and subsequently, they receive photographs for which C.O.D. charges were asked * * * " (tr. 149). "The letters the people have written to me indicate that they felt they were misled [sic] because they felt that they were going to get this free colored enlargements, [sic] and free frames, for 20 cents which they sent in, in answer to an advertisement in a publication. This is generally how they did feel they were misled [sic]" (tr. 149-150).

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The likelihood of ordering by mistake is helped by the fact that the business reply card does not contain a box ([]) for checking off "Do not color." The recipient has to understand what is required of him, and, if he is going to return the card, that he must specifically write thereon that he does not want the coloring services. Not all people will be so knowledgeable as to readily see through this device and realize that they do not have to order the coloring services. Thus, the potential for deception is great. Moreover, there would be the tendency in this advertising for the recipient to order the color photographs in the belief that this would be necessary to assure return of valued, and possibly irreplaceable, negatives or photos.

The precise issue before the Commission is whether or not it is necessary to modify the order to cease and desist herein to effectively prohibit respondent's advertising misrepresentations and deceptive practices. The Commission, as stated in its show cause order, issued in 1951 its order to cease and desist, which it believed was the most suitable remedy to correct the misleading advertising practices found to have been engaged in by the respondent. In view of all the circumstances, including the fact that respondent is continuing today to advertise and to use some of the same representations and to engage in substantially the same advertising scheme which the Commission previously found to be misleading and to constitute unfair and deceptive acts and practices injurious to the public creates substantial doubt that the Commission's order issued in 1951 is adequate to correct the illegality and to protect the public interest. (See, for comparison, the findings of fact and conclusions of the Commission *In the Matter of Ned R. Baskin*, 47 F.T.C. 913, 922-928.)⁵

It is concluded, therefore, that the public interest requires that the order to cease and desist issued herein on January 26, 1951, be modified. This is in accordance with the examiner's recommendation. The examiner, however, proposed that the order to cease and desist contained in the Commission's show cause order be modified in certain respects in view of the evidence adduced at the hearing. First, in the second part of the order to cease and desist, he would eliminate subparagraphs 1(b) and 1(c) (see Exhibit A, attached). These prohibit the offering

⁵ With reference to respondent's compliance with the Commission's order to cease and desist, the record contains, for the period from January 1951 to November 1951, correspondence between respondent and the Commission's Division of Compliance, as well as a copy of the July 5, 1957, United States District Court, Northern District of Illinois, Eastern Division, order holding respondent in violation of the Commission's cease and desist order, assessing a fine of a total of \$900 and entering a permanent injunction. These documents were received not for the purpose of showing the truth of the facts contained therein but to show the existence of the documents and related materials.

to furnish of a photograph or enlargement (1(b)) unless the negative, slide or photograph forwarded is returned simultaneously with the offered photograph or enlargement and (1(c)) without the imposition or attempted imposition of any condition. The examiner concluded there was no competent evidence to show the necessity for these provisions. We disagree.

As to the aforementioned 1(b), the evidence shows a pattern of complaints from customers asserting difficulties and delay in getting back their negatives and photographs. While it appears that respondent eventually will return these items, along with the enlargements, this is only after a period of time has elapsed or upon the receipt of the business reply card from the customer. The evidence further shows that the photographs entrusted to the respondent are often irreplaceable, and therefore treasured, items. Delay in their return is a matter of importance to the customer. It is not improbable, considering respondent's method of operation, that he could engage in a variant of his scheme by sending the finished enlargements and retaining the photographs (or negatives or slides) while making his solicitation to sell coloring services. In the circumstances we believe it is necessary to make explicit in the order that the photographs, negatives or slides must be returned simultaneously with the enlargements.

As to the aforementioned 1(c), which prohibits the offering of any photograph or enlargement unless such is in fact furnished in every instance and "without the imposition or attempted imposition of any condition," this provision goes to the heart of the matter now before the Commission. The Commission here is considering the need for modifying the order in view of the fact that respondent did impose or attempted to impose a condition, *i.e.*, the opportunity to sell his coloring services, which was not stated in the initial advertisement and which has misled or tended to mislead and deceive customers. Such a practice is specifically prohibited by 1(d), but we believe it is also necessary to include a general prohibition against the imposition or attempted imposition of any other kind of condition. Accordingly, we believe that the subparagraph 1(c) is justified.

The hearing examiner also adds to the order two new provisions which he believed to be appropriate based on the evidence adduced in the hearing. One of these is the prohibition against the false representation that photographs submitted will be considered for use as advertisements and that a fee of \$100 will be paid therefor. The other is a detailed prohibition which would attempt to "recast" the respondent's business reply card.

Consideration will first be given to the latter. The recasting or re-writing of respondent's advertising literature in the detailed way recommended by the hearing examiner does not appear to be warranted in the circumstances of this case. Other prohibitions of the order would in effect require respondent to revise the language in the business reply card so that it will no longer contain the challenged misrepresentations. Furthermore, respondent will be subject to a prohibition against soliciting the sale of coloring services by the use of such a business reply card prior to the returning of the finished enlargements as advertised so that the business reply card will not hereafter be as likely to contribute to deception. It is preferable, we believe, that the order against respondent be a prohibition against deceptive practices, thus permitting respondent to choose its own advertising representations. Respondent, of course, pursuant to § 3.61(c) of the Commission's Rules of Practice, may request and receive advice as to whether any proposed course of action will constitute compliance under the order.

The other new prohibition recommended by the examiner is that as to the \$100 offer for use of the customer's pictures. The business reply card states in bold letters:

YOUR PICTURE IS BEING CONSIDERED TO BE USED IN OUR ADVERTISEMENTS. YOU WILL RECEIVE \$100 IF YOUR PICTURE IS SELECTED. CHECK BELOW AND RETURN. (CX 13c.)

Other references to this offer are made in the business reply card and in the letter. This is a come-on; an inducement to the customer to return the business reply card. It is cleverly phrased and positioned to create the illusion that the customer has some possibility of earning this \$100. This representation substitutes for one used at the time of the original hearing, consisting of a free offer of a picture of a movie star. It is well demonstrated by the evidence that this offer is false and deceptive. According to the testimony of Mr. Baskin, the respondent, the current pictures have been used for many years and the customers supplying these photographs were the last to receive \$100 and were possibly the only customers ever receiving \$100. Moreover, the current picture appearing in magazines is that of respondent's daughter.

The offer of the \$100 for use of the customer's picture, while false and deceptive in and of itself, is also an integral part of the whole scheme. It is contained in the advertising literature—both the letter and the business reply card—which is sent to the customer after the customer's photographs or negatives have been received. It is part of the inducement to the customer to return the business reply card and

materially enhances the possibility that the customer will order the coloring services.

Misrepresentation as to the \$100 offer would be prohibited by the general prohibition against misrepresentation of the terms of any offer or the services provided by respondent in the Commission's order (see paragraph 4 of the second part of the order in the Commission's show cause order in Appendix A). Nevertheless, since this specific representation is used at this time, we believe an appropriate prohibition as to its deceptive use is needed in the modified order. The order which we will enter will flatly prohibit any reference to payments for use of pictures in advertising because it does not appear that respondent has or ever had a bona fide program to make such use of customers' pictures. At the most, he made payment only in one or two isolated instances. If respondent in the future develops a regular program of this nature, he may request the modification of the Commission's order to permit such representation.

The Commission's Findings of Fact, Conclusions and Final Order are attached hereto. The final order embodies the Commission's views as expressed above.

APPENDIX A

ORDER TO CEASE AND DESIST CONTAINED IN SHOW CAUSE ORDER

It is ordered. That the respondent, Ned R. Baskin, an individual trading under the name of Hollywood Film Studios, or trading under any other name, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of plain or colored photographs, or enlargements thereof, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing, directly or by implication, that any photograph or enlargement, colored or black and white, framed or unframed, will be made and delivered for a stipulated price, unless such photograph or enlargement will in fact be made and delivered for the stipulated price without the imposition or attempted imposition of any condition not clearly disclosed in the representation.

(2) Representing, directly or by implication, that any offer is for a limited time only, when such offer is not in fact limited in point of time, but is made by respondent in the regular course of business.

(3) Using the words "free" or "given," or any other word or term expressly or impliedly importing a like meaning, in advertising, to designate, describe, or refer to any article of merchandise which is not in fact a gift or gratuity or which is not given without requiring the purchase of other

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merchandise or the performance of some service inuring directly or indirectly to the benefit of the respondent.

(4) Using the name "Hollywood Film Studios," together with pictures of motion picture celebrities, on letterheads or in advertising matter; or otherwise representing that the respondent has any connection whatsoever with the motion picture industry.

* * * * *

It is further ordered, That respondent Ned R. Baskin, an individual doing business as Hollywood Film Studios, or under any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, furnishing, offering for sale, sale or distribution of photographs, photographic enlargements, photographic coloring or enlargement services, or any other products or services in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering to furnish any photograph or any enlargement of a picture, photograph, print, snapshot, negative, slide, color slide, or similar article, either free of cost or for any stated amount or compensation,

(a) unless the offered photograph or enlargement is in every instance furnished upon the request therefor, when accompanied by the stated amount or compensation, if any, and

(b) unless the negative, slide or photograph forwarded pursuant to the offer is returned simultaneously with the offered photograph or enlargement, and

(c) without the imposition or attempted imposition of any condition, and

(d) without first sending to the requesting person any form of communication offering to sell respondent's coloring services or any other services.

2. Offering to furnish a black and white photograph or enlargement of a picture, photograph, print, snapshot, negative, slide, color slide, or similar article, either free of cost or for any stated amount or compensation, unless in immediate conjunction with such offer, in letters of equal size and prominence, the disclosure is made that the offered photograph or enlargement is black and white.

3. Requesting information for having any photograph, enlargement, or similar article colored, in any advertisement or in any other form of communication, unless in each instance in which such request for information is made

(a) there is clear and conspicuous disclosure that forthcoming is an offer to sell respondent's coloring services and

(b) there is clear and conspicuous disclosure of the full amount of respondent's charge for such coloring services.

4. Misrepresenting in any manner the terms of any offer or the services provided by respondent.

FINDINGS OF FACT, CONCLUSIONS AND FINAL ORDER

The Commission having reopened this proceeding and having issued its order of September 9, 1966 to show cause why the order to cease

and desist issued on January 26, 1951 [47 F.T.C. 913], should not be modified; and the hearing examiner, pursuant to the Commission's direction, having conducted hearings and having certified the record of said hearings to the Commission, together with his recommendation that the Commission reopen the proceeding against respondent and issue a modified order; and

The Commission having determined, for the reasons stated in the accompanying opinion, that the public interest requires a modification of the Commission's order issued herein on January 26, 1951, in the respects described in the opinion, now enters its findings of fact, conclusions and final order.

FINDINGS OF FACT

1. Respondent, Ned R. Baskin, resides at 5847 North Corteen Place, North Hollywood, California, and conducts his business as a photographer at 7021 Santa Monica Boulevard, Los Angeles, California (tr. 5).

2. Respondent, as sole proprietor, does business under the name Hollywood Film Studios (tr. 5, 198), but in some current advertisements he uses the name Hollywood Enlargements and the address 7471 Melrose Avenue, Hollywood, California, an arrangement which permits the checking of incoming mail for the purpose of compensating the advertising agency (tr. 198-200).

3. Respondent makes enlargements of photographs or negatives, has a hand-coloring service to tint black and white enlargements, and an arrangement to send color photographs to a photofinishing laboratory that specializes in color (tr. 6).

4. The principal source of respondent's income is mail-order business (tr. 6). He uses direct mail solicitation and advertising in newspapers and magazines (tr. 6-7). Magazines are now his principal medium of advertising (tr. 8). These include movie magazines, McFadden Publications and Ideal Publications (tr. 7).

5. Respondent has been in the mail-order business for approximately 30 years (tr. 6). He employs ten persons in the business and receives an approximate average of 1500 responses to his advertisements each week (tr. 12-13).

6. Respondent's method of doing business is as follows: He publishes advertisements in magazines or periodicals. A typical recent ad states:

Get 2 FREE ENLARGEMENTS of your favorite photos, 5x7" size. Send 2 color or black and white photos or snapshots (returned unharmed). State color of hair, eyes, clothes, for prompt information for finishing, in color with

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FREE frames. Enclose 20¢ for handling. Hollywood Enlargements, 7471 Melrose Avenue, Dept. 4069, Hollywood, California 90046. (CX 11. See Attachment A attached hereto.)

When a customer responds to such an advertisement he is sent routinely a form letter (CX 12-a, -b; see Attachment B-1, -2) and also a business reply card (CX 13-a-f; see Attachments C and D) (tr. 57-70).

7. The form letter includes this representation:

P.S. On the reverse side are a few pictures selected from our customers. These people received \$100 for the use of their picture. Your picture may also be selected, so be sure to return the enclosed card. (CX 12-a.)

The business reply card contains the following statements, among others:

YOUR PICTURE IS BEING CONSIDERED TO BE USED IN OUR ADVERTISEMENTS. YOU WILL RECEIVE \$100 IF YOUR PICTURE IS SELECTED. CHECK BELOW AND RETURN.

* * * * *

Yes, if you pay me \$100 each, you have my permission to use a copy of any of my pictures for your advertising.

* * * * *

I have checked the free frame you are to include for the "Deluxe" 5 x 7 inch enlargements that you are having your artist hand color in natural oil colors. I will be glad to help with the few cents c.o.d. fees as well as \$2.50 which includes artist's labor for each oil painting, sent to me on five day approval. (CX 13-b, -c.)

8. Respondent estimates that about 50 percent of the persons who respond to his advertisements do not use the business reply card (CX 13-a, -b) and that about 30 percent returned the cards marked "Do not color" (tr. 93). If customers do not send in a card with their pictures, they will get black and white enlargements eventually, after some delay. The delay may be thirty days (tr. 94-95).

9. Pictures entrusted to respondent are often irreplaceable (tr. 95-96).

10. Respondent is using substantially the same advertising methods and certain of the same advertising representations at the present time that he was using on or before January 26, 1961, when the Commission issued its order to cease and desist. Respondent's advertising representations in the form letters and reply cards which he has used during the past several years has, except for minor changes not going to the substance, followed the same pattern (CXs 3 through 7-d, inclusive; CXs 11 through 14, inclusive; CX 15 (received for a limited purpose), CX 18; tr. 73). Respondent testified to the effect that he has used the same advertising for the past ten years, the only significant difference being that the current advertising uses different pictures (tr. 57). Compare with findings of the Commission at 47 F.T.C. 922-927.

11. Respondent's advertisement currently used in the magazines and periodicals (CX 11) states or implies, among other things, that (a) the customer will obtain free color enlargements and (b) the customer, upon enclosing 20 cents and a photo or snapshot, will forthwith receive, without any further conditions or consideration, the enlargements offered.

12. In truth and in fact the customer (a) does not receive a color enlargement without additional payment and (b) does not receive two enlargements forthwith and unconditionally. Respondent does not supply colored enlargements unless the customer returns the business reply card sent to the customer after the receipt of the customer's photographs and agrees to pay the c.o.d. fees, as well as \$2.50. The condition to the receipt of the two enlargements is that the customer must first receive additional advertising literature from respondent, seeking to sell the customer respondent's coloring services. It is only upon the return of the business reply card or upon the expiration of a period of time subsequent to the receipt of the advertising literature sent by respondent that the customer will receive the enlargements offered (tr. 57-70, 126-127, 129-130, 133-136, 149-150, 175-177).

13. Respondent, in its advertising literature, has further represented that if the customer checks a box on the business reply card, the customer's picture will be considered to be used in respondent's advertisements, for which respondent will pay the customer \$100 (CXs 12-a,-b; 13-a-f).

14. In truth and in fact the \$100 offer is a spurious offer. Evidence shows that the currently used pictures have been used for many years and the customers supplying the photographs used in such pictures were the last to receive the \$100 and were possibly the only customers ever receiving \$100 (tr. 113-114). The picture used in the current advertisement (CX 11) is that of respondent's daughter (tr. 60).

15. Accordingly, the aforementioned scheme of advertising and advertising representations now used by respondent are false, misleading and deceptive, and they have the tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that they were and are true, and into the purchase of respondent's products by virtue of these erroneous and mistaken beliefs (tr. 126-127, 129-130, 133-136, 149-150).

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CONCLUSIONS

1. Respondent's acts and practices as herein found have been and are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

2. In view of the findings herein there is a reasonable doubt that the order to cease and desist issued by the Commission against the respondent on January 26, 1951 (47 F.T.C. 913, 928), is an adequate remedy to correct the acts and practices found to be unlawful.

3. The public interest requires modification of the order to cease and desist of January 26, 1951, in accordance with the above findings of fact.

FINAL ORDER

It is ordered. That the respondent, Ned R. Baskin, an individual trading under the name of Hollywood Film Studios, or trading under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of plain or colored photographs, or enlargements thereof, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing, directly or by implication, that any photograph or enlargement, colored or black and white, framed or unframed, will be made and delivered for a stipulated price, unless such photograph or enlargement will in fact be made and delivered for the stipulated price without the imposition or attempted imposition of any condition not clearly disclosed in the representation.

(2) Representing, directly or by implication, that any offer is for a limited time only, when such offer is not in fact limited in point of time, but is made by respondent in the regular course of business.

(3) Using the words "free" or "given," or any other word or term expressly or impliedly importing a like meaning, in advertising, to designate, describe, or refer to any article of merchandise which is not in fact a gift or gratuity or which is not given without requiring the purchase of other merchandise or the performance of some service inuring directly or indirectly to the benefit of the respondent.

(4) Using the name "Hollywood Film Studios," together with pictures of motion picture celebrities, on letterheads or in adver-

tising matter; or otherwise representing that the respondent has any connection whatsoever with the motion picture industry.

It is further ordered, That respondent, Ned R. Baskin, an individual doing business as Hollywood Film Studios, or under any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, furnishing, offering for sale, sale or distribution of photographs, photographic enlargements, photographic coloring or enlargement services, or any other products or services in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering to furnish any photograph or any enlargement of a picture, photograph, print, snapshot, negative, slide, color slide, or similar article, either free of cost or for any stated amount or compensation:

(a) Unless the offered photograph or enlargement is in every instance furnished upon the request therefor, when accompanied by the stated amount or compensation, if any, and

(b) Unless the negative, slide or photograph forwarded pursuant to the offer is returned simultaneously with the offered photograph or enlargement, and

(c) Without the imposition or attempted imposition of any condition, and

(d) Without first sending to the requesting person any form of communication offering to sell respondent's coloring services or any other services.

2. Offering to furnish a black and white photograph or enlargement of a picture, photograph, print, snapshot, negative, slide, color slide, or similar article, either free of cost or for any stated amount or compensation, unless in immediate conjunction with such offer, in letters of equal size and prominence, the disclosure is made that the offered photograph or enlargement is black and white.

3. Requesting information for having any photograph, enlargement, or similar article colored, in any advertisement or in any other form of communication, unless in each instance in which such request for information is made:

(a) There is clear and conspicuous disclosure that forthcoming is an offer to sell respondent's coloring services, and

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(b) There is clear and conspicuous disclosure of the full amount of respondent's charge for such coloring services.

4. Representing that photographs, including those made from submitted negatives or slides, received from customers are being considered for use as advertisements or that a fee of \$100 or any other amount each will be paid for such use.

5. Misrepresenting in any manner the terms of any offer or the services provided by respondent.

It is further ordered, That respondent, Ned R. Baskin, 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 the order to cease and desist.

Attachment A

[PHOTO]

Get 2 Free Enlargements of your favorite photos, 5x7" size. Send 2 color or black and white photos or snapshots (returned unharmed). State color of hair, eyes, clothes, for prompt information for finishing, in color with FREE frames. Enclose 20¢ for handling. Hollywood Enlargements, 7471 Melrose Avenue, Dept. 4069, Hollywood, California 90046

Attachment B-1

HOLLYWOOD FILM STUDIOS

7021 Santa Monica Blvd., Hollywood 38, California

[PHOTO]

[PHOTO]

Dear Friend:

Your pictures have just arrived. We feel certain they are pictures which you treasure very highly. That is why we are sure that you will want them given special attention and come back to you a real work of art. As advertised we are sending you prompt information on having your one or two originals made into Deluxe 5x7 enlargements, beautifully finished in natural life-like colors and mounted in free frames.

WE HAVE SOME WONDERFUL NEWS FOR YOU. Since the color of hair, eyes and clothing was included, we will make a Deluxe professional 5x7 enlargement from each of your cherished photos or negatives and with your permission have our expert artist **ACTUALLY HAND COLOR THEM IN NATURAL LIFE-LIKE COLORS.** We will then mount them in beautiful Pearl Ivory or Opal Gray Lucite frames. These gorgeous oil-colored enlargements will be mailed promptly together with your originals.

THE UNFINISHED WORK * * * In any picture without color, however good, the "work" so to speak really remains "unfinished." It is only "finished" when you portray a person as living (true, natural and life-like). In other words, you need color to transform a plain photo to a "finished" work of art.

THE FINISHED WORK * * * Everyone knows that colored photography and COLOR movies are wonderful because they bring out people and surroundings so natural and life-like. Now, thanks to the magic touch of our expert artists in blending an array of beautiful colors, colors that have depth, transparency and never-fading qualities, your little snapshot becomes a beautiful work of art, one that you will cherish and keep forever.

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Attachment

NATURAL COLOR * * * Color negatives, transparencies and color slides are finished in gorgeous natural color by Natural Process. Now you can enjoy the beauty of big pictures of your loved one in Color, in your own home, just as you enjoy big pictures in color at the movies.

We want to please you in every way and send your colored enlargements to you without delay. Be sure to check the card telling us the color of the frames you wish—the Pearl Ivory or Opal Gray Lucite—The postcard is addressed and stamped. Mail it today. The sooner you mail the card the sooner you will get your enlargements together with your originals.

Mail color order card NOW for prompt service. If you do not wish your enlargements finished in color, mark card Do Not Color. All originals are returned unharmed.

Sincerely yours,

(S) Ned Ronald

NED RONALD,

Hollywood Film Studios.

P.S. On the reverse side are a few pictures selected from our customers. These people received \$100 for the use of their picture. Your picture may also be selected, so be sure to return the enclosed card.

Attachment B-2

Expert quality hand coloring such as you get from the Hollywood Film Studios for the small charge we make might cost as much as \$10.00 elsewhere. But because of our efficient and up to date methods, every home can now enjoy the advantages of this modern development, color in photography, at very little cost. When you receive your hand colored portrait enlargement we know you will agree that this portrait of your loved one has become "A thing of beauty." We know, too, that you will find it "A joy forever."

THESE ARE CUSTOMERS' PHOTOS SELECTED TO BE USED IN OUR ADVERTISING

THESE PHOTOS RECEIVED \$100.00 EACH

[PHOTO]

[PHOTO]

Submitted by
Mrs. W. T. Overby

Submitted by
Mrs. Harry Howryla

WHAT OUR CUSTOMERS SAY ABOUT HOLLYWOOD FILM STUDIOS

"World's Best"

*"Your Studios Have Them
All Beat"*

Your photo work is the world's best. From now on it's Hollywood Film Studios.

We received our pictures and certainly were well pleased. I think your studios have them all beat.

FRANK K. JR.,
Nashville, Tenn.

MRS. GLENN J. C.
Ely, Nev.

Attachment

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"Orders Four More"

Enclosed please find one photo. Please send 4 colored pictures. I have ordered pictures before and have been very much pleased with your work on each one.

MRS. J. WILLIAM K.,
Manlius, Ill.

"A Birthday Gift"

I have received the enlargement which you sent me and I am so pleased with your work. This is for a birthday gift. I plan to have more photo work done later.

ELSIE E. S.,
Wokanda, S.D.

"Very Well Pleased—Tells Friends"

I wish to take this opportunity to tell you how well pleased I was with my handcolored picture. I have shown it to several of my friends and they commented on the wonderful piece of work.

GLADYS M. J.,
New Orleans, La.

*"Sentimental Picture—
Marvelous Work"*

Please make 5x7. Take care of this picture as it is of sentimental value. The work you did on the other picture I sent you is marvelous. All my friends said it was a wonderful piece of work. I know you will do the same on this picture.

ROBERT I.,
Albany, N.Y.

"WORTH \$10.00"

The picture you made me is worth \$10.00. Please make one of each of the enclosed five pictures.

OLGA V.,
Rockwell St., Chicago, Ill.

*"Finest Pictures We
Ever Had"*

These were the finest pictures we have ever had finished. Thanks to the Hollywood Film Studios and their capable staff.

W. H. WOODSTOCK
Ill.

*"More Than
Satisfactory"*

The work that I previously received from you was more than satisfactory. I have told several people about your excellent work and they, too, will send their work to you.

MARJOBIE S.,
Albany, N.Y.

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Complaint

Attachement C

YOUR PICTURE IS BEING CONSIDERED TO BE USED IN OUR ADVERTISEMENTS. YOU WILL RECEIVE \$100.00 IF YOUR PICTURE IS SELECTED. CHECK BELOW AND RETURN.

FREE

FRAMES WITH COLORED ENLARGEMENTS

CHECK COLOR YOU WISH

Choice of beautiful pearl ivory or opal grey frames with standing easel back. Frames are made of lustrous lucite and make your enlargements "a thing of beauty and a joy forever." Check below color of frame you want.

- Pearl Ivory Frames
- Opal Grey Frames

Always give file number pictures are filed by number [632753].

I have checked the free frame you are to include for the "Deluxe" 5 x 7 inch enlargements that you are having your artist hand color in natural oil colors. I will be glad to help with the few cents C.O.D. fees as well as \$2.50 which includes artist's labor for each oil painting sent to me on five day approval.

Name-----, Address or R.F.D.-----
 City----- State-----

IN THE MATTER OF

BROOKLYN QUILTING CORP. ET AL.

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

Docket C-1335. Complaint, May 10, 1968—Decision, May 10, 1968

Consent order requiring a Brooklyn, N.Y., manufacturer of quilted and fabric materials to cease misbranding its wool and textile fiber products and failing to keep required records.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Brooklyn Quilting Corp., a corporation, and Benjamin Zauderer, Nathan Shotsky and David H. Turkel, individually and as officers