FINDINGS, OPINIONS, AND ORDERS, JULY 1, 1968,
TO DECEMBER 31, 1968

IN THE MATTER OF

DEAN MILK COMPANY ET AL.

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

Docket 8032. Complaint, June 30, 1960—Decision, July 2, 1968

Order modifying, pursuant to a decree dated June 18, 1968, of the Court of Appeals, Seventh Circuit, a cease and desist order dated October 22, 1965, 68 F.T.C. 710, which charged an Illinois milk company and its subsidiary with price discrimination, by narrowing the effective territory of the order from "any city or market area" to Louisville and its suburbs in Jefferson County, Kentucky, and the cities of New Albany, Jeffersonville, Clarksville, and Terre Haute, Indiana.

MODIFIED ORDER

Dean Milk Company and Dean Milk Co., Inc., having filed in the United States Court of Appeals for the Seventh Circuit on December 15, 1965, a petition to review and set aside a final order issued against them on October 22, 1965, by the Commission; and the Court on April 1, 1968, having issued its judgment denying enforcement of the Commission's order with respect to the primary-level violations and remanding the proceeding to the Commission solely for the purpose of modifying its order with respect to the secondary-level violations in conformity with the views set forth in an opinion of the Court rendered on the same date [395 F. 2d 696(1968)]; and the Commission having submitted to the Court a proposed modification of its order, which conforms to said opinion; and the Court on June 18, 1968, having entered a final decree which embodies the proposed modification;

Now, therefore, it is hereby ordered, That the order of October 22, 1965, be, and it hereby is, modified in accordance with the final decree of the Court to read as follows:

It is ordered, That the respondents, Dean Milk Company and Dean Milk Co., Inc., corporations, and their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale or distribution in commerce of fluid milk and milk products in the Falls Cities market (comprising the city of Louisville and its suburbs in Jefferson County, Kentucky, and the cities of New Albany, Jeffersonville and Clarksville in Indiana) and in the city of Terre Haute, Indiana, do forthwith cease and desist from discriminating, directly or indirectly, in the price of fluid milk and milk products of like grade and quality by selling any of these products to any purchaser at a price which is lower than the price for products of like grade and quality charged any other purchaser who competes in the resale of such products with the purchaser paying the lower price.

It is further ordered, That the respondents, Dean Milk Company and Dean Milk Co., Inc., 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 the order to cease and desist.

IN THE MATTER OF

LAKELAND NURSERIES SALES CORP. FORMERLY KNOWN AS LAKELAND-DEERING NURSERIES SALES ET AL.

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

Docket 6666. Amended Complaint, July 20, 1966—Decision, July 5, 1968

Order reopening proceedings and dismissing an amended complaint which charged a seller of nursery stock with headquarters in New York City with misrepresenting the growth potential and other characteristics of its nursery products.

ORDER REOPENING PROCEEDINGS

JULY 20, 1966

Whereas, the Commission on June 25, 1957, issued an order to cease and desist in accordance with a consent order agreement entered into by the respondents and counsel in support of the complaint in the captioned proceedings; and

Whereas, the respondents and the Commission have heretofore caused to be executed and filed, a certain stipulation dated May 4, 1966, in a certain cause hereinafter set forth, in which some of the captioned respondents are plaintiffs and the Federal Trade Commission, jointly and severally, is defendant, said cause having been lately pending in the Unied States District Court in and for the District of Columbia, designated Civil Action No. 419–66; and

Whereas, the aforesaid stipulation provided for the dismissal of the complaint in said cause in said Court as aforesaid; and

Whereas, the aforesaid stipulation further provided that the ". . . Commission may file an amended complaint in said Docket No. 6666 pursuant to Section 3.28(b) (1) of the Commission's Rules of Practice For Adjudicative Proceedings, 16 C.F.R. (1964 Supp.) § 3.28(b) (1), containing the allegations of the complaint issued in the said Docket No. 8670 and raising the same issues as presented in the proceeding in Docket No. 8670; and the proceeding in Docket No. 6666 may be reopened in accordance with Section 3.28(b) (1) of those Rules except that the plaintiffs herein and all respondents in Docket No. 6666 specifically waive the requirement contained in the said Section 3.28(b) (1) that the Commission establish changed conditions of fact or law or public interest which is ordinarily required to be established under said Section 3.28(b) (1). All respondents in such amended complaint in Docket No. 6666 shall have the right to interpose an answer thereto and to defend in the said reopened proceeding to the same extent as though the Commission has proceeded to raise the issues of the amended complaint by a reopening of the proceeding in Docket No. 6666 under said Section 3.28(b) (1) in the first instance.

"The consent cease and desist order entered in Docket No. 6666 on June 25, 1957 (as reported in 53 F.T.C. 1189) shall remain in effect at least pending the final determination of the issues raised by the amended complaint to be issued therein.

"No party to the proceeding in said Docket No. 6666 will relitigate or seek to relitigate the issues raised by the original complaint in Docket No. 6666 with respect to the specific plants which are now governed by the consent cease and desist order issued therein, except that the parties therein shall have the right to seek modification of the said consent order to cease and desist in the event an order is entered on the amended complaint which may be or appear to any party to be narrower or broader than the said consent order."; and

Whereas, said stipulation further provided that: "Lakeland-Deering Nurseries Sales, one of the resondents in the proceeding in the said Docket No. 6666, is the corporate predecessor of plaintiff Lakeland Nurseries Sales Corp."; and

Whereas, the Commission having reason to believe that the said respondents, or some of them, have violated the provisions of the Federal Trade Commission Act, as is more fully set out in a draft of amended complaint which is hereto attached; and

Whereas, the Federal Trade Commission having authority under Section 5(b) of the Federal Trade Commission Act to reopen a proceeding whenever, in its opinion, conditions of fact or law have so changed as to require such action or the public interest so requires, and said stipulation expressly waives the requirement that the Commission establish changed conditions of fact or law or a showing of public interest, and, that the Commission may proceed to reopen the captioned matter; it is, upon consideration,

Ordered, That the captioned matter be, and it is, reopened for any and all proceedings as may be appropriate under the Commission's Rules for Adjudicative Proceedings insofar as those Rules are applicable hereto, subject only to such matters and things as have heretofore been expressly waived by said respondents in the aforesaid stipulation dated May 4, 1966.

It is further ordered, That the Commission's amended complaint issue forthwith.

AMENDED 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 Lakeland Nurseries Sales Corp., a corporation trading as Lakeland Nurseries Sales, and Henry L. Hoffman, Chester Carity, Lillian Zogheb and Allen Lekus, 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 Lakeland Nurseries Sales Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 16 West 61st Street in the city of New York, Borough of Manhattan, State of New York. Said corporate respondent also trades as Lakeland Nurseries

Sales. Said corporation was formerly known by the corporate name of Lakeland-Deering Nurseries Sales.

Respondents Henry L. Hoffman, Chester Carity, Lilliam Zogheb and Allen Lekus are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of rose plants, chrysanthemum plants, and other nursery products to the public.

As used in this complaint and in the attached proposed form of order the term "nursery products" includes all types of trees, small fruit plants, shrubs, vines, ornamentals, herbaceous annuals, biennials and perennials, bulbs, corms, rhizomes, and tubers which are offered for sale or sold to the general public. Included are products propagated sexually or asexually and whether grown in a commercial nursery or collected from the wild state.

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

PAR. 4. In the course and conduct of their business, the respondents have distributed circulars, brochures, catalogues and other advertising material through the United States mails to prospective purchasers located outside the State of New York, and have furnished advertising material to others for use in soliciting sales, containing numerous statements and representations respecting respondents' status as a grower or propagator of the nursery products they offer for sale.

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

* * * * * * *

The reason we are willing to release part of our precious propagating stock at this time is simply this:

* * * * * * *

Yes, as one of America's largest nursery organizations, we've sold many,

many magnificent rose varieties throughout the years—a good number of them international prize winners. On our annual trips all over the country to visit leading hybridizers, as well as to inspect our own crops of roses produced in vast growing fields in 6 states, we usually see a total of more than 10 million roses each summer, including the crops of "friendly rival" nurserymen.

* * * * * * *

If you should come and visit the vast greenhouses and experimental "GARDENS OF TOMORROW" where our Azaleamums are hybridized you would see the answer!

* * * * * * *

The respondents' Azaleamum brochure contains a picture of several rows of plants in bloom growing in a field. Beneath the picture is the caption, "You are now looking at a few rows in the growing field—showing how Azaleamums look the very first season you plant them."

* * * * * * *

PAR. 5. Through the use of the aforesaid corporate name, "Lakeland Nurseries Sales Corp." and through the use of the trade name, "Lakeland Nurseries Sales," separately or in connection with the statements, representations and illustrations set forth in Paragraph Four hereof, and others similar thereto but not expressly set out herein, and through the use of said statements, representations and illustrations and of a Garden City, New York, mailing address, respondents have represented, directly or by implication that they actually grow or propagate the nursery products which they offer for sale and sell and that they own, operate or control nurseries, farms or properties in or on which the said products are grown or propagated.

PAR. 6. In truth and in fact, the respondents do not actually grow or propagate the nursery products which they offer for sale and sell, nor do they own, operate, or control nurseries, farms, or properties in or on which said products are grown or propagated.

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

PAR. 7. There is a preference on the part of members of the purchasing public for dealing directly with nurseries and growers of nursery products rather than with retailers, dealers or other intermediaries, such preference being due to a belief that by dealing directly with the nurseries or growers, various advantages may be obtained. The Commission takes official notice of the preference.

PAR. 8. In the further course and conduct of their business as

aforesaid, respondents have made numerous statements and representations respecting the amount and size of blossoms, duration of blooming period, and other blooming characteristics of the nursery products they offer for sale and the rate of growth, appearance, height, size and other physical characteristics which can and will be achieved with said products by purchasers thereof.

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

A. In connection with the offering for sale of the "Nearly Wild" rose, also advertised as a Superblooming Hedge Rose.

Yes, just imagine the incredible gardening thrills that now await you, if you accept this offer promptly. The thrill of seeing fresh, colorful, fragrant 3-inch roses burst into lavish clusters of 10, 12 and even 15 blossoms to a single stem . . . roses that erupt into fiery red 'n pink MASSES OF 30, 40 and even 50 NEW ROSES day after day, week after week from one single plant . . . roses to fill every room in your house with their color and exotic fragrance all summer long from just one single plant . . . roses that literally pour out their blossoms like a never-ending fountain of beauty in June, July, August, September, October, November . . . right up to first frosts and even beyond . . . and all from one single plant! Roses that start blooming a few weeks from now in your garden and once established will literally give you THOUSANDS OF BLOOMS each year . . . from each single plant!

* * * * * * *

Leading Eastern Agriculture College Reports: This Fabulous Rose Variety Produced 4,076 Roses all from one single plant!

* * * * * * *

Requires Less Care! An Ideal Rose for Beginners! So Easy To Plant and Grow for a Lifetime of Gorgeous Bloom! And because it can so easily withstand conditions that would kill off its more tender cousins, Nearly Wild is almost a foolproof rose—guaranteed to thrive and produce heavy masses of bloom for you even if you've never planted a seed before in your life!

* * * * * * *

In addition, the brochure, advertising this rose, contains a close-up photograph of rose blossoms which purports to be a photograph of the blossoms produced by the "Nearly Wild" rose plant.

B. In connection with the offering for sale of the Ray Bunge Scarlet Showers Rose.

* * * * * * *

Soars 20 Feet High . . . Spreads 40 Feet Wide The *First Growing Season* . . . For this wonder rose streaks skyward at a rate simply unheard of in roses . . . as much as 18 inches in a single week . . .

* * * * * * *

Up to 300 Giant Roses In Bloom At One Time—Dramatic Fountains of Color 5 Months of The Year!

* * * * * * *

So, if you can spare a few minutes of time and a few inches of ground in your yard to plant it, you can own the rose that defies rubber tree roots, 20° below zero winters, even semi-shaded conditions . . . to soar higher than any other everblooming, climbing rose has ever been known to grow before!

* * * * * * *

Imagine the glory of a rose bush that bursts into gigantic blossoms up to 5 inches across . . . roses that burst again and again into fiery masses of color in June, July, August, September, October . . . until snow starts to fly!

* * * * * * *

As little as 3 hours daily sunlight produces ravishing masses of bloom!

* * * * * * *

In addition the brochure, advertising this rose, contains a picture of a house with roses growing over it from the ground to the roof.

C. In connection with the offering for sale of the Wilson's Climbing Doctor rose, also known as the Climbing Doctor.

* * * * * * *

Roses that burst into everblooming fountains of color . . . soaring up to 11 feet high . . . up to 20 feet wide!

* * * * * * *

Roses that flare again and again into living walls of color in June, July, August, September, October . . . right up to wintry frost.

* * * * * * *

Gives you a lavish outpouring of exquisite hybrid tea-like roses from June to Frost. Blossoms are truly gigantic . . . usually measuring 6 to 8 inches across!

* * * * * * *

Soars Approx. 11 feet high . . .

* * * * * * *

A Few Minutes to Plant and A Bare Spot Becomes The Showplace of the Neighborhood.

* * * * * * *

In addition the brochure advertising this rose contains a picture of a rose 8 inches wide at the widest point described as "Actual Size of Bloom"; a picture of a young lady before a background of roses most of which are large enough to cover the major portion of her face; and a picture of a woman standing beside a wide spreading rose bush which is approximately twice her height.

D. In connection with the offering for sale of chrysanthemums known as Fragramums.

—they're the first fragrant chrysanthemums in garden history!

* * * * * * *

You'll Get Hundreds of Sweet-Scented Mums This Season From Each Single Plant—Thousands More Year After Year.

* * * * * * *

And you can do it in just 20 minutes whether you're an expert gardener or the greenest beginner. Because they're shipped to you ready-to-plant in a special "grow enroute" wrap, and it only takes a few minutes to scoop out a few holes and plant them.

* * * * * * *

It means mounds and mounds of fiery-hued chrysanthemums . . . as many as 200 . . . 300 . . . even 400 blossoms on a single plant . . . some up to 4" across . . . blossoms clustered so closely on the plant, you can barely push your hand into the mass to try to count them.

* * * * * * *

A Fragramum Planting Gives you Lovely, Sweet-Scented Banks of Color in August, September, October, November . . . Right Up To Frost And Beyond!

E. In connection with the offering for sale of chrysanthemums known as Azaleamums.

* * * * * * *

. . . and then cover themselves with solid unbroken masses of dazzling 2 to 4 inch blossoms!

* * * * * * *

. . . beginning in August (sometimes even in July)—each of these wonderplants erupts into a gigantic fireball of color spreading nearly a full 8 feet around. Then in September, October, November—instead of fading, instead of dropping its blooms—each and every Azaleamum bursts again and again into a continuous never-ending shower of hundreds, even thousands of colorful gold, white, pink or flaming red blossoms!

* * * * * * *

"PROBABLY WORLD'S GREATEST FLOWERING PLANT!" . . . said garden editor of N.Y. Journal American: "500 or 600 blooms open at one time is moderate; many people have reported over 1,000 blooms and in a few cases the record even stretches up to 2,000 blooms!"

G. A. Bernard, Illinois writes:

"You say 600 flowers. I'll bet there are 1,000 flowers on one single plant!"

And you can do it all with just 6 plants we send you . . . in just 20 minutes . . . whether you're an expert gardener or the greenest beginner. Because they're shipped to you packed in their own "grow enroute" containers and it only takes 20 minutes to scoop out a few holes and plant them! . . .

PAR. 9. Through the use of the aforesaid statements and representations and others similar thereto but not expressly set out herein, the respondents have represented, directly or by implication, that all purchasers of plants offered for sale and sold by them would obtain or could obtain the results listed below for each plant irrespective of the purchaser's lack of gardening experience or horticultural knowledge or of any required special care and handling of the plant.

A. Results from a single Nearly Wild Rose plant (also called a Hedge Rose) in the first season it is planted.

1. 1,000—4,076 blossoms.
2. The majority of the blooms will be 3 inches in diameter.
3. Continuous blooming from June to November.
4. Blossoms that resemble those shown in the close-up photo in the brochure advertising the Nearly Wild Rose.
5. 30 to 50 blossoms in a single day.

B. Results from a single Ray Bunge Scarlet Showers rose plant in the first season it is planted.

1. A growth of 18 inches in height in a single week, and 20 feet in height and 40 feet in width in the season.
2. The majority of blossoms will be 5 inches in diameter.
3. Repeat blooming in each month from June to October.
4. At least 300 blossoms.
5. Only 3 hours of sunlight a day are necessary to obtain the advertised results.

C. Results from a single Wilson's Climbing Doctor rose plant in the first season it is planted.

1. A growth of 11 feet in height in the season.
2. The majority of blossoms will be 6–8 inches in diameter.
3. Continuous blooming from June to October.

D. Results from a single Fragramum chrysanthemum plant the first season it is planted.

1. 200 to 400 blossoms in the first season and at least 1,000 blossoms per season each subsequent season.
2. Many blossoms 4 inches in diameter.
3. Continuous blooming from August to November.
4. The blossoms will be fragrant.

E. Results from a single Azaleamum chrysanthemum plant in the first season it is planted.

1. 500 to 2,000 blossoms.
2. Many blossoms will exceed 2 inches in diameter.
3. Continuous blooming from August to November.

PAR. 10. In truth and in fact, many purchasers of the nursery

products offered for sale by respondents could not obtain the results hereinabove set forth for the Nearly Wild rose plant, the Scarlet Showers rose plant, the Wilson's Climbing Doctor rose plant and the Azaleamum chrysanthemum plant, and, in the case of the Fragramum chrysanthemum plant could not obtain such results.

The statements and representations as set forth in Paragraphs Eight and Nine hereof were and are exaggerated, false, misleading and deceptive.

PAR. 11. In seasons subsequent to the season of initial offering the respondents have distributed advertising material in which they represented that said Scarlet Showers, Wilson's Climbing Doctor and Fragramums were new at the time of the then current offer and were being offered to the public for the first time and that all varieties of Azaleamums were new in 1960 and were being offered to the public for the first time.

PAR. 12. In truth and in fact the said Scarlet Showers, Wilson's Climbing Doctor and Fragramum plants were not new at the time of the then current offers and had been offered to the public by the respondents in preceding seasons and some varieties of Azaleamums had been offered by others in preceding seasons.

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

PAR 13. 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 nursery products of the same general kind and nature as those sold by respondents.

PAR. 14. Respondents by and through the use of the aforesaid acts and practices place in the hands of retailers and dealers, the means and instrumentalities by and through which they may mislead and deceive members of the public in the manner and as to the things hereinabove alleged.

PAR. 15. 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 nursery products offered for sale by respondents by reason of said erroneous and mistaken belief.

PAR. 16. 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. Herbert L. Blume and *Mr. J. Michael Frascati* supporting the complaint.

Bass & Friend, New York, N.Y., by *Mr. Solomon H. Friend* for respondents Lakeland Nurseries Sales Corp. and *Mr. Henry L. Hoffman;* and *Zalk, Rubel & Perret,* New York, N.Y., by *Mr. Joseph Zalk* for respondents Mr. Chester Carity, Ms. Lillian Zogheb and Mr. Allen Lekus.

INITIAL DECISION BY DONALD R. MOORE, HEARING EXAMINER

JANUARY 12, 1968

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PRELIMINARY STATEMENT

This proceeding involves an amended complaint, issued by the Federal Trade Commission on July 20, 1966, which was duly served on all respondents, namely, Lakeland Nurseries Sales Corp. (formerly known as Lakeland-Deering Nurseries Sales), a corporation trading as Lakeland Nurseries Sales, and Henry L. Hoffman, Chester Carity, Lillian Zogheb, and Allen Lekus, individually and as officers of the corporation. The amended complaint was issued pursuant to Commission order entered on July 20, 1966, reopening the proceedings in this docket. The original complaint was issued on October 26, 1956, and the proceeding based thereon was concluded by the entry of a consent order on June 25, 1957. This consent order dealt with two plants, Lythrum Morden Gleam and Shasta Daisy. (*Lakeland-Deering Nurseries Sales,* 53 F.T.C. 1189 (1957).)

The amended complaint, which charges violation of Section 5 of the Federal Trade Commission Act, alleges that respondents have misrepresented the nature of their business, the blooming characteristics of the nursery products they sell, the results obtainable by purchasers, and the newness of certain nursery products.

Before reopening this proceeding and issuing the amended complaint, the Commission, on November 1, 1965, had issued a new complaint (Docket 8670) that cited Lakeland Nurseries Sales Corp., Henry L. Hoffman, and Chester Carity as respondents. The allegation of that complaint were substantially similar to those contained in the amended complaint now before us. On December 20, 1965, respondents moved to dismiss the complaint in Docket 8670 on the ground that instead of issuing a new complaint, the Commission should have reopened the proceeding in Docket 6666. When this motion was denied, respondents, on February 17, 1966, filed suit in the United States District Court for the District of Columbia, seeking a declaratory judgment and a mandatory injunction to restrain the proceedings. This suit was dismissed on May 19, 1966, pursuant to a stipulation between the parties that provided for dismissal of the proceeding in Docket 8670 and for reopening of Docket 6666. (*Lakeland Nurseries Sales Corp.* v. *Dixon* (D.D.C., Civil Action No. 419–66).) The complaint in Docket 8670 was dismissed by the Commission in an order dated May 12, 1966 [69 F.T.C. 732]. Thereafter, by order dated July 20, 1966, the Commission reopened the instant proceeding and issued its amended complaint, which

was ultimately assigned for trial to this hearing examiner.[1a]

Answers to the amended complaint were filed by respondents Lakeland and Hoffman on August 23, 1966, and by respondents Carity, Zogheb, and Lekus on September 13, 1966. In these answers, the respondents made certain factual admissions, but they denied most of the allegations of the complaint and specifically denied any violation of law.

Following a series of prehearing conferences (Tr. 1-181), there were 17 days of hearings between May 1 and June 1, 1967, in New York, New York; Minneapolis, Minnesota; Dallas, Texas; and Los Angeles, California. At these hearings, testimony and other evidence were offered in support of and in opposition to the allegations of the amended complaint. Such testimony and other evidence were duly recorded and filed in the office of the Commission.

The evidentiary record comprises 2,680 pages of transcript and more than 150 documentary exhibits.

The parties were represented by counsel and were afforded full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues.

After the presentation of evidence, proposed findings of fact and conclusions of law and a proposed form of order, as well as reply briefs, were filed by counsel supporting the complaint and by counsel for respondents. Under Section 3.51(a) of the Commission's Rules of Practice (effective July 1, 1967), the time for filing this initial decision was extended to January 12, 1968.

Proposed findings not adopted, either in the form proposed or in substance, are rejected as lacking support in the record or as involving immaterial matters.

After carefully reviewing the entire record in this proceeding, together with the submittals of the parties, the hearing examiner finds that this proceeding is in the interest of the public; and on the basis of such review and his observation of the witnesses he makes the following findings of fact, enters his resulting conclusions, and issues an appropriate order.

As required by Section 3.51(b)(1) of the Commission's Rules of Practice, the findings of fact include references to principal supporting items in the record. Such references to testimony and exhibits are thus intended to comply with that Rule and to serve as convenient guides to the principal items of evidence supporting the findings of fact, but these record references do not

[1a] The amended complaint may be referred to hereafter simply as "complaint."

necessarily represent complete summaries of the evidence considered in arriving at such findings. Where reference is made to proposed findings submitted by the parties, such references are ordinarily intended to include their citations to the record.

References to the record are made in parentheses, and certain abbreviations are used:

CPF—Proposed Findings, Conclusions, and Order of Complaint Counsel.
CRB—Reply Brief of Complaint Counsel.
CX—Commission Exhibit.
RPF—Respondent's Proposed Findings, Conclusions, and Order.
RRB—Respondents' Reply Brief.
RX—Respondents' Exhibit.
Tr.—Transcript.

References to proposed findings and other submittals of counsel are ordinarily to page numbers—for example, CPF 19. Sometimes references to testimony cite the name of the witness and the transcript page number without the abbreviation Tr.—for example, Hoffman 2163.

Counsel supporting the complaint may be variously referred to as complaint counsel, Government counsel, or the Government, and witnesses called by Government counsel may be referred to as Government witnesses.

FINDINGS OF FACT

I. *Respondents and Their Business*

Respondent Lakeland Nurseries Sales Corp., formerly known as Lakeland-Deering Nurseries Sales, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 16 West 61st Street, New York, New York. It also trades under the name Lakeland Nurseries Sales. (Amended Complaint, Par. One; Answers of respondents, Par. One; Order Reopening Proceedings, p. 2; Tr. 6, 17, 2162, 2167; CX 2 A; RPF 7.) (Respondent Lakeland Nurseries Sales Corp. may be referred to as Lakeland or as the corporate respondent.)

Respondent Henry L. Hoffman is president of Lakeland, and respondent Chester Carity is vice president. They are the only officers of the corporation. As officers, directors, and principal stockholders, they formulate, direct, and control the acts and practices of the corporate respondent, and they have done so at all times material to the issues involved in this proceeding. Their

business address is the same as that of the corporate respondent. (Hoffman 2122, 2162–67.)

Lakeland is a closely held corporation, with approximately 50 percent of the stock owned by Mr. Hoffman; about 33 percent by Mr. Carity; and 15 percent by Howard W. Friedman. These three stockholders constitute the Board of Directors. Mr. Hoffman and Mr. Carity actively participate in the operation of the corporate business. Although their activities are in their capacities as corporate officers, the evidence indicates that the corporate structure is more a matter of form than of substance. (Hoffman 2163–67; Tr. 2254–57; see also Andrews 1117, 1244, 1250–51, 1259–61, 1270–73, 1288–90; Burks 1357–63, 1405–06; Conklin 1760–61, 1769–72, 1784–85; compare RPF 7.)

Respondents Lillian Zogheb and Allen Lekus have not been officers or directors of Lakeland for about 10 years (Tr. 2214–15, 2255–56), and there is no evidence of their participation in the practices challenged by the amended complaint. In the course of trial, Government counsel offered no opposition to a motion to dismiss as to these two individuals, and the motion was accordingly granted. (Tr. 2265–67, 2674; see CPF 5.) Thus, the term "respondents", as used hereafter, is not intended to include the respondents Zogheb and Lekus.

Respondents are now, and for several years have been, engaged in the advertising, offering for sale, sale, and distribution of rose plants, chrysanthemum plants, and other nursery products to the public. (For purposes of this proceeding, the term "nursery products" includes all types of trees, small fruit plants, shrubs, vines, ornamentals, herbaceous annuals, biennials and perennials, bulbs, corms, rhizomes, and tubers.) (Complaint, Par. Two; Answer of respondents Lakeland and Hoffman, Par. 2; CX 1; RX 35; Andrews 1238–39; Tr. 2254.)

In the course and conduct of their business, respondents now cause and for several years have caused nursery products, when sold, to be shipped from nurseries in Minnesota and Maryland and other states ("independent" nurseries with which Lakeland has contractual relations) to purchasers located in states other than those in which such shipments originated. Respondents maintain and for several years have maintained a substantial course of trade in nursery products in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondents' annual sales total more than $1 million. (Complaint, Par. Three; Answer of respondents Lakeland and Hoffman, Par. 3; Andrews 1111, 1125–27, 1171–73; Tr. 2449.)

In the conduct of their business, respondents have been in substantial competition in commerce with corporations, firms, and individuals in the sale of nursery products of the same general kind and nature as those sold by respondents. (In urging a finding to this effect, complaint counsel erroneously state that the corresponding allegation in the complaint (Par. Thirteen) was admitted in the answer of the corporate respondent (CPF 81). Actually, all the respondents denied the allegations of Par. Thirteen, but there appears to be no real dispute about this finding. The evidence, particularly the evidence offered by respondents, demonstrates—and respondents virtually concede—the validity of this finding. For example, RXs 44, 45, 113–127; see Tr. 2581–2604; see also Answer of respondents Lakeland and Hoffman, Pars. 13–15.)

II. *Representations Regarding Respondents' Business Status*

Paragraph Five of the complaint alleges that "respondents have represented, directly or by implication that they actually grow or propragate the nursery products which they offer for sale and sell and that they own, operate or control nurseries, farms or properties in or on which the said products are grown or propagated." According to the complaint, these representations have been made:

(1) Through the use "separately" of the corporate and trade names (Lakeland Nurseries Sales Corp. and Lakeland Nurseries Sales);

(2) Through the use of the corporate and trade names in connection with certain representations and illustrations cited in Paragraph Four of the complaint; and

(3) Through the use of such representations and illustrations in conjunction with a Garden City, New York, mailing address.

The complaint (Par. Four) cites as "[t]ypical and illustrative," but "not all inclusive," four representations from respondents' advertising and promotional literature, and Government counsel rely on these representations in their proposed findings (CPF 8–9). They refer, as does the complaint (Par. Five), to other representations "similar thereto," but, in the absence of any record references to other such representations, the examiner assumes that the Government's case in this regard is based on the quoted representations, as follows:

(1) . . . The reason we are willing to release part of our precious propagating stock at this time is simply this: . . . ." (CX 4 C, p. 3.)

(2) Yes, as one of America's largest nursery organizations, we've sold

many, many magnificent rose varieties throughout the years—a good number of them international prize winners. On our annual trips all over the country to visit leading hybridizers, as well as to inspect our own crops of roses produced in vast growing fields in 6 states, we usually see a total of more than 10 million roses each summer, including the crops of "friendly rival" nurserymen. (CX 6 C, pp. 1–2.)

(3) If you should come and visit the vast greenhouses and experimental "GARDENS OF TOMORROW" where our Azaleamums are hybridized you would see the answer! (CX 8 C, p. 1.)

(4) You are now looking at a few rows in the growing fields—showing how Azaleamums look the very first season you plant them—caption in Lakeland brochure accompanying a picture of several rows of blooming plants growing in a field. (CX 8 B.)

The complaint does not charge that these advertising statements *as such* constitute a representation that respondents actually grow or propagate the nursery products they sell and that respondents own, operate, or control nurseries, farms, or properties where such products are grown or propagated. These advertising statements are challenged only when used either in conjunction with the corporate and trade names featuring the words "Lakeland Nurseries Sales" or in conjunction with the Garden City mailing address. Thereby the Government seems to concede that these advertising statements alone provide no basis for a charge that respondents have represented themselves as growers or land owners.

A. *The Basic Issue*

Thus, the real issue is whether respondents' use of the word "nurseries" in their corporate and trade names is false, misleading, and deceptive. This question must be resolved in any event, since the complaint alleges (Pars. Five and Six) that the corporate and trade names "separately" constitute a misrepresentation. The other advertising statements cited and the Garden City mailing address appear to be makeweights. (Compare CRB 2.)

In connection with the Garden City mailing address, the examiner rejects the proposed finding of complaint counsel that "The use of the Garden City mailing address has created confusion among the public as to whether or not Lakeland has a nursery at that address." The testimony cited fails to support this proposed finding. (See CPF 12; Turpin 336–37, 350.) The form letter used by the Garden City Chamber of Commerce (RX 1) to answer inquiries about Lakeland is suggestive, perhaps, but it does not prove that the Garden City address has led the public to believe Lakeland is a grower. The supposed inference that the address may lead the public to believe Lakeland

has gardens there, is rejected. (For respondents' explanation of the use of this address, see Hoffman 2203–08, 2219.)

The record demonstrates the essential truthfulness of the advertising statements quoted in Paragraph Four of the complaint (*supra*, p. 5). Lakeland did own propagating stock (budwood). Lakeland was and is an "organization" in the nursery industry (*infra*, p. 20), and Mr. Hoffman did make trips to see hybridizers and to view Lakeland's "own crops of roses" as well as the crops of competitors. The evidence also substantiates the advertised claims regarding the hybridization of the Azaleamums and the picture and text in CX 8 B concerning the growing fields. The Azaleamum advertisement did not represent that Lakeland owned the gardens and fields pictured and described. (Brownell 2055; Burks 1359–60, 1356, 1382, 1387–89; Andrews 1146–48, 1244–61; Hoffman 2199–2201; RXs 20, 61–64; Davis 1889–1906, 1910–13.)

The examiner recognizes that such literal truthfulness would not necessarily save the advertising statements cited in the complaint (Par. Four) if the "net impression" likely to be made on the public were deceptive (*Rodale Press, Inc.*, D. 8619, June 20, 1967 (Opinion, p. 26 [71 F.T.C. 1237]). Nevertheless, the examiner cannot find that these statements—either alone or in conjunction with the corporate or trade names or in conjunction with the Garden City address—may properly be interpreted as making the representations of grower status alleged in Paragraph Five of the complaint.

In relying on inference (CPF 10) and on "the net overall effect of Lakeland's *entire* advertising approach" (CRB 2), complaint counsel minimize the impact of the word "nurseries" in the corporate and trade names. They state:

> The Commission's complaint is not so much directed to the use of the term "nursery" and its variations but rather the use of that term and its variations within such a context of advertising material as may lead the consumer to believe that he is purchasing his stock from one who is a farmer or grower in the most commonly accepted sense of the word. (CRB 2.)

But, in the examiner's opinion, the statements quoted in Paragraph Four of the complaint and relied on by complaint counsel (CPF 8–9) do not provide such a "context" as to lead the consumer to believe Lakeland is a grower.

It is worth noting that the original complaint did not challenge the use of the word "nurseries" in the corporate and trade names. This is not to suggest that the Commission, after re-

such a corporate or trade name merely signifies a seller of nursery products.

Although the word "nursery" is widely used throughout Government publications and other reports in the record, the word is nowhere clearly defined as limited to growers of nursery stock. In fact, the contrary appears. Despite the dictionary definitions, the term "nursery" appears to be used loosely for distributors of nursery stock, regardless of whether they grow any of it. Complaint counsel have cited no definition that restricts the use of the term "nursery" in a business name to a business entity that grows all or most of, indeed, any of the nursery products it sells, or that otherwise specifies either the commercial meaning or the public understanding of such a business name; and the examiner has found no such definition.

The only testimony cited on the subject is that of Mr. Andrews (*supra,* p. 21). Complaint counsel rely on Mr. Andrews' definition of a "nursery" as being "a location or place where nursery stock is grown" (CPF 13), but they ignore his qualifications of this definition in connection with the use of the word "nursery" in the business of selling nursery products (*supra,* p. 21). Complaint counsel confuse the concept of a nursery as a place where plants are grown with the concept of a nursery business as a commercial entity that sells the products grown by a nursery.

Complaint counsel, citing *Words and Phrases* (Vol. 28A, p. 798), contend that "The words 'nursery' and 'nurseryman' are clearly defined to connote the growing *function* primarily," but then somewhat inconsistently state: "While a nurseryman may also be a middleman, the two terms are mutually exclusive." (CPF 20; compare CPF 28–29; Tr. 2628–31.)

Moreover, although the complaint (Pars. Five and Six) is predicated on the notion that a nursery grows the nursery products it sells, the record shows, and complaint counsel concede (CPF 13, 28–29; Tr. 2628–31), that a nursery may sell at least *some* nursery products grown by others. (See footnote 3, *infra,* p. 23.) This has also been recognized by the Commission.

In each of two cases cited by Government counsel, the use of the word "nurseries" or "nursery" was prohibited unless the respondent so styling itself owned and operated or directly and absolutely controlled a nursery or farm where "a *substantial proportion* of the nursery stock sold and distributed by it . . . is grown [emphasis added]." *First National Nurseries, Inc.,* 20 F.T.C. 53, 60 (1934); *Rochester Nurseries, Inc.,* 17 F.T.C. 95, 100 (1932). In the *First National* case, the Commission referred

to a New York State regulation that, in apparently distinguishing "nurseries" from "dealers," defined "dealers" in nursery stock as sellers "who do not themselves grow more than 25 percent of the stock handled by them." (20 F.T.C. at 58) But *cf. Earl E. May Seed Co.*, 26 F.T.C. 78, 86 (1937); *Atlas Rose Farms, Inc.*, 55 F.T.C. 881, 884 (consent order, 1958).

Since, both as a matter of fact and as a matter of law, a business entity that sells plants that it has not grown may call itself a "nursery," or otherwise use the word in its business name, the conclusion is inescapable that the word "nursery" in a business name does not constitute a representation that the business so designated is the grower of the products it sells. There has been no showing that the use of the word "nursery" or "nurseries" in the name of a business has the capacity and tendency to lead the purchasing public to believe that such a business is the grower of the plants that it sells.

To summarize: In the examiner's opinion neither the evidence nor reasonable inference supports the conclusory allegation of Paragraph Five that respondents have represented themselves as growers of the products they sell or as owners of the land where such products are grown.

B. *Consumer Preference*

Even if a finding were to be made that Lakeland had misrepresented itself as a grower, nursery owner, or nursery operator, there would remain a serious question as to the materiality of the misrepresentation. The complaint has put this question in issue by invoking "official notice" of "a preference on the part of members of the purchasing public for dealing directly with nurseries and growers of nursery products rather than with retailers, dealers or other intermediaries, such preference being due to a belief that by dealing directly with the nurseries or growers, various advantages may be obtained." [3] (Complaint, Par. Seven.) The Commission apparently viewed the existence of such a preference as establishing the materiality of the alleged misrepresentation.

Although in the prehearing stage the examiner considered

[3] The theory of the Government, as exemplified by Pars. Five and Six of the complaint, is that a "nursery" is a grower of the plants it sells. (See *supra*, p. 6.) But the references in Par. Seven to dealing "with nurseries *and* growers" and to dealing "with the nurseries *or* growers" (emphasis added) seem to draw a distinction between the two. This is doubtless an inadvertency, although in the examiner's view, the existence of such a distinction is borne out by the evidence. Moreover, the record reflects some inconsistency on the part of Government counsel that is consistent with the distinction suggested by the language of Par. Seven. (See, for example, CPF 28-29; Tr. 2628-31; see *supra*, p. 22; *infra*, p. 29.)

himself bound by the official notice set forth in the complaint,[4] he now finds that the actualities of distribution methods in the nursery industry, as shown by respondents' evidence (RXs 83–89), sufficiently negate the consumer preference in question so as to rebut the official notice taken by the Commission.[5] (Compare CPF 25–26.) In the absence of official notice, the evidentiary record does not contain reliable, probative, and substantial evidence of the existence of such a preference.

The examiner's ruling that the official notice has been rebutted by respondents turns in part on the relative paucity of decided cases—particularly recent cases—concerning the specific preference here in question, compared to the "scores, if not hundreds" of cases that led the Commission, in *Manco Watch Strap Co.*, 60 F.T.C. 495, 511 (1962), to take official notice of a public preference for American-made goods.

The cases cited by complaint counsel as the basis for the official notice taken by the Commission in Paragraph Seven of the complaint do not support the existence of the public preference officially noticed. Complaint counsel state (CPF 21–22) that in *Rochester Nurseries, Inc.*, 17 F.T.C. 95 (1932), and *First National Nurseries, Inc.*, 20 F.T.C. 53 (1934), it was "alleged and proven" that:

> The purchasing public prefers to purchase nursery stock from the producer thereof, to wit, from those who own, control, and operate the nurseries in which such nursery stock is propagated, cultivated, grown, and produced. The purchasing public greatly desires to procure nursery stock that is genuine and true to the name, kind, and quality for which it is offered for sale. The purchasing public is of the opinion that in making purchases directly from such producers thereof, there is less risk of mistakes in the true name, kind, and quality of the stock so being offered for sale and sold, and a greater probability that the product is genuine and true to the name, kind, and quality for and as which it is so offered and sold.

It is true that such an allegation was made in the complaint in the *First National* case (20 F.T.C. at 54–55), but no corresponding finding was made by the Commission. Instead, the Commission found that "Permanence, stability, and responsibility on the part of sellers of nursery stock are of peculiar importance to their customers. . . ." (20 F.T.C. at 59.)

It appears that there was not even such an allegation as to

[4] See the examiner's Order Affirming Denial of Motion to Strike, dated March 27, 1967.

[5] Section 7(d) of the Administrative Procedure Act, 5 U.S.C. § 556(e), authorizes agency decisions resting "on official notice of a material fact not appearing in the evidence in the record," provided that a party, on timely request, is afforded "an opportunity to show the contrary."

preference in the *Rochester Nurseries* case (17 F.T.C. at 95–96). In any event, there was no finding of the existence of any such preference. A finding substantially identical to that quoted from the *First National* case was made (17 F.T.C. at 99).

Moreover, in both of these cases (the only "fully contested" cases cited by the Government), there were affirmative representations of grower status, contrary to fact, and misrepresentations as to size and business status. In neither case was there a finding that the use of the word "nurseries" in the corporate name standing alone was deceptive. In each case, the finding was that the use of the word "nurseries" in the corporate name "taken in connection with statements made" in advertising had the capacity and tendency to mislead and deceive. (17 F.T.C. at 99; 20 F.T.C. at 59.)

The other three formal cases cited by complaint counsel did not involve any evidentiary hearings and thus they provide scant basis for the official notice presumably based on them. Two of the cases were brought more than 30 years ago: *Earl E. May Seed Co.*, 26 F.T.C. 78 (1937) (agreed stipulation of facts); *Anna M. Gibbin*, 17 F.T.C. 177 (1932) (default). The more recent case of *Atlas Rose Farms, Inc.*, 55 F.T.C. 881 (1958), was settled by entry of a consent order.

Finally, the stipulations referred to by complaint counsel in their proposed findings (Stipulation 7929, 46 F.T.C. 1204 (1949); and Stipulation 8659, 52 F.T.C. 1705 (1955)) add little to support the claimed public preference.

The Commission is "entitled to rely on established general facts within the area of its expertise. . . ." *Brite Manufacturing Co.* v. *FTC*, 347 F. 2d 477, 478 (D.C. Cir. 1965); see *Dayco Corporation* v. *FTC*, 362 F. 2d 180, 185–87 (6th Cir. 1966). Here, however, the defense evidence has indicated that the "facts" officially noticed are not "established general facts," and the fewness as well as the nature of the cases apparently constituting the basis for the official notice, casts doubt on whether the matters are "within the area of . . . expertise."

To bolster the basis for the official notice here taken, complaint counsel refer to a line of cases in which the Commission has established consumer preference for dealing with the prime or original source of products—cases involving the use of the term "manufacturer" or "factory" or "mills" by business entities that were neither manufacturers nor millers. (CPF 23–24; CCH Trade Reg. Rep., Par. 7577.) The distinction between the terminology involved in those cases and that involved here, and

also between the fact patterns in those cases and the evidentiary record here, is so plain as to need no elaboration.

The evidence tending to negate the existence of this consumer preference—much of it presented by complaint counsel [6]—consists of reports indicating that most nursery stock, instead of being grown by retailers, is sold at wholesale to retailers by growers; that "nurseries" selling at retail do not necessarily grow all or even a major part of the nursery products they sell; and that factors other than the alleged grower status of the "nurseryman" determine the kind of outlets where the public makes its purchases. For example:

(1) The Department of Agriculture reported in 1953 that "most" nursery stock "is sold at wholesale to retailers by growers" and that only about "one-fourth of the farm value of horticultural specialty crops is accounted for by retail sales of crops which were grown by sellers," with the remaining three-fourths of the farm value representing "the wholesale value of these crops to the growers." (RX 85, pp. 2, 15, 55, 61, 67.)

(2) In the case of roses specifically, a Department of Agriculture report on the production and sale of nursery products in six selected States (including California) shows that 92 percent of all production of roses in those states in 1963 was sold at the wholesale level. The corresponding figure for 1962 was 97 percent. (RX 83, Table 6, p. 10; see also Conklin 1749–59, 1763-67; Burks 1350, 1356.)

(3) A New York study published in 1959 reported that more than one-half of the retailers of nursery stock purchased all of the nursery stock that they sold and that practically all of the retailers depended upon growers for some part of their needs. It was further reported that out-of-state growers were a major factor in supplying New York's retail nursery outlets. (RX 86, pp. 7, 19.) This report also indicates that nursery plant growers have not generally been in the retail business. (RX 86, p. 1.)

The reports in evidence not only suggest that many—probably most—"nurseries" selling at retail do not grow any substantial part of the products they sell, but they also indicate the absence of any public image of the "nurseryman" as a grower and a corresponding absence of any public preference for dealing with nurseries that do grow the products they sell.

[6] Technically, of course, the rebuttal evidence of the Government was presented for consideration only if the examiner ruled that the "official notice" had been overcome by defense evidence. However, to disregard it would be to sacrifice substance for form. At any rate, for purposes of this discussion of the subject, the examiner has considered all the relevant evidence without regard to the question when or by whom it was offered.

Studies published by a research institute affiliated with the American Association of Nurserymen confirm the indications in these Government reports that the retail sale of nursery products is largely a *resale* operation. One such study flatly states:

> Most retail nurserymen purchase the material they sell with a trend to more retailers receiving plants from very long distances. (CX 41, p. 11.)

The same report also points out that "Movement of nursery stock of the large-volume production firms and heavy producing regions of the country will continue at an increasing rate to distant populated markets. Growers outside a marketing area are now a major source of nursery stock for full-time retailers." (CX 41, p. 14; see also p. 1.)

Moreover, these studies reflect "general confusion in the minds of homeowners as to what a 'nurseryman' really is." (CX 40, p. 8) A survey showed that the nurseryman was thought to be—

A plant grower by 73 percent.
A plant salesman by 62 percent.
A landscaper by 53 percent.
A garden center operator by 38 percent.
A gardener by 31 percent.
A florist by 11 percent.
A field hand by 10 percent.
(CX 40, p. 8; CX 41, p. 7.)[7]

The Government's evidence further indicated that the public "indiscriminately lumps together wholesalers, landscaper[s], garden center operators, managers of sales yards and agents, all as 'nurserymen.'" (CX 40, p. 8; CX 41, p. 7.) Another survey makes clear that factors other than the alleged grower status of the nurseryman are significant in consumer attitudes. (CX 40, p. 8.)

In listing factors determinative of the point of purchase (CX 40, pp. 5, 7–8), the report fails to mention the growth of the products by the seller. Similarly, a list of the four major factors reportedly involved in consumer preference for buying at a garden center or retail nursery (RX 41, p. 8) did not include the alleged grower status of the nursery.

Although suitable acreage is emphasized for the wholesale nursery, this is a factor unmentioned in connection with the

[7] Understandably, both parties find comfort in this breakdown. Complaint counsel refer only to the showing that 73 percent thought a nurseryman to be a plant grower, while respondents point out "that a nursery is regarded by the overwhelming majority of purchasers merely as a 'plant salesman.'" (CPF 27; RPF 9.)

retail nursery. The retail nurseryman is merely told to locate "close to large population centers." (CX 41, p. 8.)

It is significant also that CX 40 and CX 41, in recommending various courses of action to nurserymen, fail to recommend any specific emphasis on the nurseryman as the grower of the products he sells, except perhaps for the recommendation that shrubs should be planted around the sales area. (CX 40, pp. 8–10; CX 41, p. 17.)

It is thus apparent that the studies by the Horticultural Research Institute, Inc. (CX 40 and CX 41) do not constitute reliable, probative, and substantial evidence of the alleged preference. First, they provide no proof of a public understanding that "nurseries" grow all or a substantial part of the products they sell. Second, these studies do not reflect any public preference based on such a belief. Instead, as we have noted, they indicate the contrary. Similarly, the testimony of a consumer psychologist tends to negate the existence of both the public understanding and the public preference alleged. (Queen 2513–16.)

The primary factor emphasized by these studies is the view that nurserymen are good sources for information and advice on plants and planting and also for landscaping and planting services. (CX 40, pp. 2, 7.) But to the extent that the public may prefer to deal personally with a nursery because of a desire to obtain "reliable information on plants and planting" (CX 40, Par. 14, p. 7; CPF 27; Tr. 2628–33, 2456–57), this is a factor that a consumer dealing with a mail-order house has necessarily disregarded. Similarly, a mail-order purchaser does not expect the mail-order seller to do the planting for him. (Compare CX 40, Par. 15, p. 7; CPF 27.)

CX 39 provides some support for the contention that there is a favorable public attitude toward "nurseries," but it does not show that a "nursery" necessarily grows all or any substantial part of the products that it sells, or that the public has such an understanding.[8] Moreover, the basis of whatever preference there might be is not shown to bear any relationship to a public belief that nurseries grow the products they sell. Essentially, the preference reported in CX 39 relates to nurseries *vis-a-vis* chainstores, but with some references to mail-order sales. (CX 39, pp. 3, 6-7, 33–35.)

This study—like CXs 40 and 41—also suggests that factors

[8] The report states that it was "difficult" for the consumers questioned "to differentiate accurately among nursery garden centers, chainstore garden centers, independent garden centers nurseries, and roadside stands." (CX 39, Table 2 (footnote), p. 6.)

other than a "grower image" are involved in consumer attitudes and in the actualities of the distribution of nursery product sales through various channels. (CX 39, pp. 3–4.)

In any event, the figures in CX 39 regarding retail distribution of nursery products, particularly roses, must be assessed in the light of evidence showing that substantial quantities of nursery products sold at retail by nurseries and other retail outlets are not grown by the retailer.

Government counsel suggest that to overcome the official notice, respondents should have established the facts regarding consumer preference through a sampling of representative consumer attitudes from consumers themselves (CPF 25), but it is significant that neither the official notice relied on nor the evidence offered in rebuttal was based on any survey of relevant consumer preference.

Moreover, complaint counsel finally adopt a position inconsistent with the official notice taken in the complaint by referring to a "preference on the part of members of the purchasing public for dealing directly with nurseries which actually grow or cultivate *some of the stock* they offer for sale rather than obtaining that nursery stock from a middleman or other intermediary." (CPF 28–29; emphasis added; see Tr. 2628–31.) They do not explain why such a nursery would not be "a middleman or other intermediary" as to that part of the stock which it does not "actually grow or cultivate."

In summary, with official notice having been rebutted, the examiner finds that a preponderance of the reliable, probative, and substantial evidence in the record does not support the allegations of Paragraph Seven of the complaint that there exists a "preference on the part of members of the purchasing public for dealing directly with nurseries and growers of nursery products rather than with retailers, dealers or other intermediaries."

C. *Respondents' Involvement in the Nursery Business*

Since the examiner has found that respondents did not represent themselves as growers (as alleged in Paragraph Five of the complaint) and that in any event there has been failure of proof as to the materiality of such a representation based on an alleged preference on the part of the public for dealing directly with nurseries and growers (as alleged in Paragraph Seven of the complaint), he deems it unnecessary to make detailed findings concerning the allegations of Paragraph Six of the complaint to the effect that respondents do not actually grow or propagate

the nursery products they sell or own any land on which such products are grown. However, against the possibility that the Commission, on appeal or review, might reach a different conclusion respecting the allegations of Paragraphs Five and Seven, it may be desirable to make attenuated findings of fact respecting the allegations of Paragraph Six.

Through testimony and other evidence, and also through admissions by respondents and their counsel, the record clearly establishes that, as alleged in Paragraph Six of the complaint, "respondents do not actually grow or propagate the nursery products which they offer for sale and sell." Similarly, the record clearly establishes that they do not "own" or "operate" the nurseries, farms, or properties where such products are grown or propagated. The only real issue is whether respondents "control" such nurseries, farms, or properties.

Although Lakeland does not own or operate a "nursery," the record establishes that it is in the nursery business and is not, as the Government contends, simply "an elaborate mail-drop operated by artful advertising copywriters." (CPF 22.) To call Lakeland a "sales outlet many times removed from the actual grower" (CPF 22) is to indulge in the hyperbole that Government counsel condemn in respondents.

Lakeland itself does not own or lease any land on which the products it sells are grown, but it has maintained a significant connection with and control over the propagation, development, growing, packing, shipping, handling, and distribution of nursery stock. Lakeland's connection with and control over these phases of nursery operations stem primarily from its relationship with Andrews Nursery Company, Faribault, Minnesota. Although the exact legal relationship between the parties was never clearly defined, the uncontradicted evidence indicates that for all practical purposes Lakeland has been, and is, engaged in a partnership or joint venture with Andrews. About 25 percent of the nursery stock sold by Lakeland is grown on acreage owned or controlled by Andrews; the remaining 75 percent is grown on a contract basis on acreage exclusively allocated to Lakeland, either in its own name or in the name of Andrews on behalf of Lakeland. Moreover, a significant part of the nursery products sold by Lakeland is propagated from budwood that is owned or controlled by Lakeland.

Government counsel recognize that the uncontradicted testimony in the record shows the existence of an understanding on the part of grower-suppliers that the nursery products pur-

chased by Andrews were grown for Lakeland; but in an impermissible effort to shift the burden of proof, Government counsel complain that respondents "failed to introduce any documentary evidence" to corroborate that understanding. (CPF 15.) Actually, the joint nature of the Lakeland–Andrews operation has been documented (for example, RXs 16–23, 38–40), and the absence of other documents has been explained. Contracts and other records relating to transactions between Co-Operative Rose Growers, Inc., of Tyler, Texas, and Lakeland-Andrews apparently had been destroyed in a fire. (Burks 1383.) Contrary to the argument of complaint counsel (CPF 15), there is no "inescapable conclusion" that the business realities were different from the picture painted by respondents and their suppliers.

The examiner does not mean to find or to suggest that Lakeland is entitled to call itself a nursery. It may well be that the degree of control Lakeland exercises over the production of the nursery products it sells is not of such a nature as to justify this representation. (Compare RPF 7, 14, 27.) But this is not the issue, and the cases relied on by complaint counsel relating to the use of the terms "mill" and "factory" and "manufacturer" (CPF 18–20, 23–24) are inapposite.

Similarly, the fact that the control exercised over the growing fields by respondents, either directly or through Andrews, is not absolute, does not resolve the question whether it is deceptive for Lakeland to call itself a Nurseries Sales corporation. Likewise, the point at which Lakeland obtains title to the nursery products is not dispositive of this question. (See CPF 15–17.)

The essential facts regarding respondents' business status and operations may be derived from the record as follows: Andrews 1100–36, 1139–1208, 1225–40, 1244, 1249–74, 1284–1327; Hoffman 2167–76, 2197–2201; Burks 1339–42, 1346–47, 1356–66, 1383–91, 1404–06, 1409–10, 2434–36; Conklin 1752–53, 1757–58, 1760–62, 1767–86; Levy 1734–36, 1741; stipulation, Tr. 1743–47; CXs 9–10; RXs 16–23, 28–35, 38–40.

In summary, the examiner finds that the allegations of the first subparagraph of Paragraph Six are supported by the evidentiary record, except that respondents do exercise a degree of "control" over the propagation and growing of the products they sell, such control being less than absolute. However, the facts respecting respondents' business operations do not support the further allegation that respondents' representations regarding their business status are false, misleading, or deceptive.

III. *Representations Regarding Plant Characteristics*

Paragraphs Eight, Nine, and Ten of the complaint challenge representations respecting the amount and size of blossoms, the duration of the blooming period, and other blooming characteristics, as well as the rate of growth, the appearance, the height, the size, and other physical characteristics of (1) the Nearly Wild rose, (2) the Ray Bunge Scarlet Showers rose, (3) the Wilson's Climbing Doctor rose, (4) chrysanthemums known as Fragramums, and (5) chrysanthemums known as Azaleamums.

According to Paragraph Nine, respondents represented that "all purchasers . . . would obtain or could obtain" specified results from each of these plants "in the first season it is planted," whereas, according to Paragraph Ten, "many purchasers . . . could not obtain the results" advertised.[9] The allegations and the evidence as to each of these plants will be considered separately.

A. *Nearly Wild Rose*

Paragraph Eight (A) of the complaint cities excerpts from Lakeland's direct mail advertising for the Nearly Wild rose (CXs 4 B–C), and these are the "typical" representations relied on by complaint counsel in their proposed findings (CPF 29–30). According to the Government, this advertising represented that a Nearly Wild rose plant would produce the following results in the first season that it was planted:

(1) 1,000 to 4,076 blossoms.
(2) A "majority" of blossoms 3 inches in diameter.
(3) Continuous blooming from June to November.
(4) Blossoms that resemble those pictured in the advertising.
(5) 30 to 50 blossoms in a single day. (Complaint, Par. Nine (A); CPF 34.)

Paragraph Ten of the complaint alleges that "many purchasers . . . could not obtain" these results.

Of the five representations challenged, the only dispute of any substance relates to the two claims regarding the number of blossoms. And since the Government concedes, as it must in the light of the evidence (Dowd 517–18, 569–70, 573, 600–10, 613–14;

[9] Compare Paragraph Ten of the amended complaint with Paragraph Ten of the abortive complaint issued in Docket 8670. In the amended complaint the allegation is that "many purchasers . . . *could not obtain*" the advertised results for any of the five plants specified, whereas the complaint in Docket 8670 alleged that "many purchasers . . . *did not* obtain" the advertised results for four of the plants in question. (Emphasis added.) It was only as to the Fragramum that the complaint in Docket 8670 alleged that the advertised results "could not" be obtained.

RX 3 A–D; Brownell 2048), that one Nearly Wild rose plant did produce 30 to 50 blossoms in a single day and as many as 4,076 in a single season, this dispute centers simply on the question whether respondents represented these results as achievable in the first season after planting.

Neither in the complaint (Par. Eight (A)) nor in the proposed findings of Government counsel (CPF 29–30, 36–37) is there any showing of specific language in Lakeland advertising that promises the achievement of specific bloom count in the first growing season. The only representations that specify first-season results simply guarantee that each plant will "bloom this season" and will "produce heavy masses of bloom beginning this June"—"hundreds upon hundreds" of roses. The advertising specifies that "with 12 rose plants" the purchaser might expect "thousands" of roses during "the first season alone." Other claims regarding "thousands" of blossoms refer to a time after "plants become fully established." (See CX 4 B; see also CX 4 C, p. 2, and Dowd 542, 563–64, 610–12.)

The theory of complaint counsel is that the alleged misrepresentation concerning first-season blooming arises from respondents' failure to reveal that the advertised results were achieved during the second growing season. For example, referring to the admittedly true representation that in a test conducted at an agricultural college, the Nearly Wild produced 4,076 roses from a single plant, Government counsel complain that "the respondents never qualified the claim in any manner in their brochure so as to disclose that these results were obtained (1) during the second growing season. . . ." (CPF 36, 45; Tr. 512–25.) Similarly, after citing other representations, Government counsel state that none of these claims "were ever qualified anywhere in the brochure (CX 4 B) to the effect that a purchaser could not expect to achieve these results for at least two years. . . ." (CPF 37.)

Even under the "Danish Pastry Test" espoused by Government counsel (CPF 41), it would be stretching inference too far to find that merely because of a failure to reveal the season in which the advertised results may be expected, purchasers of nursery stock would expect to accomplish in the first growing season the profuse results pictured or described in this or any similar advertising.

What complaint counsel call the "Danish Pastry Test" is derived from the case of *Heinz W. Kirchner,* Docket 8538, Final Order November 7, 1963 (Opinion, p. 3) [63 F.T.C. 1282, 1290]

(*aff'd* on other grounds 337 F. 2d 751 (9th Cir. 1964)). According to complaint counsel, the *Kirchner* case delineates "the outer limits of consumer gullibility within the mantle of the Commission's protection." It "would exclude from the Commission's consumer protection functions, any person whose intelligence level is so low as to believe that baked goods advertised as Danish Pastry [were] baked in Denmark." (CPF 41.)

In the words of the *Kirchner* case (Opinion, p. 3) [63 F.T.C. at 1290], it would be applying "uncritically" or pushing "to an absurd extreme" the Commission's duty to the "gullible and credulous" to charge Lakeland with liability, not for any affirmative representation, but for a supposed inference drawn from silence. This would be "outlandish," involving protection only of "the foolish or feeble-minded."

Exaggeration or "puffing" in seed catalogues and in related nursery products advertising has been a part of Americana for so long that it may properly be a subject for official notice. This record affords no basis for a finding that in the absence of a specific disclaimer, the ordinary purchaser of seeds or of nursery stock expects his garden or his yard to produce in the first growing season the lavish growth, blooms, or fruit depicted by photographs or by words in catalogues and advertising for nursery stock or for seeds. (See RPF 92–94, 49–50; Queen 2485–87, 2491–96, 2531–34, 2539–40, 2544–45; Malins 884–85; compare Morey 1666.)

Thus, regarding the bloom count for the Nearly Wild rose, the evidence fails to show that respondents represented directly or by implication that the number of blossoms specified in the challenged advertising (up to 50 a day or a total of more than 4,000) might be expected in the first season after planting. Moreover, against the opinion testimony of the Government's expert that such prolific first-season blooming is unlikely (Dowd 515–17, 613–14), there is defense testimony that such results are achievable in the first season after planting. (Brownell 2048, 2087–88.) And note that the Government's Witness doubted only that a daily bloom rate of 30 to 50 blooms could be "sustained." (Dowd 613.)

As to the other three representations questioned, the examiner makes findings as follows:

(1) The evidence establishes that the Nearly Wild produces blossoms 3 inches in diameter, although there may be some question whether a "majority" of them would attain such size. (Dowd 543, 608–09; Brownell 2044–45, 2047, 2074.) Again,

however, Government counsel failed to demonstrate any substantial basis for the allegation that respondents represented that a "majority" of the blossoms would be that size. (Tr. 542.)

(2) The Government has apparently conceded *sub silentio* the validity of the advertising claims respecting continuous blooming from June to November. (CPF 43–49.) At any rate, the evidence substantiates that such continuous blooming may be expected except in areas where frost occurs before November. (Dowd 560–61, 571–72, 606; Brownell 2046–48, 2091–92.)

(3) The Nearly Wild rose plant has produced blossoms that "resemble" those pictured in the advertising.

Regarding this question of alleged pictorial misrepresentation, some reference was made to the "exaggerated" size of the blossoms pictured in the close-up photograph in CX 4 B (and of the flowers and leaves in the bouquet held by the lady pictured on the reverse of CX 4 B), but the Government's case on this aspect of the advertising ultimately emerged as involving a discrepancy between the color of the rose as shown in the advertising and the actual color of the rose. (CPF 47–48.) The complaint's challenge involved only "the close-up photo" in the advertising brochure. (Complaint, Par. Nine (A) (4); CX 4 B.) The roses shown in this photograph are within the 3-inch dimensions conceded to be achievable. (Dowd 543.) Testimony regarding other photographs in the brochure (Dowd 548) is of dubious relevance (see Tr. 544–47), and in any event, it does not prove the allegation here in issue.

As far as color is concerned, the record leaves no doubt that the photograph "resembled" the actual blossoms, and the fact that the colors may not have been identical is hardly a material misrepresentation. Whatever the difference may be between "rose-pink" and "cherry-pink," and however troublesome this difference may be to an expert, the examiner cannot find the color discrepancy to be a material misrepresentation as far as the ordinary purchaser is concerned, particularly when consideration is given to the obvious difficulties of true color reproduction in printing advertising brochures. (Dowd 548–51, 553–54, 577–96, 614–15, 618–19; Brownell 2035–43, 2073–74, 2088–89, 2096; Malins 886–88; CXs 4 B, 42 A–E; RXs 4, 5, 6, 66–69.)

Specifically, the examiner finds that the Nearly Wild rose produced blossoms that, in the words of the complaint, "resemble[d] those shown in the close-up photo in the brochure advertising the Nearly Wild Rose." (Complaint, Par. Nine (A)

(4).) Thus, the examiner finds no material misrepresentation in the color depiction of the Nearly Wild rose.

On the basis of the specific representations cited, as well as the advertising of the Nearly Wild rose (CX 4 B–C) in its entirety, the examiner finds that the allegations of misrepresentation concerning this plant are not supported by the reliable, probative, and substantial evidence in the record. These allegations are accordingly dismissed.

B. *Ray Bunge Scarlet Showers Rose*

Paragraph Eight (B) of the complaint contains excerpts from respondents' advertising for the Ray Bunge Scarlet Showers rose [10] (CX 5 B–C), and the Government contends that this advertising represented that during the first growing season this plant—

(1) would grow 18 inches in height in a single week, and 20 feet in height and 40 feet in width during the season;

(2) would produce blossoms the majority of which would be 5 inches in diameter;

(3) would show repeat blooming in each month from June to October;

(4) would produce at least 300 blossoms; and

(5) would produce the advertised results with only 3 hours of sunlight a day. (Complaint, Par. Nine (B); CPF 30–31, 35, 37–38.)

As in the case of the Nearly Wild rose (*supra,* pp. 33, 34), the record does not support the charge that respondents represented that all these growth and blossoming characteristics were achievable during the first growing season. One sales letter (CX 5 C) did make the specific claim that the Scarlet Showers would soar 20 feet in height and spread 40 feet in width in the first growing season. But this specific claim is not automatically referrable to the other growing characteristics advertised, particularly those made in the brochure (CX 5 B). Moreover, there is evidence that the circulation of this letter (CX 5 C) was limited and that before Commission inquiry, this dubious claim was corrected in a later sales letter. (Hoffman 2187–97, 2215–18, 2243–47; Harriet Cohen 198; CX 2 B.) In any event, as far as the other advertising claims for this rose are concerned, the question of the timing of the advertised results (whether achievable in the first season or in a subsequent season) is incidental and basically immaterial.

[10] This plant may be referred to as the Ray Bunge rose or as the Scarlet Showers rose.

In the case of the Ray Bunge rose, the dispute centers not so much on the meaning of the advertising as on the question whether the Government has proved that the advertising is deceptive because "many purchasers" could not obtain the advertised results. (Complaint, Par. Ten.)

The Government's case against the advertising of the Scarlet Showers rose is based on the test growing of three plants. When we consider the number of plants sold and the obvious variations and vicissitudes involved in growing any plant, three plants would, at best, be a small sampling on which to base a finding that "many purchasers . . . could not" achieve the results in question. (Compare Malins 838–39, 856–57; Morey 1499–1500.)

Even if the Government's evidence regarding the test growing of these plants were accepted at face value, there would remain at least some doubt that this evidence of failure to achieve the advertised growth and blooming characteristics was representative of the experience of "many purchasers." There would remain some doubt that "many purchasers" would be as unsuccessful in obtaining the advertised results as Peter Malins, the rosarian of the Brooklyn Botanic Garden (Tr. 784, *et seq.*), and Dr. Dennison Morey,[11] former West Coast research director for Jackson & Perkins Nursery (Tr. 1467, *et seq.*). Be that as it may, the fact is that the Government's evidence relating to the so-called tests of the Ray Bunge rose is not entitled to full credence. In view of a variety of troublesome circumstances, these tests cannot be relied on to support the inferences and generalizations that complaint counsel urge.

Although there can be no question concerning the qualifications, the sincerity, and the good faith of Peter Malins, the test of the Ray Bunge rose that he conducted at the Brooklyn Botanic Garden is suspect because of (1) the faulty handling of the test plant; (2) the failure to follow respondents' directions for preparation and planting; and (3) the failure to maintain detailed written records.

Technically, the evidence fails to establish through a "chain of delivery" the identity of the plants submitted by respondents with those tested, but the circumstantial evidence leaves no real doubt on this score. More serious questions arise, however, concerning the handling of the plants between their receipt by Commission representatives and their planting in Brooklyn.

Documentary evidence establishes that Lakeland delivered to

[11] Name misspelled as Morley in transcript.

the New York office of the Federal Trade Commission, on or about April 16, 1963, one sample of the Scarlet Showers and one sample of Wilson's Climbing Doctor. (CXs 31, 32.) There is no reliable evidence concerning the manner of delivery, the person who delivered them, or the manner of their packaging when received.[12] The investigating attorney, Morton P. Cohen,[13] found them on his desk, possibly on April 16 or 17, the package having presumably been delivered in his absence to the attorney in charge. (Tr. 433, 444–45.) This fact was developed after the investigator first indicated that the plants had been delivered personally to him by one of respondents' counsel, this answer then being changed to identify respondent Chester Carity as having made delivery to him. (Tr. 429, 434, 440, 442, 444.) When the investigator first saw the rose plants, they were in plastic bags, with a tag affixed to each and with planting instructions enclosed. (Tr. 431, 435, 452, 460–61.) The record indicates that these instructions were received and marked by the investigator on April 17, 1963, but he did not tag the plants. (Tr. 433–34, 437–38, 457–58.) The planting instructions were extracted from the plastic bags, possibly at the Commission's office or perhaps at the time of delivery to the Brooklyn Botanic Garden. (Tr. 438–39.) The plants were shown to several people and possibly handled by them. They may have been moved from place to place within the office. They remained in the office at least overnight. (Tr. 445–47.) Lakeland's instructions are to store the plants in a cool place, preferably a refrigerator. (CXs 3 A–B.)

The plants were taken on the following afternoon to the Brooklyn Botanic Garden and delivered to the rosarian, Peter Malins. The investigator had no personal knowledge of the manner in which Mr. Malins handled the plants or when or how he planted them. The investigator believed he opened the plastic bags in Mr. Malins' presence and extracted the planting instructions. (Tr. 450–52.) He did not leave the planting instructions with Mr. Malins or even bring them to his attention. (Tr. 439–40, 451, 464.) He merely asked Mr. Malins to plant the roses "in the way that he would plant any of his other roses. . . ." (Tr. 463; see Malins 899.)

As a witness, the investigating attorney apparently testified wholly from memory concerning events that took place four

[12] Note also that the Government relies on assumptions as to the point of shipment of the plants and the manner of their packaging for shipment. (CPF 52-53.) There is neither evidence nor assumption as to when they were shipped or when they were received in New York by respondents or their counsel.

[13] Mr. Cohen left the Commission's employ in 1965. (Tr. 425, 456.)

years previously. He could do no more than recall vaguely the name of one of the plants. He first identified it as "the Climbing Reverend Bunge," but ultimately named the "Climbing Doctor," which he still erroneously connected with the Rev. Mr. Bunge. (Tr. 426–29, 458–59, 462.)

Several other discrepancies are troublesome. In contrast to the investigator's testimony regarding the packaging and tagging of the rose plants (*supra,* p. 38), Mr. Malins testified that when the plants were delivered to him, they were not properly packaged—they were simply wrapped in newspaper—and bore no labels. (Tr. 789–90, 794–95, 808–09, 847, 898–99.) Although Mr. Malins testified that he labeled these plants in accordance with the information given to him, the record does not establish the basis on which the investigating attorney had distinguished between the two plants. (Malins 790, 847; Morton Cohen 458–59.) Mr. Malins gave conflicting testimony regarding the basis for his identification of the plants after they bloomed. (Tr. 805–07, 833, 845–51, 857–59.)

Mr. Malins first testified that he planted the test plants within an hour after delivery, but he later testified that he soaked them in water for two or perhaps three hours. (Tr. 790–91, 809, 854.) Lakeland's instructions prescribe that the root area should be soaked from 12 to 24 hours. (CXs 3 A–B; see also Morey 1670–71.) Mr. Malins' standard procedure was to soak the roots for an hour, but he extended the soaking period for these plants because the roots looked dry. And he planted them quickly because he realized there might be problems. (Tr. 791, 809–10.) Mr. Malins also put fertilizer in the planting holes even though he recognized that this was not recommended. (Tr. 792; CXs 3 A–B.)

Despite Mr. Malins' testimony that there was no root damage sufficient to account for the poor showing made by the Ray Bunge rose he planted (Tr. 794–95, 812–14, 817, 840–41, 854, 862–67, 899–901), he did acknowledge that the roots were dried out and that this could create problems. (Tr. 792, 809–10, 817, 866, 872.) Mr. Malins' testimony minimizing the effect of root dryness if a plant survived was essentially corroborated by Dr. Morey (Tr. 1530–36, 1670–76), but the record contains countervailing testimony. (Andrews 1213–14, 1283, 1316–17; Burks 2401–09.)

Mr. Malins testified from memory. Although he had maintained some apparently sketchy records regarding the test plants, he did not bring them to the hearing. He had "no special records" for these plants—not even the date they were planted.

(Tr. 817–19, 830–31.) Contrast these test procedures with Mr. Malins' procedures for tests on behalf of Jackson & Perkins and other nurseries. (Tr. 834, 836.)

The assumptions of fact underlying some of Mr. Malins' testimony respecting the condition of the test plants when he received them, proved to be unfounded. (See, for example, Tr. 863, 867–70, 873.)

Although there may be some doubt whether (1) the treatment of the plants before delivery to Mr. Malins, (2) the consequent drying of the roots, and (3) the failure to follow Lakeland's instructions, especially those relating to preplanting soaking, account for the poor results he reported, these circumstances are nevertheless sufficient to discredit Mr. Malins' test as a fair or reasonable basis for a finding that respondents' advertising of the Ray Bunge Scarlet Showers rose was false, deceptive, and misleading.

Mr. Malins conceded that there might have been something wrong with the plants from the start. (Tr. 799, 807–09, 815–17, 857, 866.) He did suggest that the difficulty might have been an inherent genetic weakness (Tr. 814, 864–65), but this subject was not further developed, except for a similar speculative comment by Dr. Morey (Tr. 1675–76); and the record thus affords no basis for a finding along any such line as that. Whatever the reasons might have been for the shortcomings of the Scarlet Showers plant Mr. Malins grew,[14] the examiner's ultimate finding is that the evidence simply does not permit a finding that the results achieved by Mr. Malins are representative of the experience of "many purchasers" of that rose variety. (See Tr. 857, 861.)

Similarly, the test of the Ray Bunge rose plants by Lakeland's competitor, Jackson & Perkins, does not constitute reliable, probative, or substantial evidence of the falsity of respondents' advertising claims for this rose. The reasons for this conclusion are many.

A test conducted by a competitor must be cautiously viewed under any circumstances. Here, the record supports a finding that the president of Jackson & Perkins (who was "particularly interested" and "anxious" about the report on this rose) harbored animosity toward Lakeland and its president, Henry Hoffman. (Morey 1486, 1569–70, 1625–32, 1644–53; Hoffman 2212.)

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[14] The examiner finds no substantial basis for respondents' suggestion that drought conditions in New York may have adversely affected the plants in the relevant time period. (RPF 48; see Malins 793, 810-12, 854-55.)

There is evidence also that Jackson & Perkins had unsuccessfully sought the rights to sell the Ray Bunge rose and that the president of Jackson & Perkins was disappointed that the commercial rights had been assigned instead to Lakeland. (RX 81 B; Morey 1573, 1645.) The plants that were the subject of testing were obtained through the Rev. Mr. Bunge on the representation that they were to be used "strictly for hybridizing purposes." (RX 81 B.)

The Government's principal witness, Dr. Morey, testified only from memory concerning events and observations of eight to ten years ago, and his memory was so demonstrably poor that his testimony may properly be accorded little weight. For the hearing examiner to rely on such an uncertain memory for crucial test results is unthinkable.

Dr. Morey first testified positively—not once but several times, and even after a suggestion that he might be mistaken—that he had received and had planted two Ray Bunge rose plants for testing purposes in 1959 (or 1960), but other evidence establishes that the time was late 1957 or early 1958. (Tr. 1483, 1570, 1604, 1641–42, 1700–03, 1716–17; CXs 22–26, 30; RXs 46 A–B, 81 A–B; Andrews 2317–21.) His memory was likewise faulty as to the year in which two photographs of the plants (CXs 11, 12) were taken. He stated that the pictures were taken in 1962 (Tr. 1490, 1640), but a handwritten legend on the back of each states: "Ray Bunge 1963—Planted 1959."

Dr. Morey's attempt to relate the time of planting the test plants to the time when he first saw Lakeland's advertising for the Scarlet Showers (CX 5 B) adds to the confusion instead of clarifying the matter. He indicated the interval was brief, but Lakeland did not circulate any advertising for the Scarlet Showers until December 1959. (Morey 1624–25, 1648, 1699–1703, 1716–17; Hoffman 2176–77; see Andrews 2322–23; Burks 2385–86.)

More significantly, Dr. Morey testified in detail as to his *personal* receipt of the plants in good condition, but a contemporaneous letter over his signature contradicts this testimony. The letter indicates rather plainly that the plants had been mislaid in the Jackson & Perkins warehouse, that they were not in "very good" condition, and that they were not planted for a considerable time after they had been shipped. (Tr. 1483–87, 1688–91; CXs 23, 30.)

Moreover, there is evidence that the plants in question were not comparable to the plants sold commercially by the respondents. (Andrews 2317–23, 2327–45; Burks 2382–87, 2410–19, 2425–27; compare Morey 1485–87, 1565, 1703.)

The plants were subjected to procedures that cast doubt on the validity of the test results, despite the protestations of Dr. Morey that the attempted hybridization, etc., would have had no effect on the growth and other characteristics of the plants in question. (Tr. 1605–10, 1617; see also CXs 23, 25; RX 81 B.)

The record even leaves some doubt as to where the plants were grown. (Morey 1483, 1486–87, 1595, 1608; CXs 24–25; Warriner 664; Lunay 1923, 1959–60; CPF 57, n. 2.)

The selective destruction of the Jackson & Perkins documents relating to the tests likewise arouses doubts that cannot be ignored. And the testimony of the records custodian for Jackson & Perkins (Mrs. Mae Lunay) was of such a nature as to intensify rather than to dispel these doubts. (Tr. 1932, 1943–2023, 2097–2121; see Tr. 1859–70.)

The testimony of William A. Warriner, the present director of research for Jackson & Perkins, does nothing to shore up the Morey testimony. Among other things, Mr. Warriner expressed the opinion that when he observed the plants during the summers of 1963 and 1964, they were "at least a year old, possibly two." (Tr. 668.) Actually, the plants were at least five years old in 1963 (*supra*, p. 41).

Mr. Warriner did not make any special observation of these plants. He did not actually count the blooms. He made no measurements. He may have made notes, but he did not have them. His testimony regarding the number of blossoms was an estimate—a guess to the best of his recollection as to what he thought the plants had produced during the period he observed them. He acknowledged in effect that the observations about which he testified were not in line with good test procedures. (Tr. 734–38.)

Government counsel contend in effect that despite the questions raised concerning the test plantings, the expert opinions of Mr. Malins, Dr. Morey, and Mr. Warriner concerning the challenged advertising claims are sufficient to sustain the allegations of the complaint. (CPF 61–62.) However, their opinion testimony was so clearly based on their experience with the test plants that it is discredited to the degree that the tests are so suspect that this experience is not necessarily representative. (Malins 833; Morey 1709; Warriner 662, 664, 684, 686, 734.)

Conversely, despite the possibility of some pro-Lakeland bias on the part of Mr. Andrews and Mr. Burks because of their business relationships with respondents, there is no basis for rejecting or drastically discounting their testimony. (Compare CPF 62.) Their credibility was not impeached, and their testimony

has been given appropriate weight in the light of the whole record.

In view of the examiner's rejection of the Malins and Jackson & Perkins "tests" as a valid basis for the opinions stated, he deems it unnecessary to make findings regarding the observations of the testers that conflict with respondents' advertising representations. It is worth noting, however, that Government counsel again have abandoned *sub silentio* one of the charges. They propose no finding respecting the alleged falsity of the claim of 5-inch blossoms (Complaint, Par. Nine (B) (2)), the evidence having established the essential validity of this representation. (CPF 58–65; Malins 860; Warriner 739; Andrews 2313; Burks 2390; RX 7.)

When the shortcomings of the tests relied on by the Government are considered in the light of respondents' evidence (Andrews 2281–85, 2288–97, 2313–17, 2353–63, 2375–77; RXs 41A; 73–80, 104A, 108A; Burks 2382, 2389–2401, 2427–28), the conclusion is inescapable, in the examiner's opinion, that the Government has not proved by a preponderance of the reliable, probative, and substantial evidence in the record that respondents' advertising of the Ray Bunge Scarlet Showers rose was false, misleading, or deceptive. Some of the advertising claims may be questionable, but this record requires a Scotch verdict—"not proved." It should be apparent also that the examiner's findings regarding the Scarlet Showers have been influenced by considerations of fairness (and the appearance of fairness). Fairness precludes a different verdict that would have had to rely in major part on "tests" of dubious validity. See *Evis Manufacturing Co.* v. *Federal Trade Commission,* 287 F. 2d 831, 836–39, 847–48 (9th Cir. 1961), *cert. denied,* 368 U.S. 824; *Viobin Corp.,* Docket 8579, Order Dismissing Complaint, September 16, 1964.

C. *Wilson's Climbing Doctor Rose*

Concerning the Wilson's Climbing Doctor rose plant, the complaint challenges representations that during the first season it is planted, (1) it will attain a growth of 11 feet in height; (2) the majority of its blossoms will be 6 to 8 inches in diameter; and (3) it will produce continuous blooming from June to October. (Complaint, Par. Nine (C).)

The only representation concerning which the first-season aspect is material is the claim as to the 11-foot height of the plant. Again, there is no direct representation that this height is

achievable in the first season after planting, and the Government relies on respondents' failure to affirmatively reveal that such growth may be expected only after the plant is well-established. (CPF 38.) This theory is as dubious with respect to the Climbing Doctor as it was with respect to the Nearly Wild rose (*supra*, pp. 33, 34), and it is rejected.

Without saying so, Government counsel have apparently abandoned the charge as to the falsity of the representation that Wilson's Climbing Doctor rose would produce blooms measuring 6 to 8 inches in diameter. (CPF 66.) Their own witness testified that the plant he grew produced 8-inch blossoms.[15] (Malins 806.)

The Government's only evidence respecting the remaining questions—the height and blooming period of the Wilson's Climbing Doctor rose—is based entirely on the Brooklyn Botanic Garden test of one plant. The examiner finds that this test suffers from the same infirmities as that involving the Scarlet Showers (*supra*, pp. 37–40), so that the testimony of Peter Malins in this regard does not constitute reliable, probative, or substantial evidence that "many purchasers" could not obtain the advertised results.[16] In any event, the claims are supported by respondents' evidence. (Andrews 2277–81, 2350–51; Burks 2422–23; see RXs 102, 108A.)

The charges of misrepresentation relating to Wilson's Climbing Doctor rose are dismissed.

D. *Fragramums*

Advertising claims for the Fragramum chrysanthemums challenged by the complaint (Par. Nine (D) and Par. Ten) are that in the first season a Fragramum was planted, it would produce:

(1) 200 to 400 blossoms, with at least 1,000 blossoms each subsequent season;

(2) many blossoms 4 inches in diameter;

(3) continuous blooming from August to November; and

(4) fragrant blossoms.

As the evidence eventuated, the primary basis for the Government's challenge to the Fragramum advertising was the fact

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[15] In an obvious typographical error, the size is shown as "18 inches" at Tr. 806. See RPF 47 (footnote).

[16] Complaint counsel had offered testimony by William A. Warriner, Director of Research for Jackson & Perkins Nursery, respecting Wilson's Climbing Doctor rose, but because of his admitted lack of familiarity with this specific rose, the examiner ruled his testimony to be irrelevant. Although the testimony is in the record as an offer of proof, it has not been considered by the examiner in making this decision. (Tr. 688-725.)

that if Fragramums were grown in a yard or garden in most sections of the country,[17] frost would prevent any blooming at all—the plants would freeze before they had a chance to bloom. (Ackerson 935, 940, 943–48; Parker 1854–56.)

Respondents' own evidence confirms the existence of this pre-blooming freeze problem (*infra*, pp. 45, 46), and the only remaining questions of substance relate to whether there is proof (1) of the boundaries of the areas where Fragramums would freeze before blooming and (2) of the advertising and sale of Fragramums in such areas. (RPF 84, 91.) The examiner is convinced that there is such proof and so finds.

The Government's evidence was presented through Cornelius Ackerson, a "semi-professional" amateur gardener (Tr. 1049) and a leader in the National Chrysanthemum Society. (Tr. 908–11.) At the request of Dr. Elizabeth B. Parker, the originator of the Fragramums, Mr. Ackerson had test-grown Fragramums in 1960 or 1961 [18] in his New Jersey garden and in his greenhouse, but he found that those plants left in the garden failed to bloom before frost. (Tr. 912–15, 934–35.) There are several evidentiary problems concerning the test he made (*infra*, pp. 49, 50), but, when considered in the light of the whole record, they do not vitiate Mr. Ackerson's testimony concerning the inability of the plants to bloom outdoors before frost.

Mr. Ackerson, in answer to a limited question, initially testified that Fragramums planted in New Jersey, Connecticut, Massachusetts, or New York would not produce blossoms before the plants were killed by frost. (Tr. 943–47.) He amplified this answer by stating that in any area which gets severe frost by November, the Fragramums could not be grown to blooming and that this would include practically the whole country with the exception of California, Florida, and possibly the Gulf Coast states. (Tr. 940, 948, 1025–27.) He stated in substance that because of the "cultivar" classification of Fragramums, they would not be ready to bloom until December, and frost would nip them first except in the limited areas specified. (Tr. 948, 952–53, 1023–28, 1052; see Tr. 914, 935.)

The testimony on this subject by Dr. Parker, who was a defense witness, was somewhat confusing, but it did confirm Mr. Ackerson's testimony that Fragramums grown outdoors in a

[17] These were the conditions specified or implied in the advertising. (CX 7 B.) No geographic limitation was stated. The record contains no detailed information concerning the area in which the advertising was circulated, but there is evidence indicating national circulation. (Andrews 1172-73.)

[18] See *infra*, p. 49.

"northern climate" [19] proved not to bloom before frost. (Tr. 1854–56.) The "fact sheets" in evidence concerning four varieties of Fragramums (RXs 48–50, 60; Tr. 1815–17, 1843) specify blooming in the Los Angeles area from October to January for three varieties and from October to May for a fourth.[20] These documents also indicate that in areas other than California, the blooming period would probably be from August until frost, but Dr. Parker acknowledged that this was speculation on her part and that August blooming was not achieved. (Tr. 1848, 1855–56.) She also accepted as reliable the expert opinion of Mr. Ackerman as to the inability of the plants to bloom outdoors "under northern climatic conditions." (Tr. 1849.)

Dr. Parker's direct examination as a defense witness was limited, and her answers were guarded. She did not state under oath (because she was not asked to) any *facts* respecting the blooming period or other characteristics of the Fragramum varieties except that they were fragrant. She did little more than identify various documents, including the so-called "fact sheets" that had been prepared or approved by her, apparently for advertising and promotional use by respondents. (RXs 48–50, 60; Tr. 1815–17, 1843; RPF 89.) But it is noteworthy that in answer to leading questions, she simply characterized these "fact sheets" on four varieties of the Fragramum as her "best opinion" as to the growing characteristics of the plants. (Tr. 1816, 1843.) She did not verify under oath the "facts" stated therein.

Other evidence also indicates that Lakeland's commercial exploitation of the Fragramum (RXs 18–19) was a "failure." (Parker 1851–56; RX 52 A–C.) The reasons were never clearly spelled out, but the record supports an inference that the late-blooming characteristic was involved. (Tr. 1849–56.)

However, respondents contend that the area in which frost would prevent outdoor blooming of the Fragramum was not satisfactorily established. (RPF 84.) Although respondents did not question Mr. Ackerson's qualifications as a chrysanthemum expert (Tr. 911; Parker 1849; RX 52 B), they (and, initially, the examiner) doubted his expertise regarding the areas where a killing frost would prevent blooming of Fragramums. (Tr. 948–49.) On reflection and reconsideration, the examiner concludes that what might be called the "frost line" was a matter within Mr. Ackerson's expertise. His testimony on this subject not only stands uncontradicted, but it is actually corroborated in large measure

[19] Dr. Parker never defined what she considered "northern."

[20] Compare RXs 15 A-E, 47.

by Dr. Parker's testimony (*supra*).

Thus, Mr. Ackerson's testimony regarding climatic conditions is inherently credible despite some inconsistency on cross-examination (Tr. 1026–27), and despite the anomaly of his publication, in the nationally-distributed *Bulletin* of the National Chrysanthemum Society,[21] of an article concerning the Fragramums without any *caveat* concerning the limited area in which the plants could be successfully grown outdoors. (Tr. 976, 1004–06, 1038, 1052; RX 13 A-G; see RX 10.) Mr. Ackerson also had written to Dr. Parker that the "late blooming characteristic is a serious drawback for *east coast* gardeners." (Tr. 939; emphasis added) However, this is not inconsistent with his testimony but merely incomplete.

If for these or other reasons there should be any lingering doubt about the reliability or substantiality of the testimony on this subject, it is the opinion of the examiner that it is within his "judicial knowledge" that, except for California and Florida, the area in the United States that is frost-free in November and December is quite limited. In any event, such a fact is subject to "official notice," and the examiner does take official notice of United States Weather Bureau publications so indicating.[22] For example: A map showing "Mean Date of Last 32° (F.) Temperature in Spring and First 32° (F.) Temperature in Autumn," U.S. Department of Commerce, Environment Science Services Administration, Environment Data Service, 1966 ed. (Catalogue No. C 52.11:T 24/3). A copy of the side of the map that shows the "Mean Date of First 32° (F.) Temperature in Autumn" is attached hereto as Appendix A.

Although the Government might have proved more firmly and more specifically (by sales records, for example) the area in which Fragramums were advertised and sold, the testimony of respondent Henry Hoffman sufficiently establishes that sales were made in areas where Fragramums could not be grown to the point of blooming. Mr. Hoffman testified that Fragramum sales were "limited" to certain zones shown on a Hardiness Zones map (RX 71), the northern boundaries of which extended through the States of Washington, Oregon, Idaho, Nevada, Utah, New Mexico, Texas, Oklahoma, Missouri, Illinois, Indiana, Ohio, West Virginia, Pennsylvania, Connecticut, Rhode Island, and Massachusetts. (Tr. 2180–82.) And although Kimball Andrews testified

[21] Mr. Ackerson was editor of the *Bulletin*. (Tr. 908.)

[22] See footnote 5, *supra*, p. 24. Concededly, the better practice would have been to take such official notice in the course of trial, but even so, respondents are not barred from seeking "to show the contrary" before final decision. See Rule 3.43(d).

that Fragramum sales were made "mostly" in the south—"the bulk of the orders went to the south"—he acknowledged that "Some could have gone into every state. . . ." (Tr. 1172–73.) At any rate, most of "the south" is subject to November–December frost (Appendix A).

Thus, considering the record as a whole, the examiner finds that respondents did advertise and did sell Fragramums in areas where they could not be successfully grown outdoors. Purchasers in such areas obviously could not achieve the results that respondents advertised. The Fragramum advertisements were, therefore, false.

The foregoing findings essentially dispose of the issues respecting the Fragramum advertising, except that there remains the question of the results achievable where climatic conditions would permit outdoor blooming. Further discussion will be limited to Fragramum advertisements in those few places (primarily California and Florida) where frost would not prevent blooming. Because the primary issue has been resolved and because respondents had discontinued the sale of Fragramums in 1961 (CX 32; Hoffman 2178–79), the following findings will be somewhat abbreviated:

(1) The evidence (*supra*, pp. 45–47) requires a finding that the representation of continuous blooming from August to November was false as to all areas. (Just why Dr. Parker had assumed blooming from "August to frost" for Fragramums grown outside the Los Angeles area when the earliest blooming she had obtained there was in October (RXs 48–50, 60) is a question unanswered by this record.) Although there was agreement that there was no August blooming, the actual duration of the blooming period in California and other frost-free areas is not clear. (Compare RXs 15, 47–50, 60; and see Mr. Ackerson's contradictory testimony at Tr. 1020–28; compare Tr. 1023, lines 20–22, with Tr. 1025, lines 1–5, and Tr. 1028, lines 5–13.)

(2) The Government has failed to prove that in areas where the Fragramum would bloom outdoors, it was false, misleading, and deceptive for respondents to advertise that the blossoms would be "fragrant." (Complaint, Par. Nine (D) (4); Par. Ten.) The record establishes that Fragramums were "fragrant." Apparently the intent was to deal with the nature of the fragrance—to challenge the advertising of a "sweet" fragrance or of other fragrances unlike the fragrance usually associated with chrysanthemums. But this was not done; the complaint merely said in effect that they were not fragrant.

Mr. Ackerson testified that the Fragramum had a "spicy" fragrance—a "sort of a pumpkin-pie spicy fragrance"—but that it was not unique or significantly different from that of other chrysanthemums. (Tr. 941–43, 971–72, 977–78, 1004, 1012.) Moreover, Mr. Ackerson had authorized commercial use of a testimonial in which he had described the Loretto Fragramum as having a "unique but delightful fragrance" (RXs 10, 11; Tr. 977–78, 980–81) and had published an article in the NCS *Bulletin* that extolled the fragrance of the Fragramums. (RX 13 A–G; Tr. 1003–04.)

Other officials—national, state, and local—of the National Chrysanthemum Society also had written testimonials concerning the fragrance of the Fragramums. (RXs 12, 53–56; Ackerson 982–98; Parker 1824–26, 1831–35.) See also RXs 13 F, 15, 47–50, 58–60; Parker 1810.

In any event, complaint counsel, in their proposed findings, disclaim any objective standard for determining the existence of a particular type of fragrance. (CPF 76; Ackerson 941, 1004.) All things considered, the examiner finds that the allegations of the complaint regarding the fragrance of the Fragramums were not proved.

(3) The record does not afford a substantial basis for a finding that under suitable climatic conditions "many purchasers" could not achieve the number and size of blossoms claimed in Fragramum advertising.

Mr. Ackerson's testimony tends to support, albeit with some qualification, the allegations of the complaint challenging the claim of 200 to 400 blooms the first season, many of them 4 inches in size. (Tr. 936–37, 940, 949, 951–52, 981, 1030–31.) But the facts relating to his testing of the Fragramums provide a dubious basis for a finding that the claimed results are impossible of achievement for "many purchasers" in frost-free or late-frost areas.

First, the plants he tested did not come from respondents. Although there is no doubt that they were Fragramums (they came as "rooted cuttings" from Dr. Parker, their originator), no showing was made of their comparability with the plants sold commercially by respondents. (Tr. 912, 916–17, 926–27, 1012–13, 1032–33; compare RPF 83, 103; see *Viobin Corp.*, Docket 8579, Order Dismissing Complaint, September 16, 1964.) Mr. Ackerson had made further cuttings from the rooted cuttings sent to him. (Tr. 914, 935.)

Second, the record leaves in considerable doubt the identification

of the specific varieties that he planted and observed. (Tr. 912–13, 928–33.) This is significant because Mr. Ackerson acknowledged that there are variations in blooming characteristics among the different varieties. (Tr. 1012.)

Third, like Dr. Morey (*supra*, pp. 41, 42), Mr. Ackerson had an uncertain memory of the test dates, as well as of other details. The record reflects considerable confusion concerning the dates of the receipt and planting of the Fragramums,[23] as well as the dates of their removal from the garden to the greenhouse and the date and period of bloom. (Tr. 912–14, 926, 932, 934–35, 939–40, 999, 1005, 1018–19, 1054–55, 1069–70.)

Finally, Mr. Ackerson's observations of the blooming characteristics were made after the Fragramums had been moved from the garden into a greenhouse; and while he minimized the effect of such transplanting, he acknowledged that some shock would result. (Tr. 934–35, 1019; see also Tr. 1054–57.) He did not count the blossoms, nor did he measure their size. (Tr. 936, 1028, 1041–42.) He was testifying from memory; and while he had maintained some records, which he did not have with him, they did not contain detailed information concerning his observations. (Tr. 937, 1042, 1047.) He threw the plants out before blooming had stopped. (Tr. 940.) He conceded that his test procedures were not ideal for making a fair evaluation of the plants. (Tr. 1019–20.) See also Tr. 1037, 1039–40.

When these facts and Mr. Ackerson's equivocal testimony are weighed against respondents' evidence,[24] the examiner finds that the advertising claims respecting the size and number of blooms in areas where the climate would permit blooming have not been shown to be false, misleading, or deceptive by a preponderance of the reliable, probative, and substantial evidence in the record. Again the finding is "not proved."

E. *Azaleamums*

The complaint (Par. Nine (E), Par. Ten) challenged advertising claims that the Azaleamum chrysanthemum plant would produce in the first season (1) 500 to 2,000 blossoms, (2) blossoms more than 2 inches in diameter, and (3) continuous blooming from August to November.

[23] Complaint counsel still seem to believe the test planting was in the spring of 1961 (CPF 68), although Mr. Ackerson finally fixed the year as 1960. (Tr. 1070.) Compare CPF 70, line 5.

[24] Respondents' evidence includes the equivocal testimony of Dr. Parker and such documentary evidence as RXs 15, 47–50, 58–60. This evidence has its shortcomings too (*supra*, pp. 45, 46), but the burden of proof is on the Government, not on respondents.

Without saying so, complaint counsel have abandoned the charges relating to the blooming period and the size of the blossoms and now contend only that the number of blossoms achievable in the first growing season [25] was exaggerated in respondents' advertising. (CPF 78.)

The only evidence produced by the Government in support of the charges concerning the Azaleamum plant was the testimony of Cornelius Ackerson. Despite Mr. Ackerson's status as a "semi-professional" amateur in the field of chrysanthemums (Tr. 1049), his opinion concerning the Azaleamum rested on a shaky foundation. Although he testified that he grew some Azaleamums in about 1955 or 1956, they were not Azaleamums purchased from Lakeland or from sources connected with Lakeland, and the record fails to establish that they were, in fact, Azaleamums. (Ackerson 956–57, 1031; Davis 1906–08.) See *Viobin Corp.*, Docket 8579, Order Dismissing Complaint, September 16, 1964.

Moreover, Mr. Ackerson's testimony that an Azaleamum plant grown outdoors would not produce 2,000 blossoms in the first season [26] was based on his questionable memory of casual observations made 11 or 12 years previously. (Tr. 960, 963–64, 966–67, 1031, 1041, 1048; see also Tr. 968–70.) He conceded first-season growth of 500 to 600 blossoms. (Tr. 961, 971.)

Standing alone, this testimony is of dubious value. When it is considered against respondents' evidence confirming the advertising claim in question (Davis 1882, 1885–86, 1915; see RXs 99, 107, 109), the charges respecting the Azaleamums must be dismissed for failure of proof.

IV. *Representations of Plants as "New"*

Paragraphs Eleven and Twelve of the complaint raise an issue relating to the propriety of advertising certain plants as "new." According to the complaint, the advertising of the Ray Bunge Scarlet Showers rose, the Wilson's Climbing Doctor rose, and the Fragramum chrysanthemums as "new" was false, misleading, and deceptive because these plants "had been offered to the public by the respondents in preceding seasons."

Concerning the Azaleamum chrysanthemum, the complaint al-

[25] Once more there is some question about the representation of first-season results. Except for one testimonial claiming "2,928 blooms on a single first-year plant" (CX 8 B), respondents' advertising essentially promises hundreds of blooms from a single plant in the first season, with thousands resulting from 6 plants in the first year and thousands in subsequent years. (CX 8 A–C.)

[26] The witness testified that such profuse blooming was possible if early growth was started in a greenhouse. (Tr. 963–64.) He acknowledged also that second-season blooms totaling 2,000 or more could be achieved by "dividing" the original plant. (Tr. 1028–30.)

leges that respondents represented "that all varieties of Azaleamums were new in 1960 and were being offered to the public for the first time," whereas "some varieties of Azaleamums had been offered by others in preceding seasons."

The facts are not in dispute. The representation of the plants as "new" pervades all of respondents' advertising: CXs 5 B–C (Ray Bunge Scarlet Showers), CXs 6 B–C (Wilson's Climbing Doctor), CXs 7 B–C (Fragramums), and CXs 8 B–C (Azaleamums). And the period during which each was advertised and sold has been established by the testimony of respondent Henry Hoffman. (Tr. 2176–79.) These facts may be summarized as follows:

A. *Fragramums*

Concerning the Fragramums, the charge must fail because respondents advertised and sold them only for one season, from 1960 until the spring of 1961. (Hoffman 2177–79.) There is no claim that the Fragramums were not new at the time that respondents advertised and sold them. (CPF 80.)

B. *Azaleamums*

The charges respecting the Azaleamum must also be dismissed for failure of proof. A fair reading of respondents' advertising (CXs 8 B–C) does not support the allegation that it represented "that all varieties of Azaleamums were new in 1960 and were being offered to the public for the first time." As a matter of fact, Lakeland's advertising brochure (CX 8 B) discloses that the hybridization work leading to the creation of the Azaleamum dated back to 1933.

The Azaleamum was first trademarked in 1933 and was sold at the 1933 World's Fair. Azaleamums have been sold at retail for many years by the R. M. Kellogg Company, of Three Rivers, Michigan. However, there are many varities of Azaleamums, and the record establishes that the varieties advertised by respondents were in fact new at the time and had not been previously offered to the public. (Davis 1916, 1919, 1909.) To round out the record, the Azaleamums were sold by Lakeland for one season, 1960–1961. Respondents have not sold them since the spring of 1961. (Hoffman 2178–79.)

C. *Rose Plants*

Resolution of the issue relating to the Scarlet Showers rose

and the Wilson's Climbing Doctor rose presents more of a problem, although the basic facts are just as clear:

(1) The first offer of the Scarlet Showers rose was made through a "small sampling of brochures" in December 1959 for the 1959–60 season. Few plants were available for sale at that time. The Scarlet Showers was last offered for sale in the spring of 1963. It was offered every year from 1959 to 1963. (Hoffman 2176–78, 2197; Harriet Cohen 198.)

(2) The initial offer of the Wilson's Climbing Doctor rose was in 1959, and sales continued through the spring of 1961. (Hoffman 2177–78.)

(3) The advertising for these roses was substantially unchanged during the years that these plants were advertised and sold by Lakeland. (Hoffman 2179.) Representations made in the advertising included the following statements:

As to the Ray Bunge Scarlet Showers rose:

Amazing New Climbing Rose Development . . . (CX 2 A).

Acclaimed As A New Floral Sensation By Leading Garden Authorities . . . (CX 2 A).

New, Patented "Scarlet Showers" (CX 2 B, p. 1).

So New . . . Our Supplies Are Extremely Limited For Next 2 Years To Come" (CX 2 B, p. 4).

. . . Lakeland is proud to be the nursery organization selected . . . to introduce this thrilling new super-blooming rose to the public (CXs 2 A, 5 B).

. . . you are invited to be one of the first gardeners to grow this spectacular new rose on this special introductory offer (CX 2 B, p. 1).

This extraordinary event in rosedom . . . is here being made available for the first time (CX 5 C, p. 1).

Because this is the formal introductory year for "Scarlet Showers" . . . (CX 5 C, p. 4).

As to the Wilson's Climbing Doctor rose:

A new climbing form of the famous Gold Medal Winner, "The Doctor" . . . (CX 6 B).

Now, in this new climbing form, *The Doctor* has even surpassed itself! (CX 6 B.)

. . . this new strain of Super-Roses . . . (CX 6 B).

New Wilson's "Climbing Doctor" (CX 6 B).

. . . Lakeland is proud to be the nursery organization selected . . . to introduce this thrilling new super-rose to the public (CX 6 B).

Up to now, it has been kept under wraps . . . until Lakeland was ready to release it. The time has come! . . . capture a "garden first" in your town . . . (CX 6 B).

. . . you can be one of the very first gardeners to enjoy this . . . bloom in your yard (CX 6 C, p. 3).

The Government rests its case on this evidence. Complaint counsel emphasize that:

> The issue . . . is not the fact that the . . . plants were not new varieties when they were first advertised and offered for sale by the respondents but the fact that the respondents represented to the public for a period of *two or more years* that the . . . plants were new products and were being offered for the first time. (CPF 80.)

To support its conclusory allegation that the term "new" was misleading in a material respect, the Government relies solely on a recent advisory opinion by the Commission to the effect that the Commission "would be inclined to question use of any claim that a product is 'new' for a period of time longer than six months." (Advisory Opinion Digest No. 120, April 15, 1967; see also Advisory Opinion Digest No. 146, October 24, 1967.)

Government counsel have presented a singularly exiguous record for the application of the "general rule" prescribed in the Commission's opinion, and to accept their theory would pose a variety of problems. However, it is not necessary to invoke that rule to resolve the basic issue presented.

Thus, in the view taken by the examiner, there is no occasion to rely on what respondents call a "novel" but "manifestly incorrect" theory that, "as a matter of law, once a plant has been offered for sale, it becomes 'old' and cannot be advertised as new in a second season" (RPF 97), and their arguments in rebuttal (RPF 97–100, 104–05) are largely inapposite.

On this record, the vice in respondents' representations is not simply the use of the word "new" but its use in such a way—particularly in conjunction with other representations—as to represent that the nursery products so described were being offered for the first time. Such representations were false, misleading, and deceptive when they were made subsequent to the season in which the plants were first offered. And the prohibition of such representations is in no different category than any other Commission order designed to prevent deception of the purchasing public.[27]

Analysis of the proposed order (Complaint, p. 66, Par. 5; CPF 84, Par. 5) shows that this is the misrepresentation intended to be reached. The proposed order would prohibit:

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[27] The skeptic may question the materiality of the misrepresentation, but the law is well established that "the public is entitled to get what it chooses," regardless of motivation (*Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U.S. 67, 78 (1934))—here the choice being a new, first-time-offered plant. And the emphasis on the representation in the challenged advertising, as well as respondents' spirited defense, suggests that respondents have considered it a material inducement to buy.

Representing, directly or by implication, that any of the aforesaid plants or products, is new or is being offered to the public for the first time: provided, however, that it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that said plant or product is in fact new and is being offered to the public for the first time during the growing season in which the representation is made.

Unless the representation of "new" is related to a first-time offer, the proposed order actually begs the question and sets no standard for what "new" means. It would prohibit respondents from representing that a product is "new" but would allow them to defend such a claim in an enforcement proceeding by establishing that the product "is in fact new. . . ." The crux is the added condition that the product "is being offered to the public for the first time during the growing season in which the representation is made."

In recognition of the fact that there may well be proper uses of the word "new" in the advertising of nursery products that would not be understood as a representation of a first-time offer, the examiner has revised the proposed order to reach the misrepresentation found without any blanket interdiction of the word "new."

In summary, it is not arbitrary or unreasonable to prohibit a false representation that a plant is being offered for the first time —a representation that is false because it had, in fact, been offered for and during a previous growing season. Since this is self-evident, there is no failure of proof on that score. (Compare RPF 97, 98, 101, 105.)

The examiner has accordingly rejected as a defense respondents' evidence and argument respecting (1) the production and distribution problems that, according to respondents, are peculiar to the nursery products industry and (2) the supposed public reaction to the word "new" as a tired, overworked advertising expression. (RPF 98–100, 104–05.)

CONCLUSIONS

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

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

3. The representations regarding the blossoming characteristics of the Fragramum chrysanthemums are found to be false, misleading, and deceptive. (Section III (D) herein, pp. 44–48; Amended Complaint, Paragraphs Eight (D), Nine (D), and Ten.)

4. The representations that the Ray Bunge Scarlet Showers rose and the Wilson's Climbing Doctor rose were being offered to the public for the first time were false, misleading, and deceptive because these representations were made for and in growing seasons subsequent to respondents' first offer of these plants. (Section IV (C) herein, pp. 52–55; Amended Complaint, Paragraphs Eleven and Twelve.)

5. The use by respondents of such false, misleading, and deceptive statements, representations, and practices has had and may have the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true into the purchase of substantial quantities of respondents' nursery products by reason of this erroneous and mistaken belief.

6. The acts and practices of the respondents, as found herein, were and are all to the prejudice and injury of the public and of respondents' competitors and 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.

7. The reliable, probative, and substantial evidence in the record fails to support the other allegations of law violation contained in the amended complaint.

8. There is no evidence to support the allegation of Paragraph Fourteen of the amended complaint that respondents have placed in the hands of retailers and dealers the means and instrumentalities by and through which they may mislead and deceive members of the public.

9. The record supports the issuance of an order as to the respondents Henry L. Hoffman and Chester Carity, both individually and as corporate officers. (Compare CPF 5–7 with RPF 6–7, 107–08.)

10. There is no evidence to support the allegations of the amended complaint as to respondents Lillian Zogheb and Allen Lekus.

11. Ordinarily, a cease and desist order properly follows a finding of misrepresentations. But in the case of the principal misrepresentation found as to the Fragramums, that is, that climatic conditions prevented many purchasers from realizing the blossoming results advertised, a question arises as to the necessity in the public interest to issue the type of order the facts seem to warrant—an order against advertising that a plant will achieve certain blossoming characteristics when, in fact, climatic

conditions prevent any blooming at all. Moreover, respondents discontinued the sale of the Fragramums in 1961.

In view of these circumstances, and considering (1) that the examiner has found no substantial misrepresentation of this plant in areas where climatic conditions would permit its blooming [28] and (2) that he has found no proof of misrepresentation of the growing characteristics, etc., of the other plants involved in this proceeding, it may appear to be empty formalism to enter such an order.

A determination that no order is required might have been made if respondents (1) had established that they had relied in good faith on the representations of the originator of the Fragramums as to their blooming date in areas outside of Los Angeles; (2) had demonstrated that they had made reparation to all disappointed purchasers of the Fragramums in areas where they would not grow to blooming; and (3) had given assurances against repetition of such acts and practices.

However, instead of confessing error and entering a plea in mitigation, respondents apparently determined, as they had a legal right to do, to wait and see whether the Government could prove its case against them.

Respondents contend that in advertising and marketing the Fragramums, they "had acted in the utmost of good faith and in reliance on Dr. Parker's representations." (RPF 104.) The evidence does show that Dr. Parker had indicated the probability of August blooming of the Fragramums when grown in areas other than the Los Angeles area. However, respondents were at least on notice that the plants had not been tested in any area other than in the Los Angeles area. (RXs 15, 47–50, 52, 60.)

Although it is reasonable to assume, as a simple business and public relations proposition, if nothing else, that respondents would not knowingly sell plants that would not bloom in most sections of the country, nevertheless they did not fully explain the circumstances surrounding their distribution of the Fragramums as a possible basis for demonstrating that the public interest does not require the entry of an order. As the record stands, there is no basis for a finding that they acted in good faith, but rather, the evidence suggests that they may have, at least, acted in reck-

[28] The claim of August blooming was found to be false as to all areas (*supra*, p. 48), but, in the examiner's opinion, this misrepresentation is essentially covered by Par. 1 of the Order, and a separate prohibition of misrepresentation as to the period of blooming is not warranted by this record.

less disregard of the possibility that the Fragramums might not measure up to the advertising claims made for them. The record suggests that respondents rushed into an advertising and marketing campaign for the Fragramums before adequate testing had been completed.

The examiner accordingly concludes that the false advertising of the Fragramum chrysanthemums warrants the issuance of an order to cease and desist. However, in view of all the circumstances, the examiner further concludes that this record does not warrant the breadth of order proposed in the complaint (p. 15, Par. 4) and in the submittals of Government counsel (CPF 83, Par. 4).

ORDER

It is ordered, That respondents Lakeland Nurseries Sales Corp., trading as Lakeland Nurseries Sales or under any other name or names, and Henry L. Hoffman and Chester Carity, individually and as officers of this corporation, and respondents' agents, representatives, and employees (including other corporate officers), directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of rose plants, chrysanthemum plants, or any other nursery products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any plant or nursery product that respondents offer for sale or sell will exhibit any specified growing, blossoming, or fruit-producing characteristics unless climatic conditions permit such results in the areas where the plant or product is advertised, offered for sale, or sold; or unless limitations imposed by climatic conditions are clearly and conspicuously disclosed in conjunction with such representations.

2. Representing, directly or by implication, through the use of the word "new" or otherwise, that any plant or nursery product that respondents offer for sale or sell is being offered to the public for the first time when, in fact, such plant or product has been advertised, offered for sale, or sold for or during a previous growing season.

It is further ordered, That except for the allegations of Paragraphs Eight, Nine, and Ten relating to the Fragramum chrysanthemum plants, and Paragraphs Eleven and Twelve relating to the Ray Bunge Scarlet Showers rose and the Wilson's Climbing

LAKELAND NURSERIES SALES CORP., ET AL.


MEAN DATE OF LAST 32° (F.) TEMPERATURE IN SPRING AND FIRST 32° (F.) TEMPERATURE IN AUTUMN—Continued
MEAN DATE OF FIRST 32° (F.) TEMPERATURE IN AUTUMN

Doctor rose, all other allegations of law violation contained in the complaint be, and they hereby are, dismissed; and

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondents Lillian Zogheb and Allen Lekus.

OPINION OF THE COMMISSON

This matter has been considered by the Commission on the appeal of respondents from the hearing examiner's initial decision sustaining some of the allegations of the amended complaint but dismissing the major portion. Complaint counsel did not appeal from those parts of the examiner's decision adverse to it.

Respondents are a New York corporation and its officers, Henry L. Hoffman and Chester Carity, who together own over 80 percent of Lakeland's stock.[1] Respondents have been engaged in the business of selling a wide variety of plants and other nursery products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

On June 25, 1957, in Docket No. 6666, the Commission accepted a consent agreement from respondents which required them, among other things, to cease and desist from representing the physical characteristics of a particular plant (Lythrum Morden Gleam), such as size at maturity, rate of growth or amount of bloom, unless such representations would hold true in all geographic regions where the plant was advertised and sold. See 53 F.T.C. 1189–91.

Thereafter, on November 1, 1965, the Commission instituted a new proceeding against respondents with the issuance of the complaint in Docket No. 8670. That complaint set forth allegations of violations based upon representations similar, in part, to those contemplated by the aforementioned order, but outside its narrow product coverage. By stipulation between the parties, that complaint was dismissed, and an amended complaint, similar to the one in Docket 8670, was issued to reopen the proceeding in Docket No. 6666.[2]

The amended complaint charged respondents with unfair methods of competition and unfair and deceptive acts and practices

[1] Lillian Zogheb and Allen Lekus, who, respectively, had been secretary and treasurer of the corporation, have not been officers or directors of Lakeland for approximately the last years, and complaint counsel did not oppose a motion granted by the examiner to dismiss the instant proceedings as to them.

[2] The stipulation made it clear that there would be no relitigation of the issues raised by the original complaint in Docket 6666 and that the consent order of June 25, 1957, would remain in effect pending the final determination of the issues raised by the amended complaint. In the event that an order were entered on the amended complaint, the stipulation provided that the parties would have the right to seek modification of the consent order.

in violation of Section 5 of the Federal Trade Commission Act. It alleged that respondents had represented contrary to fact that Lakeland was a grower and propagator of the nursery products which it offered for sale; misrepresented in several respects the blooming characteristics of five particular plants (the Nearly Wild Rose, Ray Bunge Scarlet Showers Rose, Wilson's Climbing Doctor Rose, and the Fragramum and Azaleamum chrysanthemum plants) and the results obtainable by purchasers thereof; and represented that three of the above plant varieties were being offered for sale for the first time, when in fact they had been previously offered by respondents in preceding seasons. In all, the complaint charged that respondents were responsible for over 20 false and misleading representations published in furtherance of their business.

The hearing examiner concluded that none of the allegations was sustained save those relating to the blooming characteristics of the Fragramum and the newness of the Scarlet Showers and Climbing Doctor rose plants. He entered an order which would enjoin such misrepresentations in connection with the sale of any nursery products offered by respondents.

Upon consideration of the record, the initial decision, and the briefs and arguments of counsel, the Commission is of the view that no cease and desist order on the amended complaint is warranted. As we have noted, most of the allegations have not been proved. Furthermore, our judgment is that the record does not now contain reliable, probative and substantial evidence to support that part of the examiner's order (Paragraph 1) based upon alleged misrepresentations relating to Fragramum blooming.

The examiner found no substantial misrepresentations concerning that plant where climatic conditions would permit its blooming. It was where frost would strike prior to blooming that the represented results could not be achieved. Thus, complaint counsel had the burden of demonstrating (1) the boundaries of the areas where frost would prevent blooming of Fragramums as represented by Lakeland, and (2) the extent of respondents' advertising and sales of Fragramums in such areas. Although the record does contain some evidence on these questions, we believe, contrary to the examiner, that the evidence does not meet acceptable standards to justify issuance of an order to cease and desist.

The deficiencies of proof concerning point (1) could be cured by the Commission taking official notice of U.S. Weather Bureau

records and reports (an approach taken by the examiner) and remanding the proceedings in order to provide respondents with the opportunity to disprove the noticed facts.[3] That procedure, however, would not remedy the defects which we see in the proof relative to point (2), and we do not believe, on the facts of this case, that the public interest requires that complaint counsel be afforded another chance to introduce sufficient evidence demonstrating with clarity where these plants were advertised and sold. We therefore decline to take the necessary official notice and decline to remand the matter for additional hearings. Instead, we conclude that the allegations relating to Fragramum blooming have not been proved and that there is no basis for Paragraph 1 of the examiner's order.

Finally, the allegations that respondents have falsely represented that two plant varieties were being offered for the first time, found by the examiner to be adequately supported by record, lose much of their significance when left to stand alone. In the context of the entire complaint, these allegations had a value in that they helped to demonstrate the breadth of respondents' alleged proclivity to deceive. However, it has not been proven that respondents are so inclined, and, therefore, we believe that these particular charges warrant no further investment of the Commission's enforcement resources.

In sum, we are setting aside Paragraphs 1 and 2 of the examiner's order and dismissing the entire amended complaint. The findings and conclusions of the hearing examiner, to the extent that they conflict with this opinion, are rejected. Since no cease and desist order will issue on the amended complaint, there is no occasion to review the original consent agreement in this docket, and it remains in effect unchanged. An appropriate order will be entered.

The Commission's action in this matter is without the concurrence of Commissioner MacIntyre.

ORDER DISMISSING AMENDED COMPLAINT

FINAL ORDER

This matter has been considered by the Commission on the appeal of respondents from the hearing examiner's initial decision holding that the allegations of the amended complaint had been sustained in part. Upon examination of the record and after full consideration of the briefs and arguments of counsel,

[3] Respondents have preserved their right to such treatment by filing a timely request therefor under § 3.43 (d) of the Commission's Rules of Practice for Adjudicative Proceedings.

the Commission, for the reasons set forth in the accompanying opinion, has determined that respondents' appeal should be granted and that the amended complaint should be dismissed in its entirety. Accordingly,

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

By the Commission, without the concurrence of Commissioner MacIntyre.

IN THE MATTER OF

CARLETON WOOLEN MILLS, INC., ET AL.

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

Docket C-1352. Complaint, July 8, 1968—Decision, July 8, 1968

Consent order requiring a Rochdale, Mass., manufacturer of wool fabrics to cease misrepresenting the fiber content of its goods on invoices and misbranding its wool products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Carleton Woolen Mills, Inc., a corporation, and Edward P. Le Veen, Jr., individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Carleton Woolen Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its office and principal place of business located on Stafford Street, Rochdale, Massachusetts.

Respondent Edward P. Le Veen, Jr., is an officer of said corpora-

tion. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of the corporate respondent.

Respondents are engaged in the manufacture of woolen fabrics. They ship and distribute such products to various customers in the United States.

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

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

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

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

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

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

quired information, in violation of Rule 8 of said Rules and Regulations.

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

PAR. 7. Respondents are now, and for some time last past, have been engaged in the offering for sale, sale and distribution of certain products, namely textile fabrics. In the course and conduct of their business as aforesaid, respondents now cause and for some time last past, have caused their said products, when sold, to be shipped from their place of business in the Commonwealth of Massachusetts to purchasers 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. 8. Respondents in the course and conduct of their business, as aforesaid, have made statements on invoices to their customers, misrepresenting the fiber content of certain of their products.

Among such misrepresentations, but not limited thereto, were statements setting forth the fiber content thereof as "10 percent Nylon, 10 percent Orlon, 80 percent Wool," whereas, in truth and in fact, the product contained substantially different fibers and amounts of fibers than represented.

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

PAR. 10. The aforesaid acts and practices of respondents, as set forth in Paragraph Eight were, and are, all to the prejudice and injury of the public, and constituted, and now constitute, unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

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

the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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 Carleton Woolen Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located on Stafford Street, Rochdale, Massachusetts.

Respondent Edward P. Le Veen, Jr., 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 Carleton Woolen Mills, Inc., a corporation, and its officers, and Edward P. Le Veen, Jr., individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or

manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

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

It is further ordered, That respondents Carleton Woolen Mills, Inc., a corporation, and its officers, and Edward P. Le Veen, Jr., 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 offering for sale, sale or distribution of textile fabrics or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or amount of constituent fibers contained in such products on invoices or shipping memoranda applicable thereto, or in any other manner.

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

CARLETEX CORP. ET AL.

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

Docket C-1353. Complaint, July 8, 1968—Decision, July 8, 1968

Consent order requiring a New York City wholesaler of fabrics to cease misbranding the fiber contents of its wool products.

COMPLAINT

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

PARAGRAPH 1. Respondent Carletex Corp. 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 1451 Broadway, New York, New York.

Respondent Paul E. Conway is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of the corporate respondent.

Respondents are wholesalers of fabrics. They ship and distribute such products to various customers in the United States.

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

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

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

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

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

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

PAR. 5. Certain of said wool products were misbranded in violation of the Wool Products Labeling Act of 1939 in that they were not labeled in accordance with the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, in that the respective common generic names of fibers present in such wool products were not used in naming such fibers in required information, in violation of Rule 8 of said Rules and Regulations.

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

DECISION AND ORDER

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

thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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 Carletex Corp. 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 1451 Broadway, New York, New York.

Respondent Paul E. Conway 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 Carletex Corp., a corporation, and its officers, and Paul E. Conway, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of

1939, do forthwith cease and desist from misbranding such products by:

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

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

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

It is further ordered, That 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

SAMUEL BENJAMIN TRADING AS BENJAMIN TRIMMING CO.

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

Docket C-1354. Complaint, July 9, 1968—Decision, July 9, 1968

Consent order requiring a New York City wholesaler of trimmings and interlinings to cease misbranding his wool products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Samuel Benjamin, an individual trading as Benjamin Trimming Co., hereinafter referred

to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and 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 is an individual trading as Benjamin Trimming Co. with his principal office and place of business located at 17 East Broadway, New York, New York.

Respondent is engaged in the wholesaling of trimmings and interlinings.

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

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

Among such misbranded wool products, but not limited thereto, were interlining materials stamped, tagged, labeled, or otherwise identified as "All Wool" and "100% Wool," whereas in truth and in fact, said products contained substantially less woolen fibers than represented.

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

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

PAR. 5. The acts and practices of the respondent as set forth above were, and are, in violation of the Wool Products Labeling

Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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 Samuel Benjamin is an individual trading as Benjamin Trimming Co., with his principal office and place of business located at 17 East Broadway, New York, New York.

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

ORDER

It is ordered, That respondent Samuel Benjamin, an individual trading as Benjamin Trimming Co., or under any other name,

and respondent's representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from introducing into commerce, or offering for sale, selling, transporting, distributing, delivering for shipment or shipping, in commerce, woolen interlinings or any other wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939:

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

2. Unless each such product has securely affixed thereto or placed thereon a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a) (2) of the Wool Products Labeling Act of 1939.

It is further ordered, That the 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

ROY GILLEY DOING BUSINESS AS FLOWERCRAFT SUPPLY COMPANY

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

Docket C-1355. Complaint, July 9, 1968—Decision, July 9, 1968

Consent order requiring a Seattle, Wash., distributor of handicraft materials to cease marketing any fabric which does not conform to flammability standards of the Flammable Fabrics Act.

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 Roy Gilley, an individual doing business as Flowercraft Supply Company, hereinafter re-

ferred 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 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 Roy Gilley is an individual doing business as Flowercraft Supply Company. Respondent is a distributor of handicraft materials with his office and principal place of business located at 2415 South Jackson Street, Seattle, Washington.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the sale and offering for sale, in commerce, and in the importation into the United States, and has introduced, delivered for introduction, transported and caused to be transported in commerce, and has sold or delivered after sale or shipment in commerce, fabrics, as the terms "commerce" and "fabric" are defined in the Flammable Fabrics Act, which fabrics failed to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such fabrics mentioned hereinabove were wood fiber chips.

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

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 Roy Gilley is an individual doing business under the name Flowercraft Supply Company, with his office and principal place of business located at 2415 South Jackson Street, Seattle, Washington.

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 Roy Gilley, an individual doing business as Flowercraft Supply Company, or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from manufacturing for sale, selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any fabric as "commerce" and "fabric" are defined in the Flammable Fabrics Act, as amended, 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 herein shall, within ten (10) days after service upon him of this Order, file with the Commission an interim special report in writing setting forth the respondent's intention as to compliance with this Order. This interim special report shall also advise the Commission fully and specifically concerning the identity of the fabric which gave rise to the complaint, (1) the amount of such fabric in inventory, (2)

any action taken to notify customers of the flammability of such fabric and the results thereof and (3) any disposition of such fabric since February 23, 1968. Such report shall further inform the Commission whether respondent has in inventory any fabric, product or related material having a plain surface and made of silk, rayon or cotton or combinations thereof in a weight of two ounces or less per square yard or fabric with a raised fiber surface made of cotton or rayon or combinations thereof. Respondent will submit samples of any fabric, product or related material with this report. Samples of the fabric, product or related material shall be no less than one square yard of material.

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

IN THE MATTER OF

NATIONWIDE INDUSTRIES, INC., ET AL.

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

Docket C–1356. Complaint, July 9, 1968—Decision, July 9, 1968

Consent order requiring four affiliated marketers of automotive products to cease misrepresenting that their products have been independently tested or approved by any Federal agency, and that their guarantees are unconditional.

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 Nationwide Industries, Inc., Nu Research & Development Company, Dealers Service Specialty Corporation and Konalrad Products, Inc., corporations, and James Romanow, Wilbur Baker, Albert J. Sowolsky (also known as Albert J. Scott) and David Sokoloff, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby

issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Nationwide Industries, Inc., Nu Research & Development Company, and Dealers Service Specialty Corporation are corporations organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with their principal office and place of business located at 4410 Holmesburg Avenue in the city of Philadelphia, State of Pennsylvania.

Respondent Konalrad Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located in the city of Beaverdam, State of Ohio.

Respondents James Romanow, Wilbur Baker, Albert J. Sowolsky (also known as Albert J. Scott) and David Sokoloff are officers of each of the said corporate respondents. They formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Their address is 4410 Holmesburg Avenue in the city of Philadelphia, State of Pennsylvania.

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of chemical sealers for automatic transmissions, automobile engines and power steering mechanisms, chemical carburetor cleaners and engine tuneups, motor oils and gas line additives and other chemical automotive products to retailers for resale to the public.

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

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their products, the respondents have made, and are now making, numerous statements and representations in advertisments inserted in newspapers and nationally circulated magazines, on their product containers,

product information sheets and other forms of promotional matter with respect to the use, performance, characteristics, testing, endorsement and guarantees of their products.

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

NU SEAL AUTOMATIC TRANSMISSION SEALER UNCONDITIONALLY GUARANTEED TO SEAL LEAKY TRANSMISSIONS OR YOUR MONEY BACK! . . . NU SEAL is a coagulant that forms its own pliable seal over the worn seal! Also seals minor housing cracks and line leaks, eliminates motor racing due to slipping clutches or lazy shifting. . . .

MOTOR TITE . . . SEALER AND CONDITIONER . . . developed to make car engines run better by sealing all leaks, forestalling future leaks, building compression, . . . SATISFACTION GUARANTEE FROM NATIONWIDE INDUSTRIES! . . .

NU SEAL POWER STEERING SEALER . . . Stops leakage from Power Steering Pumps . . . from Seals . . . from Reservoir and Cylinder and Hydraulic lines at the Fittings . . . Repairs to power steering units with this quality product are as permanent and pliable as if new seals had been installed. . . . FULLY GUARANTEED BY NATIONWIDE INDUSTRIES!

ALL PRODUCTS CERTIFIED & APPROVED BUREAU OF STANDARDS AMERICAN INSTITUTE OF SCIENCE.

* * * * * * *

SNAP POWER STEERING SEALER Unconditionally Guaranteed TO SEAL POWER STEERING LEAKS.

* * * * * * *

SNAP CARBURETOR CLEANER . . . dissolves and washes away the gum, sludge and varnish . . . inside your engine . . . while you drive!

* * * * * * *

REV 500 ENGINE TUNE-UP AND BOOSTER SHOT . . . Frees Sticking Hydraulic Valve Lifters, Valve and Rings—Prevents Sludge Formations—Prolongs Engine Life . . . Keeps Engines Clean and Quiet.

* * * * * * *

Mr. MOTOR . . . UNCONDITIONALLY GUARANTEED STOPS OIL BURNING PERMANENTLY! . . . Quiets valves and lifters—Lengthens engine life . . . Increases gas mileage . . . Increases compression . . . And Mr. MOTOR lasts 4 times longer! . . .

* * * * * * *

REV 500 GAS LINE ANTI-FREEZE . . . will keep the fuel system clean of carbon, gum and sludge.

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

1. American Institute of Science is a bona fide, scientific testing laboratory fully staffed, equipped and competent to test

respondents' products and that said organization has tested respondents' products and substantiated the use and performance claims made therefor.

2. Said products have been certified and approved by an agency of the United States Government.

3. The products designated NU SEAL AUTOMATIC TRANSMISSION SEALER, Motor Tite and various other products are guaranteed to accomplish the performance results claimed or the purchaser's payment for such products will be refunded by respondents.

4. The products designated NU SEAL POWER STEERING SEALER, SNAP POWER STEERING SEALER and various other products are guaranteed without condition or limitation.

PAR. 6. In truth and in fact:

1. American Institute of Science is not a bona fide, scientific testing laboratory staffed, equipped or competent to test respondents' products and for this reason, the said organization has not properly tested any of respondents' products or adequately substantiated the use or performance claims made therefor.

2. None of respondents' products has been certified or approved by an agency or other branch of the United States Government.

3. Dissatisfied customers, seeking to obtain from respondents a refund of their payment for NU SEAL AUTOMATIC TRANSMISSION SEALER, Motor Tite or various other products are informed that they must return their sales recepit and empty container or container cap to respondents before a refund is made under the guarantee. Such requirements are not disclosed in the advertised guarantee.

Furthermore, in a substantial number of instances respondents have failed, refused or otherwise neglected to perform under the requirements of said guarantees.

4. Respondents' guarantees of NU SEAL POWER STEERING SEALER, SNAP POWER STEERING SEALER or various other products are not unconditional but are subject to limitations and conditions which are not revealed in the advertised guarantee.

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

PAR. 7. 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 herein alleged.

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 of chemical automotive products 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 by reason of said erroneous and mistaken belief.

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

DECISION AND ORDER

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

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

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

the following jurisdictional findings, and enters the following order:

1. Respondents Nationwide Industries, Inc., Nu Research & Development Company, and Dealers Service Specialty Corporation are corporations organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with their office and principal place of business located at 4410 Holmesburg Avenue, in the city of Philadelphia, State of Pennsylvania.

Respondent Konalrad Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located in the city of Beaverdam, State of Ohio.

Respondents James Romanow, Wilbur Baker, Albert J. Sowolsky (also known as Albert J. Scott) and David Sokoloff are officers of said corporations and their address is 4410 Holmesburg Avenue, in the city of Philadelphia, State of Pennsylvania.

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 Nationwide Industries, Inc., Nu Research & Development Company, Dealers Service Specialty Corporation and Konalrad Products, Inc., corporations, and their officers, and James Romanow, Wilbur Baker, Albert J. Sowolsky (also known as Albert J. Scott) and David Sokoloff, individually and as officers of said corporations 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 chemical sealers for automatic transmissions, automobile engines and power steering mechanisms, chemical carburetor cleaners and engine tune-ups, motor oil and gas line additives, other chemical automotive products or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, through the use or display of any words, emblem, seal, symbol, certification, or otherwise, that merchandise has been tested, approved or endorsed by the American Institute of Science or by any other organization: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish (a) that such testing organization is a bona fide scientific testing laboratory fully competent to test respond-

ents' products, and (b) that such testing organization, by valid scientific methods, has in fact performed tests substantiating the accuracy of the representations made by respondents.

2. Representing, directly or by implication, that their products have been certified, approved or in any way endorsed by any Agency or other branch of the United States Government.

3. Representing, directly or by implication, that their products are guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed; or from failing promptly to perform all of their obligations under the represented and expressed terms of the guarantee.

4. Misrepresenting, in any manner, the testing or endorsement of their products or their product guarantees.

5. Furnishing or otherwise placing in the hands of others any means or instrumentality by and through which they may mislead or deceive the public in the manner or as to the things prohibited by this order.

It is further ordered, That the respondent corporations shall forthwith distribute a copy of this order to each of their 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

SAM REICHBACH & SON, 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-1357. Complaint, July 9, 1968—Decision, July 9, 1968

Consent order requiring New York City manufacturing furriers to cease misbranding, deceptively guaranteeing, and falsely invoicing their fur products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission

Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Sam Reichbach & Son, Inc., a corporation, and Stanley Reichbach and Michael Denktsis, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and 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 Sam Reichbach & Son, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Stanley Reichbach and Michael Denktsis are officers of the corporate respondent. They formulate, direct and control the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are manufacturers of fur products with their office and principal place of business located at 333 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 "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

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

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

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed to disclose that the fur

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

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

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed to disclose that the fur contained in the fur product was bleached, dyed, or otherwise artificially colored, when such was the fact.

PAR. 6. 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. 7. Respondents furnished false guaranties under Section 10(b) of the Fur Products Labeling Act with respect to certain of their fur products by falsely representing in writing that respondents had a continuing guaranty on file with the Federal Trade Commission when respondents in furnishing such guaranties had reason to believe that the fur products so falsely guarantied would be introduced, sold, transported and distributed in commerce, in violation of Rule 48(c) of said Rules and Regulations under the Fur Products Labeling Act and Section 10(b) of said Act.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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 Sam Reichbach & Son, 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 333 Seventh Avenue, city of New York, State of New York.

Respondents Stanley Reichbach and Michael Denktsis 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 Sam Reichbach & Son, Inc., corporation, and its officers, and Stanley Reichbach and Michael Denktsis, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur product which has been shipped and received in commerce, as the terms "commerce,"

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

A. Misbranding fur products by:

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

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

B. Falsely or deceptively invoicing fur products by:

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

2. Representing, directly or by implication, on invoices that the fur contained in the fur products is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

It is further ordered, That respondents Sam Reichbach & Son, Inc., a corporation, and its officers, and Stanley Reichbach and Michael Denktsis, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any fur product is not misbranded, falsely invoiced or falsely advertised when the respondents have reason to believe that such fur product may be introduced, sold, transported, or distributed in commerce.

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

SOL SEIFER CO. 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-1358. Complaint, July 9, 1968—Decision, July 9, 1968

Consent order requiring New York City manufacturing furriers to cease misbranding, deceptively guaranteeing, and falsely invoicing their fur products.

COMPLAINT

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

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

Respondents Sol Seifer, Alvin I. Goldberg, and Stanley Sunshine are officers of the corporate respondent. They formulate, direct and control the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are manufacturers of fur products with their office and principal place of business located at 130 West 30th Street, 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 "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

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

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

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

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

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed to disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored, when such was the fact.

PAR. 6. 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. 7. Respondents furnished false guaranties under Section 10(b) of the Fur Products Labeling Act with respect to certain of their fur products by falsely representing in writing that respondents had a continuing guaranty on file with the Federal Trade Commission when respondents in furnishing such guaranties had reason to believe that the fur products so falsely guaranteed would be introduced, sold, transported and distributed in commerce, in violation of Rule 48(c) of said Rules and Regula-

tions under the Fur Products Labeling Act and Section 10(b) of said Act.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions are 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 Sol Seifer Co. Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 130 West 30th Street, city of New York, State of New York.

Respondents Sol Seifer, Alvin I. Goldberg and Stanley Sun-

shine 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 Sol Seifer Co. Inc., a corporation, and its officers, and Sol Seifer, Alvin I. Goldberg and Stanley Sunshine, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

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

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

B. Falsely or deceptively invoicing fur products by:

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

2. Representing, directly or by implication, on invoices that the fur contained in the fur products is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

It is further ordered, That respondents Sol Seifer Co. Inc., a corporation, and its officers, and Sol Seifer, Alvin I. Goldberg and Stanley Sunshine, individually and as officers of said corpora-

tion, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any fur product is not misbranded, falsely invoiced or falsely advertised when the respondents have reason to believe that such fur product may be introduced, sold, transported, or distributed in commerce.

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

M. GETTO & SONS, 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-1359. Complaint, July 9, 1968—Decision, July 9, 1968

Consent order requiring New York City manufacturing furriers to cease misbranding, deceptively guaranteeing, and falsely invoicing their fur products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that M. Getto & Sons, Inc., a corporation, and Bernard Getto, Sidney Raback and Mortimer B. Getto, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and 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 M. Getto & Sons, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Bernard Getto, Sidney Raback and Mortimer B. Getto are officers of the corporate respondent. They formulate, direct and control the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are manufacturers of fur products with their office and principal place of business located at 307 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 "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

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

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

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

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

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed to disclose that the fur contained in the fur product was

bleached, dyed, or otherwise artificially colored, when such was the fact.

PAR. 6. 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. 7. Respondents furnished false guaranties under Section 10(b) of the Fur Products Labeling Act with respect to certain of their fur products by falsely representing in writing that respondents had a continuing guaranty on file with the Federal Trade Commission when respondents in furnishing such guaranties had reason to believe that the fur products so falsely guarantied would be introduced, sold, transported and distributed in commerce, in violation of Rule 48(c) of said Rules and Regulations under the Fur Products Labeling Act and Section 10(b) of said Act.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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 M. Getto & Sons, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with his office and principal place of business located at 307 7th Avenue, city of New York, State of New York.

Respondents Bernard Getto, Sidney Raback and Mortimer B. Getto 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 M. Getto & Sons, Inc., a corporation, and its officers, and Bernard Getto, Sidney Raback, Mortimer B. Getto, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

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

2. Failing to affix labels to fur products showing in words and in figures plainly legible all of the informa-

tion required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

B. Falsely or deceptively invoicing fur products by:

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

2. Representing, directly or by implication, on invoices that the fur contained in the fur products is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

It is further ordered, That respondents M. Getto & Sons, Inc., a corporation, and its officers, and Bernard Getto, Sidney Raback, Mortimer B. Getto, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any fur produce is not misbranded, falsely invoiced or falsely advertised when the respondents have reason to believe that such fur product may be introduced, sold, transported, or distributed in commerce.

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

BAWS BROS. 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-1360. Complaint, July 9, 1968—Decision, July 9, 1968

Consent order requiring New York City manufacturing furriers to cease misbranding, deceptively guaranteeing, and falsely invoicing their fur products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission

Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Baws Bros. Furs, Inc., a corporation, and Murray Baws and Paul Baws, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and 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 Baws Bros. Furs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Murray Baws and Paul Baws are officers of the corporate respondent. They formulate, direct and control the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are manufacturers of fur products with their office and principal place of business located at 208 West 30th Street, 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 sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and have manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

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

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

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

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

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed to disclose that the fur contained in the fur product was bleached, dyed, or otherwise artificially colored, when such was the fact.

PAR. 6. 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. 7. Respondents furnished false guaranties that certain of their fur products were not misbranded, falsely invoiced or falsely advertised when respondents in furnishing such guaranties had reason to believe that fur products so falsely guarantied would be introduced, sold, transported or distributed in commerce, in violation of Section 10(b) of the Fur Products Labeling Act.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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 Baws Bros. 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 208 West 30th Street, city of New York, State of New York.

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

A. Misbranding fur products by:

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

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

B. Falsely or deceptively invoicing fur products by:

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

2. Representing, directly or by implication, on invoices that the fur contained in the fur products is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

It is further ordered, That respondents Baws Bros. Furs, Inc., a corporation, and its officers, and Murray Baws and Paul Baws, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any fur product is not misbranded, falsely invoiced or falsely advertised when the respondents have reason to believe that such fur product may be introduced, sold, transported, or distributed in commerce.

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
M. ALEXANDER CORP. ET AL.

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

Docket C-1361. Complaint, July 9, 1968—Decision, July 9, 1968

Consent order requiring a New York City manufacturing furrier to cease misbranding and deceptively 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 M. Alexander Corp., a corporation, and Mitchell Alexander, 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 M. Alexander Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

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

Respondents are manufacturers of fur products with their office and principal place of business located at 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 "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

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

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

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed to disclose that the

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

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

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed to disclose that the fur contained in the fur product was bleached, dyed, or otherwise artificially colored, when such was the fact.

PAR. 6. 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. 7. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

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

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

spondents 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 M. Alexander Corp. 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, city of New York, State of New York.

Respondent Mitchell Alexander 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 M. Alexander Corp., a corporation, and its officers, and Mitchell Alexander, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

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

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

B. Falsely or deceptively invoicing fur products by:

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

2. Representing, directly or by implication, or invoices that the fur contained in the fur products is natural when such fur is 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

LEEMAR 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-1362. Complaint, July 9, 1968—Decision, July 9, 1968

Consent order requiring New York City manufacturing furriers to cease misbranding, deceptively guaranteeing, and falsely invoicing their fur products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Leemar Furs, Inc., a corporation, and Harvey Kaufman and Stavos Ladis, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act

and 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 Leemar Furs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Harvey Kaufman and Stavos Ladis are officers of the corporate respondent. They formulate, direct and control the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are manufacturers of fur products with their office and principal place of business located at 227 West 29th Street, 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 "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

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

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

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

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

Among such falsely and deceptively invoiced fur products, but

not limited thereto, were fur products covered by invoices which failed to disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored, when such was the fact.

PAR. 6. 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. 7. Respondents furnished false guaranties that certain of their fur products were not misbranded, falsely invoiced or falsely advertised when respondents in furnishing such guaranties had reason to believe that fur products so falsely guarantied would be introduced, sold, transported or distributed in commerce, in violation of Section 10(b) of the Fur Products Labeling Act.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

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

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

spondents 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 Leemar 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 227 West 29th Street, city of New York, State of New York.

Respondents Harvey Kaufman and Stavos Ladis 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 Leemar Furs, Inc., a corporation, and its officers, and Harvey Kaufman and Stavos Ladis, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

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

2. Failing to affix labels to fur products showing in words and in figures plainly legible all of the informa-

tion required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

B. Falsely or deceptively invoicing fur products by:

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

2. Representing, directly or by implication, on invoices that the fur contained in the fur products is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

It is further ordered, That respondents Leemar Furs, Inc., a corporation, and its officers and Harvey Kaufman and Stavos Ladis, individually and as officers of said corporation and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any fur product is not misbranded, falsely invoiced or falsely advertised when the respondents have reason to believe that such fur product may be introduced, sold, transported, or distributed in commerce.

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 Commsision a report in writing setting forth in detail the manner and form in which they have complied with its order.

IN THE MATTER OF
TURAN 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-1363. Complaint, July 9, 1968—Decision, July 9, 1968

Consent order requiring a New York City manufacturing furrier to cease misbranding, furnishing deceptive guarantees, 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 Turan Furs, Inc., a corporation, and Sam Turan and Leonard Goldstein, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and 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 Turan Furs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

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

Respondents are manufacturers of fur products with their office and principal place of business located at 208 West 30th Street, 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 "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

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

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

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

PAR. 4. Certain of said fur products were falsely and decep-

tively invoiced by the respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated under such Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed to disclose that the fur contained in the fur product was bleached, dyed, or otherwise artificially colored, when such was the fact.

PAR. 5. Respondents furnished false guaranties that certain of their fur products were not misbranded, falsely invoiced or falsely advertised when respondents in furnishing such guaranties had reason to believe that fur products so falsely guarantied would be introduced, sold, transported or distributed in commerce, in violation of Section 10(b) of the Fur Products Labeling Act.

PAR. 6. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

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

ment 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 Turan 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 208 West 30th Street, city of New York, State of New York.

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

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

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

It is further ordered, That respondents Turan Furs, Inc., a corporation, and its officers, and Sam Turan and Leonard Goldstein, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any fur product is not misbranded, falsely invoiced or falsely advertised when the respondents have reason to believe that such fur product may be introduced, sold, transported, or distributed in commerce.

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

R. & R. BERGER 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–1364. Complaint, July 9, 1968—Decision, July 9, 1968

Consent order requiring a New York City manufacturing furrier to cease misbranding, furnishing deceptive guarantees, 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 R. & R. Berger Furs, Inc., a corporation, and Marcus Berger, 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: