tured by said respondents as required by Section 6 of the Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

It is further ordered, That the respondent corporation forthwith distribute a copy of this order to each of its operation 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

BESSIE FREED TRADING AS BOOK'S FURS ET AL.

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

Docket C-1437. Complaint, Oct. 14, 1968—Decision, Oct. 14, 1968

Consent order requiring a Scranton, Pa., retail furrier to cease misbranding falsely invoicing, and deceptively advertising its fur products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Bessie Freed, an individual trading as Book's Furs, and Margaret D. Kirias, individually and as manager of Book's Furs, 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 Bessie Freed is an individual trading as Book's Furs. Respondent Margaret D. Kirias is manager of Book's Furs. They control, direct and formulate the acts, practices and policies of Book's Furs.

Respondents are retailers of fur products with their office and principal place of business located at 428 Lackawanna Avenue, Scranton, Pennsylvania.

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 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:

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

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

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

4. To show the country of origin of the imported furs contained in the fur products.

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

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

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

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

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

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

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

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

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

PAR. 7. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

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

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

PAR. 8. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that certain advertisements intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of such fur products were not in accordance with the provisions of Section

5(a) of the said Act.

Among and included in the aforesaid advertisements but not limited thereto, were advertisements of respondents which appeared in issues of the Scrantonian, a newspaper published in the city of Scranton, State of Pennsylvania, and having a wide circulation in Pennsylvania and in other States of the United States.

Among such false and deceptive advertisements, but not limited thereto, were advertisements which failed to show the true animal name of the fur used in any such fur product.

PAR. 9. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products in violation of the Fur Products Labeling Act in that the said fur products were not advertised in accordance with the Rules and Regulations promulgated thereunder in the following respects:

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

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

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

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

PAR. 10. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products in that certain of said fur products were falsely or deceptively identified with respect to the name or designation of the animal or animals that produced the fur from which the said fur products had been manufactured, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

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

PAR. 11. Respondents have removed and mutilated and have caused and participated in the removal and mutilation of, prior to the time fur products subject to the provisions of the Fur Product Labeling Act were sold and delivered to the ultimate consumer, labels required by the Fur Products Labeling Act to be affixed to such products, in violation of Section 3(d) of said Act.

PAR. 12. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair 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 Bessie Freed is an individual trading as Book's Furs. Respondent Margaret D. Kirias is manager of Book's Furs. Respondents' office and principal place of business is located at 428 Lackawanna Avenue, Scranton, 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 Bessie Freed, individually and trading as Book's Furs, or under any other name, and Margaret D. Kirias, individually and as manager of Book's Furs, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from introducing into commerce, selling, advertising, or offering for sale in commerce, or transporting or distributing in commerce any fur product; or from selling, advertising, offering for sale, transporting or distributing 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:

1. Which has affixed to any such product a label which represents directly or by implication that the fur contained in such fur product is natural when the fur contained therein is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

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

3. To which fur product is affixed a label required by Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder:

(a) Which fails to set forth the term "natural" as part of the information required to be included on such label to describe any such product which is not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

(b) Which sets forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in handwriting.

(c) Which fails to set forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in the sequence required by Rule 30 of the aforesaid Rules and Regulations.

(d) Which fails to set forth the item number or mark assigned to each such fur product.

It is further ordered, That respondents Bessie Freed, individually and trading as Book's Furs or under any other name, and Margaret D. Kirias, individually and as manager of Book's Furs, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Falsely or deceptively invoicing any fur product by:

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

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

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

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

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

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

2. Falsely or deceptively identifies any fur product as to the name or designation of the animal or animals

that produced the fur contained in the fur product.

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

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

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

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

It is further ordered, That respondents Bessie Freed, individually and trading as Book's Furs or under any other name, and Margaret D. Kirias, individually and as manager of Book's Furs, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist, except as provided in Section 3(e) of the Fur Products Labeling Act, from removing or mutilating, or causing or participating in the removal or mutilation of, prior to the time any fur product subject to the provisions of the Fur Products Labeling Act is sold and delivered to the ultimate consumer, any label required by the said Act to be affixed to such fur product without substituting therefor a label conforming to Section 4(2) of said Act.

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

IN THE MATTER OF

FRIEDMAN'S-GEORGIA, INC.,** TRADING AS A. A. FRIEDMAN COMPANY, ETC.

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

Docket 8744. Complaint, Sept. 13, 1967—Decision, Oct. 17, 1968

Order requiring a 30-store retail jewelry chain headquartered in Augusta, Ga., to cease using bait advertising, making misleading "Pay $1 Weekly" claims, using false guarantee offers, misrepresenting that its house brand merchandise is nationally advertised, and using documents which simulate federal government forms.

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 Friedman's-Georgia, Inc., a corporation, trading and doing business as A. A. Friedman Company and Friedman's Jewelers, and Abraham A. Friedman, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Friedman's-Georgia, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia with its principal office and place of business located at 309 8th Street, Augusta, Georgia.

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

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

In connection therewith, respondents own, operate and control twenty-five corporations, which operate thirty retail stores located

* Reported as amended by Hearing Examiner's order of Nov. 15, 1967, by striking subparagraphs numbered three (3) of paragraphs eight, nine and ten.

** The corporate name was later changed to A. A. Friedman Co., Inc. (CX 107–A).

in the States of North Carolina, South Carolina, Georgia and Florida. All of the stock of the said twenty-five corporations is owned by the corporate respondent. The individual respondent is president of the corporate respondent as well as of each of the twenty-five subsidiary corporations. All of the stock of the corporate respondent is either owned or controlled by the individual respondent.

In the course of doing business, the corporate respondent makes purchases at wholesale or merchandise to be sold at retail in the thirty stores previously mentioned. The said merchandise is stored in a warehouse in Augusta, Georgia. When merchandise is required by any of the subsidiary corporations, an order is placed by it with the corporate respondent, which then ships the merchandise to the subsidiary corporation, billing the latter for the cost to the corporate respondent plus a small handling charge, which amount is then remitted to the corporate respondent. All of the advertising is prepared by the corporate respondent, sent to the subsidiary corporations and by them placed for publication in the appropriate local media. The bills for this advertising are sent to the corporate respondent and paid by it. Hiring and discharging of all personnel is performed by the corporate respondent. All bookkeeping and accounting records are maintained in the office of the corporate respondent.

In the course of doing business, the corporate respondent uses the trade name of A. A. Friedman Company in making purchases of merchandise for sale and for other purposes. Each of the individual stores is operated under the trade name of "Friedman's Jewelers."

The individual respondent, through control of the corporate respondent, formulates, directs and controls the acts and practices of each of the subsidiary corporations in conjunction with the corporate respondent. Said subsidiary corporations are simply corporate agencies used by respondents in carrying on the business herein described.

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 merchandise, advertising material, supplies, equipment and business papers to be shipped to and from their warehouse or place of business in the State of Georgia, as aforesaid, to retail stores located in the four States previously mentioned and, at said locations, the said merchandise is sold to the public. In the course and conduct of said business, respondents maintain, and at all times mentioned herein have maintained, a

substantial course of trade in said merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, at all times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms and individuals engaged in the advertising, offering for sale, sale or distribution of merchandise of the same general kind and nature as that sold by respondents.

PAR. 5. In the course and conduct of their business, as aforesaid, respondents caused to be prepared and mailed to numerous persons in the State of Georgia and various States other than the State of Georgia, advertising material which consists, among other things, of a credit voucher in the sum of $2 which could be used in the purchase of any merchandise in the stores operated by the corporate respondent. This credit voucher was printed in such a way as to have the appearance of a check issued by the United States Government, although it was only a credit voucher for credit on a purchase of merchandise in one of the respondents' retail stores. This credit voucher was enclosed in a window envelope in such a way that only the name and address of the person to whom it was addressed and the color of the paper on which the credit voucher was printed was visible before the envelope was opened. The envelope was of the size and had the appearance of the window envelopes used by the United States Government for the transmittal of Government checks. It was imprinted in a manner similar to envelopes used by the United States Government and included the following words as a return address:

OFFICE OF THE TREASURER
Accounting Division
P.O. Box 34
Augusta, Georgia. 30902

PAR. 6. Through the use, jointly and severally, of the words and terms set forth in Paragraph Five and the format and appearance of the envelope and the credit voucher, respondents represent and imply to those to whom the said credit vouchers are mailed, that the contents of the envelope is a check sent by a government agency and so cause the recipient to open the envelope and read the contents, which he might not otherwise have done.

PAR. 7. In truth and in fact, the content of the envelope is not a check or other document from a government agency but, on the contrary, the envelope contains a credit voucher and advertising

material announcing a special sale at one of the respondents' stores.

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

PAR. 8.* In the course and conduct of their aforesaid business, and for the purpose of inducing the sale of their said products, respondents have made certain statements in advertisements inserted in newspapers and in brochures or flyers with respect to prices, classification, savings and guarantees of their product.

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

1. Nationally advertised 17 jewel men's and ladies' watches. * * * Why buy a no jewel watch when you can * * *

Choose from
Caravella by Bulova
Elgin Holland
Justin Waltham.
Choose from many famous name watches
Gruen Hamilton Elgin Holland

Bulova Elgin Holland
Plus many more famous name 17-jewel precision watches.
Many other famous name watches slashed during this great sale
Hamilton Gruen Elgin Holland.

2. Discount prices and credit too!
Realtone miniature portable tape recorder
$19.87 Pay $1 weekly

* * * * * * *

4. To the watch identified as "Lord Lancaster B" was attached a ticket similar in appearance to that used by manufacturers showing a price of $139.95. This identical watch was advertised at a selling price of $88.88.

5. * * * 30 day money back guarantee

All watches carry double guarantee from Friedman's and the manufacturer.

6. Friedman's * * * 70 stores where your dollar buys more.

7. Hamilton, Elgin, Gruen, Holland * * * Your choice $54.88.

Men's six diamond Hamilton Ladies' twenty diamond Elgin * * * Your choice $88.88.

PAR. 9.* By and through the use of the aforesaid statements and representations, and others of similar import and meaning, but not specifically set forth herein, respondents represent, and have represented, directly or by implication:

1. That respondents' "house brand" watches, such as "Holland," "Justin" and "Jacques Prevard" are "nationally advertised,"

* Reported as amended by Hearing Examiner's order of Nov. 15, 1967, by striking subparagraph numbered three (3).

"name brand" or "famous name" watches.

2. That the total purchase price of respondents' merchandise is as set forth in the advertisements and may be paid at the rate per week as specified.

4. That said ticketed price of $139.95 was the manufacturer's suggested list price for the Hamilton "Lord Lancaster B" watch, that said amount was the price regularly charged by principal outlets in the trade area where the representation was made and that the advertised price of $88.88 afforded a savings to the purchaser equal to the difference between said ticketed price and the advertised price.

5. That Friedman watches carry an unconditional thirty-day money back guarantee and a double guarantee which will be honored both by the manufacturer and the respondents.

6. That respondents have an organization consisting of seventy retail stores.

7. That respondents were making a bona fide offer to sell said Hamilton watches, and other articles of merchandise not specified herein, at the prices and on the terms and conditions stated in the advertising.

PAR. 10.* In truth and in fact:

1. Respondents' "house brand" watches, such as "Holland, "Justin" and "Jacques Prevard" are not "nationally advertised," "famous name," or "name brand" watches.

2. The purchase price as advertised is not the total purchase price when paid for at the specified weekly payment but, on the contrary, interest, handling and other charges are added to the advertised purchase price.

4. Said ticketed price of $139.95 was not the manufacturer's suggested list price for the Hamilton "Lord Lancaster B" watch, said amount was not the price regularly charged by principal outlets in the trade area where the representation was made and the advertised price of $88.88 did not afford savings to the purchaser equal to the difference between said ticketed price and the advertised price. The manufacturer's suggested list price was substantially less than said ticketed amount.

5. Respondents' watches do not carry an unconditional thirty-day money back guarantee and a double guarantee which will be honored both by the manufacturer and the respondents. In fact, the respondents' guarantee will only be honored by the particular store in which the watch was purchased. The respondents also

* Reported as amended by Hearing Examiner's order of Nov. 15, 1967, by striking subparagraph numbered three (3).

fail to set forth the other terms, conditions and limitations applicable to their guarantees and the extent to which the guarantees apply and the manner in which the guarantor will perform thereunder.

6. Respondents are not an organization consisting of seventy stores, but, on the contrary, the respondents operate substantially less than the number of stores advertised.

7. Respondents were not making a bona fide offer to sell the Hamilton watches, and other advertised articles of merchandise not specified herein, at the price and on the terms and conditions stated in the advertisements but, on the contrary, the offer was made for the purpose of inducing the public to come to respondents' store in the expectation of purchasing the Hamilton watches, and other advertised merchandise not specified herein, at the advertised price and on the terms and conditions stated. Respondents, however, either maintained no stock of said Hamilton watches, and other advertised articles of merchandise not specified herein, or a supply insufficient to meet the ordinarily expected requests to purchase the Hamilton watches, and other advertised articles of merchandise not specified herein. At such time and under such circumstances, respondents then undertake to sell other and different merchandise to such purchasers.

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

PAR. 11. 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' merchandise by reason of said erroneous and mistaken belief.

PAR. 12. 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. Roy B. Pope and *Mr. J. Michael Frascati* supporting the complaint.

Mr. Jonathan Golden, Arnall, Golden and Gregory, Atlanta, Georgia, for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

MAY 15, 1968

I. PRELIMINARY STATEMENT

A. *Pleadings*

This proceeding brought by complaint issued September 13, 1967, under Section 5 of the Federal Trade Commission Act [1] charges respondents, a chain jewelry retailer and one of its officers, with false and misleading advertising and unfair acts and practices in commerce in connection with the sale of watches and other merchandise and the advertising thereof and of credit by a retail chain jewelry store.

Respondents, by answer filed October 16, 1967, admitted the corporate existence of the corporate respondent and official position of the individual respondent. But either one or the other of the respondents denied substantially all of the rest of the complaint. The answer asserted three defenses that 1) the Federal Trade Commission Act does not permit the Commission to regulate credit; 2) the advertisement referred to in the complaint "Pay $1 weekly" is not misleading or deceptive; and 3) the acts committed were by independent entities not respondents.

B. *Prehearing*

The hearing examiner called a prehearing conference held November 15, 1967. The parties substantially simplified the issues by amendments to their pleadings. Respondents stipulated to the authenticity of proposed exhibits. Complaint counsel listed witnesses. Respondents agreed to the production of documents. And, both parties agreed to a date for the start of formal hearings in Atlanta, Georgia.[2]

C. *Conceded Allegations*

The effect of the amendments to the pleadings was that the allegations admitted by respondents about: the nature of their business, the fact that they were doing business in interstate commerce, their activity in connection with the issuance of credit vouchers, the advertisement of their watches as national brands,

---

[1] Section 5 of the Federal Trade Commission Act provides in part: "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are declared unlawful." (15 U.S.C. § 45.)

[2] Prehearing Order dated November 15, 1967.

the character of their guarantee, and the size of their organization were false and misleading and had a tendency to deceive the public. Respondents also withdrew their claim that the actions engaged in were committed by independent entities.

Complaint counsel withdrew their charges concerning midleading advertisement of prices on Royal Keystone typewriters, Admiral clock radios and Remington shavers.

As to the charges admitted, findings are accordingly hereafter made in the language of the complaint, and an order is entered based upon such charges.

D. *Factual Issues Remaining*

The remaining factual issues are:

(1) Regarding Realtone miniature tape recorders, did respondents advertise the price as $19.87 "Pay $1 weekly"; thereby representing that the total price set forth might be paid for at $1 per week; whereas the advertised price was not the total purchase price when paid for in weekly installments but interest, handling, and other charges were added.

(2) Regarding "Lord Lancaster B" Hamilton watches, did respondents tag these at $139.95 with a tag similar to manufacturer's tags when an identical watch was advertised at $88.88, thereby representing that $139.95 was the manufacturer's list price, the price regularly charged by principal outlets in the trade area, and that the lower price afforded a saving of the difference between the two prices; whereas, the ticketed price was neither the price regularly charged nor the manufacturer's list price. The manufacturer's list and the price regularly charged were substantially less than the advertised price and did not afford a savings equal to the difference between the two prices.

(3) Regarding Hamilton, Elgin, Gruen and Holland watches, did respondents advertise them "your choice $54.88" and regarding men's six diamond Hamilton and Ladies' twenty diamond Elgin watches did respondents advertise them "your choice $88.88" thereby representing that respondents were making a bona fide offer to sell at the advertised prices; whereas in fact respondents used that advertisement as a lure to sell other merchandise.

(4) Regarding all the foregoing, were respondents' acts false, misleading and deceptive, did they have a tendency to mislead purchasers, were they injurious to the public and respondents' competitors, and did they constitute unfair methods of competition

and unfair and deceptive acts and practices in commerce.

E. *The Hearings and the Proposals of the Parties*

Hearings on the issues heretofore set forth commenced at Atlanta, Georgia, on February 28, 1968, and concluded February 29, 1968. Proposed findings, conclusions, and order were filed by complaint counsel on April 3, 1968, and by respondents April 9, 1968.[3] Replies were filed April 17, 1968, and April 19, 1968, respectively.

At the conclusion of complaint counsel's case, counsel for respondents moved to dismiss the complaint for failure of proof. Decision on such motion was reserved. It is now denied.

F. *Basis for Decision*

The decision herein is based on the record as a whole, including the admissions contained in the answer, the testimony and demeanor of the witnesses, the exhibits received, and the proposed findings, conclusions, and order.

All findings and conclusions not incorporated in terms or in substance are rejected. References are made in compliance with Rule 3.51(b) to principal supporting items of evidence,[4] but the failure to cite particular references does not mean that the examiner has failed to consider the evidence as a whole. The findings of fact are based on the impact of the entire proof.

On the basis of the foregoing, the following findings of fact, reasons for decision, conclusions, and order are made.

II. FINDINGS OF FACT

A. *Findings of Facts Admitted By Answer*

The following findings are made of facts set forth in the complaint and admitted by the answer, as amended:

PARAGRAPH 1. Respondent Friedman's-Georgia, Inc., is a corporation organized, existing and doing business under and by

[3] Delay in the receipt of respondents' proposals is explicable because of the civil disturbance in Washington, D.C., at that time.

[4] References are abbreviated as follows:

C. Complaint
A. Answer
CPF Complaint counsel's proposed findings.
RPF Respondents' proposed findings.
CX Complaint counsel's exhibit.
RX Respondents' exhibit.
Tr. Transcript page.

virtue of the laws of the State of Georgia with its principal office and place of business located at 309 8th Street, Augusta, Georgia.

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

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

In connection therewith, respondents own, operate and control twenty-five corporations, which operate thirty retail stores located in the States of North Carolina, South Carolina, Georgia and Florida. All of the stock of the said twenty-five corporations is owned by the corporate respondent. The individual respondent is president of the corporate respondent as well as of each of the twenty-five subsidiary corporations. All of the stock of the corporate respondent is either owned or controlled by the individual respondent.

In the course of doing business, the corporate respondent makes purchases at wholesale of merchandise to be sold at retail in the thirty stores previously mentioned. The said merchandise is stored in a warehouse in Augusta, Georgia. When merchandise is required by any of the subsidiary corporations, an order is placed by it with the corporate respondent, which then ships the merchandise to the subsidiary corporation, billing the latter for the cost to the corporate respondent plus a small handling charge, which amount is then remitted to the corporate respondent. All of the advertising is prepared by the corporate respondent, sent to the subsidiary corporations and by them placed for publication in the appropriate local media. The bills for this advertising are sent to the corporate respondent and paid by it. Hiring and discharging of all personnel is performed by the corporate respondent. All bookkeeping and accounting records are maintained in the office of the corporate respondent.

In the course of doing business, the corporate respondent uses the trade name of A. A. Friedman Company in making purchases of merchandise for sale and for other purposes. Each of the individual stores is operated under the trade name of "Friedman's Jewelers."

The individual respondent, through control of the corporate re-

spondent, formulates, directs and controls the acts and practices of each of the subsidiary corporations in conjunction with the corporate respondent. Said subsidiary corporations are simply corporate agencies used by respondents in carrying on the business herein described.

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 merchandise, advertising material, supplies, equipment and business papers to be shipped to and from their warehouse or place of business in the State of Georgia, as aforesaid, to retail stores located in the four States previously mentioned and, at said locations, the said merchandise is sold to the public. In the course and conduct of said business, respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, at all times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms and individuals engaged in the advertising, offering for sale, sale or distribution of merchandise of the same general kind and nature as that sold by respondents.

PAR. 5. In the course and conduct of their business, as aforesaid, respondents caused to be prepared and mailed to numerous persons in the State of Georgia and various states other than the State of Georgia, advertising material which consists, among other things, of a credit voucher in the sum of $2 which could be used in the purchase of any merchandise in the stores operated by the corporate respondent. This credit voucher was printed in such a way as to have the appearance of a check issued by the United States Government, although it was only a credit voucher for credit on a purchase of merchandise in one of the respondents' retail stores. This credit voucher was enclosed in a window envelope in such a way that only the name and address of the person to whom it was addressed and the color of the paper on which the credit voucher was printed was visible before the envelope was opened. The envelope was of the size and had the appearance of the window envelopes used by the United States Government for the transmittal of Government checks. It was imprinted in a manner similar to envelopes used by the United States Government and included the following words as a return address:

OFFICE OF THE TREASURER
Accounting Division
P.O. Box 34
Augusta, Georgia. 30902

PAR. 6. Through the use, jointly and severally, of the words and terms set forth in Paragraph Five and the format and appearance of the envelope and the credit voucher, respondents represent and imply to those to whom the said credit vouchers are mailed, that the contents of the envelope is a check sent by a government agency and so cause the recipient to open the envelope and read the contents, which he might not otherwise have done.

PAR. 7. In truth and in fact, the content of the envelope is not a check or other document from a government agency but, on the contrary, the envelope contains a credit voucher and advertising material announcing a special sale at one of the respondents' stores.

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

PAR. 8. In the course and conduct of their aforesaid business, and for the purpose of inducing the sale of their said products, respondents have made certain statements in advertisements inserted in newspapers and in brochures or flyers with respect to prices, classification, savings and guarantees of their product.

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

1. Nationally advertised 17 jewel men's and ladies' watches. * * * Why buy a no jewel watch when you can * * *.

Choose from
Caravella by Bulova
Elgin Holland
Justin Waltham.

Choose from many famous name watches Gruen Hamilton Elgin Holland

Bulova Elgin Holland
Plus many more famous name 17-jewel precision watches.
Many other famous name watches slashed during this great sale
Hamilton Gruen Elgin Holland.

2. [5.] * * * 30 day money back guarantee.
All watches carry double guarantee from Friedman's and the manufacturer.
3. [6.] Friedman's * * * 70 stores where your dollar buys more.

PAR. 9. By and through the use of the aforesaid statements and representations, and others of similar import and meaning, but not specifically set forth herein, respondents represent, and have represented, directly or by implication:

1. That respondents' "house brand" watches, such as "Holland," "Justin" and "Jacques Prevard" are "nationally advertised," "name brands" or "famous name" watches.

2. [5.] That Friedman watches carry an unconditional thirty-day money back guarantee and a double guarantee which will be honored both by the manufacturer and the respondents.

3. [6.] That respondents have an organization consisting of seventy retail stores.

PAR. 10. In truth and in fact:

1. Respondents' "house brand" watches, such as "Holland," "Justin" and "Jacques Prevard" are not "nationally advertised," "famous name," or "name brand" watches.

2. [5.] Respondents' watches do not carry an unconditional thirty-day money back guarantee and a double guarantee which will be honored both by the manufacturer and the respondents. In fact, the respondents' guarantee will only be honored by the particular store in which the watch was purchased. The respondents also fail to set forth the other terms, conditions and limitations applicable to their guarantees and the extent to which the guarantees apply and the manner in which the guarantor will perform thereunder.

3. [6.] Respondents are not an organization consisting of seventy stores, but, on the contrary, the respondents operate substantially less than the number of stores advertised.

PAR. 11. 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' merchandise by reason of said erroneous and mistaken belief.

PAR. 12. 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.

B. *Findings of Facts Subject to Proof*

1. *The Course of the Hearings*

As a preliminary to the specific findings, we indicate the course

of the proof. Complaint counsel first offered a number of documents stipulated to be authentic (see Stipulation and Index to Exhibits CX 107–D and F). Complaint counsel's first witness was an attorney, William E. Mumford, (Tr. 29–130) who investigated respondents on behalf of the Federal Trade Commission. Mr. Mumford described how he had secured advertisements of the corporate respondent, how he had called on five of the stores operated by that respondent, and how he had in several cases been told that there were none of the advertised Hamilton watches available but was offered other brands of watches. Mr. Mumford also described how he had attempted to secure records from respondents to show the number of watches on hand and with the fragmentary material supplied attempted to construct a tabulation (CX 109–A–B) showing the number of Hamilton watches that might possibly have been available at the various stores at the time of a night sale held in November 1964.

On cross-examination Mr. Mumford conceded that his tabulation contained some errors, and he also stated that he could not say that the tags he saw on the Hamilton watches had the name Hamilton on them or looked like Hamilton tags (Tr. 100–101).

Complaint counsel's second witness was Joseph J. Freedman, the general manager of the corporate respondent. Mr. Freedman identified the documents supplied to complaint counsel and stated that neither the corporate respondent nor any of its stores kept a physical inventory by units of the stock of each store (Tr. 135). On cross-examination Mr. Freedman described how information was obtained in the event of a sale (Tr. 135–137). On redirect examination Mr. Freedman indicated that he knew there were about 37 Lord Lancaster B Hamilton watches (advertised at $88.88 (CX 22) and carrying a retail tag of $139.95 (Tr. 39; RX 9A) owned by the corporate respondent at the time of the March 1965 sale (Tr. 139–140).

Complaint counsel's third and last witness was Barbara Peurifoy, a bookkeeper for the Friedman store in Griffin, Georgia, who testified that the store in which she worked kept a window inventory (Tr. 143). She also stated that a quick inventory was taken when ordering and an annual inventory showing watches by class and price, dividing watches into two classes—foreign and domestic. She also identified a report (CX 73) made in preparation for the night sale in November 1964 entitled "Merchandise Bulletin No. 171." (Tr. 143–152.) Complaint counsel then closed their case and respondents moved to dismiss (Tr. 154–168).

Respondent called three witnesses. The first two, Mrs. Evelyn Carruth Kerpel (Tr. 168–201, 278–290) and Harry V. Adley (Tr. 202–278) testified concerning a survey designed to show that the average person would expect to pay more for a financed purchase than for a cash purchase. Mrs. Kerpel conducted the interviews and made a report of each (RX 6).

A summary (RX 7–A–E) was prepared from the interview reports under Mr. Adley's direction. He designed the questions and picked the localities for the interviews to take place. While Mrs. Kerpel did have one erroneous date, it appeared to the hearing examiner that despite her total lack of experience she had properly and fairly conducted the interviews. The places chosen for the interviews and the size of the sample taken, appeared to be adequate, but the result of the survey merely demonstrated a general impression that the public expects to pay more for financing than it does for cash payments. There was no reference to the particular advertisement charged to be misleading (CX 57). Respondent recalled Mr. J. J. Freedman (Tr. 291–340) as its last witness. He produced some records which were found subsequent to the original submission to Mr. Mumford. He testified that the corporate respondent removed the manufacturer's tickets from the Lord Lancaster B and other Hamilton watches and rebanded them (Tr. 302–305). He also testified that the stores were adequately stocked and that one watch for the smaller stores was an adequate amount (Tr. 325). He said he had no explanation why no watches were available in particular stores (Tr. 335). He further testified that use of the phrase "Pay $1 weekly" was common practice (Tr. 337). Mr. Freedman also identified tabulations showing the watches shipped to stores (RX 13; Tr. 328) and a tabulation showing the watches purchased was received without objection (RX 15; Tr. 329).

We now consider the specific charges which were denied and the facts established concerning them. We first consider the installment charge.

2. *The Pay $1 Weekly Charge*

It was stipulated (CX 107) that in the Florence Morning News for Thursday, September 17, 1964, Friedman's Jewelers advertised a "Realtone Miniature Portable Tape Recorded [sic]." The advertisement of this item is one of 14 items and under the price of each item is smaller all capital type are the words "Pay $1 Weekly" or in two cases "Pay $2 Weekly." The advertisement is

headed in ½ inch, all caps display type "DISCOUNT PRICES AND CREDIT TOO!" and in the center of the advertisement in slightly smaller type all caps "BONA FIDE BARGAINS ARE BOUNTIFUL AT FRIEDMAN'S JEWELERS CHOOSE YOUR OWN TERMS." (CX 57.) Hence, it was established that the identical advertisement charged in the complaint without the typographical error had been previously run (C. Par. Eight 2). In addition there were received a half dozen other advertisements all using the terms "Pay $1 weekly" or "Pay as little as $1.00 weekly," "Pay only $1 weekly." (CX 47–51; 56; see also CXs 13–22.) Mr. J. J. Freedman claimed this was typical in the industry (Tr. 337).

In our opinion the use of the capitalized words in the heading "discount prices and credit too!" was reasonably capable of the construction that credit also was at a discount, particularly when the advertisement contained the statement "Choose your own terms!" (CX 57). Under these circumstances, the fact that 95 percent of the persons interviewed in a random poll who did not see the advertisement would expect to pay more for financing (RX 7–A–E) is not significant. This advertisement not only would deceive the 5 percent, but is capable of deceiving a much higher percentage of the public into believing that they would only be required to pay the total price stated without additional charges.

The contrary is the fact. Respondents' contracts added a "service charge" or "time price differential" to the purchase price (see CXs 24–43) so that the advertised price is not the total purchase price if paid for at the specified weekly payments, but handling and other charges are added.

We consider now the ticketing charge.

3. *The Price-Ticketing Charge* [5]

Respondent offered a watch for sale known as the Lord Lancaster B Hamilton watch with a price tag of $139.95 at the Freedom Village Store in Charlotte, North Carolina (Tr. 99), and

[5] Since respondents claim a fatal variance between pleading and proof, the charges in the complaint which were denied in the answer on this topic are set forth in this footnote:

Paragraph Eight: * * * respondents have made certain statements * * *.

* * * * * * *

4. To the watch identified as "Lord Lancaster B" was attached a ticket similar in appearance to that used by manufacturers showing a price of $139.95. This identical watch was advertised at a selling price of $88.88.

* * * * * * *

Paragraph Nine: * * * respondents represent * * *:

* * * * * * *

4. That said ticketed price of $139.95 was the manufacturer's suggested list price for the Hamilton "Lord Lancaster B" watch, that said amount was the price regularly charged by

also at the Lancaster, South Carolina, store (Tr. 39). The Lord Lancaster B Hamilton watch at the Lancaster, South Carolina, store had the price $139.95 stricken through and the price $88.88 put on it (Tr. 39). However, Mr. Mumford, the Commission attorney who investigated the matter, could not say that the tag purported to be a Hamilton watch tag (Tr. 100). The tags produced by respondents show that the tag affixed by Hamilton is wholly different from the tags affixed by respondents (RX 9).

Mr. Freedman testified that because the price was not the price suggested by Hamilton, the Hamilton tag was removed and a Friedman tag substituted (Tr. 332). Moreover, all the Lord Lancaster B Hamilton watches were returned to the warehouse after the night sale in 1964 and rebanded (RX 14–A–B) so they were regarded as different items from the Hamilton watches in the condition originally purchased (see Tr. 330–333 having to do with cheaper watches).

So although the sale price was fixed at $88.88 the cost was listed at $42.45 and the regular retail price retained at $139.95 under the Friedman merchandising plan for the March 1965 sale (RX 14–A–B). The item was advertised at $88.88 in The Augusta Chronical of March 25, 1965, with a special note "Compare at $150" (CX 50, CX 107). At that time the Lord Lancaster B Hamilton (without the Spiedel band) had a manufacturer's suggested retail price of $89.50 (CX 52–B), and although Mr. Mumford could not find other stores which had the Lord Lancaster B Hamilton watch in stock, he ascertained that the catalogue price was $89.50 (Tr. 34–35, 97–98).

Accordingly, we do not find that the ticket attached to the Lord Lancaster B Hamilton watch was similar in appearance to that used by manufacturers; in fact it was entirely different from the Hamilton tag, although a prospective purchaser might think the tag represented a price generally charged. We do not find that $139.95 was not the price regularly charged by prin-

---

principal outlets in the trade area where the representation was made and that the advertised price of $88.88 afforded a savings to the purchaser equal to the difference between said ticketed price and the advertised price.

* * * * * * *

Paragraph Ten: In truth and in fact:

* * * * * * *

4. Said ticketed price of $139.95 was not the manufacturer's suggested list price for the Hamilton "Lord Lancaster B" watch, said amount was not the price regularly charged by principal outlets in the trade area where the representation was made and the advertised price of $88.88 did not afford savings to the purchaser equal to the difference between said ticketed price and the advertised price. The manufacturer's suggested list price was substantially less than said ticketed amount.

* * * * * * *

cipal outlets in the trade area because there has been a complete failure of proof on that subject. Moreover, at the Freedom Village store, the clerk refused to sell the Lord Lancaster B Hamilton watch to Mr. Mumford for $88.88 claiming that the "retail price of the watch was $139.95, as marked." (Tr. 35–37.)

Hence, while we are of the opinion that there is a strong possibility that a prospective purchaser would be misled into believing that he was getting a great bargain when in fact he was securing a price very little lower than the manufacturer's suggested resale price, we do not find that the ticketing charge, as pleaded, has been sustained. We turn now to the bait and switch charge.

4. *The Bait and Switch Charge*

It was stipulated (CX 107) that the corporate respondent ran an advertisement in The News and Courier, March 17, 1965, which contained the words:

Hamilton Elgin Gruen Holland * * * Your Choice $54.88
Men's 6 Diamond Hamilton Ladies' 20 Diamond Elgin Your Choice $88.88

under a heading in display type

FOR THREE DAYS ONLY!
Hamilton Elgin Gruen Waltham
DISCOUNT WATCH RIOT!
GREATEST WATCH SALE IN OUR HISTORY! (CX 14.)[6]

Hence the advertising conforms to the charge (Complaint Paragraph 8, subparagraph 7).

From the advertising we find that respondents purported to make a bona fide offer to sell Hamilton watches and other articles of merchandise at the prices and on the terms and conditions advertised.

After obtaining similar advertisements, Mr. Mumford called at a number of the corporate respondents' stores on or about the dates specified and with the following results:

On March 18, 1965, he secured an advertisement (CX 16) from the Florence Morning News and took it to the Friedman's

[6] See also other similar advertisements:
CX 16, Florence Morning News, March 18, 1965.
CX 21, Augusta Herald, March 17, 1965.
CX 22, The Augusta Chronicle Herald, March 21, 1965.
CX 47, The Charlotte News, March 17, 1965.
CX 48, Evening Herald, Rock Hill, March 22, 1965.
CX 49, The Lancaster News, March 18, 1965.
CX 50, The Augusta Chronicle, March 25, 1965.
CX 51, The Asheville Citizen, March 26, 1965.

store in Florence, South Carolina (Tr. 30). There he examined the window to see if any Hamilton [7] watches were on display. There were none. There were Holland, Jacques Prevard,[8] Elgin, and Bulova watches on display. He then asked for a $39.88 Hamilton watch and was told there were none (Tr. 31). He next asked for a $54.88 Hamilton and the clerk told him there were none at that price. The clerk offered to sell a Holland watch that he claimed was regularly priced at $49.95 for the advertised $39.88 Hamilton watch. Mr. Mumford then asked for the Hamilton men's diamond watch priced at $88.88 and the clerk said he had none in stock that he could order one but he did not know how long it would take (Tr. 31).

On March 18, 1965, Mr. Mumford called on the Friedman's store in Durham, North Carolina. The newspaper advertisement was posted in the window, but there were no Hamilton watches displayed in the window. There were principally Holland, Jacques Prevard, "possibly Elgin and possibly others." (Tr. 32) Mr. Mumford then entered the store and asked to see the $39.88 men's Hamilton watch. The male clerk advised Mr. Mumford that he had none in stock. Mr. Mumford then asked to see the Hamilton watch advertised at $54.88. The clerk showed Mr. Mumford a watch with a price tag of $75.00 that he said he would sell at $54.88 to comply with the advertisement. There was a stock number M–693 CL 35 on this watch.[9] Mr. Mumford then asked to see the $88.88 watch and was informed there were none in stock (Tr. 32–33).

On March 22, 1965, Mr. Mumford shopped a Friedman's store at the K-Mart Shopping Plaza in Charlotte, North Carolina. He had with him an advertisement identical to CX 47. The advertisement was posted in the window. The watches previously described were displayed there, but there were no Hamilton watches. The watches on display had sale prices marked on them in the form of placards (Tr. 33). At this store Mr. Mumford was told there were no $39.88 Hamilton watches in stock and none of the $54.88 Hamilton watches in stock. The clerk offered to sell an Elgin watch at $54.88 in lieu of the Hamilton, but Mr. Mumford did not buy it. In this case, however, the clerk produced a watch that looked like the Hamilton watch advertised for $88.88 with a

[7] Mr. Mumford concentrated on Hamilton watches because of information he had received in the trade (Tr. 115–116).

[8] The Holland and Jacques Prevard watches are house brands of Friedman's (Tr. 30, 31).

[9] The numbers shown on RX 14–B for the Waltham watches to be sold for $54.88 do not bear any resemblance to this stock number. This would indicate the watches to be used in the sale were not in stock. However, RX 14—A indicates the numbers were to be changed.

tag number CL530–525 [10] and a price of $139.95 marked on it. The clerk offered to sell this watch at $88.88 but Mr. Mumford did not buy it (Tr. 34).

On March 23, 1965, Mr. Mumford shopped at Friedman's store in Freedom Village in Charlotte, North Carolina. There was no advertisement in the window but the placards showing the prices of the watches read, "Three-day Watch Riot" (Tr. 35–36). The other familiar lines of watches previously listed were displayed but no Hamilton watches were in the window display. Inside, a salesgirl with blond hair waited on Mr. Mumford. She said she had no watches in stock that were advertised at $39.88 or $54.88 but she showed him a watch that he identified as a Lord Lancaster B. The salesgirl said she could not sell it at $88.88 that the price was $139.95. She persisted in that statement after she talked with someone in the rear of the store that she said was the manager. She offered to sell a Jacques Prevard [11] watch for $125 which she said was "of equal value with the Hamilton watch * * *" (Tr. 36–37).

On March 24, 1965, Mr. Mumford called at Friedman's store in Lancaster, South Carolina. A copy of the advertisement (CX 49) was posted in the window and the same watches were displayed, but no Hamiltons (Tr. 38). The manager of this store waited on Mr. Mumford. The manager said they had no Hamilton watches at $39.88 or $54.88. He offered to sell an Elgin or Bulova at $54.88 in lieu of the Hamilton. When asked about the Lancaster B Hamilton advertised at $88.88 the manager produced such a watch marked at $139.95 "with that entry struck through and sale priced eighty-eight eighty-eight." This was a sale placard, red and white Mr. Mumford believed, "and was a sale marked-down tag" (Tr. 39).

In addition to his visits to the stores where he had the results indicated, Mr. Mumford attempted to find out whether or not the Friedman stores had a stock of Hamilton watches. He accordingly requested an inventory. No inventory was available (and Mr. Freedman testified none was kept (Tr. 135)).

In connection with a so-called night sale in November 1964, however, it appeared that the various stores had been circularized with "Merchandise Bulletin #171." This bulletin sought information as to the stock of certain watches and other merchandise on hand and was sent to each store manager to complete and to recommend how many additional units should be ordered

[10] This number also does not appear on RX 14–B.

[11] As heretofore pointed out, this was Friedman's house brand.

(CXs 61–89). In addition, the warehouse kept a carbon copy of shipments to the stores. These shipment books were bound and Mr. Mumford tabulated as many of these as were furnished to him. From these sources he prepared a tabulation (CX 109–A–B; Tr. 44–45). This tabulation was received without objection as a tabulation of exhibits in evidence (Tr. 44). It purported to show the stock on hand, the units requested by the store managers, and the possible stock on hand resulting from shipments. A number of the shipping records were not furnished to Mr. Mumford and this was also shown on the tabulation. On cross-examination and after being supplied with additional records that were not previously made available, Mr. Mumford stated that there should be certain adjustments (see, *e.g.*, Tr. 63).

Assuming, however, that counsel for respondents' proposed findings are correct (see RPF 4) there would be a difference of only seven watches in three stores on CX 109–A—none of which were stores that Mr. Mumford shopped (see RX 13). Mr. Mumford's tabulation (CX 109–A) indicates that at the time of the night sale four stores had no stock of men's 530–521 Hamilton watches, the possible stock for the 22 stores where information was originally available was 21 watches.

Respondents in its case showed that in 1965 before the date of the 3-day sale in March, there were 75 Hamilton watches with a retail price of $49.95 ordered, and an additional 65 watches with a retail price of $75 ordered, plus 25 watches with a Friedman's retail price of $139.95 ordered, and that two $49.95 watches were shipped to each of the stores Mr. Mumford shopped, and three $75 watches to all but one of those stores, and that store received two $75 watches and one $139.95 watch, and each of the other four stores received two watches bearing that Friedman's price tag (RX 13).

Mr. Freedman testified that in his opinion one or two watches of each kind were an adequate stock, except in one large store where three would be required (Tr. 325–26). However, his opinion cannot be accepted in light of Mr. Mumford's uncontradicted testimony. Mr. Freedman could offer no explanation why there was no stock of particular advertised Hamilton watches in the several stores, even if we assume that there was no men's $39.88 watch advertised and disregard the evidence regarding it. If we construe the advertisements as offering both men's and women's Hamilton watches at $39.88, as we properly should (see CX 47), none of the stores had a $39.88 sale-priced men's Hamilton watch in stock. The fact that Mr. Mumford was told by the clerks there

was none in stock rather than that none was advertised confirms our opinion that the advertisement is properly construed to mean that $39.88 men's Hamilton watches were included.

The most significant evidence that there was not a bona fide effort to sell the lower-priced Hamilton watches comes from comparison of instructions given the store managers regarding gift certificates and the night sale "Sales Bulletin #90" (CX 59–A –B) with the technique adopted at the stores that Mr. Mumford shopped. Clearly, there was an effort there to prevent full use of the gift certificates. Similarly, in connection with the recommended technique regarding the "loss leader" 144-piece Homemaker Ensemble (CX 60) there were clear written instructions to avoid selling the articles offered.[12]

By reason of all of the evidence, we find that there was not a bona fide offer to sell the low-priced men's Hamilton watches; they were advertised as a lure, and the attempt was made to switch the buyer to house brand watches, to higher priced watches or to other brands of merchandise.

5. *The Implication of the Individual Respondent*

It was stipulated that respondent Abraham A. Friedman is president of the corporate respondent, that substantially all the stock of the corporate respondent is owned or controlled by him or his family, and that the corporate respondent owns all the stock of the thirty retail stores operated. It was stipulated that Abraham A. Friedman fixes his own salary and commissions and is the final authority on all policy decisions in addition to supervising, controlling, and formulating advertising material, promulgating sales policies and promotional activities, determining products to be marketed, negotiating contractual and financial arrangements, and setting employment policies (CX 108 A–B).

Thus, it is found that he was personally implicated in the activities charged.

6. *The Effects*

It has been admitted, so far as the deceptive practices not denied in the amended answer are concerned, that the practices had the tendency to lead the public into the erroneous belief that they were true and to buy substantial quantities of respondents'

[12] This clear evidence that respondents' store managers had been specifically instructed in techniques designed to discourage customers from taking advantage of concessions offered, differentiates this case from *Globe Readers Service, Inc., et al.* v. *Federal Trade Commission*, 285 F. 2d 692 (7 Cir. 1961), 7 S.&D. 1.

merchandise because of that erroneous belief and that such acts were prejudicial to the public interest and the interest of competition and constituted unfair acts and practices in commerce in violation of the Federal Trade Commission Act (C. A.).

Since the acts and practices with regard to the advertisement of installment credit (Section 2 hereof) and those relating to respondents' bait and switch techniques (Section 4 hereof) are also false, misleading, and deceptive and are in the same setting as the admitted acts, they must have had similar effects. Accordingly, we so find.

We now set forth as required by Section 8(b) of the Administrative Procedure Act,[13] the reasons for our decision.

III. REASONS FOR DECISION

During the course of the findings of fact, we have given the factual reasons for our ultimate findings of fact. In this section we deal with the legal contentions of the parties.

In their "Brief" [14] respondents make three main points: First, complaint counsel have failed to sustain their burden of proof that the ticketing of the Lord Lancaster B Hamilton watch was fictitious. Second, complaint counsel failed to establish that the stock of Hamilton watches was inadequate and that such watches were not bona fide offers for sale. And, third, the advertisement of a price accompanied by the words $1 weekly is not misleading or deceptive and regulating credit is not within the jurisdiction of the Commission. We deal with each of these seriatim.

A. *The Fictitious Pricing Charge Was Not Established*

As heretofore pointed out there was no proof of the price at which the Lord Lancaster B Hamilton watch was generally sold.[15] And, contrary to complaint counsel's claim, Mr. Freedman did not state that respondents never sold it at $139.95. Actually Mr. Freedman testified (Tr. 305) that they had never sold it *with the Hamilton tag on it* for $139.95. Complaint counsel had the burden of establishing the price at which the watch was ordinarily sold in the trade area. He did not do so, nor did he show that respondents did not sell ordinarily at that price. In fact, Mr. Mumford testified, as we have shown, that in one of the stores the blond salesgirl refused to sell the Lord Lancaster B Hamilton watch except at $139.95, the ticketed price.

[13] 5 U.S.C. 1001.

[14] The "Brief" will be found at p. 7 of the proposals filed April 9, 1968.

[15] See 16 C.F.R. Chapter 1, Part 233.

While we deprecate the practice of placing an exorbitant markup on a piece of merchandise then striking the price through and putting on a lower price to exaggerate the alleged savings, it must be established that the exorbitant price is fictitious—not that it gouges the public—before the charge in this complaint can be sustained. Accordingly, while the testimony with regard to the catalogue price and the evidence of the suggested resale price led us to refuse to dismiss on motion, at the conclusion of complaint counsel's case, we now, after weighing all the evidence, must dismiss the charge as not proved. We turn now to the bait and switch charge.

B. *The Bait and Swtich Charge Was Established* [16]

Mr. Mumford's testimony was clear, unambiguous, and convincing. It established that he had inquired about purchasing certain advertised watches and was switched. It also established, prima facie at least, that the stores he shopped had an inadequate supply of watches because they had run out, and one salesperson said that he did not know how long it would take to order another watch of the kind inquired about. The Hamilton watches were not displayed and the respondents had previously given instructions in connection with other merchandise that clearly recommended switching customers away from that merchandise. Thus, a plan to switch was indicated. In these circumstances, the failure to call as witnesses the salespeople who waited on Mr. Mumford and the reliance on the generalizations made by Mr. Freedman are inadequate to meet complaint counsel's solid proof. We turn now to the advertising of the price and installments without showing the full installment price.

C. *The Advertisements Showing Pay $1 Weekly Were Misleading*

When critically analyzed as we have shown, the advertisements here do more than just place the price in juxtaposition to the words "Pay $1 weekly." Taken as a whole they imply a sale and a discount not only of price but of financing. The hearing examiner and the Commission are quite capable of making that determination.[17] That being so, the fact that financing or time

[16] *Guides Against Bait Advertising*, (Title 16, C.F.R., Chapter I, Part 238); see *In the Matter of General Transmissions Corporation of Washington, et al.*, Docket 8713, Opinion dated February 23, 1968, pp. 7–8 of mimeograph [73 F.T.C. 424–425].

[17] *In the Matter of Rodale Press, Inc., et al.*, Docket No. 8619, June 20, 1967 [71 F.T.C. 1184]; *Charles of the Ritz Dist. Co.* v. *Federal Trade Commission*, 143 F. 2nd 676 (2 Cir. 1944).

payments are involved is of no moment.[18] The case cited by respondents is not to the contrary.[19] Moreover, the express authority of the Federal Trade Commission to prevent unfair acts and practices is not limited to acts and practices existing at the time the Federal Trade Commission Act was passed. Great flexibility was given the Commission to prevent wrongdoing no matter how ingenious. The existence of a bill now before Congress to specifically regulate installment practices is not proof of the intent of Congress when it passed the Federal Trade Commission Act in 1914, or of the present interpretation that should be placed on the Act.

We turn now to the order.

* * * * * * *

The character and variety of the admitted unfair practices is enough to justify an order in the broadest terms. The corporate ownership of respondent Abraham A. Friedman and his responsibility for the unlawful acts, coupled with the attempt in the answer first filed to interpose the corporate fiction as a shield, commends the issuance of an order against respondent Abraham A. Friedman not only as an officer of the corporate respondent but also as an individual.

Accordingly, on the basis of all the foregoing, the following are our conclusions.

IV. CONCLUSIONS

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

2. The acts and practices established took place in the course of commerce, as commerce is defined in the Federal Trade Commission Act, and constituted unfair acts and practices in such commerce in violation of said act.

3. Complaint counsel did not establish the charge of fictitious pricing of Hamilton Lord Lancaster B watches charged in Complaint, subparagraph 4 of Paragraphs Eight, Nine and Ten.

4. The public interest requires that the following order should issue.

ORDER

It is ordered, That respondents A. A. Friedman Co., Inc.

[18] *Consolidated Mortgage Corporation,* Docket No. 8723, February 19, 1968 [73 F.T.C. 376].

[19] *Leon A. Tashof,* Docket 8714, dealt with statements of finance charges in the contracts. This is a false advertising case.

(formerly known as Friedman's-Georgia, Inc.), a corporation, and its officers, trading and doing business as A. A. Friedman Company and Friedman's Jewelers or under any other trade name or names; and Abraham A. Friedman, individually and as an officer of said corporation; and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, or distribution of diamonds, watches, jewelry, appliances, or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using any advertising material or other document which appears to be, or simulates, an official or governmental form or document; or misrepresenting in any manner the originator or source of advertising material or other documents.

2. Using in advertising the words "nationally advertised," "name brand," "famous name" or words of similar import or meaning in connection with respondents' "Holland," "Justin," "Jacques Prevard" watches or any other house or private brand watches or merchandise.

3. Setting out in any manner in advertising specified weekly, monthly, or other periodic credit payments or installment amounts with respect to an article of merchandise, in conjunction with a total price amount for such article when such total price amount does not include the total charges for the time payment; unless, in immediate conjunction with each such representation of periodic payment amounts, respondents clearly disclose (1) the total number of payments required for payment in full and (2) the total amount of the payments for which the purchaser will be indebted if he elects to pay for the article by the stated installments.

4. Representing, directly or by implication, that any of respondents' merchandise is guaranteed; unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspiciously disclosed and unless any represented guarantee is in fact provided and fully and completely performed to the extent and in the manner represented.

5. Representing, directly or by implication, that respondents' organization consists of seventy or any other number

of stores or is of any other size or extent: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that they have actually in operation the number of stores stated or that their business is of the size or extent represented.

6. Advertising or offering any merchandise for sale for the purpose of obtaining leads or prospects for the sale of different merchandise unless the respondents maintain an adequate and readily available stock of said merchandise.

7. Using any advertising, sales plan, or procedure involving the use of false, deceptive, or misleading statements or representations that are designed to obtain leads or prospects for the sale of other merchandise.

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

ORDER WITHDRAWING RESPONDENTS' APPEAL FROM INITIAL DECISION, CANCELING ORAL ARGUMENT, AND ADOPTING INITIAL DECISION AS DECISION OF THE COMMISSION

Upon consideration of respondents' motion in the above-entitled matter, filed October 10, 1968, requesting withdrawal of their appeal from the hearing examiner's initial decision and further requesting cancellation of the oral argument presently scheduled to be heard October 29, 1968, and upon consideration of complaint counsel's answer, filed October 10, 1968, not opposing said motion:

It is ordered, That respondents' appeal from the hearing examiner's initial decision in this proceeding be, and it hereby is, withdrawn.

It is further ordered, That the oral argument presently scheduled to be heard October 29, 1968, be, and it hereby is, cancelled.

It is further ordered, That the initial decision of the hearing examiner, filed May 15, 1968, be, and it hereby is, adopted as the decision of the Commission.

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 the order to cease and desist contained therein.

IN THE MATTER OF

CULLUM'S, INC.

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

Docket C-1438. Complaint, Oct. 17, 1968—Decision, Oct. 17, 1968

Consent order requiring an Augusta, Ga., retail clothing firm to cease misbranding and falsely advertising its fur products, and textile fiber products and failing to keep required records.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Fur Products Labeling Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Cullum's, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Label Act and the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Cullum's, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia.

Respondent is a retailer of fur products and textile fiber products with its office and principal place of business located at 710 Broad Street, Augusta, Georgia.

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

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

thereunder.

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed to show the true animal name of the fur used in any such fur product.

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

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

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

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

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

By means of the aforesaid advertisements and other advertisements of similar import and meaning not specifically referred to herein, respondent falsely and deceptively advertised fur products, in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of the Rules and Regulations promulgated thereunder by representing, directly or by implication, that the prices of such fur products were reduced from respondent's former prices and the amount of such purported reduction constituted savings to purchasers of respondent's fur products. In truth and in fact, the alleged former prices were fictitious in that they were not actual, bona fide prices at which respondent offered the products to the public on a regular basis for a reasonably substantial period of time in the recent regular course of business and the said fur products were not reduced in price as represented and savings were not afforded purchasers of respondent's said fur products, as represented.

PAR. 6. In advertising fur products for sale, as aforesaid,

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

PAR. 7. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondent falsely and deceptively advertised fur products in violation of the Fur Products Labeling Act in that the said fur products were not advertised in accordance with the Rules and Regulations promulgated thereunder inasmuch as the term "natural" was not used to describe fur products which were not pointed, bleached, dyed, tip-dyed, or otherwise artifically colored, in violation of Rule 19(g) of said Rules and Regulations.

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

PAR. 9. Respondent is now and for some time last past has been engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States, of textile fiber products; and has sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and has sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 10. Certain of said textile fiber products were falsely and deceptively advertised in that respondent, in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote, and assist, directly or indirectly, in the sale or offering for sale of said products, failed to set forth the required information as to fiber content as specified in Section 4(c) of the Textile Fiber

Products Identification Act and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such textile fiber products, but not limited thereto, were textile fiber products which were falsely and deceptively advertised in The Augusta Chronicle Herald, a newspaper published in the city of Augusta, State of Georgia, and having a wide circulation in Georgia and various other States of the United States, in that the true generic names of the fibers present in such products were not set forth.

PAR. 11. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondent falsely and deceptively advertised textile fiber products in violation of the Textile Fiber Products Identification Act in that said textile fiber products were not advertised in accordance with the Rules and Regulations in the following respects:

1. In disclosing the required fiber content information in advertising certain textile fiber products, namely floor coverings, containing exempted backings, fillings, or paddings, respondent failed to set forth that such disclosure related only to the face, pile, or outer surface of the floor covering and not to the exempted backing, filling, or padding, in violation of Rule 11 of the Rules and Regulations promulgated under the Textile Fiber Products Identification Act.

2. Fiber trademarks were used in advertising textile fiber products without a full disclosure of the fiber content information required by the said Act, and the Rules and Regulations thereunder, in at least one instance in said advertisements, in violation of Rule 41(a) of the Rules and Regulations promulgated under the Textile Fiber Products Identification Act.

3. Fiber trademarks were used in advertising textile fiber products containing more than one fiber and such fiber trademarks did not appear in the required fiber content information in immediate proximity and conjunction with the generic names of the fibers to which they related in plainly legible type or lettering of equal size and conspicuousness, in violation of Rule 41(b) of the Rules and Regulations promulgated under the Textile Fiber Products Identification Act.

PAR. 12. The acts and practices of the respondent as set forth in Paragraphs Ten and Eleven above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules

and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition, and unfair and deceptive acts and practices in commerce under the Textile Fiber Products Identification Act.

DECISION AND ORDER

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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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 Cullum's, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 710 Broad Street, Augusta, Georgia.

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 Cullum's, Inc., a corporation,

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

A. Misbranding any fur product by:

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

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

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

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

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

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

afforded to the purchaser of such fur product.

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

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

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

It is further ordered, That respondent Cullum's, Inc., a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from falsely or deceptively advertising any textile fiber product by:

1. Making any representation, by disclosure or by implication, as to the fiber content of any textile fiber product in any written advertisement which is used to aid, promote, or assist, directly or indirectly, in the sale or offering for sale of such textile fiber product, unless the same information required to be shown on the stamp, tag, label, or other means of identification under Section 4(b)(1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, except that the percentages of the

fibers present in the textile fiber product need not be stated.

2. Failing to set forth, in disclosing the required fiber content information as to floor coverings containing exempted backings, fillings, or paddings, that such disclosure relates only to the face, pile or outer surface of the floor covering and not to the exempted backings, fillings, or paddings.

3. Using a fiber trademark in advertising such textile fiber product without a full disclosure of the required content information in at least one instance in said advertisement.

4. Using a fiber trademark in advertising such textile fiber product containing more than one fiber without such fiber trademark appearing in the required fiber content information in immediate proximity and conjunction with the generic name of the fiber in plainly legible type or lettering of equal size and conspicuousness.

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

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

IN THE MATTER OF

ZADO GOLDENBERG, INC., ET AL.

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

Docket C-1439. Complaint, Oct. 17, 1968—Decision, Oct. 17, 1968

Consent order requiring a San Francisco, Calif., importer of textile fiber products to cease marketing dangerously flammable products.

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 Zado Goldenberg, Inc., a corporation, and Evan C. Goldenberg, and Frances C. Goldenberg, individually and as officers of said corporation, hereinafter referred to as respondents have violated the provisions of said Acts and the Rules and Regulations promulgated under the

Flammable Fabrics Act, 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 Zado Goldenberg, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Respondents Evan C. Goldenberg and Frances C. Goldenberg are officers of said corporate respondent. They formulate, direct and control the acts, practices and policies of said corporation.

Respondents are engaged in the business of the importation and sale of textile fiber products, including wearing apparel in the form of ladies' scarves, with their office and principal place of business located at 755 Market Street, San Francisco, California.

PAR. 2. Respondents are now and for some time last past have been engaged in the sale and offering for sale, in commerce, and in the importation into the United States, and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce, products as the terms "commerce" and "product" are defined in the Flammable Fabrics Act, which products 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 products mentioned hereinabove were ladies' scarves.

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, 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 Textile and Furs proposed to present to the Commsision for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended; 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 Zado Goldenberg, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 755 Market Street, San Francisco, California.

Respondents Evan C. Goldenberg and Frances C. Goldenberg 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 Zado Goldenberg, Inc., a corporation, and its officers, and Evan C. Goldenberg and Frances C. Goldenberg, 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 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 product, as "commerce" and "product" 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 respondents herein shall, within ten (10) days after service upon them of this Order, file with the Commission an interim special report in writing setting forth the respondents' intentions as to compliance with this Order. This interim special report shall also advise the Commission fully and specifically concerning the identity of the product which gave rise to the complaint, (1) the amount of such product in inventory, (2) any action taken to notify customers of the flammability of such product and the results thereof and (3) any disposition of such product since March 14, 1968. Such report shall further inform the Commission whether respondents have 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. Respondents will submit samples of any such fabric, product or related material with this report. Samples of the fabric, product or related material shall be of no less than one square yard of material.

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 of their compliance with this order.

IN THE MATTER OF

RAYLEW ENTERPRISES INCORPORATED, ET AL.

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

Docket 8732. Amended and Supplemental. Complaint, Mar. 20, 1968—Decision, Oct. 24, 1968

Order requiring two Kansas City, Mo., distributors of household appliances and other items to cease deceptively representing that they are using bona fide market surveys and contests, that any item is offered "free" or at a reduced price, that present customers will be given substantial discounts on later purchases, and using the words "retail price" to refer to amounts in excess of the usual prices in trade area.

AMENDED AND SUPPLEMENTAL 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 Raylew Enterprises Incorporated, a Kansas corporation, Raylew Enterprises Incorporated, a Missouri corporation, and Ray M. Harbertson and Lewis E. Young, 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 amended and supplemental complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Raylew Enterprises Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kansas.

Raylew Enterprises Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri.

Both corporations have their principal office and place of business located at 2800 McGee Trafficway, Kansas City, Missouri.

Respondents Ray M. Harbertson and Lewis E. Young are officers of the said corporations. They formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondents.

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

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their place of business in the State of Missouri to purchasers thereof located in various other States of the United States and maintain, and at all times herein mentioned have maintained, a substantial course of trade in 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 merchandise, the respondents and their salesmen and other representatives have made numerous statements and representations to prospective customers, orally and otherwise, with respect to their said prod-

ucts and the methods employed by them in promoting the sale thereof.

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

1. That respondents are conducting a survey when the prospective customer is originally contacted and that the prospective customer's name will be entered in a drawing or contest to be held in conjunction with the survey.

2. That the prospective customer has won a prize in the drawing or contest and that the customer must make an appointment with one of the respondents' sales representatives in order to receive such prize.

3. That respondents are in the market research business and that customers are especially selected as "test families" or "test homes" to assist respondents with their market research.

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

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

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

7. That the major items of merchandise offered for sale or the additional items of merchandise which are given "free" or "at no extra cost" in connection with the purchase of the major item of merchandise have a "value" or "retail price" which is not appreciably in excess of the highest price at which substantial sales of such merchandise have been made in the recent regular course of business in the trade area where such representations are made.

PAR. 5. In truth and in fact:

1. Respondents are not conducting a survey but are obtaining information about prospective customers' appliance needs which is used as a basis to determine whether an attempt should be made to sell such customers merchandise. The prospective customers' names are not entered in a drawing or contest to be held in connection with the survey or otherwise.

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

3. Respondents' customers are not especially selected to assist the company in market research or for any other reason. Said merchandise is available to anyone with the money or credit rating to take advantage of the offer.

4. Respondents' customers do not receive reduced prices or a special introductory offer to promote trade names of merchandise but are offered the merchandise for the same prices at which said respondents offer their merchandise in the regular course of their business. Savings are not thereby afforded to such customers.

5. Respondents' customers do not receive additional merchandise free, as a gift or at no extra cost, because the price of such additional merchandise is included in the price that the customers pay for the major or principal item sold by respondents. The major items have never been sold separately in substantial quantities at such prices.

6. Customers making purchases from respondents will not there after be able to buy merchandise at a 50 percent discount from respondents' regular prices or at any other substantial discount from respondents' regular prices.

7. The "value" or "retail price" of the major items of merchandise offered for sale or of the additional items of merchandise, which are given "free" or "at no extra cost" in connection with the purchase of the major item of merchandise, is an amount which is appreciably in excess of the highest price at which substantial sales of such merchandise have been made in the regular course of business in the trade area where such representations are made.

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

PAR. 6. 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 houseware products of the same general kind and nature as those sold by respondents.

PAR. 7. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead

members of the purchusing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' said appliances, books and other merchandise.

PAR. 8. The aforementioned acts and practices of respondents, as herein alleged, were and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

Mr. Anthony J. Kennedy, Jr., and *Mr. Fauster J. Vittone* supporting the complaint.

No appearance for respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER JUNE 12, 1968

PRELIMINARY STATEMENT

Complaint counsel in the above-entitled matter have made a motion addressed to the hearing examiner in accordance with Section 3.12(c) of the Commission's Procedures and Rules of Practice requesting him to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions, and order as to Raylew Enterprises Incorporated, a Kansas corporation, Raylew Enterprises Incorporated, a Missouri corporation, and Lewis E. Young, individually and as an officer of said corporations, for the following reasons:

1. Personal service of the Amended and Supplemental Complaint in the subject matter was made upon Lewis E. Young, individually and as an officer of the corporate respondents on April 24, 1968, at 7619 Parallel Avenue, Kansas City, Kansas, as attested thereto by an Affidavit of John T. Hankins, an attorney of the Federal Trade Commission, assigned to and stationed at the Kansas City office of the Federal Trade Commission. The original of said affidavit is on file in the Office of the Secretary of the Federal Trade Commission and a copy of said affidavit is attached hereto as Exhibit 1. (See Exhibit 1 annexed.*)

2. A check, this date [1] with the Office of the Secretary of the Commission and with the Assistant Secretary for Legal and Public Records of the Commission reveals that no Answer to the Complaint nor any other communication has been received from the

[1] May 29, 1968.

* See footnote on p. 1098.

aforesaid respondents.

3. That the corporate respondents were in good standing in their respective States is attested to as follows:

a. Raylew Enterprises Incorporated, a Missouri corporation, was in good standing in that State as of October 9, 1967. This fact is attested to by a formal statement of the Office of the Secretary of State, State of Missouri, dated October 9, 1967. (See Exhibit 23 annexed.*)

b. Raylew Enterprises Incorporated, a Kansas corporation, was in good standing in that State as of October 10, 1967. This fact is attested to by a formal statement of the Office of the Secretary of State, State of Kansas, dated October 10, 1967. (See Exhibit 24 annexed.*)

c. That Lewis E. Young is president and executive officer of the aforesaid corporations is attested to in the case of Raylew Enterprises Incorporated, a Kansas corporation, by an annual report of the corporation, submitted on March 8, 1967, to the Secretary of State, State of Kansas (see Exhibit 3-b annexed *); in the case of Raylew Enterprises Incorporated, a Missouri corporation, by a report submitted to that State on July 27, 1966. (See Exhibit 4-a annexed.*)

Complaint counsel also aver that there are no reports subsequent to the above-cited reports showing any change in the management of the corporations aforenamed.

Edwin S. Rockefeller and Thomas C. Matthews, Jr., pursuant to a letter addressed to the Federal Trade Commission dated September 19, 1967, have withdrawn as counsel for respondents Raylew Enterprises, Inc., of Kansas, Raylew Enterprises, Inc., of Missouri, and Ray M. Harbertson, subsequent to the filing of the original complaint. The Amended and Supplemental Complaint omits Easy Pipella and Keith Bigler, individually and as co-directors of Raylew Enterprises, Inc., as parties to the amended and supplemental proceedings. The Amended and Supplemental Complaint adds Lewis E. Young, individually and as an officer of the said corporations named in the Amended and Supplemental Complaint. It must be assumed, therefore, that the complaint as amended and supplemented contemplates a withdrawal of the complaint as to omitted parties pursuant to the amendments and the inclusion of an additional party named in the amended and supplemental pleading.

In view of the failure of the respondents to file an answer

* Exhibit Nos. 1, 23, 24, 3–b, and 4–a omitted in printing.

as provided under Section 3.12 of the Rules within 30 days after service of the complaint and since the aforesaid period of time has not been altered by the filing of any appropriate motion or an extension of time granted by the hearing examiner, it is deemed that respondents are in default and have waived their right to appear and contest the allegations of the complaint. Under these circumstances, the hearing examiner is authorized without further notice to the respondents to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions, and order. Accordingly, as prescribed by Section 3.12(c), the hearing examiner renders the following findings of fact, conclusions, and order in accordance with the rule aforesaid because of respondents' default in answering the Amended and Supplemental Complaint herein dated March 20, 1968.

FINDINGS OF FACT

1. Respondent Raylew Enterprises Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kansas.

2. Raylew Enterprises Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri.

3. Both corporations have their principal office and place of business located at 2800 McGee Trafficway, Kansas City, Missouri.

4. Respondents Ray M. Harbertson and Lewis E. Young are officers of the said corporations. They formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondents.

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

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

7. In the course and conduct of their aforesaid business, and for

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

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

a. Respondents are conducting a survey when the prospective customer is originally contacted and the prospective customer's name will be entered in a drawing or contest to be held in conjunction with the survey.

b. The prospective customer has won a prize in the drawing or contest and the customer must make an appointment with one of the respondents' sales representatives in order to receive such prize.

c. Respondents are in the market research business and customers are specially selected as "test families" or "test homes" to assist respondents with their market research.

d. Customers are receiving reduced prices or a special introductory offer on merchandise in order to promote the trade names of the merchandise sold by respondents and savings are thereby afforded to purchasers from respondents' regular prices.

e. When customers purchase one item from respondents, other items are awarded to such customers as a gift, "free" or "at no extra cost."

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

g. The major items of merchandise offered for sale or the additional items of merchandise which are given "free" or "at no extra cost" in connection with the purchase of the major item of merchandise have a "value" or "retail price" which is not appreciably in excess of the highest price at which substantial sales of such merchandise have been made in the recent regular course of business in the trade area where such representations are made.

9. The foregoing statements and representations [2] are false, misleading and deceptive as hereinafter set forth:

a. Respondents are not conducting a survey but are obtaining information about prospective customers' appliance needs which is used as a basis to determine whether an attempt should be

[2] Paragraph 8.

made to sell such customers merchandise. The prospective customers' names are not entered in a drawing or contest to be held in connection with the survey or otherwise.

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

c. Respondents' customers are not specially selected to assist the company in market research or for any other reason. Said merchandise is available to anyone with the money or credit rating to take advantage of the offer.

d. Respondents' customers do not receive reduced prices or a special introductory offer to promote trade names of merchandise but are offered the merchandise for the same prices at which said respondents offer their merchandise in the regular course of their business. Savings are not thereby afforded to such customers.

e. Respondents' customers do not receive additional merchandise free, as a gift or at no extra cost, because the price of such additional merchandise is included in the price that the customers pay for the major or principal item sold by respondents. The major items have never been sold separately in substantial quantities at such prices.

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

g. The "value" or "retail price" of the major items of merchandise offered for sale or of the additional items of merchandise, which are given "free" or "at no extra cost" in connection with the purchase of the major item of merchandise, is an amount which is appreciably in excess of the highest price at which substantial sales of such merchandise have been made in the regular course of business in the trade area where such representations are made.

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

CONCLUSIONS

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

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

3. Service of the Amended and Supplemental Complaint has not been consummated on Ray M. Harbertson included herein as a party individually and as an officer of the party corporations. The latest information obtained indicates that Harbertson is no longer residing in the continental United States but is engaged in some engineering business in Southeast Asia. In view of the foregoing, and in the absence of service of the Amended and Supplemental Complaint upon him, his name has been excluded from the Order. See also Certification to the Commission (dated June 12, 1968) Recommending Dismissal of the Complaint as to Individual Respondent Ray M. Harbertson, Pursuant to Complaint Counsel's Motion.

ORDER

It is ordered, That respondents Raylew Enterprises Incorporated, a Kansas corporation, Raylew Enterprises Incorporated, a Missouri corporation, and their officers, and Lewis E. Young, individually and as an officer of said corporations,[3] and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of household appliances, books, tools or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or indirectly:

1. That they are conducting a survey or market re-

[3] See Paragraph 3 of Conclusions.

search, or otherwise misrepresenting the purpose or nature of respondents' contacts with prospective customers.

2. That prospective customers' names will be entered in a drawing or contest.

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

4. That prospective purchasers of any merchandise sold by respondents are specially selected, or that such purchasers will be test families or homes for respondents' products.

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

6. That any item of merchandise which is sold or offered for sale in conjunction or combination with other merchandise is "free," a gift, or "at no extra cost."

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

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

C. Using the words "Value" or "Retail Price" or any word or words of similar import to refer to any amount, which is appreciably in excess of the highest price at which substantial sales of such merchandise have been made in the recent regular course of business in the trade area where

such representations are made; or otherwise misrepresenting the price at which such merchandise has been sold in the trade area where such representations are made.

FINAL ORDER

On June 12, 1968, the hearing examiner filed an initial decision on default entering a cease and desist order against respondents Raylew Enterprises Incorporated, a Kansas corporation, and Raylew Enterprises Incorporated, a Missouri corporation, and Lewis E. Young, individually and as an officer of the said corporations. On the same date he certified to the Commission his recommendation that the complaint be dismissed as to respondent Ray M. Harbertson on the ground that said respondent is no longer residing in the United States and that service on him of the amended and supplemental complaint had not been consummated. On July 11, 1968, the Commission issued an order staying the effective date of the initial decision until further order of the Commission, on the ground that the proof of service of the initial decision had not been received. No ruling was made at that time on the examiner's certification.

Proof of service of the initial decision has now been received as to the two corporate respondents and Lewis E. Young, and no appeal has been taken from the initial decision. Upon consideration of this matter, the Commission has determined that the case should not be placed on its own docket for review and that pursuant to Section 3.51 of the Commission's Rules of Practice (effective July 1, 1967), the initial decision should be adopted and issued as the decision of the Commission. It has further determined that the complaint should be dismissed as to respondent Ray M. Harbertson. Accordingly,

It is ordered, That the complaint be, and it hereby is, dismissed as to respondent Ray M. Harbertson.

It is further ordered, That the initial decision of the hearing examiner shall, on the 24th day of October 1968, become the decision of the Commission.

It is further ordered, That Raylew Enterprises Incorporated, a Kansas corporation, Raylew Enterprises Incorporated, a Missouri corporation, and Lewis E. Young, individually and as an officer of said corporations, shall, within sixty (60) days after service of this order upon them, file with the Commission a report in writing, signed by each respondent named in this order, setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF

THE JEWELL CORPORATION TRADING AS TODD'S ET AL.

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

Docket C-1440. Complaint, Oct. 25, 1968—Decision, Oct. 25, 1968

Consent order requiring a Washintgon, D.C., distributor of wrist watches, blenders and other merchandise to cease advertising merchandise which is not in stock, and without clearly disclosing when stock is available only in limited supply.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The Jewell Corporation, a corporation, trading and doing business as Todd's, and Jerry Jewell, individually and as an officer of said corporation, and Alvin Fischer, individually and as general manager 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 The Jewell Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 11th and F Streets, NW., in the city of Washington, District of Columbia.

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

Respondent Alvin Fischer is general manager of the corporate respondent. He formulates, directs and controls the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of wrist watches, blenders and other articles of mer-

chandise 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 merchandise, when sold, to be shipped from their place of business in the District of Columbia to purchasers thereof located in various States of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their Hamilton wrist watches and Waring blenders, the respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers, respecting the character of their offer to sell and the merchandise included in such offer.

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

MEN'S & LADIES' WATCHES
HAMILTON BENRUS ELGIN GRUEN
Automatics Calendars 17–21 Jewels Water Resistant
Expansion Bands Huge Selection
3 DAYS ONLY $19.88

* * * * * * *

DOORBUSTERS
3-DAY SALE
Waring Blender
8 Speeds Push Button Controls Easy to Clean Snap-Out Blades
Heat Resistant Glass Container Complete with 128 Page Cookbook
$19.88

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

1. The offer set forth in said advertisement is a *bona fide* offer to sell the advertised Hamilton wrist watches at the price and on the terms and conditions stated.

2. The respondents have sufficient quantities of the advertised Waring blender available in stock to meet the reasonable demands of their customers.

PAR. 6. In truth and in fact:

1. The offer set forth in said advertisement was not a *bona fide*

offer to sell the advertised Hamilton wrist watches at the price and on the terms and conditions stated. Respondents did not have any of the advertised merchandise available for sale.

2. Respondents did not have sufficient quantities of the advertised Waring blender available in stock to meet the reasonable demands of their customers.

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

PAR. 7. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale and distribution of wrist watches, blenders and other merchandise of the same general kind and nature as those sold by respondents.

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

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

DECISION AND ORDER

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

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating 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 The Jewell Corporation, trading and doing business as Todd's, is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at 11th and F Streets, NW., Washington, D.C.

Respondent Jerry Jewell is an officer of said corporation and respondent Alvin Fischer is general manager 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 The Jewell Corporation, a corporation, trading and doing business as Todd's or under any other name, and its officers, and Jerry Jewell, individually and as an officer of said corporation, and Alvin Fischer, individually and as general manager of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of wrist watches, blenders or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any products are offered for sale when such offer is not a bona fide offer to sell such products at the prices and on the terms and conditions stated.

2. Advertising any article of merchandise for sale, unless sufficient quantities of such merchandise are available in

stock to meet reasonably anticipated demands: *Provided, however,* That merchandise available only in limited supply may be advertised if such advertising clearly and conspicuously discloses the number of units in stock and the duration of the offer.

3. Misrepresenting, in any manner, the quantity of merchandise advertised for sale.

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

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

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

IN THE MATTER OF

THE NEW AMERICAN LIBRARY OF WORLD LITERATURE, INC., ET AL.[1]

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

Docket 5811. Complaint, Sept. 19, 1950—Decision, Oct. 28, 1968[2]

Order modifying an earlier order of January 11, 1965, 67 F.T.C. 15, which prohibited a New York City publisher from selling book reprints under a different title without disclosing the original title by adding to such disclosure provision that the book was published "in the English language in the United States."

MODIFIED ORDER
OCTOBER 28, 1968

The Commission on August 17, 1967, having issued its order to show cause why its modified order to cease and desist issued January 11, 1965 [67 F.T.C. 15], should not be reopened and further modified, and

[1] Now known as The New American Library, Inc.
[2] Reported as revised by Commission's order of Dec. 26, 1968.

Respondents by their counsel on September 15, 1967, and December 28, 1967, having filed their answers and amended answer expressing no objection to said modification but showing that the corporate respondent is now known as "The New American Library, Inc." and moving that the modified order be further modified to reflect said change in the name of the corporate respondent and to strike the names of the two individual respondents, and

The Commission for the reasons set forth in its order to show cause dated August 17, 1967, being of the opinion that the public interest requires reopening of the proceedings which culminated in its modified order of January 11, 1965, and modification of the order entered therein, and

The Commission being further of the opinion that the modified order should be further modified to reflect the change in the name of the corporate respondent but that no sufficient showing has been made which would justify striking the names of the individual respondents,

It is ordered, That said proceedings be, and they hereby are, reopened and the Commission's modified order of January 11, 1965, be, and it hereby is, modified by revising Paragraph 2 thereof to read as follows:

> "Using or substituting a new title in place of the title under which a book was first published in the English language unless a statement which reveals the first English language title and that it has been published previously thereunder and each and every title under which said book was previously published in the English language in the United States and that it has been published previously thereunder appears in clear, conspicuous type upon the front cover and upon the title page of paperback books and upon the front flap of the jacket or dust cover and upon the title page of hard cover books, either in immediate connection with the title or in another position adapted readily to attract the attention of a prospective purchaser."

It is further ordered, That said order be, and it hereby is, modified by changing the name of the corporate respondent to "The New American Library, Inc."

Commissioner MacIntyre abstained from this action of the Commission but without prejudice to his participation in future actions and decisions of the Commission regarding this matter.

IN THE MATTER OF

MATTHEW HUTTNER ET AL. TRADING AS PYRAMID BOOKS

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

Docket 6307. Complaint, Mar. 8, 1955—Decision, Oct. 28, 1968

Order modifying an order of June 24, 1955, 51 F.T.C. 1261, which prohibited a New York City publisher from selling book reprints under a different title without disclosing the original title by adding to such disclosure provision that the book was published "in the English language in the United States."

MODIFIED ORDER

OCTOBER 28, 1968

The Commission on August 17, 1967, having issued its order to show cause why its order to cease and desist dated June 24, 1955 [51 F.T.C. 1261], should not be reopened and modified, and

Respondents by their counsel on September 8, 1967, having filed their answer and on December 22, 1967, having filed their "Statement in Opposition to Commission's Motion for Issuance of Modified Order," and having expressed no substantive objections to said modification and having further urged that said modification should be made simultaneously by the Commission in similar orders outstanding against other publishers in connection with retitling of books and that the Commission initiate and carry through a proceeding to modify an injunction issued against the respondents pursuant to stipulation dated January 31, 1963, in the United States District Court for the Southern District of New York, and

The Commisson having this day modified said similar orders against other publishers and having notified respondent that the Commission will extend due cooperation to respondents' actions seeking a conforming modification of said injunction, and for the reasons set forth in its order to show cause dated August 17, 1967, being of the opinion that the public interest requires reopening of the proceedings which culminated in its order of June 24, 1955, and modification of the order entered therein,

It is ordered, That said proceedings be, and they hereby are, reopened and the Commission's order of June 24, 1955, be, and it hereby is modified by revising Paragraph 2 thereof to read as follows:

"Using or substituting a new title in place of the title under which a book was first published in the English language unless a statement which reveals the first English language title and that it has been published previously thereunder and each and every title under which said book was previously published in the English language in the United States and that it has been published previously thereunder appears in clear, conspicuous type upon the front cover and upon the title page of the book, either in immediate connection with the title or in another position adapted readily to attract the attention of a prospective purchaser."

Commissioner MacIntyre abstained from this action of the Commission but without prejudice to his participation in future actions and decisions of the Commission regarding this matter.

IN THE MATTER OF

DELL PUBLISHING COMPANY, INC.

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

Docket 6759. Complaint, Apr. 3, 1957—Decision, Oct. 28, 1968

Order modifying an order of May 16, 1958, 54 F.T.C. 1623, which prohibited a New York City publisher from selling book reprints under a different title without disclosing the original title by adding to such disclosure provision that the book was published "in the English language in the United States."

MODIFIED ORDER
OCTOBER 28, 1968

The Commission on August 17, 1967, having issued its order to show cause why its order to cease and desist dated May 16, 1958 [54 F.T.C. 1623], should not be reopened and modified, and

Respondents by their counsel on September 7, 1967, having filed their answer expressing no objection to said modification, and

The Commission, for the reasons set forth in its order to show cause dated August 17, 1967, being of the opinion that the public interest requires reopening of the proceedings which culminated in its order of May 16, 1958, and modification of the order entered therein,

It is ordered, That said proceedings be, and they hereby are,

reopened and the Commission's order of May 16, 1958, be, and it hereby is, modified by revising Paragraph 2 thereof to read as follows:

> "Using or substituting a new title in place of the title under which a book was first published in the English language unless a statement which reveals the first English language title and that it has been published previously thereunder and each and every title under which said book was previously published in the English language in the United States and that it has been published previously thereunder appears in clear, conspicuous type upon the front cover and upon the title page of the book, either in immediate connection with the title or in another position adapted readily to attract the attention of a prospective purchaser."

Commissioner MacIntyre abstained from this action of the Commission but without prejudice to his participation in future actions and decisions of the Commission regarding this matter.

IN THE MATTER OF

A. A. WYN, INC., ET AL.

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

Docket 6792. Complaint, May 13, 1957—Decision, Oct. 28, 1968

Order modifying an order of January 11, 1965, 67 F.T.C. 19, which prohibited a New York City publisher from selling book reprints under a different title without disclosing the original title by adding to such disclosure provision that the book was published "in the English language in the United States."

MODIFIED ORDER
OCTOBER 28, 1968

The Commission on August 17, 1967, having issued its order to show cause why its modified order to cease and desist issued January 11, 1965 [67 F.T.C. 19], should not be reopened and further modified, and

Respondents by their counsel on September 13, 1967, having filed their answer expressing no objection to said modification provided that it is expressly understood that such modification will apply only prospectively from the date it is issued, and

The Commission being of the opinion that such modification will apply only prospectively from the date it is issued, and

The Commission, for the reasons set forth in its order to show cause dated August 17, 1967, being of the opinion that the public interest requires reopening of the proceedings which culminated in its modified order of January 11, 1965, and modification of the order entered therein,

It is ordered, That said proceedings be, and they hereby are, reopened and the Commission's modified order of January 11, 1965, be, and it hereby is, modified by revising Paragraph 2 thereof to read as follows:

> "Using or substituting a new title in place of the title under which a book was first published in the English language unless a statement which reveals the first English language title and that it has been published previously there under and each and every title under which said book was previously published in the English language in the United States and that it has been published previously thereunder appears in clear, conspicuous type upon the front cover and upon the title page of the book, either in immediate connection with the title or in another position adapted readily to attract the attention of a prospective purchaser."

Commissioner MacIntyre abstained from this action of the Commission but without prejudice to his participation in future actions and decisions of the Commission regarding this matter.

IN THE MATTER OF

BANTAM BOOKS, INC.

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

Docket 6802. Complaint, May 16, 1957—Decision, Oct. 28, 1968

Order modifying an order of November 24, 1958, 55 F.T.C. 779, which prohibited a New York publisher from selling book reprints under a different title without disclosing the original title by adding to such disclosure provision that the book was published "in the English language in the United States."

MODIFIED ORDER
OCTOBER 28, 1968

The Commission on August 17, 1967, having issued its order to

show cause why its order to cease and desist dated November 24, 1958 [55 F.T.C. 779], should not be reopened and modified, and

Respondents having interposed no objection to said order to show cause, and

The Commission, for the reasons set forth in its order to show cause dated August 17, 1967, being of the opinion that the public interest requires reopening of the proceedings which culminated in its order of November 24, 1958, and modification of the order entered therein,

It is ordered, That said proceedings be, and they hereby are, reopened and the Commission's order of November 24, 1958, be, and it hereby is, modified by revising Paragraph 2 thereof to read as follows:

> "Using or substituting a new title in place of the title under which a book was first published in the English language unless a statement which reveals the first English language title and that it has been published previously thereunder and each and every title under which said book was previously published in the English language in the United States and that it has been published previously thereunder appears in clear, conspicuous type upon the front cover and upon the title page of the book, either in immediate connection with the title or in another position adapted readily to attract the attention of a prospective purchaser."

Commissioner MacIntyre abstained from this action of the Commission but without prejudice to his participation in future actions and decisions of the Commission regarding this matter.

IN THE MATTER OF

FAWCETT PUBLICATIONS, INC., ET AL.

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

Docket 8187. Complaint, Nov. 28, 1960—Decision, Oct. 28, 1968

Order modifying an order of May 16, 1961, 58 F.T.C. 761, which prohibited a New York City publisher from selling book reprints under a different title without disclosing the original title by adding to such disclosure provision that the book was published "in the English language in the United States."

MODIFIED ORDER
OCTOBER 28, 1968

The Commission on August 17, 1967, having issued its order to show cause why its order to cease and desist dated May 16, 1961 [58 F.T.C. 761], should not be reopened and modified, and

Respondents having interposed no objection to said order to show cause, and

The Commission, for the reasons set forth in its order to show cause dated August 17, 1967, being of the opinion that the public interest requires reopening of the proceedings which culminated in its order of May 16, 1961, and modification of the order entered therein,

It is ordered, That said proceedings be, and they hereby are, reopened and the Commission's order of May 16, 1961, be, and it hereby is, modified by revising Paragraph 2 thereof to read as follows:

> "Using or substituting a new title in place of the title under which a book was first published in the English language unless a statement which reveals the first English language title and that it has been published previously thereunder and each and every title under which said book was previously published in the English language in the United States and that it has been published previously thereunder appears in clear, conspicuous type upon the front cover and upon the title page of the book, either in immediate connection with the title or in another position adapted readily to attract the attention of a prospective purchaser."

Commissioner MacIntyre abstained from this action of the Commission but without prejudice to his participation in future actions and decisions of the Commission regarding this matter.

IN THE MATTER OF

BELMONT PRODUCTIONS, INC., ET AL.

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

Docket 8613. Complaint, Jan. 10, 1964—Decision, Oct. 28, 1964

Order modifying an order of August 28, 1964, 66 F.T.C. 600, which prohibited a New York City publisher from selling book reprints under a different title without disclosing the original title by adding to such

disclosure provision that the book was published "in the English language in the United States."

MODIFIED ORDER
OCTOBER 28, 1968

The Commission on August 17, 1967, having issued its order to show cause why its order to cease and desist dated August 28, 1964 [66 F.T.C. 600], should not be reopened and modified, and

Respondents having interposed no objection to said order to show cause, and

The Commission, for the reasons set forth in its order to show cause dated August 17, 1967, being of the opinion that the public interest requires reopening of the proceedings which culminated in its order of August 28, 1964, and modification of the order entered therein,

It is ordered, That said proceedings be, and they hereby are, reopened and the Commission's order of August 28, 1964, be, and it hereby is, modified by revising Paragraph 2 thereof to read as follows:

> "Using or substituting a new title in place of the title under which a book was first published in the English language unless a statement which reveals the first English language title and that it has been published previously thereunder and each and every title under which said book was previously published in the English language in the United States and that it has been published previously thereunder appears in clear, conspicuous type upon the front cover and upon the title page of the book, either in immediate connection with the title or in another position adapted readily to attract the attention of a prospective purchaser."

Commissioner MacIntyre abstained from this action of the Commission but without prejudice to his participation in future actions and decisions of the Commission regarding this matter.

IN THE MATTER OF

ASSOCIATED CHINCHILLA BREEDERS, INC., ET AL.

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

Docket 8762. Complaint, May 27, 1968—Decision, Oct. 29, 1968

Order requiring a San Jose, Calif., distributor of chinchilla breeding stock to cease making exaggerated earning claims, misrepresenting the quality of its stock, deceptively guaranteeing the fertility of its stock, and misrepresenting its service to purchasers.

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 Associated Chinchilla Breeders, Inc., a corporation, and A. W. Halvorson, individually and as an officer of said corporation, and Bryon R. Hoffman individually and as a former officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in the respect as follows:

PARAGRAPH 1. Respondent Associated Chinchilla Breeders, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its principal office and place of business located at 998 South 2nd Street, San Jose, California. Prior to its establishment at the said location respondent's principal office and place of business was located at The Dalles, Oregon.

Respondent A. W. Halvorson is an individual and officer of Associated Chinchilla Breeders, Inc. Respondent Bryon R. Hoffman is an individual and former officer of Associated Chinchilla Breeders, Inc. Together they formulated, directed and controlled the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Respondent A. W. Halvorson continues to formulate, direct and control the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. Respondent Bryon R. Hoffman's address is 3452 Outlook, San Jose, California. Respondent A. W. Halvorson's address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of chinchilla breeding stock to the public. Respondent Bryon R. Hoffman is no longer engaged in the advertising, offering for sale, sale and distribution of chinchilla breeding stock to the public. He was engaged in the aforementioned activities at the time the acts and practices hereinafter set forth occurred.

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

respondents caused, and for some time last past have caused, and respondents A. W. Halvorson and Associated Chinchilla Breeders, Inc., continue to cause, their said chinchillas, when sold, to be shipped from their places of business 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 chinchillas in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of obtaining the names of prospective purchasers and inducing the purchase of said chinchillas, the respondents made and respondents A. W. Halvorson and Associated Chinchilla Breeders, Inc., continue to make, numerous statements and representations by means of television broadcasts, in magazine advertising and through the oral statements and display of promotional material to prospective purchasers by their salesmen, with respect to the breeding of chinchillas for profit without previous experience, the rate of reproduction of said animals and the expected return from the sale of their pelts.

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

Chinchillas can be an exciting and profitable business * * *. Are odorless, quiet, have no body parasites * * *. A garage, basement, or spare room is large enough to allow you to build your own business.

Every name on this page sold chinchilla pelts for $28 to $61 last month * * *. The average price for all pelts sold was $28.44 * * *.

I have been in the Chinchilla Business for fifteen months, and I'm happy to report, that I have sold my first pelt at the price of forty dollars * * *.

Litters vary from one to five young and females may produce several successive litters at 111 day intervals without taking a rest * * *.

The nature of the animal and the value of its fur make the farming of chinchillas a pleasant and profitable business, easily managed by almost anyone * * *.

For example, one rancher reported a $6,000 annual income. He raises the animals in his basement and spends approximately two hours a day with them. Further inquiry revealed that he worked full time at his trade of well-drilling during the same period * * *.

Statistics establish that chinchillas are hardy and that farm mortality is low * * *.

Associated Chinchilla Breeders, Inc., offers * * * animal warranties * * * fine quality breeding stock * * * advisory services * * *.

PAR. 5. By and through the use of the aforesaid statements and representations and others of similar import and meaning, but not

expressly set out herein, and through the oral statements and representations made in sales presentations to purchasers, respondents represented and respondents A. W. Halvorson and Associated Chinchilla Breeders, Inc., continue to represent, directly or by implication:

1. That it is commercially feasible to breed and raise chinchillas in homes, basements, garages or spare rooms and large profits can be made in this manner.

2. That the breeding of chinchillas for profit requires no previous experience.

3. That pelts from the offspring of respondents' breeding stock generally sell for $28 to $61 per pelt.

4. That pelts from the offspring of respondents' breeding stock sell for an average price of $28.44.

5. That chinchillas are hardy animals, and are not susceptible to diseases.

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

7. That each female chinchilla purchased from respondents and each female offspring will produce several successive litters of one to five live offspring at 111 day intervals.

8. That a purchaser starting with three females and one male of respondents' chinchillas breeding stock will have an annual income of $10,000 from the sale of pelts in the fourth year.

9. That chinchilla breeding stock purchased from respondents is unconditionally guaranteed.

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

11. Through the use of the corporate name, "Associated Chinchilla Breeders, Inc.," that they are an association or other organization of chinchilla breeders and that respondents are chinchilla breeders.

PAR. 6. In truth and in fact:

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

2. The breeding of chinchillas for profit requires specialized

knowledge in the feeding, care and breeding of said animals much of which must be acquired through actual experience.

3. A purchaser of respondents' chinchillas could not expect to receive from $28 to $61 for each pelt produced since some of the pelts are not marketable at all and others would not sell for $28 but for substantially less than that amount.

4. A purchaser of respondents' chinchillas could not expect to receive an average price of $28.44 for each pelt produced but substantially less than that amount.

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

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

7. Each female chinchilla purchased from respondents and each female offspring will not produce several successive litters of one to five live offspring at 111 day intervals but generally less than that number.

8. A purchaser starting with three females and one male of respondents' chinchilla breeding stock will not have an annual income of $10,000 from the sale of pelts in the fourth year but substantially less than that amount.

9. Chinchilla breeding stock purchased from respondents is not unconditionally guaranteed but said guarantee is subject to numerous terms, limitations and conditions.

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

11. Respondents are not an association or organization of chinchilla breeders and are not themselves chinchilla breeders. The corporate respondent is simply a private corporation operated for a profit and sells chinchilla breeding stock secured from various breeders.

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

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

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

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

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

Mr. Fauster Vittone and *Mr. Ian M. Rodway* supporting the complaint.

Mr. E. Albert Morrison, Tacoma, Washington, and *Mr. Brennan John Newsome,* San Francisco, California, for the respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER
AUGUST 19, 1968

INITIAL DECISION UPON DEFAULT

The complaint in this proceeding issued May 27, 1968, and was served upon respondents on June 6, 1968. It alleges that respondents, in the interstate sale of chinchillas, engage in acts and practices which violate Section 5 of the Federal Trade Commission Act. On July 3, 1968, the hearing examiner received a telegram from Brennan John Newsome, Attorney at Law, San Francisco, California, which the hearing examiner treated as a motion, and pursuant to which the hearing examiner extended respondents' time to answer the complaint to and including August 15, 1968, and reset the hearing from July 15, 1968, until September 3, 1968. On July 29, 1968, a document captioned "Withdrawal and Substitution of Attorney for Respondents" was filed by E. Albert Morrison, Esq., 1211 Sixth Avenue, Tacoma, Washington.

Respondents, and each of them, have failed to answer the complaint herein as required by the hearing examiner's order of July 3, 1968, and are hereby found to be in default for failure to answer in accordance with the Rules of Practice for Adjudicative Proceedings of the Federal Trade Commission, Section 3.12(2)(c).

Now, therefore, in accordance with the provisions of said rules the hearing examiner makes the following findings of fact and conclusions of law and issues the following order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. (a) Respondent Associated Chinchilla Breeders, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its principal office and place of business located at 998 South Second Street, San Jose, California. Prior to its establishment at the said location respondent's principal office and place of business was located at The Dalles, Oregon.

(b) Respondent A. W. Halvorson is an individual and officer of Associated Chinchilla Breeders, Inc. Respondent Bryon R. Hoffman is an individual and former officer of Associated Chinchilla Breeders, Inc. Together they formulated, directed and controlled the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Respondent A. W. Halvorson continues to formulate, direct and control the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. Respondent Bryon R. Hoffman's address is 3452 Outlook, San Jose, California. Respondent A. W. Halvorson's address is the same as that of the corporate respondent.

2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of chinchilla breeding stock to the public. Respondent Bryon R. Hoffman is no longer engaged in the advertising, offering for sale, sale and distribution of chinchilla breeding stock to the public. He was engaged in the aforementioned activities at the time the acts and practices hereinafter set forth occurred.

3. In the course and conduct of their aforesaid business, respondents caused, and for some time last past have caused, and respondents A. W. Halvorson and Associated Chinchilla Breeders, Inc., continue to cause, their said chinchillas, when sold, to be shipped from their place of business 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 chinchillas in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. In the course and conduct of their aforesaid business, and for the purpose of obtaining the names of prospective purchasers and inducing the purchase of said chinchillas, the respondents made and respondents A. W. Halvorson and Associated Chinchilla Breeders, Inc., continue to make, numerous statements and representations by means of television broadcasts, in magazine

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

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

Chinchillas can be an exciting and profitable business * * *. Are odorless, quiet, have no body parasites * * *. A garage, basement, or spare room is large enough to allow you to build your own business.

Every name on this page sold chinchilla pelts for $28 to $61 last month * * *. The average price for all pelts sold was $28.44 * * *.

I have been in the Chinchilla Business for fifteen months, and I'm happy to report, that I have sold my first pelt at the price of forty dollars * * *.

Litters vary from one to five young and females may produce several successive litters at 111 day intervals without taking a rest * * *.

The nature of the animal and the value of its fur make the farming of chinchillas a pleasant and profitable business, easily managed by almost anyone * * *.

For example, one rancher reported a $6,000 annual income. He raises the animals in his basement and spends approximately two hours a day with them. Further inquiry revealed that he worked full time at his trade of well-drilling during the same period * * *.

Statistics establish that chinchillas are hardy and that farm mortality is low * * *.

Associated Chinchilla Breeders, Inc., offers * * * animal warranties * * * fine quality breeding stock * * * advisory services * * *.

5. By and through the use of the aforesaid statements and representations and others of similar import and meaning, but not expressly set out herein, and through the oral statements and representations made in sales presentations to purchasers, respondents represented and respondents A. W. Halvorson and Associated Chinchilla Breeders, Inc., continue to represent, directly or by implication, contrary to the fact:

(a) That it is commercially feasible to breed and raise chinchillas in homes, basements, garages or spare rooms and large profits can be made in this manner.

(b) That the breeding of chinchillas for profit requires no previous experience.

(c) That pelts from the offspring of respondents' breeding stock generally sell for $28 to $61 per pelt.

(d) That pelts from the offspring of respondents' breeding stock sell for an average price of $28.44.

(e) That chinchillas are hardy animals, and are not susceptible to diseases.

(f) That each female chinchilla purchased from respondents and each female offspring will produce at least three live offspring per year.

(g) That each female chinchilla purchased from respondents and each female offspring will produce several successive litters of one to five live offspring at 111 day intervals.

(h) That a purchaser starting with three females and one male of respondents' chinchilla breeding stock will have an annual income of $10,000 from the sale of pelts in the fourth year.

(i) That chinchilla breeding stock purchased from respondents is unconditionally guaranteed.

(j) That purchasers of respondents' breeding stock would be given guidance in the care and breeding of chinchillas.

(k) Through the use of the corporate name, "Associated Chinchilla Breeders, Inc.," that they are an association or other organization of chinchilla breeders and that respondents are chinchilla breeders.

6. The statements, representations and acts set forth in Paragraphs 4 and 5 were, and are, false, misleading and deceptive, and constitute deceptive acts and practices proscribed by the Federal Trade Commission Act.

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

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

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

Now, therefore,

It is ordered, That respondents Associated Chinchilla Breeders, Inc., a corporation, and its officers, and A. W. Halvorson, in-

dividually and as an officer of said corporation, and Bryon R. Hoffman individually and as a former officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of chinchilla breeding stock or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that:

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

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

3. Pelts from the offspring of respondents' breeding stock generally sell for $28 to $61 each.

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

5. The offspring of chinchilla breeding stock purchased from respondents will produce pelts selling for the average price of $28.44 each.

6. Purchasers of respondents' breeding stock will receive for chinchilla pelts from such stock any average price or prices: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented

average price or prices per pelt are those usually received for pelts produced by chinchillas purchased from respondents, or by the offspring of said chinchillas.

7. Chinchillas are hardy animals or are not susceptible to diseases.

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

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

10. Each female chinchilla purchased from respondents and each female offspring will produce successive litters of one to five live offspring at 111 day intervals.

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

12. A purchaser starting with three females and one male will have, from the sale of pelts, an annual income, earnings or profits of $10,000 in the fourth year after purchase.

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

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

15. Purchasers of respondents' chinchilla breeding

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

B. 1. Using the trade or corporate name "Associated Chinchilla Breeders, Inc.," or any other name of similar import or meaning.

2. Representing, directly or by implication, that respondents are an association or group or organization of chinchilla breeders.

3. Representing, directly or by implication, that respondents are chinchilla breeders.

4. Misrepresenting, in any manner, the organization, kind, nature or character of respondents' business.

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

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

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

FINAL ORDER

The initial decision of the hearing examiner having been filed on August 20, 1968, containing findings, conclusions and an order to cease and desist;

Respondent Hoffman not having filed a notice of intent to appeal;

Respondent Associated Chinchilla Breeders, Inc., and respondent Halvorson not having filed an appeal brief after the Commission, by Order of October 3, 1968, had extended the time for such filing; and

The Commission having received a motion to set aside the

initial decision by respondent Associated Chinchilla Breeders, Inc., and respondent A. W. Halvorson, on the grounds that they were denied an opportunity to reply to complaint counsel's motion to the hearing examiner for a default order, which motion is without merit because said motion by complaint counsel was moot at the time it was filed and was never acted upon,

It is ordered, That the motion of respondent Associated Chinchilla Breeders, Inc., and respondent Halvorson dated October 14, 1968, to set aside the initial decision is hereby denied.

It is further ordered, That the initial decision of the hearing examiner shall, on the 29th day of October, 1968, become the decision of the Commission.

It is further ordered, That respondents Associated Chinchilla Breeders, Inc., a corporation; A. W. Halvorson, individually and as an officer of said corporation; and Bryon R. Hoffman, individually and as a former officer of said corporation, shall, within sixty (60) days after service of this order upon them, file with the Commission a report in writing, signed by such respondents setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF

THE KROGER CO.

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

Docket 7464. Complaint, Apr. 1, 1959—Decision, Oct. 31, 1968

Order terminating Section 7 proceeding and dismissing complaint due to change of Commission's policy with respect to merger activity in the food distribution industry.

COMPLAINT [1]

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Section 45), and Section 7 of the Clayton Act as approved October 15, 1914, and as amended and approved December 29, 1950 (U.S.C., Title 15, Section 18), and it

[1] Reported as amended by Commission's order of Aug. 10, 1966, by adding "*1963* Market Basket, Los Angeles, California, including 56 food stores" to paragraph six.

appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Kroger Co., hereinafter referred to as respondent, is a corporation organized in 1902 as The Kroger Grocery & Baking Co. under and by virtue of the laws of the State of Ohio. The present name, The Kroger Co., was adopted March 11, 1946. The principal office and place of business of the respondent is located at 35 East 7th Street, Cincinnati 2, Ohio.

PAR. 2. Respondent is engaged in the business of operating a chain of approximately 1,421 retail food stores in 20 States of the United States and sells a wide variety of merchandise, including a substantial number of items manufactured, processed and packaged under trademarks or brands owned or controlled by the respondent. The respondent owns or leases and operates bread and cracker bakeries, dairies, coffee roasting plants, and a general manufacturing plant for producing and packing candies, salad dressing, preserves, gelatin pudding, peanut butter, spices, coffee, extracts, and other grocery items. The respondent operates egg exchanges. In addition thereto, respondent owns jointly with Westinghouse Electric & Manufacturing Company a patented process for tenderizing meat, known as "Tenderay Process." The respondent maintains the Kroger Food Foundation, a technical organization, which tests the quality of products it purchases, develops new products, offers technical services to all departments of the respondent, including a housewive's advisory service.

Division headquarters, consisting of an office, distribution center and transportation unit, are maintained by respondent in the following cities, and a number of subwarehouses are operated in conjunction with these:

Little Rock, Arkansas
Atlanta, Georgia
Carbondale, Illinois
Peoria, Illinois
Chicago, Illinois
Fort Wayne, Indiana
Indianapolis, Indiana
Louisville, Kentucky
Shreveport, Louisiana
Detroit, Michigan
Grand Rapids, Michigan
Kansas City, Missouri
St. Louis, Missouri
Cincinnati, Ohio
Cleveland, Ohio
Columbus, Ohio
Dayton, Ohio
Toledo, Ohio
Pittsburgh, Pennsylvania
Memphis, Tennessee
Nashville, Tennessee
Houston, Texas
Roanoke, Virginia
Charleston, West Virginia
Madison, Wisconsin
Milwaukee, Wisconsin

Of the cities named above, respondent operates bakeries in Chicago, Cincinnati, Cleveland, Columbus, Detroit, Fort Wayne, Grand Rapids, Indianapolis, Louisville, Memphis, Roanoke, St. Louis, Houston, and Madison.

Coffee roasting plants of respondent are located at Cincinnati and St. Louis.

Dairies are operated by respondent in Cincinnati, Dayton, and Indianapolis.

Respondent operates meat distributing plants in Cincinnati, Detroit, Chicago, and Grand Rapids.

In a Cincinnati, Ohio, factory various food products are processed and packaged by respondent for sale to respondent's stores under the Kroger brand names. In addition, the respondent operates its own printing plant, and has one laundry.

Respondent operates a peanut plant at Oglethorpe, Georgia, an evaporated milk plant at Marion, Indiana, a central equipment depot at Cincinnati, Ohio, and egg exchanges at Wabash, Indiana, Hudson, Michigan, Portage and Albert Lea, Wisconsin. Respondent is engaged in commerce, as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

PAR. 3. Respondent is one of the largest retail food chains in the United States and, as of December 28, 1957, ranked third in total sales volume among the food chains of this country. Respondent's net sales increased from approximately $258,000,000 in 1940, to $1,674,000,000 in 1957, an increase of approximately $1,400,000,000, or over 500 percent.

PAR. 4. The food industry is the largest segment of the American economy. According to the 1954 Census of Business, there were 385,000 food stores of all types in the United States. As of 1954, 6,334 grocery stores had individual sales of one million dollars or more, and 16,466 stores reported sales figures ranging from $300,000 to one million dollars each.

Concentration of grocery store sales in large corporate chains has been intensified in the United States through sustained programs of corporate acquisitions. Twenty percent of the grocery stores in the United States account for over seventy-two percent of the total grocery store sales in the country. From 1954 to 1957, some thirty-six corporations absorbed eighty-eight grocery chains and thereby acquired, during this period, over one and a half billion dollars in total sales.

PAR. 5. Beginning in 1908, the respondent initiated a policy of expansion by acquiring a large number of food retailers and other concerns engaged in the manufacture, processing and distribution

of food products.

As a result of its policy of expansion by acquisition, the respondent has purchased, in selected localities, retail grocery stores, numerous warehouse facilities, packing and processing plants, as well as other interests.

All of the acquired corporations, prior to and at the time of the acquisitions, were engaged in commerce, as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act. Respondent's acquisitions include, among others, all or part of the capital stock or physical assets of the following corporations, which occurred in the years indicated:

1928

Hoosier Stores Corp., Fort Wayne, Indiana, including 73 stores.

Foltz Grocery & Baking Co., Cincinnati, Ohio, and Louisville, Kentucky, including 195 stores.

Eagle Grocery Co., Pittsburgh, Pennsylvania, including 82 stores.

C. Thomas Stores, Inc., Western Michigan, including 166 stores.

Universal Grocery Co., Madison, Wisconsin, including 75 stores.

Piggly-Wiggly Valley Co., Kentucky, Ohio, and Indiana, including 108 stores.

Middle States Stores Co., Cincinnati, and Dayton, Ohio, including 30 stores.

Columbus Piggly-Wiggly Co., Columbus, Ohio, including 31 stores.

Missouri-Illinois Stores, St. Louis, Missouri, including 150 stores.

Memphis Piggly-Wiggly Co., Memphis, Tennessee, including 58 stores.

Cox Stores, Inc., Little Rock, Arkansas, including 81 stores.

Piggly-Wiggly Ellis Co., Indianapolis, Indiana, including 4 stores.

Three Rivers Grocery Co., Fort Wayne, Indiana.

Piggly-Wiggly Johnson Co., Michigan, including 26 stores.

Heilman Baking Co., Madison, Wisconsin.

Fly & Hobson Co., Memphis, Tennessee, etc., including 115 stores.

Consumers Sanitary Coffee & Butter Stores, Chicago, Illinois, etc., including 297 stores.

Piggly-Wiggly Corp., including practically entire capital stock.

Dunn Mercantile Co., Wichita, Kansas.

1929

H. W. Bracy & Co., Herrin, Illinois, including 41 stores.

McCarty Wholesale Grocery Co., Inc., Kansas City, Missouri.

Milgram Stores Inc., Kansas City, Missouri, including 34 stores.

Piggly-Wiggly Haynes, Inc., Columbia, Missouri, including 2 stores.

Richards Bros., Columbia, Missouri, including 3 stores.

Roanoke (Va.) Grocery & Milling Co., Jamison Stores, Inc., Virginia, West Virginia, Tennessee, and North Carolina, including 90 stores.

Thrift Stores System, Oklahoma City, Oklahoma.

Piggly-Wiggly Lewis Co., Oklahoma City, Oklahoma.

Franklin Piggly-Wiggly, Tulsa, Oklahoma.

Piggly-Wiggly Irwin Co., Memphis, Tennessee.

Patterson Wholesale Grocery Co.
Piggly-Wiggly Roanoke Co.

1930

G. Batchelor Hall Co., which was reorganized into Wesco Foods Co., a California corporation organized for the purpose of purchasing produce and other commodities as a subsidiary of the respondent.

1931

Clarence Saunders' Stores, Inc., Memphis, Tennessee, including 26 stores.

1938

United States Stores Corp., Pittsburgh, Pennsylvania, including 9 stores.

1939

Oakley Chain, in and around Terre Haute, Indiana, including 58 stores.

1941

Model Grocery & Baking Co., Springfield, Missouri, including 15 stores.

1943

Manufacturers & Merchants Indemnity Co., an Ohio corporation, now Selective Insurance Co.

PAR. 6. Subsequent to 1950, respondent acquired the following corporations and other concerns engaged in commecre, as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act:

1955

Henke & Pillot, Inc., Houston, Texas, including 27 stores.
Krambo Food Stores, Inc., in and around Milwaukee, Wisconsin, including 27 supermarkets.
Childs Food Stores, Inc., East Texas and West Louisiana and Arkansas, including 28 supermarkets.

1956

Big Chain Stores, Inc., Shreveport, Louisiana, including 7 stores.

1958

Wyatt Food Stores, Dallas, Texas, including 43 supermarkets.

1963

Market Basket, Los Angeles, California, including 56 food stores.

PAR. 7. The effect of the aforesaid acquisitions by the respondent, individually and collectively, through increased concentration and otherwise, may be substantially to lessen competition or tend to create a monopoly in the processing, manufacturing, purchasing and distributing of products sold in grocery stores and in the

sale of merchandise in retail grocery stores, within the meaning of Section 7 of the Clayton Act.

PAR. 8. The foregoing acquisitions which occurred prior to December 29, 1950, as alleged and heretofore set forth, constitute a violation of Section 7 of the Clayton Act, as approved October 15, 1914.

PAR. 9. The foregoing acquisitions which occurred after December 29, 1950, as alleged and set forth hereinabove, constitute a violation of Section 7 of the Clayton Act, as amended and approved December 29, 1950.

PAR. 10. The acqusitions hereinbefore described, tending substantially to lessen competition or to create a monopoly, are to the prejudice and injury of the public and constitute an unfair method of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Section 45).

PAR. 11. The foregoing acquisitions, acts and practices, as hereinbefore alleged and set forth, constitute a violation of Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Section 45).

ORDER TERMINATING PROCEEDING

The hearing examiner, on February 16, 1967, certified to the Commission two motions filed by respondent requesting that the complaint be dismissed and a motion by respondent requesting that a subpoena duces tecum be quashed.

By order issued on March 1, 1967 [71 F.T.C. 1647], the Commission remanded the matter to the examiner with the directions that he explore the possibilities of a settlement. The examiner has reported to the Commission that the proposals submitted by the parties contain fundamental differences and that no useful purpose would be served in further discussions.

Upon review of this matter, the Commission has determined that the public interest does not warrant further proceedings. This determination is based on the longevity of the case, the fact that evidentiary hearings would have to be further delayed as a result of an additional acquisition challenged in the amended complaint, and the fact that the Commission has announced its enforcement policy with respect to mergers in the food distribution industries. In implementing this policy, the Commission is now requiring large food retailers, including respondent, to file special reports sixty days in advance of any merger activity in the food distribution industry. Accordingly, this proceeding will

be terminated without adjudication.

Since this decision has been made by the Commission in the exercise of its administrative discretion, the motions certified by the examiner are moot.

For the reasons stated herein:

It is ordered, That this proceeding be, and it hereby is, terminated.

Commissioner MacIntyre not participating.

IN THE MATTER OF

GRUSKIN & FELDMAN, 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-1441. Complaint, Nov. 1, 1968—Decision, Nov. 1, 1968

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

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Gruskin & Feldman, Inc., a corporation, and Jack Gruskin and Milton Feldman, 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 Gruskin & Feldman, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Jack Gruskin and Milton Feldman are officers of said corporation. They formulate, direct and control the policies, acts and practices 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 or otherwise falsely or deceptively identified with respect to the name of the country of origin of furs contained in such fur products, in violation of Section 4(1) of the Fur Products Labeling Act.

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

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

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

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

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

3. To show the country of origin of the imported furs contained in the fur products.

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

PAR. 6. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

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

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

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

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

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

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

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

PAR. 8. Certain of said fur products were falsely and deceptively invoiced with respect to the name of the country of origin of imported furs used in such fur products, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

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

PAR. 9. Certain of said fur products were falsely and deceptively invoiced in that respondents set forth on invoices pertaining to fur products the name of an animal other than the name of the animal that produced the fur from which the said fur products had been manufactured, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

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

(a) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth on invoices in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

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

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

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 Gruskin & Feldman, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 330 Seventh Avenue, New York, New York.

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

A. Misbranding any fur product by:

1. Falsely or deceptively labeling or otherwise identifying such fur product as to the country of origin of furs contained in such fur product.

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

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

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

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

B. Falsely or deceptively invoicing any fur product by:

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

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

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

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

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

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

SPORTSVILLE CASUALS, INC., ET AL.

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

Docket C-1442. Complaint, Nov. 1, 1968—Decision, Nov. 1, 1968

Consent order requiring a New York City clothing manufacturer to cease misbranding the fiber content of its products, furnishing false guaranties, and failing to maintain required records.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission

Act, Textile Fiber Products Identification 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 Sportsville Casuals, Inc., a corporation, and Bernard W. Slavis and Simon Shar, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Textile Fiber Products Identification Act and the Wool Products Labeling Act of 1939, 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 Sportsville Casuals, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York. The said corporation is currently inactive but has not been dissolved.

Respondents Bernard W. Slavis and Simon Shar are officers of said corporate respondent. They formulate, direct and control the acts, practices and policies of said corporate respondent.

Respondents were engaged in the manufacture and sale of textile fiber products, including ladies' trousers, with their office and principal place of business located previously at 225 West 37th Street, New York, New York. The present address of Bernard W. Slavis is 804 Gehrig Avenue, Franklin Square, New York, and the present address of Simon Shar is 39 Edgemere Road, Livingston, New Jersey.

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

PAR. 3. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the Rules and

Regulations promulgated thereunder in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the names and amounts of the constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were ladies' trousers labeled as "60% Rayon, 40% Nylon" whereas, in truth and in fact, such products contained substantally different amounts of fibers other than as represented.

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

Among such misbranded textile fiber products, but not limited thereto, were ladies' trousers.

PAR. 5. Certain of said textile fiber products were further misbranded in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in that samples, swatches and specimens of textile fiber products subject to the aforesaid Act, which were used to promote or effect sales of such textile fiber products, were not labeled to show their respective fiber content and other information required by Section 4(b) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, in violation of Rule 21(a) of the aforesaid Rules and Regulations.

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

PAR. 7. Respondents have furnished false guaranties that their textile fiber products were not misbranded in violation of Section 10(b) of the Textile Fiber Products Identification Act.

PAR. 8. The acts and practices of respondents, as set forth above in Paragraphs Three through Seven were, and are in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce, under the Federal Trade Commission Act.

PAR. 9. Respondents furnished false guaranties under Section

9(b) of the Wool Products Labeling Act of 1939 with respect to certain of their wool 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 wool products so falsely guarantied would be introduced, sold, transported and distributed in commerce, in violation of Rule 33(d) of the Rules and Regulations under the Wool Products Labeling Act of 1939 and Section 9(b) of said Act.

PAR. 10. The acts and practices of the respondents as set forth above in Paragraph Nine were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices, in commerce within the meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act, the Textile Fiber Products Identification 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 Sportsville Casuals, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located previously at 225 West 37th Street, New York, New York.

Respondent Bernard W. Slavis is an officer of said corporation and his present address is 804 Gehrig Avenue, Franklin Square, New York.

Respondent Simon Shar is an officer of said corporation and his present address is 39 Edgemere Road, Livingston, New Jersey.

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 Sportsville Casuals, Inc., a corporation, and its officers, and Bernard W. Slavis and Simon Shar, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber products which has been advertised or offered for sale in commerce, or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

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

2. Failing to affix a stamp, tag, label or other means of identification to each such product showing in a clear, legible and conspicuous manner each element of infor-

mation required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

3. Failing to affix labels to samples, swatches or specimens of textile fiber products used to promote or effect the sale of such textile fiber products showing in words and figures plainly legible all the information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

B. Failing to maintain and preserve proper records showing the fiber content of the textile fiber products manufactured by said respondents, as required by Section 6 of the Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

It is further ordered, That respondents Sportsville Casuals, Inc., a corporation, and its officers, and Bernard W. Salvis and Simon Shar, 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 textile fiber product is not misbranded or falsely invoiced under the provisions of the Textile Fiber Products Identification Act.

It is further ordered, That respondents Sportsville Casuals, Inc., a corporation, and its officers, and Bernard W. Slavis and Simon Shar, 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 wool product is not misbranded, when the respondents have reason to believe that such wool 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.