12. Respondents' agents, representatives or employees are bonded for the protection of the purchaser.

B. Falsely representing, in any manner, that savings are available to purchasers or prospective purchasers of respondents' products or services; or misrepresenting, in any manner, the amount of savings available to purchasers or prospective purchasers of respondents' products or services.

C. Using the words "Advertisers Agency" or any other word or words of similar import or meaning as part of respondents' trade name or corporate name; or representing, directly or by implication, that respondents are engaged in the advertising business; or misrepresenting, in any manner, the nature or status of respondents' business.

D. Representing, directly or by implication, that letters, forms or other communications originated by respondents are sent by an Attorney at Law; or misrepresenting, in any manner, the source or the originator of any letters, forms or other communications.

E. Representing, directly or by implication, that legal action is about to be taken or has been taken to enforce payment of delinquent accounts: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that steps had been in fact taken to institute such action at the time of the notice to the delinquent debtor.

F. 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 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

STEINER & STEIN FUR CO. ET AL.

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

Docket C-1408. Complaint, Aug. 19, 1968—Decision, Aug. 19, 1968

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

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Steiner & Stein Fur Co., a partnership, and Leo Steiner and Paul Stein, individually and as copartners trading as Steiner & Stein Fur Co., 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 Steiner & Stein Fur Co. is a partnership existing and doing business under the laws of the State of New York.

Respondents Leo Steiner and Paul Stein are individual copartners trading as Steiner & Stein Fur Co.

Respondents are manufacturers of fur products with their office and principal place of business located at 224 West 30th Street, New York, New York.

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

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

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

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

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

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

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in that said fur products were invoiced to show that the fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Section 5(b) (2) of the Fur Products Labeling Act.

PAR. 7. 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 Steiner & Stein Fur Co. is a partnership existing and doing business under the laws of the State of New York, with its office and principal place of business located at 224 West 30th Street, city of New York, State of New York.

Respondents Leo Steiner and Paul Stein are individual copartners trading as Steiner & Stein Fur Co. and their address is the same as that of said partnership.

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

ORDER

It is ordered, That respondents Steiner & Stein Fur Co., a partnership, trading under its own name, or any other name, and Leo Steiner and Paul Stein, individually and as copartners trading as Steiner & Stein Fur Co., and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

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

2. Failing to affix labels to fur products showing in

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

B. Falsely or deceptively invoicing fur products by:

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

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

It is further ordered, That 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

VULCAN MATERIALS COMPANY

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

Docket C-1409. Complaint, Aug. 22, 1968—Decision, Aug. 22, 1968

Consent order requiring a Birmingham, Ala., processor and seller of construction aggregates and ready-mixed concrete to divest itself of one of two quarry and ready-mix concrete plants in the Chicago, Ill., area and refrain from acquiring any such plant in the States of Wisconsin, Illinois or Indiana for a period of 10 years.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent has violated Section 7 of the Clayton Act, as amended, 15 U.S.C. Section 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. Section 45, by virtue of its acquisition of the assets of Dolese & Shepard Co., and that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint, stating its charges as follows:

I

Definitions

1. For the purpose of this Complaint, the following definitions, which are based upon the definitions of the American Society For Testing And Materials, shall apply:

(a) "Construction aggregates" are inert materials, particles or grains in prescribed graduation or size range, such as sand, gravel, crushed stone and blast furnace slag, which when bound together into a conglomerated mass by a matrix forms concretes, mastic, mortar or plaster.

(i) "Sand" is granular material passing the 3/8 inch sieve and almost entirely passing the No. 4 (4.76 mm) sieve and predominantly retained on the No. 200 (74 micron) sieve, and resulting from natural disintegration and abrasion of rock or processing of completely friable sandstone.

(ii) "Gravel" is granular material predominantly retained on the No. 4 (4.76 mm) sieve and resulting from natural disintegration and abrasion of rock or processing of weakly bound conglomerate.

(iii) "Crushed stone" is the product resulting from the artificial crushing of rocks, boulders or large cobblestones, substantially all faces of which have resulted from the crushing operation.

(iv) "Blast furnace slag" is the nonmetallic product, consisting essentially of silicates and aluminosilicates of lime and of other bases, which is developed simultaneously with iron in a blast furnace.

(b) "Portland cement" includes Types I through V of portland cement as specified by the American Society For Testing And Materials. Neither masonry nor white cement is included.

(c) "Ready-mixed concrete" includes all portland cement concrete which is manufactured and delivered to a purchaser in a plastic and unhardened state. Ready-mixed concrete includes central-mixed concrete, shrink-mixed concrete and transit-mixed concrete.

II

Vulcan Materials Company

2. Respondent, Vulcan Materials Company ("Vulcan") is a corporation organized and existing under the laws of the State of New Jersey. Its office and principal place of business is located at One Office Park, Birmingham, Alabama.

3. Vulcan is a miner, manufacturer, processor and seller of

construction aggregates, ready-mixed concrete, concrete products, chemicals and metallics. In 1966 Vulcan had net sales of $154,637,717, total assets of $120,783,489, and net income of $11,954,846. In the year ending December 31, 1966, Vulcan's sales of aggregates totalled $60,179,000 or 38.9% of total net sales. Its sales of concrete products totalled $37,797,000 or 24.5% of total net sales. Sales of other construction materials totalled $11,605,000 or 7.5% of total net sales and sales of chemicals and metallics totalled $45,057,000 or 29.1% of total net sales.

4. Vulcan Materials Company was incorporated on September 24, 1956, as a wholly owned subsidiary of Birmingham Slag Company ("Birmingham") and on September 29, 1956, the two companies were merged. The principal business of Birmingham and its subsidiaries was the production and sale of construction aggregates and other construction or paving materials in which such aggregates are the principal ingredients. On December 31, 1956, Vulcan merged with the Vulcan Detinning Company, which had been engaged since 1902 in the separation, recovery and sale of steel scrap and tin from tin-plate scrap, forming the basis of the present corporation.

5. On December 31, 1957, Vulcan merged with Union Chemical & Materials Corp. ("Union"), and Lambert Bros., Inc., and concurrently acquired seven other partially interrelated corporations: Wesco Materials, Inc., Wesco Contracting Company, Asphalt Paving Materials Company, Brooks Sand and Gravel Company, Tennessee Equipment Company, Chattanooga Rock Products Company and Rockwood Slag Products, Inc. The business of Union fell into two main categories, an aggregate and ready-mix concrete business and a chemical business. The principal business of all the remaining corporations was the production and sale of commercial aggregates and other products used (1) in conjunction with aggregates or of which aggregates were a principal ingredient, or (2) in highway and other construction work relating to the use of such products.

6. Between October 31, 1958, and July 1, 1966, Vulcan acquired a total of twenty-five (25) businesses for (1) total cash considerations of approximately $12,084,715 plus, in some instances, the cost of inventories and other current assets, (2) a total stock consideration of 561,460 shares of common stock, valued at $9,531,070 (based on closing quotes on the dates of acquisition) and (3) 10,000 shares of 6¼% preferred stock, valued at $1,020,000 (based on closing quote the date of acquisition). Of these 25 businesses, one was in the detinning business;

one was in the chemical business; one, which was subsequently sold, was in the metal sign and stamping business; three were in the heavy construction business, and all three of these were liquidated; and nineteen, of which five were subsequently sold, were in the aggregates business or the concrete products business (such as concrete pipe, concrete block and ready-mixed concrete operations).

7. At all times relevant herein, Vulcan bought, sold and shipped products in interstate commerce; hence, Vulcan was, and is engaged in commerce as "commerce" is defined in the Federal Trade Commisson and Clayton Acts.

III

Dolese & Shepard

8. Dolese & Shepard Co. ("Dolese"), was a corporation organized and existing under the laws of the State of Illinois. Its office and principal place of business was located at Hodgkins, Illinois.

9. Dolese was established in 1868 and incorporated in 1894. Dolese's principal business consisted of the production and sale of commercial aggregates and ready-mixed concrete; it owned and operated two stone quarries located at Hodgkins and Joilet, Illinois, and three ready–mix concrete plants, one each located at Hodgkins, Addison and Joliet, Illinois.

10. For the year ending December 31, 1966, Dolese had net sales of $5,491,418, net assets of $3,732,397 and net income of $267,180.

11. At all times relevant herein, Dolese bought, sold and shipped products in interstate commerce; hence, Dolese was, and is, engaged in commerce as "commerce" is defined in the Federal Trade Commission and Clayton Acts.

IV

Trade and Commerce

12. Prior to the acquisition of Dolese by Vulcan, the McCook-Hodgkins open-pit stone quarry, at which crushed stone was produced, was owned and operated in part by Vulcan and in part by Dolese. This quarry is a single minable area without any natural barrier. Both Dolese and Vulcan had its own separate mining equipment, aggregates plant and facilities at the quarry. Each also operated a ready-mix concrete plant at the quarry.

13. Prior to the acquisition Vulcan and Dolese each produced and sold construction aggregates in the greater Chicago, Illinois area. The greater Chicago area consists of the following counties

and parts thereof in Illinios: Lake, Cook and DuPage Counties; the east half of McHenry and Kane Counties; and the northeast portion of Will County. Vulcan and Dolese also produced and sold ready–mixed concrete in various parts of the greater Chicago, Illinois, area.

14. Prior to the acquisition of Dolese, Vulcan not only owned and operated its portion of the McCook-Hodgkins quarry, but also owned and operated an open-pit stone quarry and ready-mix concrete plant at Bellwood, Illinois. The Bellwood quarry is a self-sufficient operation comparable in most respects to the preacquisition Dolese quarry located at McCook-Hodgkins, Illinois. At the Bellwood quarry, Vulcan produced and sold construction aggregates and ready-mixed concrete for the greater Chicago, Illinois, area.

15. At least 29 companies produce more than 37 million tons of construction aggregates annually for the greater Chicago market. In 1966 General Dynamics (Material Service Division) was first, with a market share of about 39%; Vulcan had about 14%; U.S. Steel, 8%; Elmhurst Chicago, 7%; Dolese, 6%; Chicago Gravel, 4%. Thus the six largest producers of construction aggregates, of all types, for the greater Chicago market accounted for approximately 78% of the total.

16. With respect to the crushed stone submarket in the construction aggregates line, eight companies produced 16.5 million tons in 1966. General Dynamics had a market share of about 55%; Vulcan, about 21%; Dolese, 13%; and Elmhurst Chicago, from 5% to 8%. Thus, the four largest producers of crushed stone for the greater Chicago market accounted for approximately 94% to 97% of the total.

17. With respect to the read-mix concrete market, approximately 7 million to 8 million cubic yards of concrete, produced by some 47 companies with at least 100 plants, were consumed in the greater Chicago market in 1966. General Dynamics had about 26% of this market; Vulcan had 10%; Dolese had about 2%.

18. Prior to October 30, 1967, Vulcan and Dolese produced and sold construction aggregates, and more specifically crushed stone, and ready–mixed concrete in competition with each other in the greater Chicago, Illinois, area

V

Violation Charged

19. On October 30, 1967, Vulcan acquired all of the assets of

Dolese in exchange for 340,530 shares of Vulcan common stock having an approximate market value of $6,768,000.

20. The effect of the acquisition of Dolese by Vulcan may be substantially to lessen competition or to tend to create a monopoly in the greater Chicago area in violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act, in that:

(a) Substantial, actual and potential competition between Vulcan and Dolese, in the production, distribution and sale of (1) construction aggregates, and more specifically crushed stone, and (2) ready-mixed concrete has been eliminated.

(b) Concentration in the production, distribution and sale of (1) construction aggregates which include crushed stone and (2) ready-mixed concrete has been increased.

(c) New entry into the production, distribution and sale of (1) construction aggregates and (2) ready-mixed concrete may be inhibited or prevented.

(d) Consumers have been, and may be further denied the benefits of free and open competition in the sale and distribution of (1) construction aggregates and (2) ready-mixed concrete.

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 Restraint of Trade proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act and Section 7 of the Clayton Act, as amended; 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 Vulcan Materials Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at One Office Park, Birmingham, Alabama.

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

I

It is ordered, That respondent, Vulcan Materials Company, and its officers, directors, agents, representatives and employees shall within one (1) year from the date this Order becomes final, divest itself absolutely and in good faith of all of the assets, properties, rights and privileges, including all properties, plants, machinery, equipment, raw material reserves, contract rights and customer lists owned by respondent at McCook-Hodgkins, Illinois, specifically including all of the assets at said location acquired from Dolese & Shepard Co., plus all of the assets at said location which respondent owned prior to the acquisition of Dolese & Shepard Co., but not including respondent's concrete pipe plant and the land on which it is situated adjacent to the McCook-Hodgkins Quarry site. Said divestiture shall be made in such manner that a going concern and a viable competitor in the production, distribution and sale of construction aggregates and ready-mixed concrete will be established at the McCook-Hodgkins Quarry site.

II

It is further ordered, In the alternative, that in lieu of the divestiture required by Paragraph I of this Order, respondent, Vulcan Materials Company, and its officers, directors, agents, representatives and employees shall within one (1) year from the date this Order becomes final divest itself absolutely and in good faith of all of the assets, properties, rights and privileges, including all properties, plants, machinery, equipment, raw material reserves, contract rights and customer lists owned by respondent at Bellwood, Illinois: *Provided, however*, That respondent shall retain or sell separately, at its option, dumping rights on quarry land from which all saleable construction aggregates have been

extracted. Said divestiture shall be made in such manner that a going concern and viable competitor in the production, distribution and sale of construction aggregates and ready-mixed concrete will be established at the Bellwood Quarry site.

III

It is further ordered, That pending divestiture, respondent shall not make any changes or permit any deterioration in any of the plants, machinery, buildings, equipment or other property or assets described in Paragraphs I and II of this Order which may impair the market value of the McCook-Hodgkins Quarry site or the Bellwood Quarry site or which may reduce the capacity at either of said quarry sites for the manufacture, sale or distribution of construction aggregates or ready-mixed concrete: *Provided, however,* That Vulcan shall not be prohibited from eliminating duplicate facilities for the production of construction aggregates and ready-mixed concrete at the McCook-Hodgkins Quarry site or making other modifications or alterations designed to unify and increase the efficiency of the operations at the McCook–Hodgkins Quarry site so long as Vulcan maintains the capacity for production of construction aggregates and ready-mixed concrete at the McCook-Hodgkins Quarry site at or above the volume of production of such products at the McCook-Hodgkins Quarry site by both Vulcan and Dolese & Shepard Co. during the calendar year 1967.

IV

It is further ordered, That pending divestiture, respondent shall not make, allow or permit, outside of the ordinary course of its day-to-day business, any depletion or transfer of the inventory, stock pile or raw material reserves at the locations described in Paragraphs I and II of this Order.

V

It is further ordered, That, in accomplishing the aforesaid divestiture, respondent shall not sell or transfer the assets, property rights or privileges described in Paragraphs I and II of this Order, directly or indirectly, to any person who, immediately following such divestiture, shall be a stockholder of the respondent, an officer, director, employee, or agent of, or otherwise directly or indirectly connected with or under the control of, the respondent or any corporation controlled by the respondent, or to any purchaser who is not approved in advance by the Federal Trade Commission.

VI

It is further ordered, That, if the consideration received for the divestiture required to be made pursuant to this Order is not entirely cash, nothing in this Order shall be deemed to prohibit respondent or any of its subsidiaries from accepting and enforcing a lien, mortgage, pledge, deed of trust or other security interest for the purpose of securing to respondent full payment of the price, with interest received by respondent in connection with the divestiture: *Provided, however*, That after bona fide divestiture including any disposal of any of the assets, in accordance with the provisions of this Order, respondent, by enforcement of such security interest regains direct or indirect ownership or control of any substantial portion of the assets, said ownership or control regained shall be redivested subject to the provisions of this Order within such reasonable period as is granted by the Commission for this purpose.

VII

It is further ordered, That for a period of ten (10) years from the date this Order becomes final, respondent shall cease and desist from entering into any arrangement with another party by which respondent obtains, in the States of Wisconsin Illinois or Indiana, directly or indirectly, through subsidiaries or otherwise, except for nonoperating quarry-site land or mineral reserves, the whole or any part of the share capital or assets [valued in excess of Twenty-five Thousand Dollars ($25,000)] of any concern, corporate or noncorporate, engaged in the production, distribution or sale of construction aggregates or ready-mixed concrete, without the prior approval of the Federal Trade Commission.

VIII

It is further ordered, That for a period of ten (10) years from the date this Order becomes final, respondent shall notify the Commission sixty (60) days in advance before acquiring, in any area of the United States, directly or indirectly, through subsidiaries or otherwise, except for nonoperating quarry-site land or mineral reserves, the whole or any part of the share capital or assets [valued in excess of Twenty–five Thousand Dollars ($25,000)] of any concern, corporate or noncorporate, engaged in the production, distribution or sale of construction aggregates

or ready-mixed concrete, if respondent and the seller are engaged in competition in selling said products in such area.

IX

It is further ordered, That respondent shall, within sixty (60) days after the date of service of this Order, and every sixty (60) days thereafter until respondent has fully complied with the provisions of Paragraphs I and II of this Order, submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which respondent intends to comply, is complying, or has complied with Paragraphs I and II of this Order. All compliance reports shall include, among other things that are from time to time required, a summary of all discussions and negotiations with potential purchasers of the specified assets and properties, the identity of all such potential purchasers, and copies of all written communications to and from such potential purchasers as well as all reports and recommendations concerning divestiture.

X

It is further ordered, That within sixty (60) days after this Order becomes final, and annually thereafter, respondent shall furnish to the Federal Trade Commission a verified written report setting forth the manner and form in which it intends to comply, is complying, or has complied with Paragraph VII of this Order.

XI

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

IN THE MATTER OF

STOW & DAVIS FURNITURE COMPANY

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

Docket C-1410. Complaint, Aug. 23, 1968—Decision, Aug. 23, 1968

Consent order requiring a Grand Rapids, Mich., furniture manufacturer to cease discriminating in price between competing resellers of its furniture.

COMPLAINT

The Federal Trade Commission, having reason to believe that

Stow & Davis Furniture Company, a corporation, the party respondent named in the caption hereof and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsection (a) of Section 2 of the Clayton Act (U.S.C., Title 15, Section 13), as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Stow & Davis Furniture Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 25 Summer Avenue, NW., Grand Rapids, Michigan.

PAR. 2. Respondent is now, and for many years last past has been, engaged in the manufacture, sale and distribution of furniture and furniture products. These products are sold to a large number of customers located throughout the United States. Sales of these products are substantial, amounting to about $5 million per annum.

PAR. 3. In the course and conduct of its business, respondent has engaged and is now engaged in commerce, as "commerce" is defined in the Clayton Act.

Respondent manufactures its products in Grand Rapids, Michigan, from which point the products are shipped to purchasers located in various cities and States in the United States.

Respondent sells said products for use, consumption or resale within the United States, and, when said products are sold, respondent ships or causes them to be shipped to purchasers or customers of its purchasers located in States other than the State wherein said products are manufactured. Respondent maintains, and at all times mentioned herein has maintained, a continuous course of trade in commerce in said products among and between the various States of the United States and the District of Columbia.

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

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

For several years last past respondent has priced its line of

products in terms of list prices. One class of respondent's customers purchase at said list prices less a discount of 40% while other classes of customers purchase at list prices less discounts ranging up to 50 & 10%. Various members of each class of customers compete with each other and with various members of each of the other classes.

PAR. 6. The effect of respondent's discriminations in price as alleged herein has been or may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which respondent's customers are engaged, or to injure, destroy, or prevent competition with purchasers from respondent who receive the benefit of such discriminations.

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

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of subsection (a) of Section 2 of the Clayton Act, as amended, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with the proposed form of order; 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 complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

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

1. Respondent Stow & Davis Furniture Company is a corporation organized, existing and doing business under and by virtue

of the laws of the State of Michigan, with its office and principal place of business located at 25 Summer Avenue, NW., in the city of Grand Rapids, State of Michigan.

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

ORDER

It is ordered, That respondent Stow & Davis Furniture Company, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in, or in connection with, the offering for sale, sale or distribution of furniture or furniture products in commerce, as "commerce" is defined in the Clayton Act, do, on and after *December 31, 1968,* forthwith cease and desist from:

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

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

It is further ordered, That respondent shall, on or before December 31, 1968, file with the Commission a report in writing setting forth in detail the manner and form in which it will comply with this order.

IN THE MATTER OF

H. C. BOHACK CO., INC.

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

Docket C-1411. Complaint, Aug. 23, 1968—Decision, Aug. 23, 1968

Consent order requiring a Brooklyn, N.Y., grocery store chain to divest itself of four of eight stores listed herein and refrain from acquiring other grocery stores of specified size for the next 10 years without Commission approval.

COMPLAINT

The Federal Trade Commission, having reason to believe that

the acquisition by H. C. Bohack Co., Inc., of the stock and business of Packer's Super Markets, Inc., will violate the provisions of Section 7 of the Clayton Act, as amended, 15 U.S.C. Section 18, and that the agreement to consummate said acquisition violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. Section 45(a)(1), and it appearing that a proceeding by the Commission in respect to such violations would be to the interest of the public, issues this Complaint stating its charges as follows:

I

Definitions

1. "Food stores" are establishments primarily selling food for home preparation and consumption. The definition corresponds to Bureau of Census Major Group Classification No. 54.

2. "Grocery stores" are food store establishments primarily selling (a) a wide variety of canned or frozen foods, such as vegetables, fruits and soups; (b) dry groceries, either packaged or in bulk, such as tea, coffee, cocoa, dried fruits, spices, sugar, flour, and crackers; and (c) other processed food and non-edible grocery items. In addition, these establishments often sell smoked and prepared meats, fresh fish and poultry, fresh vegetables and fruits, and fresh or frozen meats. This definition corresponds to Bureau of Census Industry Classification No. 5411.

3. The New York Metropolitan Area, as used herein, refers to the following: New York City: all counties; other parts of New York State: Nassau, Rockland, Suffolk and Westchester Counties.

II

H. C. Bohack Co., Inc.

4. H. C. Bohack Co., Inc., respondent herein (hereinafter referred to as "Bohack"), is a corporation organized in and existing under the laws of the State of New York. Its principal office and place of business is located at 48–25 Metropolitan Avenue, Brooklyn, New York 11237.

5. The principal business of Bohack is the operation of grocery stores. In 1967, Bohack ranked sixth in sales among all grocery store chains in the New York Metropolitan Area. Bohack's sales in its fiscal year 1967 which ended January 27, 1968, were approximately $207,000,000. Bohack had a net profit of $125,646 in that year.

6. As of April 26, 1968, Bohack operated 165 retail grocery

stores in the New York Metropolitan Area. Among these, Bohack operated 32 grocery stores in Kings County (Brooklyn), New York and 50 grocery stores in Queens County, New York. The Bohack stores listed below were located within five city blocks of the Packer's stores identified in paragraph 10 below;

Bohack store #2233,
29–10 Broadway,
Astoria, New York.
Bohack store #2122,
220–34 Jamaica Avenue,
Queens, New York.
Bohack store #2232,
1419–25 Newkirk Avenue,
Brooklyn, New York.
Bohack store #2200,
1772 Rockaway Parkway,
Brooklyn, New York.

7. Bohack purchased products in interstate commerce, is, and for many years has been, engaged in commerce as "commerce" is defined in the Clayton and Federal Trade Commission Acts.

III

Packer's Super Markets, Inc.

8. Packer's Super Markets, Inc. (hereinafter referred to as "Packer's"), was established as an individual proprietorship in 1933. Subsequently, Packer's became a partnership and in 1954 became a corporation under the laws of the State of New York. Its principal office and place of business is located at 150 52nd Street, Brooklyn, New York.

9. The principal business of Packer's is the operation of grocery stores. In 1967, with a market share of approximately 1.64%, Packer's ranked fourteenth in sales among all grocery store chains in the New York Metropolitan Area. Packer's sales in its fiscal year 1967 which ended February 25, 1967, were approximately $58,000,000. In that year, Packer's had a net profit of $67,988.

10. As of April 26, 1968, Packer's operated 38 grocery stores; 29 of these stores are in Kings County (Brooklyn), 8 are in Queens County and one is in Nassau County. The Packer's stores listed below were located within five city blocks of the Bohack stores identified in paragraph 6 above;

Packer's store located at
31–11 Broadway,

Astoria, New York.
Packer's store located at
222–51 Jamaica Avenue,
Queens, NewYork.
Packer's store located at
1408–14 Newkirk Avenue,
Brooklyn, New York.
Packer's store located at
9738 Seaview Avenue,
Brooklyn, New York.

11. Packer's purchased products in interstate commerce, is, and for many years has been, engaged in commerce as "commerce" is defined in the Clayton and Federal Trade Commission Acts.

IV

Nature of Trade and Commerce

A. *Generally*

12. Food stores account for the largest single segment of retail trade in the United States. In 1963, food store sales were approximately $57 billion, or 23% of all retail trade in the United States. Grocery stores accounted for by far the largest portion of food store sales. In 1963, the 245,000 grocery stores in the United States represented 77% of the number of food store establishments, and their $53 billion in sales represented over 92% of all food store sales.

13. Grocery stores are recognized as a separate class of retail establishment, distinguished by their trade in a wide variety of food and other high-volume, low-markup consumer goods.

14. Concentration in the grocery store industry is high and has been increasing. Between 1949 and 1963 the number of grocery stores in the nation declined from 359,000 to 245,000. During the same period the share of grocery store sales accounted for by the top twenty companies increased from 27% in 1948 to 34% in 1963.

15. Mergers and acquisitions have been responsible for a substantial portion of the increase in concentration in the grocery store industry. Between 1949 and 1964 the nation's top twenty grocery store companies acquired 297 companies operating 3,063 grocery stores with sales of $3.1 billion.

16. The competitive impact of mergers and concentration in the grocery store industry, and of the growth of national chains, has been felt both in local and regional markets on both the selling and buying side of the market.

One of the significant effects of the merger movement and the trend toward concentration in the grocery store industry has been that mergers have become a substitute for the entry of new competition. The merger movement has eliminated potential competition, has tended to remove the threat of entry and the restraining influence which entry has upon non-competitive behavior, and has tended to discipline the market behavior, of smaller competitors reluctant to enter into competitive warfare with chains many times their size and with many times their resources. The merger movement and the trend toward concentration have tended to dampen the vigor of competition by increasing an awareness of multimarket interdependence among grocery store chains which face one another in several markets.

On the buying side of the market, suppliers have tended to favor the large chains, with preferences and advantages over other purchasers by reason of the chains' economic power as large buyers. The merger movement and the trend toward concentration have also weakened the ability of independent grocery store chains to compete and have tended to precipitate additional acquisitions and mergers and the disappearance of such independent chains from the grocery store and food store industries.

B. *The Local Markets*

17. *The New York Metropolitan Area* is one of the most competitive in the country insofar as sales by food stores are concerned. In 1963, there were 19,905 food stores in the Area. Their sales volume totalled $2,734,359,000 in that year; however, concentration in the sale of grocery and related products in the New York Metropolitan Area has been shifting in that the market share of the top four grocery store companies has declined.

Evidence of this shift is the fact that the top four grocery store companies accounted for 41.1%, 36.7% and 34.5% of grocery store sales in 1954, 1958 and 1963, respectively. Over this same period, however, the top twenty grocery store companies' market share increased slightly—from 54.7% in 1954 to 56.9% in 1963.

18. In the New York Metropolitan Area Bohack ranks sixth in dollar volume of food store sales with a market share of approximately 2.92%. Packer's ranks fourteenth with a market share of about .88%. Combined they would rank fourth.

19. In Kings County, which comprises Brooklyn, New York, Bohack ranks third with a market share of about 4.94%. Packer's ranks second with a market share of about 5.5%. Combined

they would rank second.

20. In Queens County, Bohack ranks second with a market share of about 6.95%. Packer's ranks eighth with a market share of about 1.5%. Combined they would rank second.

V

Violation of the Federal Trade Commission and Clayton Acts

21. On February 14, 1968, Bohack agreed, in violation of Section 5 of the Federal Trade Commission Act, to acquire 284,443 shares, with an option to buy 10,000 additional shares, of Packer's common stock for a consideration of approximately $4 million cash. The probable effect of consummation of the agreement to acquire Packer's as described above may be substantially to lessen competition or to tend to create a monopoly in the food store business or grocery store business throughout the United States or portions thereof, in violation of Section 7 of the Clayton Act, as is more fully described below in paragraph 22.

VI

Effects of the Violation Charged

22. The effect of consummation of the acquisition of Packer's by Bohack, as alleged in paragraph 21, may be substantially to lessen competition or to tend to create a monopoly in the sale of grocery and related products through food or grocery stores in the New York Metropolitan Area and in Kings and Queens Counties, New York, or in portions thereof, in violation of Section 7 of the Clayton Act, in the following, among other ways:

(a) Substantial actual or potential competition will have been eliminated between Bohack or Packer's;

(b) The combination of the assets and business of Packer's may so increase Bohack's facilities, financial, market and buying power as to provide decisive competitive advantages over independent food store and grocery store operators;

(c) New entry into the food store or grocery store business may be inhibited or prevented;

(d) The acquisition challenged herein separately and in the context of the merger movement described in paragraphs 12 and 13, contributes to an overall tendency toward increasing concentration and arresting tendencies toward declining concentration in the food and grocery store industries and forms a part of a

tendency toward oligopoly and a deterioration in the vigor of competition as described in paragraph 16;

(e) Members of the consuming public have been denied the benefits of free and unrestricted competition between Packer's and Bohack.

23. The agreement to acquire Packer's, as alleged above, constitutes a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. Section 45(a)(1).

24. Consummation of the agreement to acquire Packer's, as alleged above, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. Section 18.

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 Restraint of Trade proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act and Section 7 of the Clayton Act, as amended; 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 H. C. Bohack Co., Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 48–25 Metropolitan Avenue, Brooklyn, New York 11237.

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

I

It is ordered, That respondent H. C. Bohack Co., Inc., a corporation, and its officers, directors, agents, representatives and employees shall divest, absolutely and in good faith a total of four (4) of the eight (8) following listed retail grocery stores to a purchaser, or purchasers, approved in advance by the Federal Trade Commission, with said purchaser, or purchasers, having the option to purchase one or the other, but not both, of the two retail grocery stores in each of the four (4) localities listed below. Said divestiture shall include all property leaseholds, leasehold improvements, furniture, fixtures, improvements and other assets necessary to continue a going retail grocery store business, but not including trade names.

1. Packer's store located at
   31–11 Broadway,
   Astoria, New York.

   or

   Bohack store #2233
   29–10 Broadway,
   Astoria, New York.

2. Packer's store located at
   222–51 Jamaica Avenue,
   Queens, New York.

   or

   Bohack store #2122
   220–34 Jamaica Avenue,
   Queens, New York.

3. Packer's store located at
   1408–14 Newkirk Avenue,
   Brooklyn, New York.

   or

   Bohack store #2232
   1419–25 Newkirk Avenue,
   Brooklyn, New York.

4. Packer's store located at
   9738 Seaview Avenue,
   Brooklyn, New York.

Bohack store #2200
1772 Rockaway Parkway,
Brooklyn, New York.

II

It is further ordered, That respondent, Bohack, and its officers, directors, agents, representatives and employees, within thirty (30) days after the effective date of this Order, begin to offer, and to continue to make good faith efforts to complete the divestiture required by Section I of this Order, to the end that said divestiture shall be fully completed no later than one (1) year from the effective date of this Order.

If Bohack is unable to dispose of its interest in the retail grocery stores divested, entirely for cash, nothing in this Order shall be deemed to prohibit Bohack from retaining, accepting and enforcing in good faith any security interest therein for the sole purpose of securing to Bohack full payment of the price, with interest, at which the said interest is disposed of or sold: *Provided,* That such security arrangement shall be on terms and conditions approved by the Federal Trade Commission: *And further provided,* That if, after a good faith divestiture of the said interest, the buyer fails to perform his obligation and Bohack regains ownership or control over its said interest, Bohack shall redivest itself of said interest within one (1) year in the same manner as provided for herein.

III

It is further ordered, That, pending divestiture, respondent shall not make any changes in any of the aforesaid assets which would impair their capacity for the retail sale of food or grocery products, or their market value; however, respondent may remove existing names and signs from the divested premises and may exercise good faith business judgment with respect to the operation and management of said assets pending divestiture.

IV

It is further ordered, That, for a period of ten (10) years following the effective date of this Order, respondent shall not (a) merge with or acquire, directly or indirectly, through subsidiaries, or in any other manner, except with the prior approval of the Commission upon written application, the whole or any part of any grocery store (an establishment classified in Industry

No. 5411, Standard Industrial Classification Manual, 1967 revision), or a grocery department in a non-food store, where such acquisition or merger involves (1) five (5) or more grocery stores, (2) annual grocery store sales of more than five million dollars ($5,000,000), or (3) combined (respondent and the grocery stores to be acquired or merged) grocery store sales of more than five percent (5%) of total grocery or food store sales in any city or county in the United States; and (b) without sixty (60) days prior notification to the Commission, merge with or acquire, directly or indirectly, through subsidiaries or in any other manner, any grocery store establishment for which prior approval is not required pursuant to subsection (a) above.

V

It is further ordered, That, within thirty (30) days from the effective date of this Order, and annually thereafter until it has fully complied with this Order, respondent shall submit a verified written report to the Federal Trade Commission setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with this Order.

VI

The effective date of this Order shall be the date upon which Bohack acquires the stock of the Packer's Super Markets, or the date upon which the Federal Trade Commission enters this Order, whichever is later.

VII

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

IN THE MATTER OF

HARRICH, 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-1412. Complaint, Aug. 26, 1968—Decision, Aug. 26, 1968

Consent order requiring a Los Angeles, Calif., wholesaler of men's and boys' hosiery to cease misbranding and falsely advertising its textile fiber products and misbranding its wool products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the 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 Harrich, Inc., a corporation, and Richard J. Greenberg and Sidney S. Levine, 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, 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 as follows:

PARAGRAPH 1. Respondent Harrich, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Its office and principal place of business is located at 3833 South Hill Street, Los Angeles, California.

Individual respondents Richard J. Greenberg and Sidney S. Levine are officers of said corporation. They formulate, direct and control the acts, practices and policies of said corporation. Their office and principal place of business is the same as that of said corporation.

The respondents are wholesalers and distributors of men's and boys' hosiery.

PAR. 2. Respondents are now, and for some time last past have 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 have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products; as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

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

of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name or amount of constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products, *viz.*, men's hosiery, which were falsely and deceptively advertised, in that they were advertised as 35% orlon acrylic, 35% olefin, 30% nylon whereas, in truth and in fact, such textile fiber products contained substantially different amounts of fibers from those so represented.

PAR. 4. Certain of said textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled or otherwise identified with the information required under 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 textile fiber products with labels which failed:

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

PAR. 5. Certain of said textile fiber products were misbranded in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

A. Non-required information or representations were placed on the label or elsewhere on the product so as to interfere with, minimize, detract from, or conflict with the required information, in violation of Rule 16(c) of said Rules and Regulations.

B. Generic names and fiber trademarks were used on labels without a full and complete fiber content disclosure being made on such labels the first time the generic names and fiber trademarks appeared on the said labels.

C. Where an election was made under Rule 23 of the Rules and Regulations to show on labels the principal fiber or blend of fibers of the textile fiber product, with an exception which named a superimposed or added fiber, the labels failed to show the percentage of such superimposed or added fiber in relation to the total weight of the principal fiber or blend of fibers, and the area or section which contained the superimposed or added fiber, in violation of said Rule 23 of said Rules and Regulations.

PAR. 6. Certain of said textile fiber products were falsely and deceptively advertised in that respondents in making dis-

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

Among such textile fiber products, but not limited thereto, were men's hosiery which were falsely and deceptively advertised, by means of catalogues distributed by respondents throughout the United States, in that the true generic names of the fibers in such articles were not set forth.

PAR. 7. The acts and practices of respondents, as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

PAR. 8. Respondents, now and for some time last past, have introduced into commerce, sold, transported, distributed, delivered for shipment, shipped and offered for sale in commerce, as "commerce" is defined in said Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 9. Certain of said wool products were misbranded within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were certain pairs of men's hosiery stamped, tagged or labeled as "50% Cashmere, 50% Nylon," whereas, in truth and in fact, said products contained substantially different amounts of fibers from those represented on the label.

PAR. 10. Certain of said wool products were further misbranded in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

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

PAR. 11. The acts and practices of the respondents as set forth in Paragraph Nine and Ten were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Fur 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 Harrich, 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 3833 South Hill Street, Los Angeles, California.

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

A. Misbranding textile fiber products by:

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

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

3. Failing to keep non-required information or repre-

sentations, set forth on the label or elsewhere on the product, separate and apart from the required information, so as not to interfere with, minimize, detract from, or conflict with such required information.

4. Using a generic name or fiber trademark, whether required or nonrequired, without making a full and complete fiber content disclosure in accordance with the Act and the Rules and Regulations thereunder the first time such generic name or fiber trademark appears on the said label.

5. Failing to show the percentage of a superimposed or added fiber in relation to the total weight of the principal fiber or blends of fibers in the textile fiber product and the area or section which contained the superimposed or added fiber, when an election is made under Rule 23 of the Rules and Regulations to show on labels the principal fiber or blends of fibers of said textile fiber product, with an exception which names the superimposed or added fiber.

B. Falsely or deceptively advertising textile fiber products by making any representations, 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.

It is further ordered, That respondents Harrich, Inc., a corporation, and its officers, and Richard J. Greenberg and Sidney S. Levine, 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 into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

It is further ordered, That the respondent corporation shall forthwith distribute a copy of the 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

FRANK G. CORNELL TRADING AS CORNELL OF CALIFORNIA, ETC.

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-1413. Complaint, Aug. 26, 1968—Decision, Aug. 26, 1968

Consent order requiring an Oakland, Calif., manufacturer of neckties to cease misbranding wool and textile fiber products, misrepresenting domestic textiles as foreign, furnishing guarantees, and failing to maintain required records.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the 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 Frank G. Cornell, an individual trading as Cornell of California, Dino Orsini and Ronne, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Frank G. Cornell is an individual

trading as Cornell of California, Dino Orsini and Ronne. He formulates, directs and controls the acts, practices and policies of said proprietorship. His office and principal place of business is 1810 San Pablo Avenue, Oakland, California.

Respondent is a manufacturer of textile fiber products and wool products.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the introduction, delivery for introduction, manufacture for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States, of textile fiber products; and 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. 3. Certain of said textile fiber products were misbranded by respondent within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name or amount of the constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products, namely neckties, with labels on or affixed thereto which set forth the fiber content as "All Silk," whereas, in truth and in fact, said products contained different fibers and amounts of fibers than represented.

PAR. 4. Certain of the textile fiber products were misbranded by respondent 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 neckties with labels which failed:

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

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

PAR. 5. Respondent has failed to maintain proper records showing the fiber content of the textile fiber products manufactured by him in violation of Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

PAR. 6. Respondent furnished false guaranties under Section 10(b) of the Textile Fiber Products Identification Act with respect to certain of his textile fiber products by falsely representing in writing that respondent had a continuing guaranty on file with the Federal Trade Commission, when respondent, did not, in fact, have such a guaranty on file.

PAR. 7. The acts and practices of respondent, as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts or practices, in commerce, under the Federal Trade Commission Act.

PAR. 8. Respondent, now and for some time last past, has introduced into commerce, sold, transported, distributed, delivered for shipment, shipped and offered for sale, in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 9. Certain of said wool products were misbranded by the respondent within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in that said wool products, namely neckties, were stamped, tagged, labeled, or otherwise identified with labels affixed thereto on which the words "Dino Orsini" and "Ronne" were set forth, which terms represented, directly or by implication, that the neckties were of foreign origin, whereas, in truth and in fact, said neckties were not of foreign origin, but were manufactured in the United States.

PAR. 10. Certain of said wool products were further misbranded by respondent in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were certain products, namely neckties, with labels on or affixed thereto which failed to disclose the percentage of the total fiber weight of the said wool products, exclusive of ornamenta-

tion not exceeding 5 per centum of said total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool, when said percentage by weight of such fiber was 5 per centum or more; and (5) the aggregate of all other fibers.

PAR. 11. The acts and practices of the respondent as set forth in Paragraphs Nine and Ten were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

PAR. 12. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of neckties to retailers who in turn sell to the general public.

PAR. 13. In the course and conduct of his business, respondent now causes and for some time last past has caused his said products, when sold, to be shipped from his place of business in the State of California to purchasers located in various other States of the United States, and maintains, and at all times mentioned herein has maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 14. In the course and conduct of his business respondent has advertised textile products, namely neckties, by means of labels or tags attached to the said neckties which labels or tags set forth the words "Dino Orsini" and "Ronne."

PAR. 15. By and through the use of the aforementioned statements, representations and words on the aforesaid labels respondent has represented, directly or by implication, that said neckties were of foreign origin, whereas, in truth and in fact, said neckties were not of foreign origin, but were manufactured in the United States.

Therefore, the representations on labels are false, misleading and deceptive.

PAR. 16. By and through the use of the aforesaid misrepresentations on labels, respondent placed in the hands of others the means and instrumentalities by and through which they may mislead and deceive the public as to the origin of said neckties.

PAR. 17. The use by the respondent of the aforesaid false, misleading and deceptive statements, representations and prac-

tices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 18. The acts and practices set out in Paragraphs Fourteen, Fifteen, Sixteen and Seventeen have had and now have the tendency and capacity to mislead and deceive the purchasers of said products as to the true origin thereof and were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the 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 Textile Fiber Products Identification Act and the Wool Products Labeling Act of 1939; and

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

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

1. Respondent Frank G. Cornell is an individual trading as Cornell of California, Dino Orsini and Ronne, and his address is

1810 San Pablo Avenue, Oakland, California.

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 Frank G. Cornell, an individual trading as Cornell of California, Dino Orsini and Ronne, or under any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product, which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivering, 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 any textile fiber product as to the name or amount of constituent fibers contained therein.

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

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

It is further ordered, That respondent Frank G. Cornell, an individual trading as Cornell of California, Dino Orsini and Ronne, or under any other name or names, and respondent's representatives, agents and employees, directly or through any

corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any textile fiber product is not misbranded or falsely invoiced.

It is further ordered, That respondent Frank G. Cornell, an individual trading as Cornell of California, Dino Orsini and Ronne, or under any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction, into commerce, or in connection with the sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

A. Representing on labels affixed to wool products through the use of the terms "Dino Orsini," "Ronne" or any other words, terms, depictions, or symbols of similar import that such products are of foreign origin when such products were in fact manufactured in the United States.

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

It is further ordered, That respondent Frank G. Cornell, an individual trading as Cornell of California, Dino Orsini and Ronne, or under any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of neckties or any other textile product, in commerce, as "commerce" is defined in the Federal Trade Commission Act do forthwith cease and desist from:

A. Representing contrary to fact that any of such products are of foreign origin.

B. Representing through the use of the terms "Dino Orsini," "Ronne" or through the use of any words, terms, depictions or symbols of similar import that domestically manufactured products are of foreign origin when such products were not manufactured outside of the United States.

C. Furnishing means and instrumentalities to others by and through which they may mislead the public in the manner or as to the things prohibited by this order.

It is further ordered, That the respondent herein shall, within

sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF

EAGLE CARPETS, INC., ET AL.

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

Docket C-1414. Complaint, Aug. 26, 1968—Decision, Aug. 26, 1968

Consent order requiring a Cartersville, Ga., carpet mill to cease misbranding and falsely advertising and guaranteeing its textile fiber products, and failing to keep required records.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Eagle Carpets, Inc., a corporation, also trading as Eagle Carpet Mills and as Eagle Carpet Mills, Inc., and James M. Hodge and Kenneth D. Bryson, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Textile Fiber Products Identification Act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Eagle Carpets, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia. The proposed respondent also trades as Eagle Carpet Mills and as Eagle Carpet Mills, Inc.

Respondents James M. Hodge and Kenneth D. Bryson, are officers of said corporate respondent. Together they formulate, direct and control the acts, practices and policies of said corporate respondent, including the acts, practices and policies hereinafter set forth.

Respondents are engaged in the manufacture and sale of textile fiber products, including floor coverings, with their offices and

principal place of business located at 7 River Drive, Cartersville, Georgia.

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

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

Among such misbranded textile fiber products, but not limited thereto, were carpets which were invoiced to show the fiber content as "100% Continuous filament Nylon," whereas, in truth and in fact, said product contained substantially different fibers and amounts of fibers.

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

Among such misbranded textile fiber products, but not limited thereto, were numerous rolls of carpeting which contained no labels.

PAR. 5. Certain of said textile fiber products were misbranded in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in that in disclosing the required fiber content information as to floor coverings containing exempted backings, filling, or paddings, such disclosure was not

made in such a manner as to indicate that such required fiber content information related only to the face, pile or outer surface of the floor covering and not to the backing, filling or padding, in violation of Rule 11 of the aforesaid Rules and Regulations.

PAR. 6. Certain of said textile fiber products were further misbranded by respondents 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 the information required under Section 4(b) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder was not set forth conspicuously and separately on the same side of the label in such a manner as to be clearly legible and readily accessible to the prospective purchaser, and all parts of the fiber content information did not appear in type or lettering of equal size and conspicuousness.

PAR. 7. Certain of said textile fiber products were falsely and deceptively advertised in that respondents in making disclosure or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote and to 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 specfied by Section 4(c) of the Textile Fiber Products Identification Act and in the manner and form prescribed by the Rules and Regulations under said Act.

Among such misbranded textile fiber products, but not limited thereto, were carpets advertised on price lists which were distributed in interstate commerce without the fiber content information required in Section 4(c) of the Textile Fiber Products Identification Act being therein set forth. In the aforementioned price lists the respondents made a disclosure or implication of fiber content when the fiber content of other textile fiber products was disclosed and the fiber content of the said textile fiber products was not disclosed.

PAR. 8. In disclosing the required fiber content information in advertising certain textile fiber products, namely floor coverings, containing exempted backings, fillings, or paddings, respondents 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.

PAR. 9. Respondents have failed to maintain proper records showing the fiber content of the textile fiber products manu-

factured by them, in violation of Section 6 of Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

PAR. 10. Respondents have furnished their customers with false guaranties that certain of the textile fiber products were not misbranded or falsely invoiced by falsely representing in writing on invoices that respondents have filed a continuing guaranty under the Textile Fiber Products Identification Act with the Federal Trade Commission in violation of Rule 38(d) of the Rules and Regulations under said Act and Section 10(b) of such Act.

PAR. 11. The acts and practices of respondents as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute unfair methods of competition and unfair and deceptive acts and practices, in commerce, under the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

lowing jurisdictional findings, and enters the following order:

1. Respondent Eagle Carpets, 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 7 River Drive, Cartersville, Georgia. Respondent also trades as Eagle Carpet Mills and as Eagle Carpet Mills, Inc.

Respondents James M. Hodge and Kenneth D. Bryson 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 Eagle Carpets, Inc., a corporation, also trading as Eagle Carpet Mills and as Eagle Carpet Mills, Inc. or any other name or names, and its officers, and James M. Hodge and Kenneth D. Bryson, 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, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

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

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

Textile Fiber Products Identification Act.

3. Failing to disclose on labels the required fiber content information as to floor coverings, containing exempted backings, fillings, or paddings, in such manner as to indicate that it relates only to the face, pile, or outer surface of the floor covering and not to the exempted backing, filling or padding.

4. Failing to set forth all parts of the required information conspicuously and separately on the same side of the label in such a manner as to be clearly legible and readily accessible to the prospective purchaser with all parts of the fiber content information appearing in type and lettering of equal size and conspicuousness.

B. Falsely and deceptively advertising textile fiber products by:

1. Making any representations, by disclosure or by implication, as to fiber content of any textile fiber product in any written advertisement which is used to aid, promote or assist, directly or indirectly, in the sale, or offering for sale of such textile fiber product unless the same information required to be shown on the stamp, tag, label, or other means of identification under Sections 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 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 such textile fiber products and not to the exempted backings, fillings, or paddings.

C. 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 Eagle Carpets, Inc., a corporation, also trading as Eagle Carpet Mills and as Eagle Carpet Mills, Inc., or any other name or names, and its officers, and James M. Hodge and Kenneth D. Bryson, 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 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

LEN ARTEL, INC., ET AL.

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

Docket C-1415. Complaint, Aug. 27, 1968—Decision, Aug. 27, 1968

Consent order requiring a New York City importer of textile fiber products to cease misbranding its products and furnishing false guaranties.

COMPLAINT

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

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

Respondent Leonid Artel is an officer of the corporate respondent. He formulates, directs and controls the acts, practices and policies of the said corporate respondent including those here-

inafter set forth.

Respondents are importers of textile fiber products with their office and principal place of business located at 1412 Broadway, New York, New York.

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

PAR. 3. Certain of 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 or amounts of the constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products invoiced as "Poly" thereby representing, directly or by implication, that the said textile fiber products were composed wholly of polyester. In truth and in fact such textile fiber products contained substantially different fibers and amount of fibers than represented.

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

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products which were not labeled to show in words and figures plainly legible the true generic names and amounts of the constituent fibers present in the textile fiber products.

PAR. 5. Certain of said textile fiber products were misbranded in violation of the Textile Fiber Products Identification Act in that

they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects.

(a) Fibers present in the amount of less than five per centum of the total fiber weight were designated by their generic names or fiber trademarks in disclosing the constituent fibers in required information, in violation of Rule 3 of the aforesaid Rules and Regulations.

(b) Fiber trademarks were placed on labels without the generic names of the fibers appearing in immediate conjunction therewith, in violation of Rule 17(a) of the aforesaid Rules and Regulations.

(c) Fiber trademarks were placed on labels without a full and complete fiber content disclosure the first time the fiber trademarks appeared on the labels, in violation of Rule 17(b) of the aforesaid Rules and Regulations.

PAR. 6. Respondents have furnished false guaranties that their textile fiber products were not misbranded, in violation of Section 10 of the Textile Fiber Products Identification Act.

PAR. 7. The acts and practices of the respondents as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition, and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

PAR. 8. Respondents now and for some time last past have falsely represented on invoices to their customers that a Continuing Guaranty has been filed with the Federal Trade Commission with respect to the articles of wearing apparel, to the effect that reasonable and representative tests made under the procedure provided in Section 4 of the Flammable Fabrics Act, as amended, and the Rules and Regulations promulgated thereunder, show that such articles of wearing apparel are not, in the form delivered by respondents, so highly flammable under the provisions of the Flammable Fabrics Act as to be dangerous when worn by individuals. There was reason for the respondents to believe that the articles of wearing apparel covered by such guaranty might be introduced, sold or transported in commerce, in violation of Rule 10(3) of the Rules and Regulations promulgated under the Flammable Fabrics Act and Section 8(b) of said Act.

The acts and practices set forth above were false and misleading in that the respondents did not have a Continuing Guaranty on file with the Commission.

PAR. 9. The aforesaid acts and practices of respondents as set

forth in Paragraph Eight were and are in violation of the Flammable Fabrics Act and the Rules and Regulations promulgated thereunder, and as such constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act, the Textile Fiber Products Identification 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 Len Artel, 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 1412 Broadway, New York, New York.

Respondent Leonid Artel is an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That Len Artel, Inc., a corporation, and its officers, and Leonid Artel, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate 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, or the importation into the United States, of any textile fiber products; 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 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 the constituent fibers contained therein.

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

3. Designating fibers in such textile fiber products in the amount of less than five per centum of the total fiber weight, by their generic names or fiber trademarks except as permitted by Rule 3(b) and Sections 4(b)(1) and (2) of the Textile Fiber Products Identification Act.

4. Using a fiber trademark on a label affixed to such a textile fiber product without the generic name of the fiber appearing in immediate conjunction therewith.

5. Using a generic name or fiber trademark on such label, whether required or nonrequired, without making a full and complete fiber content disclosure in accordance with the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder the first time such generic name or fiber trademark appears on the label.

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

It is further ordered, That respondents Len Artel, Inc., a corporation, and its officers, and Leonid Artel, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty under the Flammable Fabrics Act, that any fabric is not, under the provisions of Section 4 of the said Act, so highly flammable as to be dangerous when worn by individuals, when respondents have reason to believe such fabric may be introduced, sold, or transported in commerce.

It is further ordered, That the 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

PRIMROSE KNITTING MILLS, 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-1416. Complaint, Aug. 27, 1968—Decision, Aug. 27, 1968

Consent order requiring three affiliated New York City distributors of dresses and sweaters to cease misbranding their wool products and respondent, Primrose Knitting Mills, Inc., to cease furnishing false guarantees and misrepresenting itself as a manufacturer.

COMPLAINT

Pursuant to the Provisions of the Federal Trade Commission Act, the Wool Products Labeling Act of 1939 and the Textile

Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Primrose Knitting Mills, Inc., a corporation, Melody Knitwear Corp., a corporation, Picado Sportswear Corp., a corporation, and Paul Fried and Julia Fried, individually and as officers of said corporations, sometimes hereinafter referred to as respondents, have violated the provisions of the said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939 and 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. Respondents Primrose Knitting Mills, Inc., Melody Knitwear Corp. and Picado Sportswear Corp. are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their office and principal place of business located at 112 West 34th Street, New York, New York.

Individual respondents Paul Fried and Julia Fried are officers of said corporations. They formulate, direct and control the acts, practices and policies of the corporate respondents including the acts and practices hereinafter referred to. Their office and principal place of business is the same as that of the corporate respondents.

Respondent Primrose Knitting Mills, Inc., is engaged in importing and distributing childrens' sweaters and sales amount to approximately $1,000,000 per year.

Respondent Melody Knitwear Corp. is a manufacturer of sweaters with sales amounting to approximately $2,000,000 per year.

Respondent Picado Sportswear Corp. manufactures knitted dresses and sales amount to approximately $2,000,000 per year.

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

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

tained therein.

Among such misbranded wool products, but not limited thereto, were wool blend sweaters stamped, tagged, labeled, or otherwise identified as containing "89% Mohair, 11% Nylon," whereas in truth and in fact, said sweaters contained subtantially different fibers and amounts of fibers than represented.

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

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

PAR. 5. Certain of said wool products were misbranded in violation of the Wool Products Labeling Act of 1939, in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder, in that the term "mohair" was used in lieu of the word "wool" in setting forth the required fiber content information on labels affixed to wool products when certain of the fibers so described were not entitled to such designation, in violation of Rule 19 of the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939.

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

PAR. 7. Respondents are now and for some time last past have been engaged in the introduction, delivery for introduction, manufacture for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States, of textile fiber products, and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile

fiber products, which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products; as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 8. Respondent Primrose Knitting Mills, Inc., a corporation, and individual respondents Paul Fried and Julia Fried, individually and as officers of said corporation, furnished false guaranties under Section 10(b) of the Textile Fiber Products Identification Act with respect to certain of their textile fiber products by falsely representing in writing that said respondent Primrose Knitting Mills, Inc., had a continuing guaranty on file with the Federal Trade Commission, when said respondent did not, in fact, have such a guaranty on file.

PAR. 9. The acts and practices of respondents as set forth above in Paragraph Eight, 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 and deceptive acts and practices, in commerce, and unfair methods of competition in commerce, under the Federal Trade Commission Act.

PAR 10. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 11. In the course and conduct of their business in soliciting the sale of and in selling its aforesaid products, respondents Primrose Knitting Mills, Inc., and Paul Fried and Julia Fried, individually and as officers of said corporation, have represented on invoices by the use of the name Primrose Knitting Mills, Inc., as well as by the use of the term "Factory" thereon, that respondent Primrose Knitting Mills, Inc., operates a mill or factory in which sweaters or other products sold by it are manufactured, and that such mill or factory is located at 42–16 Vernon Boulevard, Long Island City, New York.

PAR. 12. In truth and in fact, respondent Primrose Knitting Mills, Inc., does not own, operate, or control any mill or factory

where the aforesaid sweaters or other products sold by it are manufactured, but is engaged solely in the business of importation and distribution of said sweaters or other products.

PAR. 13. There is a preference on the part of many members of the trade to buy products directly from mills or factories, believing that by so doing lower prices and other advantages thereby accrue to them.

PAR. 14. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of sweaters or other products of the same general kind and nature as those sold by said respondents.

PAR. 15. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead purchasers into the erroneous and mistaken belief that said statements and representations were, and are, true, and into the purchase of substantial quantities of said respondents' products by reason of said erroneous and mistaken belief.

PAR. 17. The aforesaid acts and practices of respondents, as herein alleged in Paragraphs Eleven through Fifteen 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 and unfair and deceptive acts and practices in commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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 Primrose Knitting Mills, 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 112 West 34th Street, New York, New York.

Respondent Melody Knitwear Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 112 West 34th Street, New York, New York.

Respondent Picado Sportswear Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 112 West 34th Street, New York, New York.

Respondents Paul Fried and Julia Fried are officers of the above named corporations and their address is the same as that of said corporations.

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

ORDER

It is ordered, That respondents Primrose Knitting Mills, Inc., a corporation, Melody Knitwear Corp., a corporation, Picado Sportswear Corp., a corporation, and the officers of each of said corporations, and Paul Fried and Julia Fried, individually and as officers of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the manufacture for introduction into commerce, introduction into commerce, or offering for sale, sale, transportation, distribution, delivery for shipment or shipment,

in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding wool products by:

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

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

3. Using the term "mohair" in lieu of the word "wool" in setting forth the required fiber content information on labels affixed to wool products unless the fibers described as mohair are entitled to such designation and are present in at least the amount stated.

It is further ordered, That respondents Primrose Knitting Mills, Inc., a corporation, and its officers, and Paul Fried and Julia Fried, 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 Primrose Knitting Mills, Inc., a corporation, and its officers, and Paul Fried and Julia Fried, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Directly or indirectly using the word "Mills," or any other word or term of similar import or meaning in or as a part of respondents' corporate or trade name, or representing in any manner that respondents perform the functions of a mill or otherwise manufacture or process the sweaters or other products sold by them unless and until respondents own and operate or directly and absolutely control the mill wherein said sweaters or other products are manufactured.

2. Misrepresenting in any manner that respondents have mills or factories where their products are manufactured

or misrepresenting in any manner the location of the respondents' place of business.

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

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

IN THE MATTER OF

ARONOWICZ, 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-1417. Complaint, Aug. 27, 1968—Decision, Aug. 27, 1968

Consent order requiring a New York City wholesale and retail furrier to cease misbranding, deceptively invoicing and falsely 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 Aronowicz, Inc., a corporation, trading under its own name and as House of Aronowicz, and Saul Arons, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

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

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

Respondents are manufacturers, wholesalers and retailers of fur products with their office and principal place of business located at 345 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 or designation of the animal or animals that produced the fur from which the said fur products had been manufactured, in violation of Section 4(1) of the Fur Products Labeling Act.

Among such misbranded fur products, but not limited thereto, were fur products which were labeled as "Hudson Seal" when fur contained in such products was, in fact, "Dyed Sheared Muskrat."

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 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) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated

thereunder was set forth on labels in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

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

(c) 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.

(d) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not completely set out on one side of labels, in violation of Rule 29(a) of said Rules and Regulations.

(e) 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.

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

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

Among such falsely and deceptively invoiced fur products but not limited thereto, were fur products covered by invoices which failed to show the true animal name of the fur used in any such fur product.

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

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

PAR. 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 New York Times, a newspaper published in the city of New York, State of New York and having a wide circulation in New York and 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. In advertising fur products for sale as aforesaid respondents represented through such statements as "January Fur Sale–30%–50% reductions" that prices of fur products were reduced in direct proportion to the percentage stated and that the amount of said reduction afforded savings to purchasers of respondents' products when in fact such prices were not reduced in direct proportion to the percentage stated and the represented savings were not thereby afforded to purchasers, in violation of Section 5(a) (5) of the Fur Products Labeling Act.

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 violation of the Fur Products Labeling Act in that said fur products were not advertised in accordance with the Rules and Regulations promulgated thereunder in that the term "natural" was not used to describe fur products which were not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Rule 19(g) of the said Rules and Regulations.

PAR. 11. In advertising fur products for sale, as aforesaid, respondents 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. Respondents 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. 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 con-

stitute 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 Rule; 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 Aronowicz, 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 345 Seventh Avenue, New York, New York.

Respondent Saul Arons is an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Aronowicz, Inc., a corporation,

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

A. Misbranding any fur product by:

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

2. Failing to affix a label to such fur product showing in words and in figures plainly legible all 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 information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form on a label affixed to such fur product.

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

5. 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.

6. Failing to completely set out information required under Section 4(2) of the Fur Products Labeling Act

and the Rules and Regulations promulgated thereunder on one side of the label affixed to such fur product.

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

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

B. Falsely or deceptively invoicing any fur product by:

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

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

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

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

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

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

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

product from respondents the percentage of savings stated.

4. Misrepresents in any manner the amount of savings afforded to the purchaser of such fur product.

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

D. 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 under the Fur Products Labeling Act are based.

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

FRITO-LAY, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7 OF THE CLAYTON ACT

Docket 8606. Complaint, Nov. 13, 1963—Decision, Aug. 28, 1968

Consent order requiring a Dallas, Texas, potato chip manufacturer and its parent company to divest ten acquired manufacturing plants, to refrain from acquiring wholesaler of certain beverages and foods without prior Commission approval, and not to advertise certain snacks in combination with its parent's carbonated soft drinks.

COMPLAINT *

The Federal Trade Commission has reason to believe that the above-named respondent has acquired the assets and stock of other corporations in violation of Section 7 of the amended Clayton Act (15 U.S.C. Sec. 18); and, therefore, pursuant to Section 11 of said Act, it issues this complaint, stating its charges in that respect as follows:

PAR. 1. Respondent, Frito-Lay, Inc., is a corporation organized and existing under the laws of the State of Texas, with its

* Reported as amended by Hearing Examiner's order of Feb. 28, 1964, and Commission's order of Aug. 28, 1968.

principal offices in the Exchange Bank Building, 100 Exchange Park North, Dallas 35, Texas.

Respondent was originally organized on August 14, 1934, as The Frito Company and it operated and did business as such until August 22, 1961, when H. W. Lay and Company, Inc., and The Frito Company entered into an agreement to merge. Under the agreement of August 22, 1961, it was agreed that the name of the surviving corporation would be Frito–Lay, Inc. The agreement of August 22, 1961, was filed on September 22, 1961.

Respondent, Frito–Lay, Inc., is a corporation organized and existing under the laws of the State of Delaware with its principal offices located at Frito–Lay Tower, Exchange Park, Dallas, Texas.

Respondent, PepsiCo, Inc., is a corporation organized and existing under the laws of the State of Delaware with its principal offices located at 500 Park Avenue, New York, New York.

Prior to and on or about June 10, 1965, Pepsi–Cola Company was engaged principally in the manufacture and sale of concentrate and base syrup used to produce beverages and the syrup therefor. The concentrate and base syrup were sold to independent franchise bottlers, which operated approximately 507 bottling plants in the United States, to whom appointments were issued for the packaging of the carbonated beverage and the distribution of beverages and syrup in their respective territories. Subsidiaries of Pepsi–Cola Company operated additional bottling plants in the United States. Beverages were sold under various trademarks, including "Pepsi–Cola," "Teem," "Patio," "Patio Diet Cola" and "Mountain Dew." As of December 31, 1964, the total assets of Pepsi–Cola Company and its consolidated subsidiaries amounted to $164,928,518. The net income for the year ended December 31, 1964, amounted to $18,577,017.

On or about June 10, 1965, the Pepsi–Cola Company acquired the assets and business of Frito–Lay, Inc. The transaction occurred as follows: The assets and business of Frito–Lay, Inc., a Texas corporation, were transferred to Flico Properties, Inc., a Delaware corporation which was a wholly owned subsidiary of Pepsi–Cola Company, in exchange for 2,940,326 shares of the common stock of Pepsi–Cola Company. Concurrently therewith, the name of Flico Properties, Inc., was changed to Frito–Lay, Inc.; the name of Pepsi–Cola Company was changed to PepsiCo, Inc.; and the name of Frito–Lay, Inc., the Texas corporation, was changed to FRL Corporation, which corporation was subsequently liquidated. PepsiCo, Inc., has continued and maintained the business and assets of the Pepsi–Cola Company since June 10,

1965. Frito–Lay, Inc., is a wholly owned subsidiary of PepsiCo, Inc.

Prior to the acquisition, Pepsi–Cola Company, through its officers and directors, had knowledge that Frito–Lay, Inc., was engaged in litigation, In the Matter of Frito–Lay, Inc., a corporation, Docket No. 8606, being a complaint issued by the Federal Trade Commission on November 13, 1963.

At all times relevant herein, Frito–Lay, Inc., a Delaware corporation, and PepsiCo, Inc., have been and are corporations engaged in selling said products throughout the United States and engaged in commerce, as "commerce" is defined in the Clayton Act.

PAR. 2. Respondent is engaged in the manufacture and sale of potato chips, corn chips and pretzels, the three lines of commerce relevant herein, as well as other products. Respondent is the leading producer of potato chips and corn chips and is one of the principal producers of pretzels in the United States. Respondent has approximately 45 manufacturing plants and has approximately 2,800 driver salesmen. Respondent sales and delivers its products to its customers through driver salesmen and independent distributors. (Whenever used in this complaint, independent distributor means any person, partnership, corporation or entity which purchases and resells potato chips, corn chips or pretzels to retail sellers and others.) In addition, respondent also grants exclusive franchises to other companies to manufacture and sell "Fritos" brand corn chips and other of its branded products.

As of December 31, 1957, the last year prior to the acquisitions challenged in this complaint, the combined total assets of respondent and its subsidiaries were approximately $9,800,000 and total net annual sales as of that date amounted to approximately $33,380,000. A substantial portion of the growth of respondent from the date of its incorporation until December 31, 1957, was achieved by mergers or acquisitions. As of August 26, 1961, following the last acquisition challenged in this complaint, respondent and its subsidiaries had total assets of approximately $46,893,000 and total net annual sales as of that date of approximately $127,447,000.

PAR. 3. Prior to June 5, 1958, Nicolay–Dancey, Inc. (Nicolay–Dancey), a corporation organized in 1926, was doing business under and by virtue of the laws of the State of Michigan, with its principal offices at 5801 Grandy Street, Detroit, Michigan.

On June 5, 1958, respondent acquired all of the capital stock

of Nicolay–Dancey for 202,304 shares of respondent's common stock, valued at approximately $5,000,000.

Prior to its acquisition, Nicolay–Dancey was engaged in the manufacture of potato chips and in the sale of potato chips, corn chips and pretzels. Nicolay–Dancey sold said products in a geographic area comprised of the lower peninsula of Michigan, northeastern Illinois, northern Indiana, Ohio, western Pennsylvania, and northern West Virginia.

At the time of its acquisition, Nicolay–Dancey was a substantial factor is its geographic area of operations. In the year prior to its acquisition, Nicolay–Dancey's gross annual sales were approximately $13,000,000. As of May 3, 1958, its total assets amounted to approximately $3,400,000.

Prior to and at the time of the acquisition, Nicolay–Dancey and respondent were substantial actual or potential competitors in the sale of potato chips, corn chips or pretzels within the geographic area served by Nicolay–Dancey. This geographic area, and each metropolitan area contained therein, including particularly the Chicago, Illinois, and Cleveland, Ohio metropolitan areas, are sections of the country relevant to this acquisition.

PAR. 4. Prior to June 16, 1958, Crispie Potato Chip Company (Crispie), a corporation organized in 1956, was doing business under and by virtue of the laws of the State of California, with its principal offices at 648 West Fremont Street, Stockton, California.

On June 16, 1958, respondent acquired all of the capital stock of Crispie and other properties in exchange for 4,000 shares of respondent's common stock and other consideration, valued at approximately $400,000.

Prior to its acquisition, Crispie was engaged in the manufacture of potato chips and in the sale of potato chips, corn chips and pretzels. Crispie sold said products in a geographic area comprised of central California, western Nevada and western Arizona.

At the time of its acquisition, Crispie was a substantial factor in its geographic area of operations. In the year prior to acquisition, Crispie's gross annual sales amounted to approximately $2,300,000. As of June 15, 1958, Crispie's assets amounted to approximately $295,000.

Prior to and at the time of the acquisition, Crispie and respondent were substantial actual or potential competitors in the sale of potato chips, corn chips or pretzels within the geographic area served by Crispie. This geographic area, and each metropolitan area contained therein, including particularly the

Stockton, Fresno and Bakersfield, California, metropolitan areas, are sections of the country relevant to this acquisition.

PAR. 5. Prior to September 1, 1958, Num Num Foods, Inc. (Num Num), a corporation organized in 1919 was doing business under and by virtue of the laws of the State of Ohio, with its principal offices at 4735 West 150th Street, Cleveland 11, Ohio.

On September 1, 1958, respondent acquired all of the capital stock of Num Num for approximately $947,000.

Prior to its acquisition, Num Num was engaged in the manufacture of potato chips and pretzels and in the sale of potato chips, corn chips and pretzels. Num Num sold said products in a geographic area comprised of northeastern Ohio, western Pennsylvania and western New York State.

At the time of its acquisition, Num Num was a substantial factor in its geographic area of operations. In the year prior to acquisition, Num Num's gross annual sales were approximately $2,000,000. As of August 31, 1958, Num Num's total assets amounted to approximately $1,300,000.

Prior to and at the time of the acquisition, Num Num and respondent were substantial actual or potential competitors in the sale of potato chips, corn chips or pretzels within the geographic area served by Num Num. This geographic area and each metropolitan area contained therein, including particularly the Cleveland, Ohio, metropolitan area, are sections of the country relevant to this acquisition.

PAR. 6. Prior to May 1, 1960, Williams and Company, a corporation organized in 1923, was doing business under and by virtue of the laws of the State of Oregon, with its principal offices at 2045 NE. Union Avenue, Portland 12, Oregon.

Prior to May 1, 1960, Williams and Company, Inc., a corporation organized in 1952, was doing business under and by virtue of the laws of the State of Washington, with its principal offices at 1405 Elliott Avenue West, Seattle 99, Washington.

Prior to the acquisition, Williams and Company and Williams and Company, Inc., were owned by the same stockholders and were under common management. Said corporations will hereinafter be called Williams.

On May 1, 1960, respondent acquired substantially all of the capital stock of Williams for approximately $550,000.

Prior to its acquisition, Williams was engaged in the manufacture of potato chips and in the sale of potato chips, corn chips and pretzels. Williams sold said products in a geographic area comprised of Oregon, northern California, Washington, Idaho

and western Montana.

At the time of its acquisition, Williams was a substantial factor in its geographic area of operations. In the year prior to acquisition, Williams' gross annual sales were approximately $1,800,000. As of April 30, 1960, Williams' total assets amounted to approximately $400,000.

Prior to and at the time of the acquisition, Williams and respondent were substantial actual or potential competitors in the sale of potato chips, corn chips or pretzels within the geographic area served by Williams. This geographic area, and each metropolitan area contained therein, including particularly the Portland, Oregon, and Spokane, Washington, metropolitan areas, are sections of the country relevant to this acquisition.

PAR. 7. Prior to July 1, 1961, Made Rite Potato Chip Company (Made Rite), a corporation organized in 1949, was doing business under and by virtue of the laws of the State of Massachusetts, with its principal offices at 1853 South Main Street, Fall River, Massachusetts.

On July 1, 1961, respondent acquired all of the assets of Made Rite, exclusive of its subsidiary, The Salvo Machinery Company, in exchange for 10,000 shares of respondent's common stock and other consideration, valued at approximately $1,000,000.

Prior to its acquisition, Made Rite was engaged in the manufacture of potato chips and in the sale of potato chips, corn chips and pretzels. Made Rite sold said products in a geographic area comprised of Massachusetts, Rhode Island and Connecticut.

At the time of its acquisition, Made Rite was a substantial factor in its geographic area of operations. In the year prior to acquisition, Made Rite's gross annual sales were approximately $2,800,000. As of July 1, 1961, Made Rite's total assets amounted to approximately $1,200,000.

Prior to and at the time of the acquisition, Made Rite and respondent were substantial actual or potential competitors in the sale of potato chips, corn chips or pretzels within the geographic area served by Made Rite. This geographic area, and each metropolitan area contained therein, including particularly the Boston and Springfield, Massachusetts, and New Haven, Connecticut, metropolitan areas, are sections of the country relevant to this acquisition.

PAR. 8. Prior to July 27, 1961, The Frito Columbus Company (Frito Columbus), a corporation organized in 1945, was doing business under and by virtue of the laws of the State of Ohio, with its principal offices at 3790 East Fifth Street, Columbus,

Ohio.

On July 27, 1961, respondent acquired substantially all of the assets of Frito Columbus in exchange for 9,323 shares of respondent's common stock and other consideration valued at approximately $800,000.

Prior to its acquisition, Frito Columbus was engaged in the manufacture of potato chips and corn chips and in the sale of potato chips, corn chips and pretzels. Frito Columbus sold said products in a geographic area comprised of Ohio, except for northeastern and eastern Ohio, northeastern Kentucky and central western West Virginia. Under an agreement dated January 21, 1946, respondent granted Frito Columbus an exclusive franchise to manufacture and sell corn chips under the "Fritos" brand in all of its area of operations except northeastern Kentucky and central western West Virginia.

At the time of its acquisition, Frito Columbus was a substantial factor in its geographic area of operations. In the year prior to acquisition, Frito Columbus' gross annual sales were approximately $1,600,000. As of June 29, 1960, Frito Columbus' total assets amounted to approximately $465,000.

Prior to and at the time of the acquisition, Frito Columbus and respondent were substantial actual or potential competitors in the sale of potato chips, corn chips or pretzels within the geographic area served by Frito Columbus. This geographic area, and each metropolitan area contained therein, including particularly the Toledo, Ohio, and Charleston, West Virginia, metropolitan areas, are sections of the country relevant to this acquisition.

PAR. 9. Prior to August 16, 1961, The Frito Midwest Company (Frito Midwest), a corporation organized in 1947, was doing business under and by virtue of the laws of the State of Nebraska, with its principal offices at Post Office Box 1033, Omaha 1, Nebraska.

On August 16, 1961, respondent acquired all of the outstanding stock of Frito Midwest in exchange for 62,500 shares of respondent's common stock, valued at approximately $2,000,000.

Prior to its acquisition, Frito Midwest was engaged in the manufacture of potato chips and corn chips and in the sale of potato chips, corn chips and pretzels. Frito Midwest sold said products in a geographic area comprised of Iowa, Nebraska, Kansas, northwestern Illinois, southern South Dakota and northwestern Missouri. Under agreements dated March 15, 1947, and October 30, 1950, respondent granted Frito Midwest exclusive franchise to manufacture and sell corn chips under the "Fritos"

brand and potato chips under the "Tatos" brand throughout its area of operations.

At the time of its acquisition, Frito Midwest was a substantial factor in its geographic area of operations. In the year prior to acquisition, Frito Midwest's gross annual sales were approximately $3,000,000. As of February 25, 1960, Frito Midwest's total assets amounted to approximately $890,000.

Prior to and at the time of the acquisition, Frito Midwest and respondent were substantial actual or potential competitors in the sale of potato chips, corn chips or pretzels within the geographic area served by Frito Midwest. This geographic area, and each metropolitan area contained therein, including particularly the Kansas City, Missouri, and Omaha, Nebraska, metropolitan areas are sections of the country relevent to this acquisition.

PAR. 10. Prior to August 22, 1961, H. W. Lay and Company, Inc. (Lay), a corporation organized in 1939, was doing business under and by virtue of the laws of the State of Tennessee, with its principal offices at 4950 Peachtree Industrial Boulevard, Chamblee, Georgia.

Under the Plan and Agreement of Merger between respondent and Lay of August 22, 1961, Lay was merged into respondent with the surviving corporation assuming the name Frito–Lay, Inc. Under said agreement, respondent acquired substantially all of the outstanding common stock of Lay, through an exchange of 1.65 shares of respondent's common stock for each share of Lay's stock. At the time of the acquisition of Lay, respondent's common stock exchanged for Lay's common stock had a market value of approximately $64,000,000.

Prior to its acquisition, Lay was engaged in the manufacture of potato chips, corn chips and pretzels. Lay sold said products in a geographic area comprised of Florida, Georgia, North Carolina, South Carolina, Alabama, Mississippi, Louisiana, Arkansas, Tennessee, Kentucky, Ohio, West Virginia, Virginia, Iowa, Minnesota, Wisconsin, Maryland, northwestern Oklahoma, southwestern, central and northeastern Kansas, eastern Nebraska, eastern South Dakota, central and eastern North Dakota, southwestern corner and northern Michigan, northern Illinois, Indiana except for the northeast corner, and Missouri except for central and eastern Missouri. Under an agreement of September 1, 1945, respondent granted Lay an exclusive franchise to manufacture and sell corn chips under the "Fritos" brand in the southeastern United States.

At the time of its acquisition, Lay was a substantial factor in

its geographic area of operations. In the year prior to the acquisition, Lay's gross annual sales were approximately $45,000,000. As of August 27, 1960, Lay's total assets amounted to approximately $8,000,000. Prior to the acquisition, a substantial portion of the growth of Lay had been achieved through the acquisition of other independent manufacturers or sellers of potato chips, corn chips or pretzels.

Prior to and at the time of its acquisition, Lay and respondent were substantial actual or potential competitors in the sale of potato chips, corn chips or pretzels within the geographic area served by Lay. This geographic area, and each metropolitan area contained therein, including particularly the Charleston and Huntington, West Virginia, Chicago, Illinois, New Orleans, Louisiana, Kansas City and Springfield, Missouri, and Omaha, Nebraska, metropolitan areas, are sections of the country relevant to this acquisition.

PAR. 11. Through its marketing organization, respondent sells and delivers or ships potato chips, corn chips or pretzels from its plants and other facilities, located in various States of the United States to food stores, supermarkets, restaurants, schools, institutions, or other purchasers, located in States other than the State in which such sales and shipments originate. In the regular course and conduct of its business, respondent is now, and was prior to each of the acquisitions challenged in this complaint, engaged in commerce, as "commerce" is defined in the amended Clayton Act.

Through their respective marketing organizations, each of the acquired corporations, Nicolay–Dancey, Crispie, Num Num, Williams, Made Rite, Frito Columbus, Frito Midwest, and Lay, sold and delivered or shipped potato chips, corn chips or pretzels from their respective plants and facilities, located in various States of the United States, to food stores, supermarkets, restaurants, schools, institutions, or other purchasers, located in States other than the State in which such sales and shipments originated. In the course and conduct of their respective businesses, each of the aforenamed acquired corporations was prior to, and at the time it was acquired by respondent, engaged in commerce, as "commerce" is defined in the amended Clayton Act.

PAR. 12. The sales of potato chips, corn chips and pretzels increased substantially throughout the United States between 1957 and 1961. In 1957, potato chip, corn chip and pretzel sales were approximately $220,000,000, $27,000,000, and $34,000,000, respectively. In 1961, potato chip, corn chip and pretzel sales had

increased to approximately $322,000,000, $53,000,000, and $44,-000,000, respectively.

Although sales of potato chips, corn chips and pretzels increased substantially between 1957 and 1961, the number of companies producing and distributing said products declined significantly, primarily as a result of mergers and acquisitions. Between 1949 and 1961, membership in the potato chip trade association, the Potato Chip Institute (PCI) declined approximately 25%. PCI members produce approximately 90% of the total amount of potato chips sold in the United States each year.

The manufacture of potato chips, corn chips and pretzels is highly concentrated. Approximate percentage sales of potato chips, corn chips and pretzels sold in the United States by the four and eight largest manufacturer–sellers of said products in 1957 and in 1961 were as follows:

	Percent	
	1957	*1961*
Potato chips		
Four largest	31	41
Eight largest	46	51
Corn chips		
Four largest	83	85
Eight largest	89	91
Pretzels		
Four largest	56	60
Eight largest	72	75

Concentration in said industries has been accelerated and further substantially increased by the acquisitions challenged herein and by the acquisitions made by other companies in said industries.

PAR. 13. As a result of its acquisitions, respondent increased its share of the total sales of potato chips, corn chips and pretzels in the United States, the section of the country which is relevant to each, any, or all of its acquisitions. In 1957, the year prior to the first acquisition challenged herein, respondent was not among the eight largest manufacturer–sellers of potato chips; by 1961, respondent became the largest manufacturer–seller of potato chips with approximately 18% of total sales in the United States.

In 1957, respondent was the largest manufacturer–seller of corn chips, with approximately 65% of total sales of corn chips in the United States; by 1961, respondent increased its share to approximately 75% of total United States sales of corn chips. The second largest manufacturer–seller of corn chips in 1961 accounted for approximately 4% of total sales of corn chips in the United States.

In 1957, respondent was not among the eight largest manufacturer–sellers of pretzels; by 1961, respondent accounted for approximately 17% of total sales of pretzels in the United States and was the second largest manufacturer–seller. The largest manufacturer–seller of pretzels accounted for approximately 22% of the total sales of pretzels in the United States in 1961.

PAR. 14. Respondent has established through large scale advertising, carried on over the course of several years, consumer acceptance and demand for its corn chips which are sold under the brand name "Fritos" throughout the United States.

Respondent sells its potato chips throughout the United States under different brand names in different areas of the country and its potato chip brands include: Lays, New Era, Red Dot, Made Rite, Kacy Jones, Crispie, Jupiter, Williams, Ruffles, Tatos, Num Num and Fritatos.

Respondent sells its pretzels throughout the United States under different brand names in different areas of the country and its pretzel brands include: Tastee, Num Num, Fritos, Rold Gold and Halters.

Respondent utilizes the established consumer acceptance and demand for its "Fritos" corn chips as a means of gaining entrance into supermarkets for its potato chips and pretzels. Supermarkets account for a substantial portion of total retail food sales in the United States and constitute a major market for the sale of potato chips, corn chips and pretzels. Through the acquisitions challenged herein, respondent has materially expanded its distribution facilities, sales force, and scope of its operations, whereby it may now offer a full line of potato chips, corn chips and pretzels to regional and national supermarkets.

PAR. 15. In the following ways, among others, the effect of respondent's acquisitions, herein alleged, may be substantially to lessen competition or tend to create a monopoly in the manufacture and sale of potato chips, or of corn chips, or of pretzels, or in any or all of these lines of commerce, (a) in the United States, as a result of each, any, or all of said acquisitions; and/or (b) in any of the sections of the country which are specified in Paragraph Three, as a result of the acquisition of Nicolay–Dancey; which are specified in Paragraph Four, as a result of the acquisition of Crispie; which are specified in Paragraph Five, as a result of the acquisition of Num Num; which are specified in Paragraph Six, as a result of the acquisition of Williams; which are specified in Paragraph Seven, as a result of the acquisition of Made Rite; which are specified in Paragraph Eight,

as a result of the acquisition of Frito Columbus; which are specified in Paragraph Nine, as a result of the acquisition of Frito Midwest; and which are specified in Paragraph Ten, as a result of the acquisition of Lay:

(1) Actual or potential competition between respondent and each acquired corporation in the manufacture or sale of potato chips, corn chips or pretzels has been eliminated.

(2) Actual or potential competition between respondent and other manufacturers or sellers of potato chips, corn chips or pretzels has been, or may be, lessened or eliminated.

(3) Each of the acquired corporations has been eliminated as a substantial independent competitive factor in the manufacture or sale of potato chips, corn chips or pretzels in the sections of the country in which it operated, to the detriment of actual or potential competition.

(4) Independent distributors have been eliminated as actual or potential competitors in the sale of potato chips, corn chips or pretzels.

(5) Respondent has increased and enhanced its prior significant position and now has a decisive competitive advantage over its competitors in the manufacture or sale of potato chips, corn chips or pretzels, to the detriment of actual or potential competition.

(6) Each of the acquired corporations has been eliminated as an independent purchaser and user of potatoes, other raw materials, supplies, equipment and services used in the manufacture or sale of potato chips, corn chips or pretzels.

(7) Former suppliers of potato chips, corn chips or pretzels to the acquired corporations have lost business, or have been eliminated as sources of supply.

(8) Industrywide concentration in the manufacture or sale of potato chips, corn chips or pretzels, has been substantially increased to the detriment of actual or potential competition.

(9) Industrywide concentration in the manufacture or sale of potato chips, corn chips or pretzels, has been or may be, accelerated or further increased in that the aforesaid acquisitions by respondent have caused, or may cause, competitors of respondent to merge with, or acquire, other companies, to the detriment of actual or potential competition.

(10) Entry into the potato chip, corn chip or pretzel industries has been or may be discouraged and inhibited, to the detriment of actual or potential competition.

(11) Respondent has the facilities, the market position, and

the dominant ability to tend to monopolize the manufacture or sale of potato chips, corn chips or pretzels, in the United States, or in the sections of the country where the aforesaid acquired companies operated.

PAR. 16. Prior to the acquisition of Nicolay–Dancey, Crispie, Num Num, Williams, Made Rite, Frito Columbus, Frito Midwest and Lay, respondent had, it now has, and, subsequent to the divestiture of the above–named companies, it will continue to have such a significant competitive position in the sale of potato chips or corn chips or pretzels in any of the sections of the country described in Paragraphs Three through Ten or in the United States that the effect of any acquisition by respondent of any of the stock or assets of any other corporation engaged in commerce and in the manufacture or sale of potato chips or corn chips or pretzels in any of these sections of the country may be substantially to lessen competition or tend to create a monopoly as alleged in Paragraph Fifteen.

PAR. 17. The foregoing acquisitions, acts and practices as hereinbefore alleged and set forth, constitute a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. Section 18).

DECISION AND ORDER IN DISPOSITION OF THIS PROCEEDING

The Commission having issued complaint in this docketed matter on November 13, 1963, charging the respondent named therein, Frito–Lay, Inc., a Texas corporation, with violation of Section 7 of the amended Clayton Act, and said respondent having subsequently filed request pursuant to § 2.34(d) of the Commission's Rules to have the matter withdrawn from adjudication, and the Commission having granted such request by its order of July 13, 1967; and

Respondent Frito–Lay, Inc., and Frito–Lay, Inc. ("Frito–Lay"), a successor Delaware corporation, and PepsiCo, Inc. ("PepsiCo"), and counsel for the Commission having thereafter entered into an agreement containing consent order, and which agreement contemplates and provides, *inter alia*, that the complaint in the matter be amended by adding the new Frito–Lay, Inc., a Delaware corporation, and PepsiCo, Inc., as party respondents, and by adding to Paragraph One thereof the unnumbered paragraphs recited in the said agreement; and which agreement further contains an admission, for purposes of this proceeding only, by Frito–Lay and its predecessor and PepsiCo of all the jurisdictional facts set forth in the complaint in this proceeding, as well as in the proposed amendments thereto provided

for in the agreement; a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by Frito–Lay and its predecessor or PepsiCo of any allegations of fact, other than the jurisdictional facts, or that the law has been violated as set forth in the complaint, as it is to be amended; and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having then determined that the complaint should be amended as provided for in the agreement, and having thereupon accepted the consent agreement and placed such agreement on the public record for a period of thirty (30) days, and having this date entered its order amending the complaint as provided for in the agreement, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order in disposition of the proceeding:

1. Respondent Frito–Lay, Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal offices located at Frito–Lay Tower, Exchange Park, Dallas, Texas.

Respondent PepsiCo, Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal offices located at 500 Park Avenue, New York, New York.

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

ORDER

I

It is ordered, That respondents, Frito–Lay, Inc. ("Frito–Lay"), and PepsiCo, Inc. ("PepsiCo"), both of which are Delaware corporations, their officers, directors, agents, representatives, employees, subsidiaries, affiliates, predecessors, successors and assigns shall within the periods specified below divest, absolutely and in good faith, subject to the approval of the Federal Trade Commission ("Commission"), the following potato chip plants acquired by Frito–Lay as a result of its or H. W. Lay and Company, Inc.'s, acquisition of the companies indicated below. Divestiture of said plants shall consist of the land, buildings and potato chip manufacturing equipment acquired from said companies in the locations specified, together with the acquired trade names and

trademarks specified, customer lists (current as of the date of divestiture), trucks and all improvements added to said plants since their acquisition and used in the manufacture of potato chips.

Acquired company	*Plant location*	*Trademark*
Num Num Foods, Inc.	4735 West 150 St., Cleveland, Ohio	NUM NUM.
The Frito Columbus Co.	3790 East Fifth St., Columbus, Ohio	KACY JONES.
Nicolay-Dancey, Inc.	5801 Grandy Ave., Detroit, Mich.	NEW ERA.
Nicolay-Dancey, Inc.	4051 West 51st St., Chicago, Ill.	NEW ERA.
Red Dot Foods, Inc.	130 Bashaw St., Ottumwa, Iowa	RED DOT.
Red Dot Foods, Inc.	Mill Rd., Grand Forks, N. Dak.	RED DOT.
Red Dot Foods, Inc.	1435 East Washington Ave., Madison, Wis.	RED DOT.
Red Dot Foods, Inc.	1521 Eagle St., Rhinelander, Wis.	RED DOT.
Brooks Potato Chip Co.	1927 North Lyon, Springfield, Mo.	BROOKS.
Williams & Co.	2045 NE. Union Ave., Portland, Oreg.	WILLIAMS.

II

It is further ordered, That, within 18 months from the date of service of this Order, respondents shall divest, as a unit and to a single entity, all of the plants specified in Paragraph I of this Order, other than the Williams Company, Portland, Oregon, plant, which may be separately divested. As a part of such divestiture Frito–Lay shall agree to purchase, and the new owners of the plants to be divested shall agree to supply, during the first 8 months following divestiture (but not more than 20 months after the date of service of this Order), at least 90 percent of the potato products now manufactured at said plants, based upon the rate of production during the last 12 months preceding the date of divestiture; during the next 8 months (but not more than 28

months after the date of service of this Order), at least 75 percent of such production; during the next 10 months (but not more than 38 months after the date of service of this Order) 50 percent of such production; and during the next 10 months (but not more than 48 months after the date of service of this Order) 25 percent of such production. If at the expiration of 12 months from the date of service of this Order, respondents establish that, despite their good faith efforts, they have been unable to enter into a contract to divest the above–described plants, other than the Williams Company, Portland plant, as a unit to a single entity, respondents may, within 6 months thereafter, divest said plants to two or more entities under the same conditions as set forth above, except that the stated percentages of potato product production shall then apply to each said plant.

It is further ordered, That Frito–Lay shall obtain, prior to the expiration dates of the leases for the Springfield and Portland plants options to extend such leases for at least three years beyond November 1970 and September 1970, respectively, with the full right of assignment to the purchaser or purchasers of such plant operations, and Frito–Lay shall give notice to the lessor of said properties of the terms of this Order.

It is further ordered, That respondents shall, as part of this agreement containing consent order, submit copies of such lease option agreements.

This Order contemplates that Frito–Lay may furnish its personnel continued employment and said personnel may remain in its employ: *Provided, however*, That any purchaser of any divested plant may, if it so desires, use reasonable persuasion to employ any person.

III

It is further ordered, That if respondents are unable to sell or dispose of any of the plants described in Paragraph I hereof entirely for cash, nothing in this Order shall be deemed to prohibit respondents from retaining, accepting and enforcing in good faith any security interest therein for the sole purpose of securing to respondents full payment of the price, with interest, at which any such plant is sold or disposed of: *Provided, however*, That if, after a good faith divestiture of any such plant pursuant to this Order, the buyer fails to perform his obligations and respondents regain ownership or control over said plant by enforcement of any security interest therein, respondents shall redivest said plant within six months in the same manner as provided for herein.

IV

It is further ordered, That none of the plants to be divested pursuant to this Order shall be sold or transferred, directly or indirectly, to any person who, at the time of the divestiture, is an officer, director, employee, or agent of, or under the control or direction of, respondents or any of respondents' subsidiary or affiliated corporations, or who owns or controls, directly or indirectly, more than one percent of the outstanding shares of PepsiCo's common stock.

V

It is further ordered, That, pending divestiture pursuant to this Order, respondents shall not make or permit any deterioration in the plants to be divested which may impair the present manufacturing capacity of said plants, unless such capacity is restored prior to divestiture: *Provided, however*, That nothing herein shall prevent respondents, pending divestiture, from exercising good faith business judgment with respect to the operation and management of said plants.

VI

It is further ordered, That for a period of ten years from the date of service upon them of this Order, respondents shall cease and desist, without the prior approval of the Commission, from entering into any arrangement with another party, corporate or noncorporate, as a result of which respondents obtain, directly or indirectly, through subsidiaries or otherwise, the whole or any part of the stock or other share capital, or the assets (other than products purchased or sold in the ordinary course of business) of any concern, corporate or noncorporate (other than PepsiCo's franchise bottlers, Frito–Lay's corn chip franchises and respondents' distributors) engaged at the time of such acquisition in the United States, in the manufacture or wholesale distribution of carbonated soft drinks (including cola), coffee, tea, milk, sugar or any of the following snack food products: potato chips, corn chips, pretzels, nut meats, crackers (nonsweet), cracker sandwiches (nonsweet), pork rinds, popcorn, caramel corn, corn puffs or potato sticks. As used in this Paragraph, the acquisition of assets includes any arrangement by respondents with any other party, pursuant to which such other party discontinues manufacturing any of said products under a brand name or label owned by such other party and thereafter distributes any of said products under any of respondents' brand names or labels.

VII

It is further ordered, That, for a period of five years from the date of service upon them of this Order, respondents shall cease and desist from initiating or conducting any type of radio, national magazine or nationwide newspaper advertising in which Frito–Lay's potato chips, corn chips or pretzels are advertised in combination or conjunction with any of PepsiCo's carbonated soft drinks; such restriction shall also apply to television advertising, including advertising which is commonly referred to in the television industry as piggybacking, where such television advertising results in lesser rates than would be the case if said products were advertised separately: *Provided, however*, That respondents shall have the burden of demonstrating that any such television advertising in which they engage does not result in lesser rates than would be the case if said products were advertised separately.

VIII

It is further ordered, That in the event the Commission issues any Order or Rule which is less restrictive than the provisions of Paragraph VI of this Order, in any proceeding involving the merger or acquisition of a snack food or soft drink company, then the Commission shall, upon the application of Frito–Lay or PepsiCo reconsider this Order and may reopen this proceeding in order to make whatever revisions, if any, are necessary to bring the foregoing paragraph into conformity with the less stringent restrictions imposed upon respondents' competitors.

IX

It is further ordered, That within sixty (60) days from the date of service of this Order, and every ninety (90) days thereafter until the divestitures required by Paragraph I of this Order have been completed, respondents shall report in writing to the Federal Trade Commission their plans for effecting such divestitures and the actions they have taken in implementation thereof, including, in addition to such other information as may be required: (a) the name, address and official capacity of the individual or individuals designated to carry out each divestiture and to negotiate with interested parties; (b) a brochure, presentation or other writing containing all of the essential information necessary to permit an interested party to evaluate each of the businesses to be divested, including a description and listing of its assets; (c) the efforts made and to be made in advertising

and affirmatively announcing the availability of each of the businesses to be divested; (d) the particular efforts made to locate and interest prospective purchasers not previously engaged in the industry; (e) a summary of contacts and negotiations relating to the sale of facilities ordered to be divested, including the identities of all parties expressing interest in the acquisiton of any of the businesses to be divested; (f) subject to any legally recognized privilege, copies of all written communications pertaining to negotiations, offers to buy or indications of interest in the acquisition of the whole or any part of any of the businesses to be divested; and (g) copies of all agreements and forms of agreement relating directly or indirectly to proposed sale of the whole or any part of the businesses to be divested.

It is further ordered, That respondents shall report in writing within sixty (60) days from the date of service of this Order, and every six (6) months thereafter setting forth in detail the manner and form in which it has complied, and is complying with Paragraphs II, VI and VII of this Order.

X

It is further ordered, That respondents shall forthwith distribute a copy of this Order to each of their operating subsidiaries and divisions.

IN THE MATTER OF

CENTRAL CHINCHILLA GROUP OF AMERICA, INC., ET AL.

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

Docket C-1418. Complaint, Sept. 3, 1968—Decision, Sept. 3, 1968

Consent order requiring a Des Moines, Iowa, seller 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 Central Chinchilla Corporation of America, Inc., a corporation, and Hillis B. Akin and Edna Akin, individually and as officers of said corporation, hereinafter referred to as respondents, have violated

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

PARAGRAPH 1. Respondent Central Chinchilla Group of America, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, with its principal office and place of business located at 2125 Indianola Road, Des Moines, Iowa.

Respondents Hillis B. Akin and Edna Akin are individuals and are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past, have been engaged in the advertising, offering for sale, sale and distribution of chinchilla breeding stock 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 chinchillas, when sold, to be shipped from their place of business in the State of Iowa to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, as 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 prespective purchasers and inducing the purchase of said chinchillas, the respondents have made, and are now making, numerous statements and representations by means of newspaper advertising, direct mail advertising and through the oral statements and display of promotional material to prospective purchasers by their salesmen, with respect to the breeding of chinchillas for profit without previous experience, the rate of reproduction of said animals, the expected return from the sale of their pelts and the training assistance to be made available to purchasers of respondents' chinchillas.

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

$9,000–$15,000
per year

Raise Chinchilla Breeding Stock For Us
We Guarantee
Livability—Production—
Offspring Purchase—Constant
Schooling, Training and Guidance.
Minimum investment and space required.

Preferred Producers Contract

CENTRAL CHINCHILLA GROUP OF AMERICA AGREES:

1. To buy all descendants of the chinchillas purchased from Central Chinchilla Group of America, Inc., * * *
2. To pay the sum of One Hundred Dollars ($100.00) per pair for said offspring.

* * * * * * *

That only clean animals in smooth condition and in normal good health will be involved under the terms of this agreement.

* * * * * * *

Professional assistance from well-trained ranch inspectors assures success, even if you have had no experience.

* * * * * * *

Starting with 3 Select High Quality Females and 1 Male. *Assuming* Your Females Produce An Average of 4 Offspring Yearly ***.
***That's A Gross Income Of
$8,100
A Year!
(Based *Conservatively* On $25.00 Pelt Price Average.)

* * * * * * *

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, made by respondents in their advertising and promotional material, separately and in connection with the oral statements and representations made by their salesmen and representatives, the respondents have represented and are representing, directly or by implication, that:

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

2. The breeding of chinchillas from breeding stock purchased from respondents, as a commercially profitable enterprise, requires no previous experience in the breeding, raising and caring for such animals.

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

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

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

6. Each female chinchilla purchased from respondents and each female offspring will produce several successive litters of from one to four live offspring at 111–day intervals.

7. The offspring referred to in Paragraph Five, subparagraph (6), above, will have pelts selling for an average price of $25 per pelt, and that pelts from offspring of respondents' breeding stock generally sell from $25–$55 each.

8. A purchaser starting with three females and one male of respondents' chinchilla breeding stock will have an income of $8,100 from the sale of pelts in the fourth year.

9. Chinchilla breeding stock purchased from respondents is unconditionally guaranteed to live four years and reproduce.

10. The respondents will promptly fulfill all of their obligations and requirements set forth in or represented directly or by implication to be contained in the guarantee applicable to each and every chinchilla.

11. Purchasers of respondents' breeding stock receive three service calls from respondents' service personnel each year.

12. Purchasers of respondents' breeding stock are given guidance in the care and breeding of chinchillas.

13. Purchasers of respondents' breeding stock can expect a great demand for the offspring and for the pelts of offspring of respondents' chinchillas.

14. Respondents will purchase, through the "Preferred Producers Contract," all of the healthy chinchilla offspring raised by purchasers of respondents' chinchilla breeding stock for $100 per pair, a pair being a male and a female or two females.

15. The "Group Quality" standards of live chinchilla evaluation is an accepted standard in the chinchilla industry for determining the quality of chinchilla breeding stock.

16. Through the assistance and advice furnished to purchasers of respondents' breeding stock by respondents, purchasers are able to successfully breed and raise chinchillas as a commercially profitable enterprise.

PAR. 6. In truth and in fact:

1. It is not commercially feasible to breed or raise chinchillas from breeding stock purchased from respondents in homes, basements, garages, closed–in porches, spare buildings or sheds, 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 from breeding stock purchased from respondents, as a commercially profitable enterprise, requires specialized knowledge in the breeding, raising and care of said animals, much of which must be acquired through actual experience.

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

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

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

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

7. The offspring referred to in subparagraph (6) of Paragraph Five above will not produce pelts selling for an average price of $25 per pelt but substantially less than that amount; and pelts from offspring of respondents' breeding stock will generally not sell for $25–$55 each since some of the pelts are not marketable at all and others would not sell for $25 but for substantially less than that amount.

8. A purchaser starting with three females and one male of respondents' breeding stock will not have an income of $8,100 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 to live four years and reproduce but such guarantee as is provided is subject to numerous terms, limitations and conditions.

10. Respondents do not in fact promptly fulfill all of their obligations and requirements set forth in or represented, directly or by implication, to be contained in the guarantee applicable to each and every chinchilla.

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

12. Purchasers of respondents' breeding stock are given little

if any guidance in the care and breeding of chinchillas.

13. Purchasers of respondents' breeding stock cannot expect a great demand for the offspring of and pelts from respondents' chinchillas.

14. Respondents seldom, if ever, through the "Preferred Producers Contract" or any other plan purchase all, or any, of the healthy chinchilla offspring raised by purchasers of respondents' chinchilla breeding stock for $100 a pair or any other like amount.

15. The "Group Quality" standards for live chinchilla evaluation is not an accepted standard in the chinchilla industry for determining the quality of chinchilla breeding stock.

16. Purchasers of respondents' breeding stock are not able to successfully breed and raise chinchillas as a commercially profitable enterprise through the assistance and advice furnished them by respondents.

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 of chinchilla breeding stock.

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

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

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of

Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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 Central Chinchilla Group of America, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, with its office and principal place of business located at 2125 Indianola Road, in the city of Des Moines, State of Iowa.

Respondents Hillis B. Akin and Edna Akin 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 its proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Central Chinchilla Group of America, Inc., a corporation, and its officers, and Hillis B. Akin and Edna Akin, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of chinchilla breeding stock or any other products, in commerce, as "com-

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

A. Representing, directly or by implication, that:

1. It is commercially feasible to breed or raise chinchillas in homes, basements, garages, closed–in porches, spare buildings or sheds, 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 as a commercially profitble enterprise can be achieved without previous knowledge or experience in the breeding, raising and care of such animals.

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

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

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

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

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

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

9. Pelts from the offspring of respondents' chinchilla breeding stock sell for an average price of $25 per pelt; or that pelts from the offspring of respondents' breeding stock generally sell for from $25 to $55 each.

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

11. A purchaser starting with three females and one male will have, from the sale of pelts, an annual income, earnings or profits of $8,100 in the fourth year after purchase.

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

13. Breeding stock purchased from respondents is guaranteed or warranted 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.

14. Respondents' chinchillas are guaranteed unless respondents do in fact promptly fulfill all of their obligations and requirements set forth in or represented, directly or by implication, to be contained in any guarantee or warranty applicable to each and every chinchilla.

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

16. 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.

17. Chinchillas or chinchilla pelts are in great demand; or that purchasers of respondents' breeding stock can expect to be able to sell the offspring or the pelts of the offspring of respondents' chinchillas because said chinchillas or pelts are in great demand.

18. Respondents will purchase all or any of the healthy chinchilla offspring raised by purchasers of respondents' breeding stock for $100 a pair, or said offspring for any other price: *Provided, however,* It shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that they do, in fact, purchase all the offspring offered by said purchasers at the prices and on the terms and conditions represented.

19. The "Group Quality" standards of live chinchilla evaluation is an accepted standard in the chinchilla industry for determining the quality of chinchilla breeding stock; or misrepresenting, in any manner, the standards or the acceptance or recognition of standards in the chinchilla industry for the evaluation or grading of chinchillas or the pelts therefrom.

20. The assistance or advice furnished to purchasers of respondents' chinchilla breeding stock by respondents will enable purchasers to successfully breed or raise chinchillas as a commercially profitable enterprise: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respond-

ents to establish that through the assistance and advice furnished by respondents to their purchasers, said purchasers are actually able to breed or raise chinchillas as a commercially profitable enterprise.

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

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

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

It is further ordered, That the 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

MALZONE SPORTS, 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-1419. Complaint, Sept. 5, 1968—Decision, Sept. 5, 1968

Consent order requiring a Tampa, Fla., manufacturer of men's and women's athletic uniforms and jackets to cease misbranding its wool and textile fiber products, falsely advertising its textile fiber products, and failing to keep required records.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having

reason to believe that Malzone Sports, Inc., a corporation, doing business under its own name and as Speedline Athletic Wear, and Armand B. Malzone, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of the said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act 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 Malzone Sports, Inc., doing business under its own name and as Speedline Athletic Wear is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its office and principal place of business located at 1804 North Habana Avenue, Tampa, Florida.

Individual respondent Armand B. Malzone is an officer of the corporate respondent. He formulates, directs and controls the acts, policies and practices of the corporate respondent including the acts and practices hereinafter referred to. His address is the same as that of the corporate respondent.

Respondents are engaged in the manufacture and sale of men's and women's athletic uniforms and jackets.

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

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

Among such misbranded textile fiber products but not limited thereto were men's baseball uniforms, falsely and deceptively advertised by means of a catalog distributed by respondents throughout the United States, in that such uniforms were described as containing "25% Acrilan Acrylic, 10% Nylon, 25% Cotton, 40% Rayon," whereas in truth and in fact such uniforms contained substantially different amounts and kinds of fibers.

PAR. 4. Certain of said textile fiber products were further misbranded by respondents in that they were not stamped, tagged, labeled or otherwise identified as required under the provisions of Section 4(b) of the Textile Fiber Porducts 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 textile fiber products, namely baseball uniforms, with labels which failed:

1. To disclose the true generic names of the fibers present.
2. To disclose the percentages of such fibers.
3. To show the name, or other identification issued and registered by the Commission, of the manufacturer of the product, or one or more persons subject to Section 3 with respect to such product.

PAR. 5. Certain of said textile fiber products were falsely and deceptively advertised in that respondents in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote, assist directly or indirectly in the sale or offering for sale of said products, failed to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Fiber Products Identification Act and in the manner and form promulgated under said Act.

Among such textile fiber products, but not limited thereto, were knit jerseys which were falsely and deceptively advertised by means of a "catalogue" distributed by respondents throughout the United States in that the true generic name of each fiber present in the products was not set forth.

PAR. 6. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents 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 promulgated thereunder in the following respects:

A. Fiber trademarks were used in advertising textile fiber products without the full disclosure of the fiber content information required by the said Act and the Rules and Regulations thereunder in at least one instance in the said advertisement, in violation of Rule 41(a) of the aforesaid Rules and Regulations.

B. Fiber trademarks were used in advertising textile fiber products containing more than one fiber, without such fiber trademark appearing at least once in the advertisement in immediate proximity and conjunction with the generic name of the fibers in plainly legible and conspicuous type or lettering of equal size and conspicuousness in violation of Rule 41(b) of the aforesaid Rules and Regulations.

C. Fiber trademarks were used in advertising textile fiber products containing only one fiber, without such fiber trademark appearing at least once in the advertisement, in immediate proximity and conjunction with the generic name of the fiber, in plainly legible and conspicuous type or lettering of equal size and conspicuousness in violation of Rule 41(c) of the aforesaid Rules and Regulations.

PAR. 7. Respondents have failed to maintain proper records showing the fiber content of the textile fiber products manufactured by them in violation of Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

PAR. 8. The acts and practices of the respondent as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations 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, now and for some time last past, have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939 wool products as "wool product" is defined therein.

PAR. 10. Certain of said wool products were misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a) (2) of the Wool Products Labeling Act and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto,

were wool products without fiber content labels.

PAR. 11. The act and practice of respondent as set forth in Paragraph Ten was, and is, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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 Malzone Sports, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 1804 North Habana Avenue, Tampa, Florida. Respondent also does business under the name Speedline Athletic Wear.

Respondent Armand B. Malzone is an officer of said corporation

and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Malzone Sports, Inc., a corporation, doing business under its own name and as Speedline Athletic Wear or any other name, and its officers, and Armand B. Malzone, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, 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 textile fiber products; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of textile fiber products which have been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of textile fiber products, whether in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

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 labels to such products showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

B. Falsely and deceptively advertising textile fiber products by:

1. Making any representation, by disclosure or by implication, as to the fiber content of any such 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, in the manner and form required except that the percentages of the fibers present in the said textile fiber product need not be stated.

2. Using a fiber trademark in advertisements without a full disclosure of the required content information in at least one instance in the said advertisement.

3. Using a fiber trademark in advertising textile fiber products 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.

4. Using a fiber trademark in advertising textile fiber products containing only one fiber without such fiber trademark appearing at least once in the advertisement, in immediate proximity and conjunction with the generic name of the fiber, in plainly legible and conspicuous type.

C. Failing to maintain and preserve proper records of fiber content of 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 Malzone Sports, Inc., a corporation doing business under its own name and as Speedline Athletic Wear or any other name, and Armand B. Malzone, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, distribution or delivery for shipment in commerce, of wool wearing apparel or other wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such wool products by failing to securely affix to, or place on each wool product a stamp, tag, label or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That the respondent corporation shall

forthwith distribute a copy of the 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 EMPORIUM CAPWELL COMPANY

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

Docket C-1420. Complaint, Sept. 5, 1968—Decision, Sept. 5, 1968

Consent order requiring a San Francisco, Calif., retail furrier to cease 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 The Emporium Capwell Company, a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the 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 Emporium Capwell Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California.

Respondent is a retailer of fur products with its office and principal place of business located on Market Street at Powell, San Francisco, California.

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 transportion 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 falsely and deceptively invoiced by the respondent, through The Emporium Store, in that they were not invoiced as required by Section 5(b) (1) of the Fur Products Labeling Act and the Rules and Regulations promulgated under such Act.

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

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

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

3. To show the name and address of the person issuing such invoice.

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

PAR. 4. Certain of said fur products were falsely and deceptively invoiced by the respondent, through The Emporium Store, with respect to the name or designation of the animal or animals that produced the fur from which the said fur products had been manufactured in violation of Section 5(b) (2) of the Fur Products Labeling Act.

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

PAR. 5. Certain of said fur products were falsely and deceptively invoiced by the respondent, through The Emporium Store, 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) The term "Dyed Mouton Lamb" was not set forth on

invoices in the manner required by law, in violation of Rule 9 of said Rules and Regulations.

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

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

PAR. 6. The aforesaid acts and practices of respondent, 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 respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act and the Fur Products Labeling Act; and

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

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

1. Respondent The Emporium Capwell Company 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 on Market Street at Powell, San Francisco, California.

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 The Emporium Capwell Company, 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 falsely or deceptively invoicing any fur product by:

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

2. Setting forth on an invoice pertaining to such fur product any false or deceptive information with respect to the name or designation of the animal or animals that produced the fur contained in such fur product.

3. 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.

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

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

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

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

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

It is further ordered, That the 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

BLUE MIST CHINCHILLA COMPANY, INC., ET AL.

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

Docket C-1421. Complaint, Sept. 6, 1968—Decision, Sept. 6, 1968

Consent order requiring a Bigfork, Mont., seller of chinchilla breeding stock to cease making exaggerated earning claims, misrepresenting the quality of its animals, 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 Blue Mist Chinchilla Company, Inc., a corporation, and Harley L. Elrod, and Ann B. Elrod, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Blue Mist Chinchilla Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Montana, with its principal office and place of business located at East Lake Shore, Bigfork, Montana, 59911.

Respondents Harley L. Elrod and Ann B. Elrod are individuals

and officers of Blue Mist Chinchilla Company, Inc. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past, have been engaged in the advertising, offering for sale, sale and distribution of chinchilla breeding stock to the public.

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

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of obtaining the names of prospective purchasers and inducing the purchase of said chinchillas, respondents make numerous statements and representations by means of television broadcasts, direct mail advertising and through the oral statements and display of promotional material to prospective purchasers by their salesmen, with respect to the breeding of chinchillas for profit without previous experience, the rate of reproduction of said animals, the expected return from the sale of their pelts, the training assistance to be made available to purchasers of respondents' chinchillas, their quality, their hardiness and freedom from disease.

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

Gestation period is about 111 days, with litters averaging approximately 2 babies. Under normal conditions, the period occurs in the female every 28 days and also immediately after birth of young, making 3 litters per year possible—the average being approximately 2 litters when figuring on national basis.

The chinchilla is naturally hardy and does not require elaborate housing. A basement unused bedroom or built-in back porch may be used as a starter. An outside building such as a barn, shed, chicken house or garage is also satisfactory.

The raising of chinchillas***by following a few simple rules and instructions it is in no way difficult.

World consumption of chinchillas at one time exceeded a half million skins per year, and the future market will surely demand many more***.

Not only is the project from raising chinchillas fabulous, but it is something that is fun to do; a real pleasure and a joy.

We guarantee the animals unconditionally***we service them periodically for a period of two years***.

When a new rancher is accepted under the Blue Mist Chinchilla Co. program, he is taught the business of raising chinchillas profitably. A staff is always available to advise the Blue Mist rancher at no cost to the rancher.

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, made by respondents in their advertising and promotional material, separately and in connection with statements and representations made by their salesmen, respondents represent, and have represented, directly or by implication, that:

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

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

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

4. Purchasers of respondents' breeding stock receive select or pedigreed quality chinchillas.

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

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

7. The offspring referred to in Paragraph Five subparagraph (6) above will have pelts selling for an average price of $30 per pelt, and that pelts from offspring of respondents' breeding stock generally sell from $25–$75 each.

8. A purchaser starting with twelve females and two males of respondents' chinchilla breeding stock will have an income of $3,800 from the sale of pelts in the third year.

9. Chinchilla breeding stock purchased from respondents is unconditionally guaranteed.

10. The respondents will promptly fulfill all of their obligations and requirements set forth in or represented directly or by implication to be contained in the guarantee applicable to each and every chinchilla.

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

12. Purchasers of respondents' breeding stock are given guidance in the care and breeding of chinchillas.

13. Purchasers of respondents' breeding stock can expect a great demand for the offspring and for the pelts of the offspring of respondents' chinchillas.

PAR. 6. In truth and in fact:

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

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

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

4. Chinchilla breeding stock sold by respondents is not of select or pedigreed quality.

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

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

7. The offspring referred to in subparagraph (6) of Paragraph Five above will not produce pelts selling for an average price of $30 per pelt but substantially less than that amount; and pelts from offspring of respondents' breeding stock will generally not sell for $25–$75 each since some of the pelts are not marketable at all and others would not sell for $25 but for substantially less than that amount.

8. A purchaser starting with twelve females and two males of respondents' breeding stock will not have an income of $3,800 from the sale of pelts in the third year but substantially less than that amount.

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

10. Respondents do not in fact promptly fulfill all of their obligations and requirements set forth in or represented directly or by implication to be contained in the guarantee applicable to each and every chinchilla.

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

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

13. Purchasers of respondents' breeding stock cannot expect a great demand for the offspring of and pelts from respondents' chinchillas.

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

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

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

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

DECISION AND ORDER

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

The respondents and counsel for the Commission having there-

after 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 Blue Mist Chinchilla Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Montana, with its office and principal place of business located at East Lake Shore, Bigfork, Montana, 59911.

Respondents Harley L. Elrod and Ann B. Elrod 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 Blue Mist Chinchilla Company, Inc., a corporation, and its officers, and Harley L. Elrod and Ann B. Elrod, individually and as officers of said corporation and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of chinchilla breeding stock or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that:

1. It is commercially feasible to breed or raise chinchillas in homes, basements, garages, closed-in porches,

spare buildings, sheds, barns, chicken houses 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. Chinchillas are hardy animals or are not susceptible to disease.

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

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

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

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

8. The number of litters or sizes thereof produced per female by respondents' chinchilla breeding stock is any number or range thereof: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented number or range thereof of litters and sizes

thereof are usually and customarily produced by chinchillas purchased from respondents or the offspring of said chinchillas.

9. Pelts from the offspring of respondents' chinchilla breeding stock sell for an average price of $30 per pelt; or that pelts from the offspring of respondents' breeding stock generally sell for from $25 to $75 each.

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

11. A purchaser starting with twelve females and two males will have, from the sale of pelts, an annual income, earnings or profits of $3,800 in the third year after purchase.

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

13. Breeding stock purchased from respondents is guaranteed or warranted 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.

14. Respondents' chinchillas are guaranteed unless respondents do in fact promptly fulfill all of their obligations and requirements set forth in or represented, directly or by implication, to be contained in any guarantee or warranty applicable to each and every chinchilla.

15. Purchasers of respondents' chinchilla breeding stock will receive service calls from respondents' service personnel four times a year for two successive years after purchase of the animals or at any other interval or frequency: *Provided, however,* That it shall be a defense

in any enforcement proceeding instituted hereunder for respondents to establish that the represented number of service calls are actually furnished.

16. 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 and are furnished the represented advice by respondents as to the breeding of chinchillas.

17. Chinchillas or chinchillas' pelts are in great demand; or that purchasers of respondents' breeding stock can expect to be able to sell the offspring or the pelts of the offspring of respondents' chinchillas because said chinchillas or pelts are in great demand.

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

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

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

It is further ordered, That the 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 compiled with this order.