in the companion case (*i.e.*, *Universal-Rundle Corp.*, Docket No. 8070).[8] The case is accordingly closed, and it is

ORDER

Ordered, That the complaint is herein and hereby dismissed.

FINAL ORDER

The hearing examiner having filed his initial decision herein on November 4, 1963, and counsel supporting the complaint having filed notice of intention to appeal from said decision on November 18, 1963, and thereafter having requested that the appeal be placed on suspense; and

The Commission, on December 13, 1963, having issued an order staying the effective date of the initial decision, and now having determined that the case should not be placed on its own docket for review; and

The Commission having considered a motion filed by respondent on July 10, 1964, requesting that the Commission vacate its order staying the effective date of the initial decision and that it adopt the initial decision as the decision of the Commission, and having determined that said request should be granted:

It is ordered, That respondent's motion be, and it hereby is, granted.

It is further ordered, That the initial decision of the hearing examiner, filed November 4, 1963, be, and it hereby is, adopted as the decision of the Commission.

IN THE MATTER OF

METROPOLITAN GOLF BALL, INC., ET AL.

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

Docket 8528. Complaint, Aug. 27, 1962—Decision, July 31, 1964

Order requiring Santa Monica, Calif., distributors of previously used golf balls which they had rebuilt, to cease selling such golf balls with no disclosure on the packaging or on the balls themselves that the balls were previously used or rebuilt.

---

[8] Counsel in support of the complaint have advised the hearing examiner they have no additional evidence to adduce at this time. This disposition is in accord with the authority vested in the hearing examiner under section 7(b) of the Administrative Procedure Act and is consistent with the Federal Trade Commission's Rules and Regulations section 3.14(d) relating to official notice.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by the said Act, the Federal Trade Commission, having reason to believe that Metropolitan Golf Ball, Inc., a corporation, and Leland B. Wagner, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH. 1. Respondent Metropolitan Golf Ball, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of California with its principal office and place of business located at 1831 Colorado Avenue, Santa Monica, California.

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution to dealers and others for resale to the public of previously used golf balls which have been rebuilt or reconstucted.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped and transported from their place of business in the State of California 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 business, respondents rebuild or reconstruct golf balls, using in said process, portions of the ball which have been used and reclaimed.

Respondents do not disclose either on the ball itself, or the wrapper, on the box, or on the bags in which the balls are sometimes packed, or in any other manner, that said golf balls are previously used balls which have been rebuilt or reconstructed.

When such previously used golf balls are rebuilt or reconstructed, in the absence of any disclosure to the contrary, or in the absence of an

adequate disclosure, such golf balls are understood to be and are readily acceptable by the public as new balls, a fact of which the Commission takes official notice.

PAR. 5. By failing to disclose the fact as set forth in Paragraph Four, respondents place in the hands of uninformed and unscrupulous dealers and others, means and instrumentalities whereby they may mislead and deceive the public as to the nature and construction of their said golf balls.

PAR. 6. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 7. The failure of the respondents to disclose on the golf ball itself, on the wrapper, or on the box or bag in which they are packed, or in any other manner, that they are previously used balls which have been rebuilt or reconstructed, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said golf balls were, and are, new in their entirety and into the purchase of substantial quantities of respondents' products by means of said erroneous and mistaken belief.

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

Mr. Roy B. Pope for the Commission.
Mr. Leland B. Wagner, pro se and for corporate respondent.

INITIAL DECISION AFTER REMAND BY WILMER L. TINLEY, HEARING EXAMINER

JUNE 17, 1964

The Federal Trade Commission, on August 27, 1962, issued and subsequently served its complaint charging the respondents named in the caption hereof with violating Section 5 of the Federal Trade Commission Act by selling rebuilt or reconstructed golf balls without making adequate disclosure on the balls or packaging that they are previously used balls which have been rebuilt or reconstructed. Answer was filed by the respondents on November 5, 1962, admitting, in effect, the production and sale of such golf balls, but otherwise denying the essential allegations of the complaint.

After a prehearing conference in December 1962, and hearings in Chicago, Illinois, in February 1963, an initial decision dismissing the complaint was filed by the hearing examiner on May 3, 1963. The record as then constituted did not provide an adequate basis for informed determination as to whether or not respondents' products have the appearance of new golf balls, and are understood to be, and are readily acceptable by the public as, new golf balls; and the public interest, which then appeared to be present, was not sufficient to warrant reopening the proceeding for the reception of further evidence.

On April 3, 1964 [65 F.T.C. 1295], the Commission entered its order vacating the initial decision and remanding the case to the hearing examiner on the basis of a motion and affidavit by counsel supporting the complaint with respect to newly discovered evidence. The scope of the remand was set out in the following provisions of the Commission's order:

It is further ordered, That this proceeding be, and it hereby is, remanded to the hearing examiner for the purpose of receiving such additional evidence as the parties may offer relevant to the substantiality of respondents' interstate sales of rebuilt or re-covered golf balls ordinarily used by the public in playing golf.

It is further ordered, That if the aforementioned additional evidence establishes significant interstate sales by respondents of these golf balls, such further evidence be received as the parties may offer relevant to the appearance of respondents' rebuilt or re-covered golf balls packaged in the manner in which they are sold to the public; and relevant to whether or not, in the absence of adequate disclosure to the contrary, such balls are understood to be and are readily acceptable by the public as new balls.

Thereafter, by letter dated May 12, 1964, respondents terminated the services of counsel by whom they had previously been represented in this matter, and the individual respondent undertook responsibility for their further representation.

On June 3, 1964, respondents filed a motion to withdraw their answer previously filed herein, and, in lieu thereof, to substitute an answer, annexed to said motion, stating that they elect not to contest further the allegations of fact set forth in the complaint, and that, for the purposes of this proceeding, "they admit all material allegations of the Complaint."

Also on June 3, 1964, counsel supporting the complaint and respondents filed a stipulation proposing a form of order which they considered appropriate, and which was "submitted to the hearing examiner for his consideration in connection with the disposition of this case." In the stipulation, the parties also agreed

that the testimony and exhibits introduced at the previous hearings in this case may be considered by the hearing examiner as part of the record despite the subsequent filing of the substitute answer.

By his order of June 15, 1964, the hearing examiner granted respondents' motion to withdraw their original answer and to file substitute answer, and respondents' admission answer was received in lieu of their original answer. At the same time, it was also ordered that the evidence theretofore received remain in the record for consideration in the disposition of this proceeding despite the subsequent filing of the admission answer.

The purpose and effect of the admission answer are to supply the additional evidence referred to in the Commission's remand herein with respect to "the substantiality of respondents' interstate sales of rebuilt or re-covered golf balls ordinarily used by the public in playing golf"; with respect "to the appearance of respondents' rebuilt or recovered golf balls packaged in the manner in which they are sold to the public"; and with respect "to whether or not, in the absence of adequate disclosure to the contrary, such balls are understood to be and are readily acceptable by the public as new balls."

The admission answer has, accordingly, supplied the factual deficiencies which prevented an informed decision in the original initial decision on certain of the issues, and which caused the Commission to remand the proceeding for the reception of additional evidence. In these circumstances, further hearings herein are unnecessary, and the matter has been submitted by the parties for decision on this record, with a proposed form of order which they consider appropriate.

The order proposed by the parties differs from the form of order incorporated in the "Notice" portion of the complaint by the inclusion of words which would limit the application of the order to "white, painted or unpainted," rebuilt golf balls. The clear purpose of this modification proposed by the parties is to limit the application of the order to "rebuilt or re-covered golf balls ordinarily used by the public in playing golf," to which the Commission's order of remand was limited, and to exclude from its application wholly or partly colored balls used by putting courses, and circumferentially striped balls used by driving ranges.

This is a proper limitation which is fully supported by the evidence presented during the original proceedings. The language of the order proposed by the parties, however, requires further modification so as to exclude from its coverage white balls with the characteristic circumferential striping used by driving ranges. This may be accomplished by limiting its application to rebuilt balls "of the type ordi-

narily used by the public in playing golf." With this further modification, the order proposed by the parties will be adopted.

Although the evidence previously received herein may be considered in the preparation of this initial decision, it is unnecessary, and would be inappropriate, to make detailed findings of fact with respect to basic issues which have been resolved by the admission answer. In issuing this initial decision on remand, therefore, the hearing examiner finds the facts to be essentially as alleged in the complaint with only such amplification as may be necessary to provide an appropriate basis for the limitations of the order hereinabove referred to. Specific references to supporting evidence in the record are made only in connection with findings which amplify the admitted allegations of the complaint.

FINDINGS OF FACT

1. Respondent Metropolitan Golf Ball, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its principal office and place of business located at 1831 Colorado Avenue, Santa Monica, California.

2. Respondent Leland B. Wagner is an individual, and is an officer of said corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

3. Respondents are now, and for some time have been, engaged in the offering for sale, sale and distribution to dealers and others for resale to the public of previously used golf balls which have been rebuilt or reconstructed.

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

5. In the course and conduct of their business, respondents rebuild or reconstruct golf balls by removing the covers and part of the rubber winding from used golf balls, rewinding the remaining part of the balls with rubber thread to their original size without covers, and adding new covers. The covers are manufactured of new material, and are finished with the standard pattern of dimples characteristic of substantially all new golf balls (Tr. 150–70).

6. Many golf balls are rebuilt by respondents with covers of solid

colors, such as red, green, yellow, orange or blue, or with covers which are half white and half colored. These colored balls are sold by respondents to or for the use of "miniature" or putting golf courses (Tr. 110–12, 121–6, 168–9, 188–93).

7. Respondents also rebuild golf balls with white covers having colored bands or stripes completely around their circumference, which are either unbranded, or are branded with such words as "Driving Range" or "Stolen" or with the name of the driving range. Such balls are sold by respondents to or for the use of golf practice driving ranges (Tr. 113–4, 169–70, 186–7, 190–3, 536–7).

8. Balls with colored or striped covers, as described above, which are sold by respondents to or for the use of putting courses and driving ranges, are not marked so as to identify them as rebuilt balls. They are, however, always invoiced to the customers as rebuilt balls. The operators of putting courses and driving ranges, who purchase such balls, are not deceived in any way and do not resell such balls to the golfing public (Tr. 111, 184–93).

9. Respondents also rebuild many golf balls with white covers characteristic of golf balls ordinarily used by the public in playing golf, and many of such balls rebuilt by respondents are marked with brand names (Tr. 112–15, 191, 208–9, 230–3, 500–6). The covers used by respondents in rebuilding these golf balls are made of polyethylene, a white plastic material with a relatively dull finish. Respondents experimented with various enamels and solvents in an effort to improve the gloss and luster of their white golf balls, but the cover material would not satisfactorily accept any type of coating or paint, and the effort was abandoned (Tr. 138–9, 155, 170–84, 201–5). Whether painted or unpainted, however, the covers, which are the only visible parts of these balls, are made of all new material.

10. Respondents' rebuilt white golf balls of the type ordinarily used by the public in playing golf are packaged in bags or boxes, the containers frequently being marked with brand names, and are sold by respondents to wholesalers or retailers for resale to the consuming public (Tr. 91–5, 109, 114–5, 150). On the invoices which respondents send to their customers, and on their price lists, their golf balls are identified as rebuilt (Tr. 184-93), but these invoices and price lists are not for the information of the consuming public.

11. Respondents do not disclose on their rebuilt white golf balls of the type ordinarily used by the public in playing golf, or on the bags, boxes, or wrappings in which they are packaged, that they are previously used balls which have been rebuilt or reconstructed. In the absence of any disclosure to the contrary, or in the absence of an adequate

disclosure, such golf balls are understood to be and are readily acceptable by the public as new balls.

12. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by respondents, and with others engaged in the sale of new golf balls (Tr. 109).

CONCLUSIONS

1. The failure of the respondents to disclose on their rebuilt white golf balls of the type ordinarily used by the public in playing golf, or on the bags, boxes or wrappings in which they are packaged, or in any other manner, that they are previously used balls which have been rebuilt or reconstructed, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said golf balls were, and are, new in their entirety, and into the purchase of substantial quantities of respondents' products by means of said erroneous and mistaken belief.

2. By failing to make such disclosure, respondents have placed, and now place, in the hands of uninformed or unscrupulous dealers and others the means and instrumentalities whereby they may mislead and deceive the public as to the nature and construction of said golf balls.

3. The aforesaid acts and practices of respondents were, and are, to the prejudice and injury of the public and of the 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.

ORDER

It is ordered, That respondent Metropolitan Golf Ball, Inc., a corporation, and its officers, and respondent Leland B. Wagner, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of white rebuilt or reconstructed golf balls of the type ordinarily used by the public in playing golf, whether painted or unpainted, do forthwith cease and desist from:

1. Failing clearly to disclose on the bags, boxes, or other containers in which such golf balls are packaged, on the wrappers, and on said golf balls themselves, that they are previously used balls which have been rebuilt or reconstructed.

2. Placing any means or instrumentalities in the hands of others whereby they may mislead the public as to the prior use and rebuilt nature and construction of such golf balls.

FINAL ORDER

The hearing examiner having filed his initial decision herein containing an order to cease and desist, which order conforms in substance to the order proposed by the parties, and no appeal having been taken therefrom; and

The Commission having determined that the hearing examiner's order should be modified with a provision permitting respondents to omit markings disclosing prior use on their golf balls themselves if respondents establish that the disclosure on the bags, boxes or other containers and/or wrappers of such golf balls adequately informs retail customers at the point of sale of that fact:

It is ordered, That the order to cease and desist contained in the initial decision be, and it hereby is, modified to read as follows:

It is ordered, That respondent Metropolitan Golf Ball, Inc., a corporation, and its officers, and respondent Leland B. Wagner, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of white rebuilt or reconstructed golf balls of the type ordinarily used by the public in playing golf, whether painted or unpainted, do forthwith cease and desist from:

1. Failing clearly to disclose on the bags, boxes, or other containers in which such golf balls are packaged, on the wrappers, and on said golf balls themselves, that they are previously used balls which have been rebuilt or reconstructed. Provided, however, that disclosure need not be made on the golf balls themselves if respondents establish that the disclosure on the bags, boxes or other containers and/or wrappers is such that retail customers, at the point of sale, are informed that the golf balls are previously used and have been rebuilt or reconstructed.

2. Placing any means or instrumentality in the hands of others whereby they may mislead the public as to the prior use and rebuilt nature and construction of their golf balls.

It is further ordered, That the initial decision as modified be, and it hereby is, adopted as the decision of the Commission.

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

IN THE MATTER OF

HUGH J. McLAUGHLIN & SON, INC., ET AL.

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

Docket 8529. Complaint, Aug. 28, 1962—Decision, July 31, 1964

Order making effective desist order of June 12, 1964, 65 F.T.C. 992, which required a manufacturer of golf balls in Crown Point, Ind., to cease selling rebuilt or re-constructed golf balls without disclosure on the packaging and on the balls themselves that they were previously used and rebuilt.

FINAL ORDER

By its decision of June 12, 1964 [65 F.T.C. 992], the Commission modified and adopted the initial decision as modified but suspended enforcement of the cease and desist order contained therein until further notice. The Commission has determined, in the light of its final order in *Metropolitan Golf Ball, Inc., et al.*, Docket No. 8528, that the order to cease and desist should be made effective. Accordingly,

It is ordered, That the order to cease and desist contained in the decision of the Commission issued June 12, 1964 [65 F.T.C. 992], shall become effective with the issuance of this order.

It is further ordered, That respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the provisions of the order issued June 12, 1964.

IN THE MATTER OF

UNITED STATES RUBBER COMPANY

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

Docket 8586. Complaint, July 18, 1963—Decision, July 31, 1964

Order dismissing—on evidence that the challenged practices had been abandoned several years prior to issuance of the complaint, with no likelihood of resumption—complaint charging a leading manufacturer of rubber and