

## IN THE MATTER OF

## DAN DEE PRETZEL &amp; POTATO CHIP CO. ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF  
SECS. 2(a), 2(d), AND 2(e) OF THE CLAYTON ACT

*Docket 6919. Complaint, Oct. 17, 1957—Decision, June 25, 1958*

Consent order requiring a manufacturer and its sales corporation to cease discriminating in price in the sale of their pretzels, potato chips, and corn chips: specifically to cease violating section 2(a) of the Clayton Act by giving certain large retail customers a 5 percent or 5 percent plus 2 percent discount from the published wholesale prices charged other customers, and granting certain jobbers a 25 percent discount from such wholesale prices while their nonfavored competitors received only 20 percent; violating section 2(d) of the same act by granting to some customers but not to their competitors special advertising allowances amounting to 3 percent of purchases; and violating section 2(e) by furnishing some stores, but not their competitors, with demonstrators who gave coupons to customers entitling them to a 10 percent price reduction for which they reimbursed the stores.

*Mr. Kent P. Kratz* for the Commission.

*Mr. Guy J. Mauro*, of Salem, Ohio, and *Baker, Hosteller & Patterson*, by *Mr. Richard F. Stevens*, of Cleveland, Ohio, for respondents.

## COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, have violated and are now violating the provisions of subsections (a), (d) and (e) of section 2 of the Clayton Act (U.S.C. Title, 15 sec. 13) as amended by the Robinson-Patman Act approved June 19, 1936, hereby issues its complaint stating its charges with respect thereto as follows:

## COUNT I

PARAGRAPH 1. Respondent Dan Dee Pretzel & Potato Chip Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio with its principal office and place of business located at 2901 East 65th Street, Cleveland, Ohio.

Respondent Dan Dee Northern Ohio Corp. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio with its principal office and place of business also located at 2901 East 65th Street, Cleveland, Ohio.

## Complaint

Dan Dee West Virginia Corp. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of West Virginia with its principal office and place of business located at 2301 Warwood Avenue, Warwood, W. Va.

PAR. 2. Respondent Dan Dee Pretzel & Potato Chip Co. is now and for several years last past has been engaged primarily in the business of manufacturing and selling pretzels, potato chips, and corn chips. Almost all sales are and have been made to Dan Dee Central Ohio Corp., Dan Dee Eastern Ohio Corp, respondent Dan Dee Northern Ohio Corp., and respondent Dan Dee West Virginia Corp. These corporations, hereinafter referred to as the four sales corporations, in turn sell and have sold said products to retailers and jobbers.

PAR. 3. The officers and directors of the respondent corporations and the Dan Dee Central Ohio Corp. and the Dan Dee Eastern Ohio Corp. are as follows:

Dan Dee Pretzel & Potato Chip Co.: President and chairman of the board, Harry A. Orr; vice president and director, Gerald L. Pike; treasurer and director, Truman J. Fisher; secretary and director, Charles L. Pike; office manager and director, Sol Perelman; auditor and director, Daniel S. Lopatt.

Dan Dee Northern Ohio Corp.: President and chairman of the board, Harry A. Orr; vice president and director, Charles L. Pike; secretary and director, Daniel S. Lopatt; treasurer and director, Truman J. Fisher; director, Emil Talamo; director, Gerald Pike.

Dan Dee West Virginia Corp., Dan Dee Eastern Ohio Corp., and Dan Dee Central Ohio Corp. all have the same officers and directors, as follows: President and chairman of the board, Harry A. Orr; treasurer and director, Charles L. Pike; secretary and director, Daniel S. Lopatt; director, Gerald Pike.

The books of accounts and other records of the four sales corporations are and have been maintained in the general offices in Cleveland, Ohio, of respondent corporation Dan Dee Pretzel & Potato Chip Co. Also, Mr. Emil Talamo is and has been general sales manager for respondent Dan Dee Pretzel & Potato Chip Co. and for each of the four sales corporations and has had supervisory control over all the salesmen and personnel connected with each of the four sales corporations. All sales policies for all corporations are and have been the responsibility of Mr. Talamo and are not and have not been made by any of the four sales corporations.

PAR. 4. Respondents for several years have been and now are selling and distributing the aforesaid products in commerce between and among various States of the United States to different purchasers for

use, consumption, or resale, and preliminary to or resulting from such sales, have caused and now cause the shipment and transportation of said products to said purchasers from States of the United States other than the States wherein said purchasers are located. There is and has been during all times mentioned herein a continuous flow of trade in commerce, as "commerce" is defined in the Clayton Act, in said products across State lines between respondents and said purchasers.

PAR. 5. Respondents for several years have been and are now engaged in active and substantial competition with other corporations, firms, and individuals manufacturing, processing, selling, and distributing similar products between and among the various States of the United States, the District of Columbia and other places under the jurisdiction of the United States for use, consumption, or resale by different purchasers therein. Some of the aforesaid purchasers from respondents are competitively engaged with each other and with such purchasers from respondents' said competitors within their respective trading areas.

PAR. 6. In the course of their business respondents for several years have been and now are directly and indirectly discriminating in price between different purchasers of such products of like grade and quality by selling or causing the sale of these products at higher and less favorable net prices to some purchasers than to other purchasers competitively engaged as aforesaid with each other and with purchasers from respondents' competitors.

For example, among others, respondents have given some of their retailer customers, including certain drug and grocery chain stores, large independent grocery stores and cooperative grocery buying groups, a 5 percent or 5 percent plus 2 percent discount from their published wholesale prices which have been the amounts paid by certain other competing retailer customers who have not received the aforementioned discount. Also, respondents have given certain of their jobber customers a 25 percent discount from said wholesale prices while other competing jobber customers have received only a 20 percent discount.

PAR. 7. The effect of respondents' aforesaid discriminations in price between different purchasers of such products sold and purchased in manner and method and for purposes as aforestated may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which the respondents and the aforesaid favored purchasers are engaged or to injure, destroy, or prevent competition with said respondents, said favored purchasers or with customers of either of them.

PAR. 8. The aforesaid acts and practices of respondents constitute violations of the provisions of subsection (a) of section 2 of the Clayton Act (U.S.C., title 15, sec. 13) as amended by the Robinson-Patman Act approved June 19, 1936.

## COUNT II

PAR. 9. Each of the allegations contained in paragraphs 1 through 5 of this complaint are now realleged and incorporated in this count as if they were set forth in full.

PAR. 10. Respondents in the course and conduct of their business as aforesaid have been for several years last past and now are paying and contracting for the payment of something of value to and for the benefit of some of their customers as compensation or in consideration for services and facilities furnished by and through such favored customers in connection with the processing, handling, sale, or offering for sale of such products. Said payments and contracts for payment to and for the benefit of such favored customers are not and have not been made available on proportionally equal terms by the respondents to all their customers competing in the distribution of said products.

For example, among others, respondents have given special advertising and promotional allowances to certain of their customers which in some instances amounted to 3 percent of that customer's purchases. Such allowances have not been made available on proportionally equal terms by respondents to all of their other customers, some of whom have been competing in the sale of respondents' products with those receiving such allowances.

PAR. 11. The aforesaid acts and practices of respondents constitute violations of the provisions of subsection (d) of section 2 of the Clayton Act (U.S.C. title 15, sec. 13) as amended by the Robinson-Patman Act approved June 19, 1936.

## COUNT III

PAR. 12. Each of the allegations contained in paragraphs 1 through 5 of this complaint are now realleged and incorporated in this count as if they were set forth in full.

PAR. 13. Respondents for several years last past have been and now are discriminating in favor of some purchasers against others, who have bought their products for resale, by contracting to furnish or furnishing or by contributing to the furnishing of services or facilities connected with the processing, handling, sale, or offering for sale of such products so purchased upon terms not accorded to all other competing purchasers on proportionally equal terms.

For example, among others, respondents have furnished and have contracted to furnish certain purchasers the services and facilities of a "demonstrator" who is a sales person employed by respondents to visit the purchaser's store and "push" respondents' products. The "demonstrator" in most instances would give coupons to customers in such stores which when presented to the sales clerk would entitle them to a 10 percent reduction in the retail price of respondents' products. Periodically the stores in which these "demonstrators" appeared would return these coupons and then be reimbursed by respondents.

Respondents have not accorded the same services and facilities on proportionally equal terms to all the purchasers engaged competitively in the resale of their products.

PAR. 14. The aforesaid acts and practices of respondents constitute violations of the provisions of subsection (e) of section 2 of the Clayton Act (U.S.C. Title 15, sec 13) as amended by the Robinson-Patman Act approved June 19, 1936.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of subsections (a), (d), and (e) of section 2 of the Clayton Act (U.S.C. Title 15, sec. 13) as amended by the Robinson-Patman Act, the Federal Trade Commission on October 17, 1957, issued and subsequently served its complaint in this proceeding against Dan Dee Pretzel & Potato Chip Co., Dan Dee Northern Ohio Corp., corporations, existing and doing business under and by virtue of the laws of the State of Ohio, and Dan Dee West Virginia Corp., a corporation existing and doing business under and by virtue of the laws of the State of West Virginia.

On April 23, 1958, there was submitted to the undersigned hearing examiner an agreement between respondents Dan Dee Pretzel & Potato Chip Co. and Dan Dee West Virginia Corp. and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. By such agreement, respondents waive any further procedural steps before the hearing examiner and the Commission; waive the making of findings of fact and conclusions of law; and waive all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. Such agreement further provides that it disposes of all of this proceeding as to all parties; that the record on which this initial decision and the decision of the Commission shall be based shall consist solely of the

complaint and this agreement; that the latter shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents, and, when so entered, it shall have the same force and effect as if entered after a full hearing, and may be altered, modified, or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued.

1. Respondent Dan Dee Pretzel & Potato Chip Co. is a corporation, existing and doing business under the laws of the State of Ohio, with its office and principal place of business located at 2901 East 65th Street, Cleveland, Ohio.

Respondent Dan Dee West Virginia Corp., is a corporation, existing and doing business under the laws of the State of West Virginia, with its office and principal place of business located at the Central Union Building, 14th and Market Streets, Wheeling, W. Va.

Respondent Dan Dee Northern Ohio Corp. (as shown by an affidavit which is attached to such agreement and made a part thereof) is engaged solely in sales in intrastate commerce within the State of Ohio with the exception of sales to two jobbers, one in Erie, Pa., and one in Fort Wayne, Ind. The jobber customers of said respondent do not compete with each other and the retail customers of said jobbers located in the States of Pennsylvania and Indiana do not compete with said respondent's retail customers or with the customers of its only other jobber customer, which is located in Elyria, Ohio. Counsel supporting the complaint does not have presently available evidence to establish that any alleged difference in price between this respondent's jobber customers has had or may have any substantial adverse effect on competition in any line of commerce. The term "respondent" as used herein does not include the Dan Dee Northern Ohio Corp.

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

Order

54 F.T.C.

## ORDER

*It is ordered,* That respondents Dan Dee Pretzel & Potato Chip Co., a corporation, and Dan Dee West Virginia Corp., a corporation, their officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of pretzels, potato chips, corn chips, or related products in commerce as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

1. Discriminating in the price of such products of like grade and quality by selling to any one purchaser at net prices higher than the net prices charged to any other purchaser who in fact competes with the purchaser paying the higher price in the resale and distribution of respondents' products.

2. Paying or contracting for the payment of anything of value to or for the benefit of any of respondents' customers as compensation or in consideration of any service or facility furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any of respondents' products unless such payment or consideration is made available on proportionally equal terms to all of respondents' other customers competing in the distribution of such products.

3. Discriminating in favor of any of respondents' purchasers against any of their other purchasers of said products bought for resale by contracting to furnish or furnishing, or by contributing to the furnishing of any services or facilities connected with the processing, handling, sale, or offering for sale of such products unless such services or facilities are accorded to all of respondents' purchasers on proportionally equal terms.

*It is further ordered,* That the complaint be, and it hereby is, dismissed without prejudice as to respondent Dan Dee Northern Ohio Corp.

ORDER DENYING MOTION FOR STAY OF EFFECTIVE DATE OF INITIAL  
DECISION, AND DECISION OF THE COMMISSION AND ORDER TO FILE  
REPORT OF COMPLIANCE

The hearing examiner, on April 30, 1958, having filed his initial decision accepting an agreement containing a consent order to cease and desist executed by respondents, Dan Dee Pretzel & Potato Chip Co. and Dan Dee West Virginia Corp., and counsel in support of the complaint, service of which upon respondents was completed May 23, 1958; and

1844

Order

Said respondents, on June 23, 1958, having filed a motion requesting a stay of the effective date of said initial decision for the reason that the pretzel and potato chip industry allegedly is considering a trade practice conference and that entering an order prior to such rules as may be promulgated would be inequitable; and

The Commission being of the opinion that no adequate grounds have been shown for the action requested; and

It appearing that pursuant to the provisions of section 3.21 of the Commission's rules of practice, the aforesaid initial decision on the 25th day of June 1958, did become the decision of the Commission:

*It is ordered,* That the motion to stay the effective date of the initial decision be, and it hereby is, denied.

*It is further ordered,* That respondents, Dan Dee Pretzel & Potato Chip Co. and Dan Dee West Virginia Corp., shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

## IN THE MATTER OF

## E. L. BROWNHILL, INC., ET AL.

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

*Docket 7055. Complaint, Jan. 31, 1958—Decision, June 27, 1958*

Consent order requiring a furrier in Greensboro, N.C., to cease violating the Fur Products Labeling Act by affixing to fur products labels carrying fictitious prices and misrepresenting regular prices; by misuse of the term "blended" in labeling, invoicing, and advertising; by advertising which failed to disclose the names of animals producing the fur in certain products or that certain furs were artificially colored, used the name of one animal to describe the fur of another, and represented prices as reduced from regular prices which were in fact fictitious, or as "below wholesale cost," or misrepresented percentage savings; and by failing to maintain adequate records disclosing the facts on which such pricing claims were based.

*Mr. Alvin D. Edelson* for the Commission.

*Galef & Jacobs*, of New York, N.Y., for respondents.

## INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter, issued on January 31, 1958, charged the respondents named therein, E. L. Brownhill, Inc., a corporation, and Lewis Rosenberg, an individual, with violating the Fur Products Labeling Act and the rules and regulations promulgated thereunder, and the Federal Trade Commission Act. Since the issuance of the complaint, the individual respondent, Lewis Rosenberg, has died, and an agreement has now been entered into between the corporate respondent E. L. Brownhill, Inc., and counsel supporting the complaint which provides, among other things, that respondent admits all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondent specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in con-

struing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent E. L. Brownhill, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina with its office and principal place of business located at 108 North Elm Street, Greensboro, N.C.

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 E. L. Brownhill, Inc., a corporation, and its officers, and respondent's agents, representatives, and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, offering for sale, transportation, or distribution of fur products, in commerce, or in connection with the sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "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 on labels attached to fur products, or in any other manner, that certain amounts are the regular and usual prices of fur products when such amounts are in excess of the prices at which such products are usually and customarily sold by respondent in the recent regular course of its business.

2. Failing to affix labels to fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed by the rules and regulations.

(b) That the fur product contains or is composed of used fur, when such is the fact.

(c) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact.

(d) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact.

(e) The name, or other identification issued and registered by the Commission, of one or more persons who manufactured such fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported it in commerce.

(f) The name of the country of origin of any imported furs used in the fur product.

3. Setting forth on labels affixed to fur products the term "blended" as part of the information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations thereunder to describe the pointing, bleaching, dyeing, or tip-dyeing of furs.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices to purchasers of fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations.

(b) That the fur product contains or is composed of used fur, when such is the fact.

(c) That the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur, when such is the fact.

(d) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact.

(e) The name and address of the person issuing such invoice.

(f) The name of the country of origin of any imported furs contained in the fur product.

2. Setting forth on invoices pertaining to fur products the term "blended" as part of the information required under section 5(b) of the Fur Products Labeling Act and the rules and regulations thereunder to describe the pointing, bleaching, dyeing, or tip-dyeing of furs.

C. Falsely or deceptively advertising fur products 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 fur products which:

1. Fails to disclose:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations.

(b) That the fur products contain or are composed of bleached, dyed or otherwise artificially colored fur, when such is the fact.

2. Contains the name of an animal or animals other than the name or names of the animal or animals that produced the fur.

3. Contains the term "blended" as part of the information required under section 5(a) of the Fur Products Labeling Act and the rules

and regulations thereunder to describe the pointing, bleaching, dyeing, or tip-dyeing of furs.

4. Represents directly or by implication that respondent's regular price of any fur product is any amount which is in excess of the price at which respondent has regularly or customarily sold such products in the recent regular course of its business.

5. Represents directly or by implication that the prices of fur products are "below wholesale cost," or words of similar import, when such is not the fact.

6. Represents directly or by implication through percentage savings claims that the regular or usual retail prices charged by respondent for fur products in the recent regular course of its business were reduced in direct proportion to the amount of savings stated, when contrary to the fact.

D. Makes claims and representations in advertisements respecting comparative prices, percentage savings claims or claims that prices are below wholesale cost or claims that prices are reduced from regular or usual prices, unless there are maintained by respondent full and adequate records disclosing the facts upon which such claims and representations are based.

*It is further ordered,* That the complaint be, and it hereby is, dismissed as to respondent Lewis Rosenberg, deceased.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 27th day of June 1958, become the decision of the Commission; and, accordingly:

*It is ordered,* That the respondent E. L. Brownhill, Inc., a corporation, 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 the order to cease and desist.

IN THE MATTER OF  
PRESENT TRADING CORP. ET AL.

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

*Docket 7073. Complaint, Feb. 28, 1958—Decision, June 27, 1958*

Consent order requiring a concern in New York City, engaged in distributing imported stainless steel table flatware to retail stores, house-to-house installment companies, and houseware jobbers for resale to the public, to cease misrepresenting regular retail prices by placing fictitious and exaggerated prices on packages of such products and on empty boxes and cartons which it sold to its customers for said flatware sets.

*Mr. Garland S. Ferguson* for the Commission.

*Mr. Lawrence I. Hammer*, of New York, N.Y., for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding, issued February 28, 1958, charges the respondents Present Trading Corp., a corporation, and Ignatz Present and David Mermelstein, individually and as officers of said corporation, the office and principal place of business of all respondents being located at 220 Fifth Avenue, New York, N.Y., with violation of the Federal Trade Commission Act in the sale and distribution of imported stainless steel table flatware.

After the issuance of the complaint, said respondents entered into an agreement containing consent order to cease and desist with counsel in support of the complaint, disposing of all the issues as to all parties in this proceeding, which agreement was duly approved by the Director and Assistant Director of the Bureau of Litigation.

It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by said respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the said respondents admitted all the jurisdictional facts alleged in the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

By said agreement, the parties expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights

1856

## Order

they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement

Respondents further agreed that the order to cease and desist, issued in accordance with said agreement, shall have the same force and effect as if made after a full hearing.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provide for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with section 3.21 and 3.25 of the rules of practice, and, in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, that this proceeding is in the interest of the public, and issues the following order:

## ORDER

*It is ordered,* That respondents Present Trading Corp., a corporation, and its officers, and Ignatz Present, and David Mermelstein, 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 offering for sale, sale, and distribution of stainless steel table flatware, or any other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Setting forth prices on the boxes or cartons in which their merchandise is packed for sale, or on boxes or cartons furnished in connection with their said merchandise, which are in excess of the prices at which said merchandise is usually and customarily sold at retail, or representing in any other manner that any price is the usual or regular retail price which is in excess of the price at which said merchandise is usually and customarily sold at retail.

2. Putting any plan in operation whereby retailers or others may misrepresent the usual and customary retail prices of merchandise.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF  
COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 27th day of June 1958, become the decision of the Commission; and, accordingly:

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

## Decision

IN THE MATTER OF  
BERNARD W. COATES DOING BUSINESS AS ASSOCIATED  
MAIL MERCHANTISERS

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

*Docket 6988. Complaint, Dec. 13, 1957—Decision, June 28, 1958*

Consent order requiring an individual in Dorchester, Mass., engaged in the sale and distribution of merchandise and supplies for use in a mail order business, to cease representing falsely through the use of various trade names and advertising material mailed to prospective purchasers that he offered limited and exclusive membership in a cooperative association operated for the profit of its members, that said members were carefully selected and were assisted in the operation of their mail order enterprises by a large and experienced staff, that merchandise available for mail order sale by them had been selected after extensive research and trial tested for salability, and that members would earn large incomes; and to cease misleading use of the words "Association" or "Associated" in his trade names.

*Mr. Terral A. Jordan* for the Commission.

*Mr. Harold J. Field*, of Boston, Mass., for respondent.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on December 13, 1957, issued and subsequently served its complaint in this proceeding against respondent Bernard W. Coates an individual trading and doing business as a sole proprietorship under the name of Associated Mail Merchandisers, with his office and principal place of business located at 35 Pleasant Street, Dorchester, Mass.

On May 7, 1958, there was submitted to the undersigned hearing examiner an agreement between respondent and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. By such agreement, respondent waives any further procedural steps before the hearing examiner and the Commission; waives the making of findings of fact and conclusions of law; and waives all of the rights he may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. Such agreement further provides that it disposes of all of this

Order

54 F.T.C.

proceeding as to all parties; that the record on which this initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the latter shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law in any respect as alleged in the complaint; and that the following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondent, and, when so entered, it shall have the same force and effect as if entered after a full hearing, and may be altered, modified, or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued.

1. Respondent Bernard W. Coates is an individual formerly trading and doing business as a sole proprietorship under the name of Associated Mail Merchandisers, and now doing business under the name of National Mail Merchandisers, with his office and principal place of business located at 35 Pleasant Street, Dorchester, Mass.

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 Bernard W. Coates, an individual formerly trading as Associated Mail Merchandisers, now trading as National Mail Merchandisers, or under any other name, and respondent's agents, representatives and employees, directly or through any corporate or other device, in the offering for sale, sale, or distribution of various articles of merchandise and various kinds of catalogs, order blanks, and other supplies and equipment used in the operation of a mail order merchandising business, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or indirectly that:

1. Purchasers of respondent's aforesaid products are offered, sold or provided with a membership or other kind of association in or with a cooperative or mutually beneficial mail order buying and selling

1859

Decision

association or group operated in whole or in part for the profit or gain of its members or in any other kind of association or group.

2. Purchasers of respondent's aforesaid products are offered, sold or provided with a limited or exclusive membership or association in or with a cooperative or mutually beneficial mail order buying and selling association or group operated in whole or in part for the profit or gain of its members or in any other kind of association or group.

3. Purchasers of respondent's aforesaid products are carefully or otherwise selected to be members or associates of a cooperative or mutually beneficial mail order buying and selling association or group operated in whole or in part for the benefit of its members or of any other kind of association or group.

4. Purchasers of respondent's aforesaid products will be assisted and served in the operation of their respective mail order merchandising enterprises by a staff of persons or organizations who are competent, specialized and experienced in the operation of a mail order business and who are employed by respondent or are under his personal direction or control.

5. Merchandise made available for mail order offerings and sales by purchasers of respondent's aforesaid products has been selected on the basis of extensive research and study, has been trial tested for acceptance and salability on the general public or has proved that it will sell and be purchased by members of the buying public, unless such is in fact true.

6. Purchasers of respondent's aforesaid products will receive any amount of profits from the operation of a mail order merchandising business distributing the products offered by the respondent in excess of those which such purchasers may reasonably expect to receive.

B. Using the words "Association" or "Associated" as a part of his trade name or in any other manner representing that his business is other than a private commercial enterprise operated for profit.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF  
COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 28th day of June 1958, become the decision of the Commission; and, accordingly:

*It is 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 the order to cease and desist.

IN THE MATTER OF  
TOPVAL CORP. ET AL.

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

*Docket 7007. Complaint, Dec. 26, 1957—Decision, June 28, 1958*

Consent order requiring two associated mail order sellers in Lindenhurst, N.Y., of electrical appliances, electric skillets, cooker fryers, and other merchandise, to cease representing falsely in advertising in nationally distributed magazines—frequently in the form of salesmen's opportunities intended to attract individuals desiring to go into their own mail order discount business—that fictitious and exaggerated amounts were their usual retail or wholesale prices, and that their merchandise had been advertised in Life magazine; and to cease representing falsely, by displaying the names "General Electric" and "Westinghouse," that certain of their products were made by those companies, and by displaying the seals of Good House-keeping magazine and the United Laboratories, that their products had passed quality and safety tests.

*Mr. Harry E. Middleton, Jr.*, for the Commission.

*Mr. Michael J. Ryan*, of Babylon, N.Y., for respondents.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

On December 26, 1957, the Federal Trade Commission issued its complaint against Topval Corp., a corporation, and Kendex Corp., a corporation, and Michael H. Kent, erroneously referred to in the complaint as Michael Kent, and Joseph H. Kent, erroneously referred to in the complaint as Joseph Kent, individually and as officers of said corporations, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act with reference to electric appliances, including electric skillets, cooker fryers and other merchandise. After the issuance of said complaint, no answer having been filed thereto, the initial hearing was held on March 20, 1958, in New York, N.Y., at which time, before testimony was taken, an agreement for consent order was entered into by and between respondents and counsel supporting the complaint, subject to approval by the Bureau of Litigation, in accordance with section 3.25 of the rules of practice and procedure of the Commission. This agreement was duly approved by the Bureau of Litigation and submitted to the hearing examiner on April 11, 1958, together with affidavit executed by Michael H. Kent and Joseph H. Kent which is attached to said agreement and made a part thereof.

By the terms of said agreement, the respondents admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations, said agreement disposing of all of this proceeding as to all parties. Respondents in the agreement expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

It was further provided in said agreement that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the said agreement. It was further agreed that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint. The said agreement also provided that the order to cease and desist issued in accordance therewith shall have the same force and effect as if entered after a full hearing; that it may be altered, modified or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with sections 3.21 and 3.25 of the rules of practice; and in consonance with the terms of said agreement, the hearing examiner makes the following jurisdictional findings and order:

1. Respondents Topval Corp. and Kendex Corp. are corporations 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 174 East Montauk Highway, Lindenhurst, N.Y.

The individual respondents Michael H. Kent and Joseph H. Kent are officers of the corporate respondents and have their office and principal place of business at the same address as the corporate respondents.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents

Order

54 F.T.C.

under the Federal Trade Commission Act and this proceeding is in the interest of the public.

## ORDER

*It is ordered,* That respondents, Topval Corp., a corporation, and its officers, and Kendex Corp., a corporation, and its officers, and Michael H. Kent and Joseph H. Kent, individually and as officers of said corporations, and respondents' agents, representatives and employees directly, or through any corporate or other device, in connection with the offering for sale, sale and distribution of electric skillets, cooker fryers, or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act do forthwith cease and desist from:

1. Representing, directly or indirectly:

(a) That any amount is the retail price of merchandise when such amount is in excess of the price at which such merchandise is usually and regularly sold at retail;

(b) That any amount is the wholesale price of merchandise when such amount is in excess of the price at which such merchandise is usually and regularly sold at wholesale;

(c) That merchandise has been advertised in Life magazine; or has been advertised in any other magazine or publication, unless such is the fact.

2. Using the name of any company in connection with merchandise which has not been manufactured in its entirety by said company, or representing, directly or indirectly, that merchandise not manufactured in its entirety by a specified company, was so manufactured, provided however, that this prohibition shall not be construed as prohibiting a truthful statement that apart of an article of merchandise has been manufactured by a specified company when the part is clearly and conspicuously identified.

3. Using the Good Housekeeping seal of approval in connection with their merchandise; or representing in any manner that their merchandise, or any article thereof, has been awarded said seal of approval; or that their merchandise, or any article thereof, has been approved by any other group or organization, unless such is the fact.

4. Using the seal of United Laboratories, Inc., in connection with their merchandise; or representing in any other manner that their merchandise or any article thereof, has been approved by said company or that their merchandise, or any article thereof, has been approved

1862

Decision

by any other group or organization as to its safety, unless such is the fact.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 28th day of June 1958, become the decision of the Commission; and, accordingly:

*It is ordered,* That repondents Topval Corp., a corporation, and Kendex Corp., a corporation, and Michael H. Kent, erroneously referred to in the complaint as Michael Kent, and Joseph H. Kent, erroneously referred to in the complaint as Joseph Kent, individually and as officers of said corporations, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.



## INTERLOCUTORY ORDERS, ETC.

### O. J. McCLURE TALKING PICTURES

*Docket 6607. Order and Opinion, Aug. 9, 1957*

Order denying—for lack of preliminary showing of conditions for modification—respondent's motion to reopen proceeding and set aside desist order.

#### ON MOTION TO REOPEN

By ANDERSON, Commissioner:

In a letter dated July 6, 1957, the respondent requested that he be granted a rehearing and that the order to cease and desist heretofore entered be set aside. The letter was treated as a motion to reopen, and counsel supporting the complaint has filed an answer in opposition thereto.

On July 31, 1956, the Commission issued its complaint charging respondent, O. J. McClure, a distributor of manually-operated sound slide film projectors, with disparaging the efficiency and value of competitors' automatic sound slide film projectors. Thereafter, under section 3.25 of the Commission's rules of practice, respondent and counsel supporting the complaint negotiated and executed an agreement containing a consent cease and desist order. The agreement was submitted to the hearing examiner, who accepted it as a basis for his initial decision which he thereupon entered. Pursuant to section 3.21 of the Commission's rules of practice, the initial decision became the decision of the Commission on November 24, 1956, of which fact the respondent was duly apprised by an appropriate order, and the order to cease and desist contained therein has now become final by operation of law.

Under section 3.25 of the Commission's rules of practice, provision is made for negotiation of an agreement containing a cease and desist order disposing of a proceeding. The office of such an agreement is to obviate adversary trials and to avoid, in the public interest, the necessity of the expenditure of time and expense both on the part of respondents and the Commission. Every such agreement includes the admission of jurisdictional facts, a provision that the complaint may be used in construing the terms of the order and that the order shall have the same force and effect as if entered after a full hearing. Each such agreement, including the one in the instant case, is required to contain a waiver of the requirement that the decision must contain

1867

a statement of findings of fact and conclusions of law; and a waiver of further procedural steps before the hearing examiner and the Commission, as well as a waiver of all rights to challenge or contest the validity of the order to cease and desist. The order in the instant case, as contemplated by the rule, also contains a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law, as alleged in the complaint.

Finally, section 3.25 provides that an order to cease and desist issued on the basis of a consent agreement may be altered, modified or set aside in the manner provided by statute for other orders.

Under section 5 of the Federal Trade Commission Act, any order of the Commission which has become final may be reopened and altered, modified or set aside, in whole or in part, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action, or if the public interest shall so require. Ordinarily, the basis for such a determination is established by the introduction of evidence before a hearing examiner. As a prerequisite for such proceeding, there must, of course, be a preliminary showing that the conditions for modification may be present. The petition for reopening, modification or the setting aside of an order, therefore, should allege facts which, when assumed to be true, would justify the relief sought.

Respondent's letter of July 6, 1957, considered as a motion to reopen and set aside the order in this proceeding, which has become final, does not make the necessary preliminary showing. Respondent makes no contention that any condition of fact or of law has changed since entry of the order so as to require its modification. He states as his principal grounds that respondent never understood the reason for the Commission's decision and that respondent's evidence apparently never reached the Commission. The Commission has concluded that respondent's motion provides no basis for reopening the proceeding and it must, therefore be denied.

#### ORDER DENYING MOTION TO REOPEN PROCEEDINGS

This matter having been heard on the respondent's request, in the form of a letter dated July 6, 1957, for reopening of this proceeding for the purpose of having set aside the order to cease and desist heretofore entered in disposition of this proceeding; and

The Commission, for the reasons set forth in its accompanying opinion, having concluded the said motion fails to establish a reasonable probability that material changes in conditions of fact or in law have occurred and fails to demonstrate a reasonable probability that

the public interest requires reopening of the proceeding and setting aside of the order to cease and desist:

*It is ordered,* That respondent's request that the proceeding be reopened and the order to cease and desist be set aside be, and it hereby is, denied.

ERIE SAND & GRAVEL CO.

*Docket 6670. Order, Sept. 9, 1957*

Interlocutory order denying respondent's appeal from rulings granting complaint counsel's motion to amend complaint to conform to evidence introduced by consent of the parties; denying respondent's motion to dismiss complaint as not showing justification; and denying respondent's request for oral argument as serving no useful purpose.

ORDER DISPOSING OF RESPONDENT'S INTERLOCUTORY APPEAL AND  
REQUEST FOR ORAL ARGUMENT

This matter having come on to be heard upon respondent's interlocutory appeal from the hearing examiner's rulings on July 24, 1957, granting the motion of counsel supporting the complaint to amend the complaint and denying respondent's motion to dismiss the complaint, upon respondent's request for oral argument, and upon the answering briefs of counsel supporting the complaint in opposition thereto; and

It appearing to the Commission that the examiner's ruling on the motion to amend the complaint was in effect a ruling to conform the complaint to the evidence introduced by consent of the parties; and it being the opinion of the Commission that such a determination on the part of the examiner is entitled to great weight and not one to be disturbed in the absence of a clear showing of error; and it also appearing that to protect respondent's rights it is not required that the Commission render a ruling at this time, since respondent may raise this point on appeal from any initial decision which may be filed; and it having been determined that, under the circumstances, the ruling on the motion to amend is not one on which appeal will be granted under section 3.20 of the Commission's rules of practice; and

It further appearing that the examiner's denial of respondent's motion to dismiss the complaint is only a determination that a prima facie case has been established, a determination not affecting the final decision in the proceeding since that decision will be made on the basis of the whole record, including such evidence as may be received from the respondent; and it having been determined that there has been no showing of justification for appeal from the denial of the motion to dismiss, as required by said section 3.20; and

It additionally appearing that the Commission is now fully advised in the matter by the briefs of counsel and that oral argument would serve no useful purpose:

*It is ordered,* That respondent's interlocutory appeal from said rulings of the hearing examiner and its request for oral argument be, and they hereby are, denied.

#### AMERICAN HOME PRODUCTS CORP.

*Docket 6755. Order, Sept. 10, 1957*

Interlocutory order upholding hearing examiner's denial of motion to hold complaint in abeyance on the grounds that the Commission has not proceeded against all other products competitive with respondent's, etc.; and denying respondent's request for oral argument.

#### ORDER DENYING RESPONDENT'S INTERLOCUTORY APPEAL AND DENYING RESPONDENT'S REQUEST FOR ORAL ARGUMENT

This matter having come on to be heard upon respondent's interlocutory appeal from the hearing examiner's order, dated August 20, 1957, denying respondent's motion to hold the complaint and all proceedings thereunder in abeyance, upon respondent's request for oral argument, and upon answer to respondent's interlocutory appeal filed by counsel supporting the complaint; and

It appearing that the grounds asserted before the hearing examiner in support of respondent's motion, and renewed here on interlocutory appeal, are in substance that the Commission has not proceeded against all other products which are competitive with respondent's products; that such competitive products are advertised by representations similar to, or more far reaching than, those attacked in this proceeding; and that, if respondent is compelled to cease its representations and competitors are permitted to continue their practices, respondent's products would necessarily be forced off the market; and

The Commission being of the opinion that it is not prejudicially discriminatory for the Commission to proceed against respondent without pressing similar charges contemporaneously against respondent's competitors who allegedly engage in like practices; that, therefore, the ruling appealed from does not affect any substantial rights of respondent; that the ruling will not materially affect the final decision of the case; that a determination of the correctness of such ruling before conclusion of the trial is not required to better serve the interests of justice; and hence, the appeal is not one to be granted under section 3.20 of the Commission's rules of practice:

*It is ordered, accordingly,* That respondent's interlocutory appeal from the hearing examiner's order, dated August 20, 1957, denying

respondent's motion to hold the complaint and all proceedings thereunder in abeyance, and respondent's request for oral argument, be, and they hereby are, denied.

BURKLEIGH CO., ET AL.

*Docket 6270. Order and Opinion, Oct. 9, 1957*

Order denying—for lack of the requisite preliminary showing—motion to reopen proceeding and modify desist order.

OPINION OF THE COMMISSION

By ANDERSON, Commissioner:

By letter dated August 22, 1957, signed by respondent Edgar Kirby, apparently on his own behalf and in the interest of respondent Foreign Products Corp., it was requested that the Commission consider an accompanying sworn report of Dr. Reginald Milton as to the results of tests conducted by him for possible enhancement of bacterial activity and of nitrogen fixation in soil by reason of the addition of a product designated Actumus. The request seeks modification of the order to cease and desist heretofore entered in this proceeding through the setting aside of all but 3 of 14 inhibitory paragraphs of the order which has become final. The letter and report were treated as a motion to reopen the proceeding and to modify the order in the particulars indicated. Counsel supporting the complaint has filed an answer in opposition to the motion.

Respondents, by the order in question, were required to stop misrepresenting the qualities of Actumus as humus or as a soil conditioner. The order is based upon the hearing examiner's findings that respondents have claimed falsely that Actumus is humus; that it activates bacteria which create nitrogen; that it creates fertility in the soil; and that it is entirely natural and 100 percent organic. These findings are based upon contested issues fully tried and resolved by the hearing examiner. The 10 additional related prohibitions of the order are based upon an agreement containing a consent order to cease and desist executed by all parties to the proceeding.

Under section 5 of the Federal Trade Commission Act, any order of the Commission which has become final may be reopened and altered, modified or set aside, in whole or in part, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action, or if the public interest shall so require. Ordinarily, an informed determination on these premises is arrived at by the introduction of evidence before a hearing examiner. As a prerequisite for such proceeding there must, of course, be a preliminary showing that the conditions for modification may be present. Any motion for

reopening, modification or the setting aside of an order, therefore, should set forth facts which, when assumed to be true, would justify the relief sought.

Respondents' letter of August 22, 1957, together with the accompanying sworn report of Dr. Reginald Milton, does not make the requisite preliminary showing. Respondent Kirby makes no contention that any condition of fact or of law has changed since entry of the order so as to require its modification. Moreover, his letter and the accompanying report of tests performed by Dr. Milton furnish no information from which it might be concluded that the public interest otherwise requires the modification. On the contrary, Dr. Milton has shown that the difference, if any, in nitrogen between the treated and untreated samples of soil tested is too small to have any practical agricultural value. The report, if anything, tends to justify the inhibitions of the order sought to be set aside. It adds nothing significant to the scientific record made in this case on the basis of which the order to cease and desist was entered. The Commission, accordingly, has concluded that respondents' motion provides no ground for reopening the proceeding and it must, therefore, be denied.

ORDER DENYING MOTION TO REOPEN PROCEEDING AND MODIFY  
ORDER TO CEASE AND DESIST

This matter having come on to be heard by the Commission upon the respondents' request for modification of the order to cease and desist contained in the hearing examiner's initial decision, as adopted by the Commission on February 8, 1957, and upon answer in opposition to the request filed by counsel supporting the complaint; and

The Commission having concluded, for the reasons stated in its accompanying opinion, that respondents' submittal does not constitute a sufficient showing, as contemplated under section 5 of the Federal Trade Commission Act, that conditions of fact or law may have so changed so as to justify the action requested, or that the public interest so requires:

*It is ordered*, That respondents' request dated August 22, 1957, to reopen this proceeding and to modify the order to cease and desist previously entered herein be, and it hereby is, denied.

BANTAM BOOKS, INC.

*Docket 6802. Order and Opinion, Oct. 11, 1957*

Interlocutory order granting complaint counsel's appeal from hearing examiner's denial of request for hearing to introduce expert testimony that an exhibit tendered was an abridged edition, as having a direct bearing on the allegations of the complaint.

## ON INTERLOCUTORY APPEAL

By ANDERSON, Commissioner:

Respondent, Bantam Books, Inc., is charged in the complaint in this proceeding with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce in the sale of its paperbacked books. In this connection it is alleged that respondent in some cases fails to disclose the fact that its books are abridged; that in other cases it discloses the fact of abridgement in small, inconspicuous letters; and that in the case of reprints bearing new titles it does not adequately disclose the original titles. In its answer, respondent denied the charges.

At the initial hearing counsel supporting the complaint offered and there was received in evidence 41 of respondent's books. The record discloses agreement that these books were reprints, or were abridged, or had been retitled. Counsel supporting the complaint also offered in evidence one other book, Commission's exhibit 42, for identification, the receipt of which was objected to, however, on the ground that the book was neither a reprint nor an abridgement and, therefore, not relevant to the issues in this proceeding. This objection was sustained by the hearing examiner who, also on the record, denied the request of counsel supporting the complaint for a hearing sought for the purpose of introducing expert testimony that the exhibit tendered was in fact an abridged edition from which large portions of the original text were omitted.

Commission's exhibit 42, for identification, is a paperbound volume entitled:

Alexander Dumas  
THE COUNT OF MONTE CRISTO  
a new translation  
By Lowell Blair.

Counsel for respondent, on the record, vigorously denies that this book is an abridgment, or a reprint, claiming it to be "a new translation." For the reason that the proffered book did not disclose on its face that it was a reprint or an abridgement, the hearing examiner was of the opinion it was not proper evidence and, in response to counsel's request for another hearing, stated that a sufficient number of respondent's books had been received in evidence to establish respondent's practices so as to enable him to arrive at an initial decision on the case made. The request for the additional hearing was, therefore, denied.

The Commission has examined the record and finds that the only evidence adduced as to abridgment is that which tends to show inadequate disclosure of abridgment. There is no evidence presently in the record that in some cases respondent does not disclose in any manner

that certain of its books from which portions of the text have been deleted are, in fact, abridged editions. The purpose of the proffered evidence and testimony is to establish the fact that some of respondent's books are abridgments which contain no disclosure of that fact.

The Commission is of the opinion that the tendered evidence and testimony have a direct bearing on the allegations of the complaint. We are of the further opinion that the substantial right of counsel to support his case within the issues framed by the pleadings is involved in this interlocutory appeal. We also think that in the interest of justice this evidence and testimony should be received. We conclude, therefore, that the hearing examiner's ruling was erroneous and that the interlocutory appeal of counsel supporting the complaint should be granted.

ORDER GRANTING INTERLOCUTORY APPEAL OF COUNSEL SUPPORTING  
THE COMPLAINT

This matter having come on to be heard upon the interlocutory appeal of counsel supporting the complaint from the hearing examiner's ruling denying the request of counsel for a hearing to receive certain expert testimony and evidence; and

The Commission having concluded, for the reasons stated in the accompanying opinion, that the hearing examiner's ruling was erroneous:

*It is ordered*, That the appeal of counsel supporting the complaint be, and it hereby is, granted.

*It is further ordered*, That the case be remanded to the hearing examiner for further proceedings in conformity with the Commission's opinion.

CROSSE & BLACKWELL CO.

*Docket 6463. Order and Opinion, Nov. 13, 1957*

Order vacating initial decision dismissing complaint for lack of jurisdiction—respondent claiming to be a "packer" within the meaning of the Packers and Stockyards Act—and remanding case for further proceedings.

OPINION OF THE COMMISSION

By GWYNNE, Chairman:

The complaint charges violation of section 2(d) of the Clayton Act by the giving of promotional and advertising allowances to some but not all of respondent's customers competitively engaged in the resale of its products. Before evidence was taken as to the truth of this allegation, respondent filed a motion to dismiss on the ground that it is a "packer" within the meaning of the Packers and Stock-

yards Act (17 U.S.C. 191 et seq.) and that exclusive jurisdiction of the acts and practices in question was in the Secretary of Agriculture rather than the Federal Trade Commission. The hearing examiner sustained the motion and dismissed the complaint for want of jurisdiction, from which this appeal is taken.

The hearing examiner made findings of fact as to the jurisdictional feature as follows:

Factual allegations contained in the motion being controverted by counsel in support of the complaint, a hearing for that purpose only was held, from which it developed that respondent makes, manufactures or prepares some 14 products containing meat or "stock" extracted from meat, as follows:

<i>Name</i>	<i>Raw percentage</i>	<i>Cooked percentage</i>
Beef stew.....	25	18
Lamb stew.....	25	18
Corned beef hash.....	50	35
Chili con carne.....	25.5	17.5
Ham and tongue paste.....	36	24
Liver and beef paste.....	50	39
Scotch chicken soup.....	14	.4
French onion soup.....	12.5	-----
Cream of chicken soup.....	8.7	-----
Chicken noodle soup.....	13.8	-----
Chicken rice soup.....	9.3	-----
Beef noodle soup.....	20	-----
Vegetable beef soup.....	19	-----
Vegetable soup with beef stock.....	10	-----

Sales of these items containing meat or meat stock amounted to \$339,211 in 1955 and \$380,250 in 1956 out of a total sales of manufactured products in 1955 of \$7,760,679, and in 1956 of \$7,897,162. The sales of said products have continued during the year 1957 at approximately the same rate.

Respondent sells approximately 150 products under 1 brand name, and some 35 under another, totaling approximately \$14 million a year. Its sales in 1955 of the 14 products containing meat constituted 2.3 percent of its 1955 total sales, and in 1956, 2.7 percent.

\* \* \* \* \*

Respondent is not registered under the Packers and Stockyards Act with the Secretary of Agriculture, and does not own or control, directly or indirectly, through stock ownership or otherwise, any slaughterhouse or packing plant or any interest therein, nor does it do any slaughtering or shipment of carcasses in commerce. The meat which it incorporates in the 14 products enumerated above is purchased by it from a local slaughterhouse and by it trimmed, boned, cut up, cooked, mixed, and otherwise prepared for canning.

Title 7 United States Code section 191 is as follows:

Packer defined.

When used in this chapter—

The term "packer" means any person engaged in the business (a) of buying livestock in commerce for purposes of slaughter, or (b) of manufacturing or preparing meats or meat food products for sale or shipment in commerce, or (c) of manufacturing or preparing livestock products for sale or shipment in commerce, or (d) of marketing meats, meat food products, livestock products, dairy products, poultry, poultry products, or eggs, in commerce; but no person engaged in such business of manufacturing or preparing livestock products or in such marketing business shall be considered a packer unless—

(1) Such person is also engaged in any business referred to in clause (a) or (b) above, or unless

(2) Such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, by himself or through his agents, servants or employees, any interest in any business referred to in clause (a) or (b) above, or unless

(3) Any interest in such business of manufacturing or preparing livestock products, or in such marketing business is owned or controlled, directly or indirectly, through stock ownership or control or otherwise, by himself or through his agents, servants, or employees, by any person engaged in any business referred to in clause (a) or (b) above, or unless

(4) Any person or persons jointly or severally, directly or indirectly, through stock ownership or control or otherwise, by themselves or through their agents, servants, or employees, own or control in the aggregate 20 per centum or more of the voting power or control in such business of manufacturing or preparing livestock products, or in such marketing business and also 20 per centum or more of such power or control in any business referred to in clause (a) or (b) above.

The Commission had occasion to consider this section *In the Matter of Food Fair Stores, Inc.*, docket 6458. In that case the facts were substantially different. Food Fair had since 1945 operated a meat packing plant and bought livestock in commerce for purposes of slaughter. Furthermore, it produced and distributed meat as that term is used commercially.

Respondent in the instant case does neither of these. Its motion to dismiss is based solely on the fact that the products it produces and sells contain certain percentages of meats. The claim is that it is a "packer" under section 191(b) because it is engaged in the business of manufacturing or preparing meat food products for sale or shipment in commerce. The ultimate question, therefore, is whether such products are included in the definition given in Title 7 U.S.C. sec. 182(3) which is as follows:

(3) The term "meat food products" means all products and byproducts of the slaughtering and meat-packing industry—if edible.

The initial decision calls attention to section 1.1(w) of the regulations governing meat inspection by the U.S. Department of Agriculture

which regulations are promulgated under authority of the Meat Inspection Act, 21 U.S.C. secs. 71-91. The above section defines meat food products as:

Any article of food, or any article intended for or capable of being used as human food which is derived or prepared, in whole or in substantial and definite part, from any portion of any cattle, sheep, swine, or goat, except such articles as organo-therapeutic substances, meat juice, meat extract, and the like, which are only for medicinal purposes and are advertised only to the medical profession.

Title 21 has to do with the production, sale and transportation of many articles of food, including meat and meat food products. Section 74 provides for the inspection of all "meat food products prepared for interstate or foreign commerce in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment."

That the law contained in section 71 and following of Title 21 is a health measure to be given a broad construction to carry out its purpose is indicated by the following:

The determination of the meaning of the term "meat food products" is essential to the proper enforcement of the meat inspection law, and, as Congress has not defined the term, and it has no well defined meaning but is one of commercial usage, such determination is not a question of law upon which the Attorney General may express an opinion, but is a question of fact.—(1910) 28 Opinions of the Attorney General 369. The power to determine what is a meat food product rests in the Secretary of Agriculture subject to the restriction that the definition of the term adopted be not clearly and unquestionably outside the intent of such section. The definition of "meat food product" as given by the Secretary in regulation 3, section 8, to wit: "Any article of food intended for human use which is derived or prepared in whole or in part from any edible portion of the carcass of cattle, sheep, swine, or goats, if the said edible portion so used is a considerable definite portion of the finished food product" is valid.—(1911) 29 Opinions of the Attorney General 227.

In *Pittsburgh Milling Co. v. Totten* (1918) 248 U.S. 1, the court pointed out that one purpose of the act was to prevent shipment of impure, unwholesome, and unfit meat and meat food products in commerce, and that Oleo oil, a substance made from the fat of slaughtered beeves, seldom used by itself as food, but employed largely in making oleomargarine and somewhat in cooking, is a "meat food product" within the Meat Inspection Act, when manufactured fit for human consumption and not "denatured" and is barred from commerce unless inspected and passed under the act.

It is not disputed that respondent's products are meat food products as defined by the Secretary of Agriculture under the Meat Inspection Act. In fact, respondent is registered under said act and its products are inspected regularly.

However, the question in this case is not the meaning of "meat food products" under the Meat Inspection Act, but the meaning under

the Packers and Stockyards Act. The two acts are entirely separate. Although both touch and concern the general subject of meat and the production and distribution thereof, nevertheless, the objectives are entirely different. The Meat Inspection Act is a health measure to protect the public from the introduction of impure products into commerce. The Packers and Stockyards Act was enacted to remedy certain business practices of a designated industry.

We conclude that respondent's products are not meat food products under the definition of that term in the Packers and Stockyards Act for the following reasons:

- (1) The Packers and Stockyards Act contains no indication, either expressly or by implication that Congress intended to adopt therein the definition of meat food products which had been adopted by the Secretary of Agriculture under the Meat Inspection Act.
- (2) In fact the Packers and Stockyards Act has its own definition, differing in its language from that of the Meat Inspection Act.
- (3) In applying this definition, consideration should be given to the intent of Congress in adopting the legislation.

When the Packers and Stockyards Act was adopted, the Meat Inspection Act had been in operation for some time. Congress was familiar with the broad and sweeping definition of "meat food products" being enforced by the Secretary of Agriculture. Nowhere in the legislative history is there any express acceptance of such definition for the Packers and Stockyards Act. Nor is there an implied acceptance by failing to write a definition in the statute. On the contrary, a definition was expressly included, considerably limiting the sweep of the same language in the regulations under the prior legislation. Instead of including every article of food derived or prepared in part from any edible portion of the carcass of cattle, etc., the definition in the Packers and Stockyards Act covers only all edible products and byproducts of the slaughtering and meat-packing industry.

What Congress had in mind is illustrated by the following statement by Senator Wadsworth:

The discussions in the committee very clearly brought out the fact that the authors of the bill intended by this bill, and under these two definitions, to have these regulatory provisions apply to the packer as we know him, as he is generally considered, that is, a large concern engaged in purchasing animals, slaughtering them, selling the food products and processing the byproducts to a greater or lesser degree. That, I think, it is fair to say is the conception of the authors.

While there was considerable dispute as to the choice of language which would best express the congressional intent, nevertheless,

there were many other statements in substantial agreement with the above quotation from Senator Wadsworth.

In *Bishop v. City of Tulsa* (Okla. 1922) 27 A.S.R. 1008, the court said:

A byproduct is a secondary or additional product of value; something produced in the course of business in addition to the principal product. It is well known that packing houses, oil refineries, and some other kinds of manufacturers, make byproducts amounting in value to a material part of their gross income.

It is clear that respondent's products are not byproducts. The use of the term "byproducts" in the definition throws considerable light on what groups Congress intended to include under the Packers and Stockyards Act. The language used, the history and background of the legislation indicate that it was aimed at organizations buying livestock for slaughter or preparing therefrom meats as was customarily being done by the packers of that day. We do not believe that it was ever intended to cover an organization such as respondent, which buys no animals for slaughter, prepares no meat as that term is used commercially, and which only produces products of which meat may be an ingredient. In other words, respondent is not a member of the "slaughtering and meat packing industry" as envisioned by the framers of the Packers and Stockyards Act. This situation is similar to that of an independent processor of livestock products. As to that situation, the House Committee report points out:

An independent tannery would not be a packer, but if a packer sets up a tannery business as a separate corporation, it would be controlled.

To give the law the construction urged by respondent would bring strange results. For example, a baker who buys meat and puts it in pizza pies sold in interstate commerce would be a packer. A farmer might also be a packer in spite of the fact that the Meat Inspection Act exempts the farmer who engages only in traditional farming operations.

In construing the meaning of the words in the statute consideration must be given to the intent of the entire statute and to the evils it was designed to cure. This is true of such words as "meat" and "meat food products" which are used in a variety of meanings as is indicated by dictionary definitions and by court decisions. For example, see *Gardner v. State* (1915 Ind.), 108 N.E. 230; *State v. Nugent* (1955 N.C.), 89 S.E. 2 781; *State v. Morey* (Wis.), 60 Am. Dec. 439.

The general objective of the Packers and Stockyards Act was to regulate certain business practices of a group usually referred to as

the slaughtering and meat packing industry. To apply the act to respondent would be to go beyond what we consider to be the Congressional intent.

We conclude that the hearing examiner was in error in sustaining respondent's motion to dismiss. The appeal of counsel supporting the complaint is granted, the motion to dismiss is denied and the case is remanded to the hearing examiner for further proceedings in accordance with this opinion.

ORDER VACATING INITIAL DECISION AND REMANDING CASE TO HEARING  
EXAMINER

This matter having come on for hearing upon the appeal of counsel supporting the complaint from the initial decision of the hearing examiner which granted the respondent's motion to dismiss the complaint for lack of jurisdiction; and

The Commission, for reasons stated in its accompanying opinion, having determined that the hearing examiner was in error in granting the motion to dismiss:

*It is ordered,* That the initial decision be, and it hereby is, vacated and set aside.

*It is further ordered,* That this case be remanded to the hearing examiner for further proceedings in accordance with the Commission's opinion.

AMERICAN HOME PRODUCTS CORP.

(formerly WHITEHALL PHARMACAL CO.)

*Docket 6755. Order, Nov. 14, 1957*

Interlocutory order granting complaint counsel's appeal from hearing examiner's rulings excluding from the record photographic prints of the video portions of particular frames of certain kinescopes or films of respondent's television commercials as not the "best evidence."

ORDER GRANTING INTERLOCUTORY APPEAL FROM RULING OF HEARING  
EXAMINER

This matter having been heard upon an interlocutory appeal, filed by counsel in support of the complaint, from rulings of the hearing examiner excluding from the record photographic prints of the video portions of particular frames of certain kinescopes or films of the respondent's television commercials, which kinescopes or films had already been admitted in evidence; and

It appearing that the bases for said rulings were that the photographs are not the best evidence, and that they do not purport to show the films in their entirety; and

The Commission being of the opinion that inasmuch as the exhibits were not offered in substitution for the films, but in addition thereto, for the sole purpose of assisting the reviewing authorities in their study of the record after viewing the films, the rule excluding evidence because it is not the "best evidence" has no application; and

The Commission being of the further opinion that for the purpose indicated and in the circumstances of this case, the photographs constitute relevant, material and reliable evidence and that the advantages of having them in the record outweigh any technical objections to their admissibility:

*It is ordered*, That the rulings of the hearing examiner sustaining the respondent's objections to the exhibits designated as Commission's exhibits 25-A through K, 26-A through I, 27 and 28 for identification, be, and they hereby are, reversed.

*It is further ordered*, That said exhibits be, and they hereby are, received in evidence.

#### GIANT FOOD SHOPPING CENTER, INC.

*Docket 6459. Order and Opinion, Dec. 19, 1957*

Order vacating initial decision dismissing complaint for lack of jurisdiction—respondent operator of a supermarket chain claiming to be a "packer" within the meaning of the Packers and Stockyards Act—and remanding case to hearing examiner.

#### OPINION OF THE COMMISSION

By KERN, Commissioner:

Respondent was charged with violating section 5 of the Federal Trade Commission Act through, among other things, inducing payments of discriminatory advertising allowances by suppliers of its merchandise, which allowances it knew or should have known to be discriminatory. In the course of the hearings, respondent moved for dismissal of the complaint on the ground that it is a packer within the meaning of the Packers and Stockyards Act of 1921,<sup>1</sup> and that the acts and practices to which the charges related are within the exclusive jurisdiction of the Secretary of Agriculture. The hearing examiner granted the motion and filed an initial decision dismissing the proceeding. Counsel supporting the complaint have appealed.

Since 1936 respondent has operated a chain of supermarkets for retailing food—including meat, poultry, and dairy products—and household articles. After this proceeding was commenced and im-

<sup>1</sup>42 Stat. 160; 7 U.S.C. 191, et seq.

mediately before filing its motion to dismiss, respondent registered as a packer with the U.S. Department of Agriculture. According to its moving papers, respondent buys from its suppliers slaughtered carcasses of various animals, including steers, calves, and lambs. It receives its beef and veal as quarter- and half-carcasses, respectively, and the lamb in whole carcasses. Upon delivery these meats are cut and trimmed by butchers in the individual stores into steaks, roasts, and chops for display and sale over the counter. The butchers also make meat loaf and country sausage. The meat loaf is prepared by grinding predetermined quantities of beef, pork, and veal and adding spices; the sausage is composed of ground pork loins and spices.

Section 202 of the Packers and Stockyards Act<sup>2</sup> proscribes use by any packer of unfair or discriminatory practices or other acts there specified. Section 406(b)<sup>3</sup> provides, with exceptions not here material, that as long as that act remains in effect, the Federal Trade Commission "shall have no power or jurisdiction" relating to "any matter" made subject by the act to the jurisdiction of the Secretary of Agriculture. Section 2(a)(3),<sup>4</sup> defines the term "meat food products" as "all products and byproducts of the slaughtering and meat-packing industry—if edible." Of the various definitions of the term "packer" contained in section 201 of the act,<sup>5</sup> the one here relevant reads:

The term "packer" means any person engaged in the business (a) of buying livestock in commerce for purposes of slaughter, or (b) of manufacturing or preparing meats or meat food products for sale or shipment in commerce \* \* \*.

On the basis of his interpretation of the foregoing, the hearing examiner concluded that the respondent's cutting and boning of its purchased meats for resale, together with the grinding of hamburger meat, did not render respondent a packer within the meaning of the act. He concluded, however, that the processing activities incident to the sale of meat loaf and sausage did constitute the manufacture or preparation of meat food products which are separate and distinct from meat alone and that the respondent must accordingly be regarded as a packer within the meaning of the act and hence subject to the Secretary's exclusive jurisdiction.

We concur in the hearing examiner's conclusion that the preparation of meats as roasts, hamburger, and other cuts does not suffice

<sup>2</sup> 42 Stat. 161; 49 Stat. 649; 7 U.S.C. 192.

<sup>3</sup> 42 Stat. 169; 7 U.S.C. 227.

<sup>4</sup> 42 Stat. 158; 7 U.S.C. 182.

<sup>5</sup> 42 Stat. 160; 7 U.S.C. 191.

under the statute to constitute a meat-packing enterprise. We disagree with his conclusion that by making some of its meat into meat loaf and sausage respondent became a packer under the act.

The hearing examiner's conclusion that respondent's grinding and seasoning of some of its meats transform the legal identity of such meats under the act from "meat" to "meat food products" is plainly erroneous. As we have previously noted, the act defines "meat food products" as edible products and edible byproducts of the slaughtering and meatpacking industry. Edible meat, accordingly, is a meat food product within the meaning of the act. Hence, the meats which respondent elects to grind and season already are meat food products at the very time they are received by respondent, and they remain such when offered at retail as meat loaf and country sausage. Respondent does no more than engage in the activities which are customary in the retail merchandising of meat; these activities do not of themselves constitute the manufacture and preparation of meat or meat food products for sale or shipment in commerce within the purview of the act.

After the hearing examiner filed his initial decision, we held in the matter of *Crosse & Blackwell Co.*, docket No. 6463 (decided November 13, 1957), that the preparation of soups or other table foods containing meat purchased by the processor from a local slaughterhouse did not, under the act, confer upon the processor the status of packer. And we noted that through this legislation Congress was seeking to regulate the practices of the business concerns (and their financial affiliates) which composed the slaughtering and meatpacking industry. The law was aimed at controlling the packer *as Congress knew him*, and the legislative target was the large concern engaged in purchasing animals, slaughtering them, selling food products and processing the byproducts to greater or lesser degree. This congressional intent appears plainly in the previously noted definition of "meat food products." That definition does not purport to include every article of food derived or prepared in part from edible portions of cattle or other livestock. To the contrary, it is confined to edible products and edible byproducts of "the slaughtering and meat-packing industry." This language thus logically excludes from the category of articles to which the act applies those which are manufactured or prepared by persons not members of the slaughtering and meatpacking industry.

Of the 36 supermarkets operated by respondent, 14 are located in the District of Columbia. According to the definition of "commerce" in the statute, respondent's sales to the public throughout the latter

stores are sales "in commerce," that is, interstate commerce. However, neither this aspect of respondent's operations nor its recent registration with the Department can govern our determination of its status under the Packers and Stockyards Act. Respondent buys no livestock in commerce for purposes of slaughtering. There has been no showing that it owns or controls any interest in a packing establishment or that any substantial stock interest in respondent is held by a member of the slaughtering and meatpacking industry. Furthermore, respondent's processing operations are essentially limited to point-of-sale preparation and over-the-counter sale of its meat loaf and country sausage—ordinary and usual in the retailing of meat. It clearly is not a member of the industry group whose practices Congress sought to regulate—the slaughtering and meatpacking industry. To hold otherwise would make a "packer" out of almost every food retailer in the District of Columbia. That respondent itself senses the fallacy of such a position is, we think, evidenced by its belated registration as a "packer," as noted earlier.

The facts here differ materially from those under consideration in the matter of *Food Fair Stores, Inc.*, docket No. 6458 (decided September 27, 1957), where the respondent operated a meatpacking plant and engaged in the preparation of meats which it resold both to independent jobbers and through its own stores.

The appeal of counsel supporting the complaint is accordingly granted. The initial decision will be vacated and the case remanded for further proceedings consistent herewith.

ORDER VACATING INITIAL DECISION AND REMANDING CASE TO HEARING  
EXAMINER

This matter having come on for hearing upon the appeal of counsel supporting the complaint from the hearing examiner's initial decision granting the motion of the respondent to dismiss the complaint for lack of jurisdiction; and

The Commission, for reasons stated in the accompanying opinion, having determined that the hearing examiner was in error in granting said motion:

*It is ordered,* That the initial decision be, and it hereby is, vacated and set aside.

*It is further ordered,* That this case be remanded to the hearing examiner for further proceedings in accordance with the Commission's opinion.

## COLUMBUS COATED FABRICS CORP., ET AL.

*Docket 6677. Order and Opinion, Dec. 23, 1957*

Interlocutory order upholding hearing examiner's rulings limiting request for production of certain statements of witnesses, quashing certain specifications in subpoenas, and denying motion to strike testimony of witness; and denying request for oral argument.

## OPINION OF THE COMMISSION

By the COMMISSION:

This matter is before the Commission upon the interlocutory appeal of respondent Philan, Inc., from several rulings of the hearing examiner made in the course of hearings conducted in New York City from September 9 through September 12, 1957, as follows:

(1) Ruling of September 9, 1957, which, in response to Philan's motion in part requesting an order to require counsel supporting the complaint to produce for examination documents in his possession containing statements of certain named witnesses "to any investigator or other representative of the Federal Trade Commission prior to their testimony in this proceeding," ordered the production of only certain interview report documents with some deletions;

(2) Ruling of September 10, 1957, quashing certain specifications in two subpoenas duces tecum served upon Oscar Siperstein; and

(3) Ruling of September 12, 1957, denying Philan's motion to strike the testimony of Oscar Siperstein.

In connection with the ruling granting limited examination of certain documents in possession of counsel supporting the complaint, Philan argues first that, while the examiner ordered the turning over of interview reports with certain witnesses, he did not order the turning over of other prior statements of the *same witnesses* in forms other than interview reports. The hearing examiner considered the motion as "sort of a blunderbuss motion" and refused to grant the request to the extent that examination, direct or cross, brought out no indication of any report, statement, or interview of a witness. The result was to confine the requested production to interview reports only, and, in addition, to only the reports of this kind relating to the several witnesses in which cases it was apparent from the testimony that such reports were in existence; excluded were reports relating to other witnesses, as well as other prior statements of any of the witnesses. In other words, the request which involved an excursion to see what documentary material, if any, might be uncovered was limited to reasonable dimensions; it was limited to those documents immediately related to the testimony of the witnesses. Under the circumstances,

we do not believe that the hearing examiner abused his discretion in such ruling.

Philan additionally argues, relative to the September 9th ruling, that it was error for the examiner to excise those portions of the reports which he considered to be privileged and irrelevant or simply irrelevant. The deletions included portions which make reference to an applicant in this proceeding; information which we believe was properly withheld. For one thing, the identification of one who has complained to the Commission is irrelevant, since Commission action is taken only in the public interest. No applicant is a party to this proceeding. Furthermore, the status of a complainant is such that a strict policy of protecting his identity is warranted.<sup>1</sup> We have examined all of the parts deleted and conclude, as the examiner did, that they contain nothing relevant to this proceeding; consequently, we are in accord with the examiner's action.

Philan argues that it was denied the right to be heard relative to the excisions. It appears, however, that to be heard in the matter, Philan would have to be shown the deleted material. This would defeat the purpose of the action taken. Under all the circumstances, we cannot find that Philan was in any way prejudiced by the deletion of irrelevant parts of the reports in question.

In reference to the ruling quashing certain specifications in the subpoenas served upon Oscar Siperstein, Philan argues that quashing item 14 in the one and item 6 in the other was in error. These items are substantially similar, differing only with respect to the company involved and the period of time covered. The request is for any and all correspondence, or copies thereof, by or between N. Siperstein, Inc. [St. George Paint & Wallpaper Supply in the other] (or any officer or agent thereof) and any agency or department in the U.S. Government in the specified periods, containing statements which relate to or describe the purpose or sale of Wall-Tex or any difficulties in connection with such sale or purchase. The examiner construed this as reasonably calling for complaints to the Federal Trade Commission. He concluded that section 10 of the Federal Trade Commission Act made any such records absolutely privileged. This section prohibits any officer or employee of the Commission from making public any information obtained by the Commission without its authority.

We are of the opinion that in an administrative proceeding, such as this, statements in writing to the Commission by applicants or complaining parties should be strictly protected from disclosure, as a general rule. Philan concedes that the specifications in question call

<sup>1</sup> Even under criminal procedure, it has been held where a court concludes that material obtained by the Government from third persons ought to be produced, the court should be solicitous to protect against disclosure of the identity of informants. *Borman Dairy Co. v. United States*, 341 U.S. 214.

for complaints by the parties named made to the Federal Trade Commission. It asserts, however, that such production is necessary for Philan to be accorded the right of cross-examination. The question here is not dissimilar from that presented with respect to the request for documents in the possession of counsel supporting the complaint, and should be resolved on a similar basis. Not only has there been no use of any such statement in this proceeding, nor any reference thereto in the witness' testimony, the record fails to disclose that any written statement was ever made by the parties to the Commission. Under circumstances where confidential documents of this character might be revealed, we believe that some stronger relationship to the witness' testimony or to the proceeding in general is needed than is here shown to warrant the production requested.

Moreover, this question should not be viewed merely with respect to the specifications quashed. Philan has requested and has been granted by the examiner subpoenas to witness Oscar Siperstein covering a wide range of data and documentation adjudged to be relevant to this proceeding and concerning matters testified to, against which the witness' credibility might be tested. Furthermore, Philan has been given access to all interview reports with the witness, except so far as there has been some deletions of irrelevant matter. In short, access has been broadly granted to relevant matter requested having a bearing on the testimony of the witness. Under such circumstances, we do not believe Philan has suffered prejudice by way of any denial of its right to cross-examine.

The final question on this appeal is whether it was error for the examiner, having denied in part the requests for production, to deny Philan's motion to strike the testimony of witness Oscar Siperstein. Since we have already concluded that Philan has not been denied its right to cross-examination with respect to this witness, it follows that it was proper to deny the motion to strike.

Philan, Inc., has made a request for oral argument, but it appears that the briefs are entirely adequate to fully advise the Commission as to the matters in issue and that no useful purpose would be served thereby.

The interlocutory appeal and request for oral argument of Philan, Inc., are denied.

ORDER DENYING INTERLOCUTORY APPEAL AND REQUEST FOR ORAL  
ARGUMENT

This matter having come on to be heard upon the interlocutory appeal of respondent Philan, Inc., from certain rulings of the hearing examiner denying or limiting its request for production of certain records by motion and by subpoena duces tecum and denying its

motion to strike the testimony of a witness and upon said respondent's request for oral argument; and

The Commission having determined, for the reasons appearing in the accompanying opinion, that the appeal and the request for oral argument should be denied:

*It is ordered*, That the interlocutory appeal and request for oral argument of respondent Philan, Inc., be, and they hereby are, denied.

COLUMBUS COATED FABRICS CORP., ET AL.

*Docket 6677. Order and Opinion, Dec. 23, 1957*

Interlocutory order upholding hearing examiner's ruling denying in part respondents' motion to quash subpoenas duces tecum served upon one of them as involving trade secrets.

OPINION OF THE COMMISSION

By the COMMISSION:

This matter is before the Commission upon the interlocutory appeal of Oscar Siperstein, a witness in this proceeding, N. Siperstein, Inc., and St. George Paint & Wallpaper Supply, from the ruling of the hearing examiner which denied in part their motion to quash two subpoenas duces tecum served at the request of respondent Philan, Inc., upon said Siperstein, in the one instance as an officer of N. Siperstein, Inc., and in the other as an officer of St. George Paint & Wallpaper Supply. Brief has been filed in support of the appeal by counsel supporting the complaint. Respondent Philan, Inc., has filed briefs in opposition to the appeal and in answer to the brief of counsel supporting the complaint.

The requested documents, relative to which the motion to quash was denied, include, for various specified periods of time, the following:

(a) Records relative to the returns of Wall-Tex by N. Siperstein, Inc., to any vendor other than Philan, Inc.

(b) Records showing the names and addresses of all customers who purchased Wall-Tex from N. Siperstein, Inc., who returned Wall-Tex to N. Siperstein, Inc., as damaged or defective, for which return was made by N. Siperstein, Inc., to Philan, Inc., in the regular course of business, as well as the amount of credit extended or cash refunded to each such customer.

(c) Records showing the volume of Wall-Tex purchased by N. Siperstein, Inc., and St. George Paint & Wallpaper Supply, with the names of the vendors, and the volumes of sales of the product by N. Siperstein, Inc., and St. George Paint & Wallpaper Supply.

(d) Tear sheets of advertisements of Wall-Tex placed by N. Siperstein, Inc., and other related memoranda.

(e) Minutes of meetings of directors and stockholders showing the election of officers of the respective companies, as well as records relating to the identification of officers and employees.

The argument of the appellants seems to be principally that the subpoenas violate their right to privacy of records, particularly where allegedly little or no relevance has been shown. It is also strongly urged that the hearing examiner erred in allegedly delegating authority to counsel for respondent Philan, Inc., to decide whether or not the records should be produced.

Counsel supporting the complaint argues primarily that the records ordered to be produced contain trade secrets and thus are privileged from disclosure, citing authorities such as *E. B. Muller & Co., et al. v. Federal Trade Commission*, 142 F. 2d 511.

There does not appear to be any question here as to the general relevance and reasonable scope of the records ordered to be produced. The hearing examiner carefully and specifically considered the relevant nature of the documents in each instance. He also considered the reasonableness of the several requests, as evidenced by the fact that some specifications were stricken entirely or limited in their coverage. We find no reason to overrule his judgment in these respects.

The contention that the examiner delegated authority to decide whether or not the records should be produced is without foundation. The questions directed to counsel for Philan, Inc., were simply for the purpose of determining if said counsel had a reasonable basis for requesting various documents covered by the subpoenas. From the answers the examiner was better informed to decide the appropriateness of the requests. Such a procedure is proper and does not constitute a delegation of authority.

The argument that the documents ordered produced involve trade secrets apparently is most directly in point in connection with the request for records intended to identify certain customers of N. Siperstein, Inc. A customers list has been held to be a valuable property right, entitled to protection, and in general privileged against disclosure. *E. B. Muller & Co., et al. v. Federal Trade Commission, supra*. One of the subpoenas in this instance calls for the names of certain customers, but not an exhaustive listing by any means. The request is limited so that it calls for the names of only those customers who purchased Wall-Tex from N. Siperstein, Inc., and returned it as damaged or defective, and for which returns were made by N. Siperstein, Inc., to Philan, Inc. It does not appear that this would in any way involve a wholesale disclosure of the names of customers of N. Siperstein, Inc. We do not believe that the names of the several customers which might be revealed fall in the category of trade information protected by privilege. Moreover, there is no absolute privi-

lege against disclosure of trade secrets. If there are such secrets contained in the documents here involved, it is further believed that the circumstances of this proceeding justify an order requiring production.

The interlocutory appeal of Oscar Siperstein, N. Siperstein, Inc., and St. George Paint & Wallpaper Supply is denied.

ORDER DENYING INTERLOCUTORY APPEAL

This matter having come on to be heard upon the interlocutory appeal of Oscar Siperstein, a witness in this proceeding, N. Siperstein, Inc., and St. George Paint & Wallpaper Supply, from the ruling of the hearing examiner denying in part their motion to quash subpoenas duces tecum served upon said Oscar Siperstein as an officer of N. Siperstein, Inc., and as an officer of St. George Paint & Wallpaper Supply; and

The Commission having determined, for the reasons appearing in the accompanying opinion, that the appeal should be denied:

*It is ordered*, That the interlocutory appeal of Oscar Siperstein, N. Siperstein, Inc., and St. George Paint & Wallpaper Supply be, and it hereby is, denied.

FIDELITY STORM SASH CO. OF D.C., INC., ET AL.

*Docket 6804. Order, Jan. 7, 1958*

Interlocutory order upholding hearing examiner's orders amending the complaint to correct the names of the corporate respondents and denying motion to postpone hearing dates.

ORDER DENYING INTERLOCUTORY APPEAL

Counsel for respondents having filed an interlocutory appeal from the hearing examiner's order of November 14, 1957, amending the complaint to correct the names of the corporate respondents therein, and having also appealed from the examiner's subsequent order denying respondents' motion to postpone hearing dates set for January 20, 1958, et seq.; and

It appearing that the rulings made in both orders were clearly within the scope of the authority conferred upon the hearing examiner by section 3.9 of the Commission's rules of practice; and

It further appearing that no showing has been made that either ruling involves respondents' substantial rights or will materially affect the final decision of the case; and

The Commission being of the opinion that the appeals are not in the category of those to be granted under section 3.20 of the rules of practice:

*It is ordered,* That the aforesaid appeals, including respondents' request for oral hearing, be, and they hereby are, denied.

## SURPLUS TIRE CO., INC., ET AL.

*Docket 7004. Order, Feb. 26, 1958*

Interlocutory order upholding hearing examiner's denial of respondents' motion for continuance, to limit situs of all hearings to Chicago, and for disclosure of names and addresses of all complainants.

## ORDER DENYING INTERLOCUTORY APPEAL

Respondents having filed an interlocutory appeal from orders of the hearing examiner denying respondents' motions for continuance, to limit the situs of all hearings to Chicago, Ill., and for disclosure of the names and addresses of all complainants, and upon answer in opposition thereto filed by counsel supporting the complaint; and

The Commission, being of the opinion that no showing has been made that the rulings appealed from involve substantial rights or that such rulings will materially affect the final decision in this proceeding, has concluded that respondents' appeal does not come within the category of those to be granted under section 3.20 of the Commission's rules of practice:

*Accordingly, it is ordered,* That respondents' interlocutory appeal filed February 19, 1958, be, and it hereby is, denied.

## GULF OIL CORP.

*Docket 6689. Order, Feb. 28, 1958*

Interlocutory order upholding hearing examiner's order directing complaint counsel to furnish opposing counsel lists of witnesses to be called at scheduled hearings.

## ORDER DENYING INTERLOCUTORY APPEAL

Counsel supporting the complaint having filed an interlocutory appeal from that part of the hearing examiner's order of October 16, 1957, which directs that counsel furnish to opposing counsel, not less than two weeks prior to the date of each scheduled hearing or series of hearings, a list of the names and addresses of the witnesses whom they expect to call at such hearings; and

It appearing that no clear showing has been made that the challenged ruling constitutes an abuse of the hearing examiner's discretion or that said ruling involves substantial rights or will materially affect the final decision of the case; and

The Commission being of the opinion that in the circumstances the appeal is not one to be granted under section 3.20 of the Commission's rules of practice:

*It is ordered,* That said appeal be, and it hereby is, denied.

## VOSS HAIR EXPERTS OF GEORGIA

*Docket 6498. Order, Mar. 20, 1958*

Interlocutory order upholding hearing examiner's rulings denying respondent's motions to dismiss complaint for alleged failure to establish a prima facie case respecting jurisdiction and public interest, and to strike scientific testimony of complaint counsel's physician witness.

ORDER DISPOSING OF INTERLOCUTORY APPEALS FILED BY THE  
RESPONDENT

The respondent having filed on February 27, 1958, and March 3, 1958, interlocutory appeals from the hearing examiner's rulings denying motions by the respondent (1) to dismiss the complaint for alleged failure to establish a prima facie case respecting jurisdiction and public interest and (2) to strike the scientific testimony of a physician called as a witness by counsel supporting the complaint; and

It appearing that the challenged rulings of the hearing examiner do not constitute a decision on the merits of the case, nor do they affect the final decision or any of the respondent's rights to present fully his defense to the charges against him; and

The Commission having determined that neither of the appeals come within the category of those to be granted under section 3.20 of the Commission's rules of practice and that the respondent's request to present oral argument in support of the appeals should be denied:

*It is ordered,* That the respondent's interlocutory appeals be, and the same hereby are, denied.

## PURE OIL CO.

*Docket 6640. Order and Opinion, Mar. 20, 1958*

Interlocutory orders upholding hearing examiner's ruling directing that complaint counsel produce a certain interview report, and vacating and setting aside his rulings conditionally denying said counsel's requests for production by respondent of certain statements and for a subpoena duces tecum for production thereof.

## INTERLOCUTORY APPEAL FROM CERTAIN RULINGS

By the COMMISSION:

This matter is before the Commission on an interlocutory appeal of counsel supporting the complaint from several rulings of the hearing examiner made during the course of hearings held June 27, 1957, and December 10 and 11, 1957. The June 27 ruling appealed from is that directing counsel supporting the complaint to produce a Commission investigator's report of an interview with J. F. Liles, who appeared as a witness and testified at the instance of counsel supporting the complaint. The December 10 and 11 rulings appealed from

are those conditionally denying counsel supporting the complaint's requests for production by respondent of certain affidavits or statements of designated witnesses who also testified in support of the complaint, and requests for issuance of a subpoena duces tecum directed to Pure Oil Co., respondent, for production of such documents.

The circumstances surrounding the appeal are as follows:

On June 27, 1957, during the testimony of J. F. Liles, a Commission witness, respondent's counsel requested the production of an interview report with this witness said to have been prepared by a Commission investigator identified as Francis J. Stewart. Liles testified that he had been interviewed by this investigator. The hearing examiner directed production of the interview report and noted in effect that he would examine it for relevancy and then make the relevant portions, if any, available to respondent. Counsel supporting the complaint refused to comply with this order, it appearing generally that the grounds relied upon were the lack of authority of the examiner and the discretion invested in said counsel with respect to confidential documents.

Subsequently, during the hearing of December 10, 1957, counsel supporting the complaint requested that counsel for respondent be directed to produce a certain affidavit signed by witness Samuel Ray Harris. This witness was then on the stand testifying for counsel supporting the complaint. During the course of the examination of this and some other dealer witnesses, it was shown that they had given statements to representatives of respondent. Apparently, these were signed and notarized statements taken following the issuance of the complaint and related to matters alleged in the complaint. The hearing examiner denied the request on the ground that it was inequitable to order respondent to produce this document while counsel supporting the complaint stood in defiance of the examiner's order to produce the interview report concerning witness Liles. The examiner indicated he would order the production of the Harris affidavit if counsel supporting the complaint would agree to produce the Liles interview report.

The hearing examiner made similar rulings with respect to requests of counsel supporting the complaint for production of the statements or affidavits of witnesses Charles E. Allgood and Seth Calvin Gordon. On December 11, 1957, counsel supporting the complaint requested production of a statement signed by witness William Arthur Burke, then testifying in support of the complaint. At this time said counsel agreed to produce the interview report with Liles in conformity with the examiner's prior order, as the examiner had indicated he must to obtain production of any such document. Counsel, however, specifi-

cally limited his agreement to produce to the Liles report only. The examiner then ruled that he would not order respondent to produce such statement unless counsel supporting the complaint agrees that he would comply with all future orders of the hearing examiner respecting the production of documents.

The examiner likewise refused to grant the requests made by counsel supporting the complaint on December 10 and 11, for the issuance of a subpoena duces tecum for the production of such statements or affidavits. The December 10 request was for a subpoena directed to Pure Oil Co. for the production of all statements taken by any representative of that company from their independent dealers with respect to a certain alleged plan. The request for subpoena of December 11, was not particularized. These requests were denied as to the witnesses testifying for the same reasons that production of the documents was not directed. Counsel supporting the complaint thereupon appealed from these several rulings.

The ruling of June 27, 1957, directing production of the report of interview with Liles was not appealed from within the time permitted by section 3.20 of the Commission's rules of practice, and, thus, this ruling is not now subject to interlocutory appeal. The fact that counsel in support of the complaint may have considered an appeal within such time unnecessary because of the examiner's failure to insist upon immediate compliance with his direction is wholly immaterial. Under the Commission's procedures for adjudicative cases, the primary responsibility for the orderly conduct of hearings for the receipt of evidence rests with the hearing examiner. This officer, in the discharge of his duty, has the necessary authority to rule on all motions and other requests which may be appropriate in adversary proceedings, and it seems elementary that he is entitled to expect counsel, both in support of and in opposition to the complaint, to govern themselves accordingly. Unless and until it is reversed or modified, an examiner's ruling represents the law of the case on the points covered, and it should not be necessary to remind counsel that it is his obligation to either obey such ruling or take the steps provided in the rules of practice to have it reviewed. Under no circumstances can he be permitted to arrogate to himself the right to decide whether or not he will be bound by it or when he will appeal from it.

Although the ruling of June 27 is not subject to interlocutory appeal, consideration of the rulings of December 10 and 11, 1957, involves also a review of the June 27 ruling, since compliance therewith was one of the conditions attached to the later rulings.

In the opinion of the Commission, the ruling of June 27 was erroneous. The Commission considers data and information received from any informant to be confidential as well as privileged and permits

disclosure only in accord with the provisions of section 1.133 of the Commission's rules of practice, subject, however, to the rules of law with respect to privilege in the conduct of any proceeding.

In this instance, there was no action which deprived the interview report with witness Liles of its status as a privileged document. This witness testified that he had been interviewed by an attorney-examiner named Stewart. Respondent, on the basis of this admission, requested production of the interview report for the purpose, it was stated, of seeing whether the witness made any statements to Mr. Stewart inconsistent with his testimony. There is no showing that the interview report was used in any way during the course of the hearings. It was a report prepared not by the witness but by an outside party. Such report, in addition to being privileged, is pure hearsay and would be inadmissible if offered as evidence. Furthermore, it could not be successfully used to impeach the testimony of the witness. The fact, if it be a fact, that a third party had reported what the witness had said would be wholly immaterial. This situation is entirely different from that in *Jencks v. U.S.*, 353 U.S. 657 (June 3, 1957), whether or not the rule of that case may be held to apply to administrative proceedings. Among other things, in *Jencks* the production requested was for documents prepared by witnesses on the stand concerning activities as to which they testified.

Respondent in its brief in opposition to the appeal cites our opinion *In the Matter of Columbus Coated Fabrics Corporation, et al.*, docket No. 6677 (decision on interlocutory appeal, December 23, 1957). The cases are not comparable. There the Commission was considering in pertinent part the appeal of that respondent from the examiner's ruling which denied production of an indefinite number of unidentified documents other than interview reports and also the excised portions of certain interview reports. We held that, under the circumstances, the examiner properly ruled in denying production of the documents other than interview reports and that he did not err in excising nonrelevant parts of the interview reports ordered turned over to respondent. In ruling on the propriety of excising irrelevant material in reports, we did not thereby rule as to the correctness of the order for production of these reports. That question was not before us. Counsel in support of the complaint had not appealed from the ruling requiring such production.

Because the ruling of June 27 was in error, the rulings of December 10 and 11 were necessarily erroneous also since they imposed upon counsel supporting the complaint the obligation to produce a document which the examiner had no power to require and should not have required. Furthermore, it was unreasonable to attach a condition that counsel supporting the complaint must agree to produce any thing

else the examiner ordered. Each order for production must be determined on its own merits when made.

In granting the appeal from the rulings of December 10 and 11, we are deciding only that the examiner erred in conditioning his order for the production of documents sought by counsel supporting the complaint upon the production of the Liles report or upon an agreement to produce any other document which the examiner might order. The question whether or not counsel supporting the complaint are entitled to the affidavits or statements they seek is not before the Commission, and on this point no decision is made.

Accordingly, the appeal is denied insofar as it is from the June 27 ruling and granted insofar as it is from the rulings of December 10 and December 11, 1957.

#### ORDER RULING ON INTERLOCUTORY APPEAL

Counsel supporting the complaint having filed an interlocutory appeal from the hearing examiner's ruling of June 27, 1957, directing that said counsel produce a certain interview report, and from the examiner's rulings of December 10 and 11, 1957, conditionally denying the requests of said counsel for an order by the examiner directing the production by respondent of certain statements and conditionally denying requests for a subpoena duces tecum for production of such documents; and

The Commission, for the reasons stated in the accompanying opinion, having denied the appeal insofar as it is from the ruling of June 27, 1957, and having granted the appeal insofar as it is from the rulings of December 10 and 11, 1957:

*It is ordered*, That the rulings of December 10 and 11, 1957, involved in this appeal, be, and they hereby are, vacated and set aside.

B. F. GOODRICH CO., ET AL.

*Docket 6485. Order, March 26, 1958*

Interlocutory order upholding hearing examiner's ruling denying respondent's motion to withdraw from instant proceeding any issue as to its dealings, etc. with Firestone Tire & Rubber Co., since the question thus presented was determined adversely to respondent on an earlier appeal.

#### ORDER DENYING INTERLOCUTORY APPEAL

Respondent, the Texas Co., having filed with the Commission an interlocutory appeal from the hearing examiner's ruling of February 24, 1958, denying its motion to withdraw from this proceeding any issue as to dealings, practices, contracts, agreements or arrangements between the Texas Co. and the Firestone Tire & Rubber Co.,

and to strike all evidence heretofore received in this case with respect to any such issue; and

It appearing that it is the respondent's contention that because of the reception of evidence by the same hearing examiner, concerning contracts and dealings between the Texas Co. and the Firestone Tire & Rubber Co. in both this proceeding and docket No. 6487 in which the Texas Co. is not a party, this respondent is deprived of a fair hearing; and

It further appearing that the question thus presented was considered and in effect determined adversely to the respondent in the Commission's disposition on November 28, 1956, of an interlocutory appeal theretofore filed by counsel in support of the complaint from rulings of the hearing examiner excluding from the record evidence of the type here involved; and

The Commission being of the opinion that the aforesaid determination of the question renders unnecessary its further consideration at this time:

*It is ordered*, That the respondent's appeal, together with its motion for deferment of decision thereof and for permission to file additional briefs and its request for oral argument, be, and they hereby are, denied.

PROCTER & GAMBLE CO.

*Docket 6901. Order, March 26, 1958*

Interlocutory order in merger proceeding reversing hearing examiner's rulings excluding from subpoena as irrelevant respondent's records showing acquisitions, advertising expenditures for acquired products, etc. and limiting demand for acquired company's records.

ORDER SUSTAINING APPEAL FROM HEARING EXAMINER'S RULING  
LIMITING SUBPENA

This matter having come on to be heard upon an interlocutory appeal filed by counsel in support of the complaint from the hearing examiner's rulings granting in part the respondent's motion to limit or quash a subpoena duces tecum theretofore served on the respondent; and

It appearing that the effects of the rulings are to exclude from the subpoena as irrelevant to any of the issues in this proceeding the respondent's records showing its domestic acquisitions from 1946 to the date of the subpoena, its advertising and promotional expenditures, including designated surveys and advertising research reports, concerning certain products recently acquired or developed by the respondent, for the years 1952 through 1957, and the records of the Clorox Chemical Co. showing its domestic acquisitions from 1952

through 1957, and to limit to material actually used in 1956 and 1957 the subpoena's demand for production of the Clorox Chemical Co.'s 1952-57 records showing the company's merchandising practices, the prices of its products, the geographical areas served by each of its producing facilities and the dollar volume sales in each such area, and samples of the labels and wrappers used on each of its products; and

The Commission having considered the matter in the light of all of the circumstances, including the allegations of the complaint, with particular reference to the nature of the acquisition charged to have been unlawful and the scope of the inquiry concerning the potential effects on competition which is necessary, and having reached the conclusion that the records and documents excluded from the subpoena are generally relevant to the basic issues involved in the proceeding and further, that a requirement for their production need not expand the case beyond manageable proportions:

*It is ordered*, That the hearing examiner's rulings granting in part the respondent's motion to limit or quash the subpoena as aforesaid be, and they hereby are reversed, it being understood, however, that this does not constitute a ruling on the respondent's contention that the requirement for the production of certain of said records and documents is an unreasonable burden on the respondent and involves an unnecessary disclosure of its trade secrets, or a determination of the admissibility of any of the records or documents into the record as evidence, neither of which questions was involved in the appeal.

J. H. CAMP, ET AL.

*Dockets 4446, 4893. Order and Opinion, April 9, 1958*

Order denying respondent's motion to reopen proceedings to set aside desist order.

OPINION OF THE COMMISSION

By TAIT, Commissioner:

In a petition filed March 18, 1958, respondent in these proceedings requests that the order entered in docket No. 4446 on March 12, 1941, and the order entered in docket No. 4893 on June 27, 1944, be set aside. This petition has been treated as a motion to reopen and set aside the said orders. Counsel supporting the complaint has filed an answer in opposition thereto.

In both proceedings, respondent entered into stipulations as to the facts with counsel supporting the complaint. The Commission in each case made its findings as to the facts and conclusion, based on the facts as stipulated and entered an order to cease and desist. The orders have become final.

Respondent's motion makes no showing as to a change in conditions of fact or of law or that the public interest requires the reopening of these proceedings and the setting aside of the orders to cease and desist. The basis for the request is, in substance, that the decision in *Federal Trade Commission v. Carter Products, Inc.*, 346 U.S. 327 (1953), represents a change in conditions of law. That decision, however, was not a ruling on the merits; rather, it was a ruling on procedure in a matter involving contested issues of fact.<sup>1</sup> It could have no possible effect on these proceedings in which the facts were stipulated. The Commission, accordingly, has concluded that respondent's motion provides no ground for reopening the proceedings and it must, therefore, be denied.

## ORDER DENYING MOTION TO REOPEN PROCEEDINGS

This matter having been heard upon respondent's petition filed March 18, 1958, for reopening of this proceeding for the purpose of having set aside the order to cease and desist heretofore entered in disposition of this proceeding; and

The Commission, for the reasons set forth in its accompanying opinion, having concluded that said petition fails to establish a reasonable probability that material changes in conditions of fact or in law have occurred and fails to demonstrate a reasonable probability that the public interest requires reopening of the proceeding and setting aside of the order to cease and desist:

*It is ordered*, That the respondent's request that the proceeding be reopened and the order to cease and desist be set aside be, and it hereby is, denied.

## GULF OIL CORP.

*Docket 6689. Order, April 17, 1958*

Interlocutory order upholding hearing examiner's denial of complaint counsel's application for issuance of subpoena duces tecum directing respondent to produce contracts for sales of natural gasoline and liquefied petroleum gas as providing little relevant information beyond that already in record.

## ORDER DENYING APPEAL FROM HEARING EXAMINER'S RULING

This matter having come on to be heard upon an appeal filed by counsel in support of the complaint from the hearing examiner's ruling denying counsel's application for the issuance of a subpoena duces tecum directing Warren Petroleum Corp. to produce all of its contracts for the years 1954, 1955, and 1956 to sell natural gasoline and lique-

<sup>1</sup> Upon remand of the case to the Commission, the Commission after further proceedings issued its decision with an order to cease and desist. This matter is now on appeal to the Court of Appeals for the Ninth Circuit.

fied petroleum gas to the 20 largest purchasers of each of said products; and

It appearing that the ruling was based, in part at least, on the hearing examiner's determination that the contracts involved would provide counsel with little, if any, information relevant to the issues in this proceeding other than that which is already contained in the record; and

Such a determination being a matter within the sound discretion of the hearing examiner, and no clear showing having been made that in this instance such discretion was abused:

*It is ordered*, That the aforesaid appeal be, and it hereby is, denied  
Commissioners Secrest and Kern dissenting.

### CONSOLIDATED FOODS CORP.

*Docket 7000. Order, April 25, 1958*

Interlocutory order in merger proceeding upholding hearing examiner's denial of respondent's motion for leave to file memorandum in support of its proposed motion to dismiss complaint, to argue said motion orally, etc.

#### ORDER DISPOSING OF RESPONDENT'S INTERLOCUTORY APPEAL AND MOTION TO DISMISS COMPLAINT

This matter having come on to be heard upon the respondent's appeal from the hearing examiner's order of April 2, 1958, denying the respondent's motion for leave to file on or before May 10, 1958, a memorandum in support of a proposed motion to dismiss the complaint and to argue said motion orally, and for postponement of a hearing theretofore set for April 29, 1958, to a date to be fixed after final decision on the motion to dismiss; and

It appearing that the basis for the hearing examiner's order was that he would have no authority to rule on the questions to be raised in the proposed motion to dismiss, namely, the propriety and timeliness of the Commission's action in issuing the complaint in the first instance and the sufficiency of the complaint as issued to state a cause of action under section 7 of the Clayton Act, as amended; and

It further appearing that the respondent has made no showing that the hearing examiner was in error in so ruling, and, thus, has failed to demonstrate that the order is or may be one to be entertained under section 3.20 of the Commission's rules of practice; and

The Commission, however, having considered the respondent's motion to dismiss the complaint, filed April 7, 1958, and having determined that the issues presented therein can best be resolved after the development of a complete factual record:

*It is ordered,* That the respondent's appeal from the hearing examiner's order of April 2, 1958, be, and it hereby is, denied.

*It is further ordered,* That the respondent's motion to dismiss the complaint be, and it hereby is, also denied, without prejudice, however, to the right of the respondent to renew said motion after introduction of all of the evidence in the case.

NATIONAL RESEARCH CO. ET AL.

*Docket 6236. Order and Opinion, May 22, 1958*

Order remanding case to hearing examiner to consider whether changes in conditions of law or fact, or the public interest, require modification of desist order.

OPINION OF THE COMMISSION

By GWYNNE, Chairman:

This matter is before the Commission on a notice and opportunity for hearing in the matter of modification of the order heretofore entered. Both parties have presented written briefs and oral arguments.

The original complaint charged respondents with violation of the Federal Trade Commission Act by engaging in unfair and deceptive acts and practices through the dissemination and use of "skip tracing" forms. After a hearing, the hearing examiner found against respondents and entered an order requiring respondents to cease and desist from:

- (1) Using or placing in the hands of others for use, any form, questionnaire, or other material, printed or written, which represents, directly or by implication, that the purpose for which the information is requested is other than that of obtaining information concerning delinquent debtors;
- (2) Representing, or placing in the hands of others any means of representing, directly or by implication, that money is being held for or is due, persons concerning whom information is sought, or is collectible by such persons, unless money is in fact due and collectible by such persons and the amount of such money is accurately stated;
- (3) Using the terms "Claims Office," "Reverification Office," or "United States Credit Control Bureau" or the picturization of an eagle, or any other word or phrase, or picturization of similar import to designate, describe or refer to respondent's business; or otherwise representing, directly or by implication, that requests for information concerning delinquent debtors are from the U.S. Government or any agency or branch thereof, or that their business is in any way connected with the U.S. Government;
- (4) Using the name "New Employment Status Questionnaire," or any other name of similar import to designate, describe, or refer to respondents' business; or otherwise representing directly or by implication that respondents' business is that of gathering and furnishing information relative to employment;
- (5) Using the name "Disbursements Office," or any other name of similar import to designate, describe or refer to respondents' business; or otherwise representing, directly or by implication, that money has been deposited with them

for persons from whom information is requested, unless or until the money has in fact been so deposited, and then only when the amount so deposited is clearly and expressly stated;

(6) Using the name "Cigarette and Tobacco Research Bureau," or "National Gasoline Research Bureau," or any other name of similar import to designate, describe or refer to respondent's business; or otherwise representing, directly or by implication, that respondents are a research bureau, or are engaged in research.

Counsel supporting the complaint urges that the Commission reopen the proceedings and modify the order as set forth in its notice and opportunity for hearing. Respondents' answer, among other matters, denies the jurisdiction of the Commission to so modify such order, because there is no showing since the issuance of the original order that there are changed conditions of fact or of law, or that the public interest requires the reopening and modification, and requests that a hearing be granted before the Commission in respect to the proposed modification.

Section 5(b) of the Federal Trade Commission Act provides in part:

Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the transcript of the record in the proceeding has been filed in a circuit court of appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission may at any time, after notice and opportunity for hearing, reopen and alter, modify or set aside, in whole or in part, any report or order made or issued by it under this section, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action or if the public interest shall so require:

Clayton Act orders do not become final merely by lapse of time. Consequently, that Act contains the following provision as to modification:

Until a transcript of the record in such hearing shall have been filed in a U.S. court of appeals, as hereinafter provided, the Commission or Board may at any time upon such notice, and in such manner as it shall deem proper, modify or set aside in whole or in part any report of any order made or issued by it under this section.

See also *In the Matter of National Biscuit Co.*, docket No. 5013.

The Federal Trade Commission Act's provision for modification was considered by the court in *American Drug Corp. v. Federal Trade Commission* (1944) 149 F. 2d 608. There, the Commission, in 1934, had issued an order against respondent. In 1944, the staff of the Commission moved to set aside the order and dismiss the complaint without prejudice. In response to a show cause order, respondent filed a return, challenging the jurisdiction of the Commission to set

aside its earlier order on the ground that such action was not in the public interest. The Commission set aside its 1934 order and dismissed the complaint without prejudice, from which the appeal to the court was taken. The Commission moved to dismiss the appeal on the grounds (a) that the court had no jurisdiction to review the order, and (b) that respondent was in no way aggrieved by the order. The court held it did have jurisdiction and, as to (b), held as follows:

Whether the petitioner is aggrieved by this order depends upon the merits of the controversy and is not open to us upon this motion to dismiss.

While these were the only matters actually decided, nevertheless, the following from the court's opinion indicates the procedure to be followed by the Commission in these matters:

Subsection (b) provides that until the time allowed for filing a petition for review has passed or until the transcript of the record in the proceeding has been filed in the circuit court in a review proceeding, the Commission may at any time upon notice "and in such manner as it shall deem proper modify or set aside, in whole or in part, any report or any order made or issued by it." This subsection further provides that if no petition for review has been filed within the allowable time, the Commission may, at any time, "after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any report or order made or issued by it under this section, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action or if the public interest shall so require." The just quoted provision as to reopening carries a proviso "that the said person, partnership, or corporation may, within 60 days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate circuit court of appeals of the United States, in the manner provided in subsection (c) of this section."

The just quoted proviso seems to settle the right of this petitioner to file a petition for review. Here no petition for review had been filed to the order of 1934 and the time for such filing had long expired. In this situation the statute clearly gives the Commission the power at any time to "reopen and alter, modify, or set aside, in whole or in part, any report or order made or issued by it under this section." However, the sentence governs such action by the Commission in two respects: (1) it requires the opinion of the Commission as to changed conditions of fact or law or the opinion of the Commission that the public interest requires the exercise of such power; and (2) it requires that the exercise of such power be only "after notice and opportunity for hearing." Acting under these conditions and limitations the Commission may reach any result it deems proper. Among these specifically authorized results are to "set aside, in whole or in part, any report or order made or issued by it under this section." What the Commission has done here is to set aside in whole the order made by it in 1934. Whether it took that action because of changed conditions of fact or law or because the public interest so required is not revealed in the papers now before the court. But whatever may have prompted its action, the before quoted proviso expressly gives the right to review to the petitioner from this "order entered after such a reopening."

Obviously, changed conditions of fact or of law may be contestable issues. No less true is the issue of whether such action is required by "the public interest" (*Federal Trade Commission v. Klesner*, 280 U.S. 19, 23, 27, 30) [13 F.T.C. 581; 1 S. & D. 1166].

In the instant case, no petition has been filed for review of the original decision and order and the time therefor had expired prior to the application for modification.

Since the effective date of the order, respondents have been using some new forms. Counsel for the complaint claims that there is difficulty and confusion in securing compliance, that the public is still being deceived, and that the language of the order appears to be susceptible of interpretation contrary to the real intent and purpose of the Commission in using it. Some of these claims are controverted by respondents.

The Commission concludes that further consideration should be given to the question of whether changed conditions of fact or of law or the public interest require that the original order entered herein be reopened, altered, modified, or set aside in whole or in part.

The case is remanded to the hearing examiner for the holding of such hearings as may be necessary, and for consideration and report with recommendation to the Commission for its determination of the question above referred to.

#### ORDER REMANDING CASE TO HEARING EXAMINER

This matter having been heard on briefs and oral arguments of counsel in support of and in opposition to a proposal for alteration of the outstanding order to cease and desist by a modification of paragraph 1 thereof in the manner designated in a notice and opportunity for hearing issued February 6, 1958; and

The Commission, for reasons set forth in its accompanying opinion, having determined that further consideration should be given to the question of whether conditions of law or fact have so changed as to require such action or if the public interest so requires:

*It is ordered*, That this case be, and it hereby is, remanded to Hearing Examiner Abner E. Lipscomb for the purpose of receiving such evidence as may be offered with respect to said question.

*It is further ordered*, That the hearings shall be conducted in accordance with the Commission's rules of practice for adjudicative proceedings insofar as such rules are applicable; that the hearing examiner shall have all the powers and duties as provided for in section 3.15 of said rules, except that of making and filing an initial decision; and that the respondent shall have the usual rights of due notice, cross-examination and the presentation of evidence in rebuttal.

*It is further ordered*, That the hearings shall be held at such times and at such places as the hearing examiner may designate, the initial hearing to be held on a day at least thirty (30) days after service of notice thereof on the respondent.

*It is further ordered,* That upon completion of the hearings the hearing examiner shall certify the record to the Commission with his report and recommendation thereon.

BRILLO MANUFACTURING CO., INC.

*Docket 6557. Order and Opinion May 23, 1958*

Order remanding merger case to hearing examiner for further consideration of respondent's motion to dismiss complaint.

OPINION OF THE COMMISSION

By SECREST, Commissioner:

The respondent produces steel wool and steel wool products.<sup>1</sup> In July 1955, it acquired all the capital stock and assets of the Williams Co. which processed similar products. In challenging such acquisition as unlawful, the complaint issuing in this proceeding alleged that its competitive effects may be those proscribed in section 7 of the Clayton Act, as amended.<sup>2</sup> Contending that counsel in support of the complaint had failed to make out a prima facie case by not showing, first, that the relevant markets or lines of commerce affected by the acquisition are industrial steel wool and household steel wool, and, second, that the effect of the acquisition may be substantially to lessen competition, respondent, at the close of the case-in-chief filed with the hearing examiner a motion to dismiss the complaint. This motion the examiner granted in part and denied in part, and in so doing he ruled (1) that the relevant markets involved in the proceeding are industrial and household steel wool products, because these are the products produced by respondent and Williams and thus constitute the area of effective competition between the two corporations; (2) that when, as here, the record shows that the acquiring and the acquired corporations each enjoy a substantial share of the industrial steel wool market, the acquisition as a matter of law substantially lessens competition in that market and thus constitutes a violation of section 7 of the Clayton Act, as amended; and (3) that, on the other hand, the record showing that the acquired corporation had only  $\frac{3}{10}$  of 1 percent of the household steel wool market necessarily precludes a finding of competitive injury in that market and hence cannot constitute a violation of section 7. Interlocutory appeals have been filed by the re-

<sup>1</sup> These articles are marketed for household use in the cleaning of pots and pans and also used as abrasives in the paint and other trades.

<sup>2</sup> 64 Stat. 1125, 15 U.S.C. 18:

"\* \* \* [N]o corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly."

spondent and counsel supporting the complaint from the rulings adverse to them.

The respondent's appeal excepts to the standards applied by the hearing examiner when determining industrial steel wool to be a line of commerce. We think the hearing examiner in concluding as a matter of law that industrial steel wool was the relevant market erred in basing his determinations solely on the fact that those were the wares being produced by the acquired and acquiring companies. The test instead is whether these products are shown by the facts to have such peculiar characteristics and uses as to constitute them sufficiently distinct from others to make them a "line of commerce" within the meaning of the act. *United States v. E. I. du Pont de Nemours & Co.*, 353 U.S. 586 (1957). That the acquired and acquiring corporations both made industrial steel wool was only one circumstance to be considered. Additional factors which could have been taken into account include data relating to the manner in which the products are marketed, their physical characteristics, prices and possibly other things bearing on the question of whether or not they may be distinguished competitively from other wares. On the other hand, as the examiner in essence held, the mere fact that articles other than steel wool are marketed for industrial use as abrasives is not adequate legal warrant for including all abrasive products in the relevant line of commerce. The determinations as to the area of effective competition should have been made on the basis of all record facts delineating the relevant market or markets. Inasmuch as the hearing examiner's ruling was based on a standard other than the foregoing, this aspect of the appeal is granted.

The respondent further states that the hearing examiner's ruling bars it from proving on defense that the relevant market in fact includes other industrial abrasives. No showing has been made in the appeal that the hearing examiner heretofore has excluded evidence pointing to a substantial competitive interrelationship between industrial steel wool and other abrasives. As noted above, the issue as to the bounds of the relevant market in section 7 proceedings is one of fact. Thus, the respondent's right to present evidence showing that products other than steel wool are included within the area of effective competition and, therefore, are a part of the relevant line of commerce is fully protected. This, however, should not be construed as a holding that all economic data having an indirect or casual bearing on the marketing of the products concerned should be received in section 7 proceedings. Manifestly, the scope of the investigation should not be expanded beyond manageable proportions, and only evidentiary material from which significant market or competitive impact may be evident need be received.

In his ruling, the examiner further stated that in the light of respondent's substantial share of the market for industrial steel wool, its acquisition of another manufacturer which similarly had been a substantial factor in that market must of necessity be attended by reasonable probabilities of substantial lessening of competition in such line of commerce. We do not concur in the holding that a significant increase in a producer's already substantial share of the market necessarily demonstrates likelihood of statutorily forbidden effects in every distributional situation. This is not to say that the dimensions of the market segment being eliminated from competition between merging corporations may not in some evidentiary situations support inferences of substantial anticompetitive effects. Nevertheless, informed determinations as to actual or probable competitive effects can only be based on an analysis of all facts of record pertaining to the relevant market. In addition to the facts concerning market shares, likewise important is such evidence as was received herein pertaining to the general competitive situation, number of competitors and degree of concentration prevailing in the industry. Hence, it was error for the hearing examiner to find as a matter of law that the record showing of substantiality of the market shares involved in the acquisition established a violation of section 7.

A corollary concept of quantitative unsubstantiality was the basis for the hearing examiner's ruling dismissing the charges pertaining to the household steel wool market, from which ruling counsel supporting the complaint has appealed. In 1954, the year preceding the acquisition, the share of the household market for steel wool held by the acquired corporation comprised  $\frac{3}{10}$  of 1 percent. In such year, the hearing examiner noted, the respondent's share of that market was 45.3 percent, which was exceeded only by one other manufacturer. Because no area of substantial competition had previously existed between the acquired and acquiring companies in the household line of commerce, he concluded that no substantial lessening of competition could result from the acquisition. The facts emphasized by the courts in the decisions cited by the hearing examiner in support of his holding differ materially from those apparently presented in this proceeding. Hence, those decisions<sup>3</sup> construing section 7 prior to its amendment are not deemed controlling to decision here.

In the *Thatcher* case, the acquired corporation, Woodbury, had decided prior to the stock transfer to stop the manufacture of milk bottles. Its share of that relevant market was less than 1 percent, and the acquiring corporation took over and filled its "one or two" outstanding contracts for milk bottles. The acquired company was not

<sup>3</sup> *Federal Trade Commission v. Thatcher Manufacturing Co.*, 5 F. 2d 615 (C.A. 3, 1925); affirmed in part reversed in part 272 U.S. 554 (1926); *International Shoe Co. v. Federal Trade Commission*, 280 U.S. 291 (1930).

licensed to use any of the automatic feeding machines then in successful use for manufacturing such bottles; and, furthermore, the court of appeals found that the prime purpose of the acquiring corporation was to secure Woodbury's license to use certain automatic machinery for manufacturing containers other than milk bottles. Those matters, it was held, precluded inferences as to competition being substantially lessened or tendency to monopoly.

In the *International Shoe* case, less than 5 percent of the products of the acquired and acquiring companies were in competition; and the decision emphasized that the resources of the acquired corporation were depleted and its insolvency probable.

The prime test of legality at the time when the foregoing decisions were rendered was thought to be the prior existing competition between the corporations involved in jointers of interest. Preacquisition competition is not necessarily a prerequisite under the Act, as amended. All acquisitions are within its reach whenever reasonable likelihood appears of forbidden competitive effects. *United States v. du Pont, supra* (592). For the reasons set forth above, we think the ruling granting the motion to dismiss as to the household line of commerce for steel wool is based on an improper standard. That the household market share of the acquired corporation had been less than 1 percent was a circumstance as to which due cognizance was to be taken. It was error, however, for the hearing examiner to deem such fact exclusively controlling as a matter of law and to fail to accord due consideration to other relevant market information of record, including post-acquisition production and marketing data.

No factual analysis or evaluation of the evidence presented for delineating the relevant markets, and any competitive effects which reasonably may result from the acquisition, appears in the hearing examiner's order for us to review. The motion to dismiss should be ruled on on the basis of the facts. Accordingly, the proceeding is being remanded to the hearing examiner for further consideration of the merits of respondent's motion in the light hereof.

#### ORDER REMANDING CASE TO HEARING EXAMINER

This matter having come on for hearing upon the cross interlocutory appeals from the hearing examiner's rulings which granted in part and denied in part the respondent's motion to dismiss the complaint; and the Commission having granted the appeals for the reasons and in the manner indicated in the opinion accompanying this order:

*It is ordered*, That the case be remanded to the hearing examiner for further consideration of the respondent's motion to dismiss and ruling thereon in the light of the Commission's opinion.

## TIMKEN ROLLER BEARING CO.

*Docket 6504. Order and Opinion, May 27, 1958*

Order vacating and setting aside initial decision dismissing complaint in section 3 Clayton Act proceeding and remanding case to hearing examiner for further action.

## OPINION OF THE COMMISSION

By KERN, Commissioner:

This matter comes before us on the appeal of counsel supporting the complaint from the hearing examiner's initial decision wherein he dismissed the complaint. Briefs in support of and in opposition to the appeal have been filed, and oral argument of counsel has been heard.

The complaint, issued February 13, 1956, charged respondent with violation of section 3 of the Clayton Act in the sale of its tapered roller bearings in interstate commerce.<sup>1</sup> At the close of the introduction of evidence in support of the complaint, respondent moved for dismissal on the ground that a prima facie case had not been established. The hearing examiner granted the motion and dismissed the complaint.

The appeal raised two questions:

1. Does the record show prima facie that respondent has sold its tapered roller bearings to distributors or jobbers on the condition, agreement, or understanding that the distributors or the jobbers will not handle tapered roller bearings sold by any competitor with the probable effect of substantially lessening competition or tending to create a monopoly in any line of commerce?

2. Did the hearing examiner err in refusing to admit into evidence some 94 exhibits offered as relevant to the issues raised by the complaint?

Respondent, an Ohio corporation with headquarters in Canton, Ohio, is the largest manufacturer and seller of tapered roller bearings in the United States. It sells its products both for use as original equipment and for replacement and repairs in automobiles, tractors, and other machines. Only sales for ultimate purposes of replacement and repairs are involved in this proceeding.

Respondent's total sales in the replacement market run between \$10 million and \$20 million a year. Its closest competitor does a yearly business of between \$1 million and \$2 million a year in the sale

<sup>1</sup> The pertinent text of this section is as follows:

"SEC. 3. That it shall be unlawful for any person engaged in commerce \* \* \* to \* \* \* make a sale or contract for sale of goods \* \* \* for \* \* \* resale within the United States \* \* \* on the condition, agreement, or understanding that the \* \* \* purchaser thereof shall not use or deal in the goods \* \* \* of a competitor or competitors of the \* \* \* seller, where the effect of such \* \* \* sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce." [38 Stat. 731; 15 U.S.C. 14.]

of tapered roller bearings, and the next competitor, only between \$400,000 and \$800,000. Respondent manufactures more than 11,000 different items in its line of tapered roller bearings; its closest competitor, only 780; and the next competitor, a mere 586. Between 65 and 75 percent of all tapered roller bearings manufactured in the United States are produced by respondent. Its pre-eminence in the market would seem beyond dispute.

Timken distributes its bearings through two main classes of customers: Authorized distributors and authorized jobbers. The distributors buy directly from respondent; the jobbers buy through the distributors. Both pay the same price, but respondent allows a specified credit to distributors for sales which they make to jobbers. Generally speaking, the distributors carry a larger and more complete stock of bearings than do the jobbers.

In 1956, respondent had sales contracts with 1,541 authorized distributors, who, along with their branch stores, controlled 3,360 outlets for respondent's bearings, and with 3,406 authorized jobbers. These contracts were subject to cancellation by either party upon 10 days' written notice. Neither type provided that the purchasers must not deal in the bearings of respondent's competitors. Hence, if respondent has indeed made sales or contracts for sale on the understanding that the buyers should not handle competitive bearings, proof of that fact must be found elsewhere than in the written contracts. The complaint alleged that respondent's requirement of exclusive dealing was "a consistent policy" and did not particularize the form in which the alleged policy was manifested.

From the fact that the statute is not limited to express contractual provisions imposing exclusivity but encompasses sales made "on the condition, agreement or understanding that the \* \* \* purchaser \* \* \* shall not use or deal in the goods \* \* \* of a competitor," it is clear that any type of coerced exclusivity is unlawful, whether imposed by written instrument or not. See *Carter Carburetor Corporation v. FTC*, 112 F. 2d 722, 732 (8th Cir. 1940).

From our examination of the present record we are satisfied that the evidence received affords the basis for reasonably concluding, in the absence of countervailing proof, that during the period covered by the complaint respondent regularly and consistently required its authorized distributors and authorized jobbers not to deal in the tapered roller bearings manufactured by others. We fully recognize that at the present stage of the proceeding respondent has not had the opportunity to explain or contradict that evidence, but we are convinced that the allegations of the complaint have been prima facie made out.

The evidence includes documentary exhibits consisting of correspondence between Timken officials and members of the Timken sales force and memoranda authorizing cancellation of respondent's agreements with distributors and jobbers in consequence of failure to adhere to the company's exclusive-dealing policy. This evidence consists of more than mere isolated, disconnected fragments of information indicating possibly sporadic or unauthorized activity by minor employees. On the contrary, it implicates respondent's branch managers in Atlanta, Cincinnati, Dallas, Detroit, Los Angeles, Minneapolis, New York, Philadelphia, Pittsburgh, San Francisco, and Seattle, and it shows that General Manager Austin not only received reports of deviations from the 100 percent-loyalty-requirement policy but authorized cancellation of the recalcitrants' agreements.

Throughout these letters and memoranda runs a constant pattern. New accounts were given to understand that they were to liquidate their stocks of competitive bearings and "go Timken 100 percent" or to show "100 percent loyalty." Established accounts detected in handling competitive lines of bearings were canceled by top management on the recommendation of branch managers. All this conduces to the inference that exclusive dealing has been an important and regular feature of respondent's relations with its Authorized Distributors and Authorized Jobbers.

In the present posture of the case we, of course, draw no conclusions on the merits. Our sole task at the present time is to ascertain whether a prima facie case has been established in support of the complaint. In our decision of November 29, 1955, in *Vulcanized Rubber & Plastics Company*, Docket No. 6222, we said:

The ruling of a hearing examiner denying a motion to dismiss a complaint for failure of proof, made at the conclusion of the case in chief, obviously is not a decision on the merits of the case. Such a ruling is merely a determination that there is in the record reliable evidence which, when considered in connection with reasonable inferences which may be drawn therefrom, and if not overcome by the respondent's evidence, would support an order to cease and desist. The ultimate decision of whether an order to cease and desist will be issued, even in the absence of further evidence, is not reached; and it could well be that a hearing officer, upon full consideration of a proceeding submitted for final decision, after making appropriate determinations concerning the credibility of witnesses, the weight to be given conflicting evidence, and other pertinent questions involved, would dismiss the complaint even though he had theretofore denied a motion to dismiss for failure of the record to establish a prima facie case.

A hearing examiner in ruling on a motion to dismiss for failure of proof, made at the close of the case in chief, like a Federal district court in ruling on a similar motion in a nonjury trial, views the evidence and inferences reasonably to be drawn therefrom in the light most favorable to the complaint. Thus, an appeal from a ruling denying such a motion should be granted only when it is apparent that there is in the record no substantial evidence in support of the complaint

and the ruling was obviously erroneous. The instant appeal does not present this situation. The record in this case contains considerable respectable evidence which, if not overcome by rebutting evidence, would support an order to cease and desist. \* \* \*

In the light of the holding just quoted, the hearing examiner applied a wholly erroneous test when he held that a prima facie case is not established unless "the record under consideration (including, of course, inferences reasonably to be drawn therefrom) warrant[s] a finding and conclusion of violation of law on the part of the respondent and the issuance of an order to cease and desist." Furthermore, despite his recognition that certain exhibits "indicate that in some instances respondent has entered into agreements with customers that they would not handle competing lines," he proceeded to discount their probative value for what he called their "remoteness in point of time" and "their extremely small number in relation to the number of respondent's dealers." The alleged "remoteness in point of time" goes "as far back as 1949." On the other hand, many of the exhibits bear dates of 1952 and 1953, and one is as late as 1954. Taking into account the fact that the complaint recited that respondent "is now and for many years has been engaged in the manufacture" of tapered roller bearings, documents relating to transactions within the 5-year period of 1949-54 can hardly be thought inapposite to a proceeding instituted early in 1956 by issuance of a complaint charging that respondent "has made and is now making sales and contracts for sale of its tapered roller bearings \* \* \* on the \* \* \* understanding that the purchasers thereof shall not use or deal in like or similar tapered roller bearings sold or supplied by a competitor or competitors of respondent."

In holding that "the number of instances reflected by the documents appears negligible—insufficient to warrant an inference of a general policy of exclusive dealing" the examiner has failed to follow the applicable precedents. To ascertain the prevalence of a particular type of business dealing, and the degree to which it may constitute a general policy, the Commission is not bound to undertake an exhaustive enumeration. Thus, the United States Court of Appeals for the Second Circuit held in *Standard Distributors, Inc. v. FTC*, 211 F. 2d 7, 12 (1954):

\* \* \* There were 31 witnesses called by the Commission who testified to about that number of instances, and the petitioners called 13 witnesses in an effort to refute such testimony. While the instances of misrepresentation so proved ranged through a period roughly of 9 years and were comparatively small, both in numbers per year and in total numbers of sales of sets of encyclopedias which ran to over 160,000 and were made by over 2,000 salesmen, they were enough to show a pattern of conduct sufficiently extensive to support the findings made by the Commission. \* \* \*

To like effect are *Steelco Stainless Steel, Inc. v. FTC*, 187 F. 2d 693, 696 (7th Cir. 1951); *Consumer Sales Corp. v. FTC*, 198 F. 2d 404, 407 (2d Cir. 1952); *Tractor Training Service v. FTC*, 227 F. 2d 420, 425 (9th Cir. 1955).

Because the exhibits cover a range of about 5 years and relate to the acts of widely scattered branch offices of respondent and reports made by those branch offices to respondent's general sales manager, we believe that there is raised the presumption that they evince a standard policy of the Timken Co. to oblige its authorized distributors and authorized jobbers to handle Timken tapered roller bearings to the exclusion of all other brands.

There remains the necessity of deciding whether there has been a prima facie showing that respondent's exclusive-dealing requirement "may be to substantially lessen competition or tend to create monopoly in any line of commerce." We think that respondent's overwhelming ascendancy in the manufacture and sale of its bearings, as shown by its dollar sales figures compared with those of its two closest rivals, and its superlatively more varied product line, together with the fact that there is some evidence in the record, so far uncontradicted, showing specific and substantial loss of sales by respondent's competitors in the replacement market, clearly suffice to constitute a prima facie showing of a likelihood of the lessening of competition or tendency toward the creation of monopoly.

Viewing the evidence in the record and inferences to be drawn therefrom in the light most favorable to the complaint, we conclude that a prima facie case has been established and that the hearing examiner accordingly erred by dismissing the complaint. Respondent will have ample opportunity to rebut, explain, or contradict the proof adduced in support of the complaint in the next stage of the proceeding.

Finally, for determination is the appeal of counsel supporting the complaint from rulings of the hearing examiner refusing to admit into evidence some 90-odd documents which were offered as being relevant and germane to the issue of whether respondent Timken has an established policy of requiring its distributors and jobbers to handle its products exclusively. These documents consisted of salesmen's reports of calls and intercorporate correspondence regarding the respondent's relations with distributors and jobbers who carry a competitive line of bearings. Appendix A to the appeal brief of counsel supporting the complaint consists of a summary of excerpts from the documents excluded. Counsel for the respondent in his brief in opposition to the appeal brief appears to characterize the excerpts contained in the summary appendix as being meaningless, the significance of which can be understood only by examining the entire exhibit from which each is taken. This the Commission has done,

and it is of the opinion that certain of the documents in question should have been admitted as being relevant to the principal issue presented in this matter, namely, whether respondent does follow a consistent general policy of exclusive dealing.

Typical of the rejected documents is Commission's exhibit 38 for identification. This is a salesman's report of a call upon one of respondent's customers, Pat Murphy, president, Quality Parts and Equipment Co., Laurinburg, N.C. The hearing examiner rejected this exhibit, apparently because he viewed it merely as a report of the "ordinary day-to-day effort of a salesman's endeavor to sell his employer's goods \* \* \* to establish a new account or to improve an account which was already in existence \* \* \*." It was the hearing examiner's view that the proffered exhibit had no "probative value on the question as to whether Timken had a policy to the effect charged in the complaint." The pertinent statements in the exhibit are in the first two paragraphs as follows:

Called he. for further talks with these people about their going Timken 100 percent.

During this talk Pat Murphy told me that they were perfectly willing to go Timken 100 percent. \* \* \*

From our examination of this rejected exhibit we deem it relevant to the issue of exclusivity. It bears directly on the question of whether there was an understanding, or agreement, between respondent's salesman and a customer that the latter was going to handle Timken 100 percent.

In this connection we note the close similarity between the character of this salesman's report and others which were received in evidence and can see no persuasive reason for treating them any differently. If some were admissible, the others likewise should have been received as being relevant and material.

Commission's exhibit 45A and B for identification evidences even more clearly the constant pattern running through the letters and memoranda, some of which are already in evidence. This rejected document is a report to respondent's general manager, Service Sales Division, from respondent's Pittsburgh, Pa., branch manager in regard to the Forbes Motor Co., Monroeville, Pa. The letter recommends that Forbes be considered for a Timken distributorship and reads in pertinent part as follows:

We are recommending this company be considered for a direct appointment on a distributorship for Timken roller bearings. \* \* \*

\* \* \* \* \*

Currently, they are one of the better Bower roller bearing accounts in our territory and have been selling, according to Mr. Magan, approximately, \$4,500 to \$6,000 worth of Bower bearings per year.

\* \* \* \* \*

It is my understanding with Mr. Magan that he has return privileges with the Federal-Mogul Co. so that it will be possible for him to return the better part of his present stock of Bower roller bearings and he will be in a position, thereby, to replace same, with a stock order for Timken bearings.

We are quite anxious to make this appointment for many reasons. The first reason being that we can use an authorized distributor at this particular location and also one specializing in heavy-duty fleet contacts. The second good reason is, that we have the opportunity of taking one of the better Bower accounts from the Federal-Mogul Co.

\* \* \* \* \*

An examination of this exhibit in its entirety clearly shows the possibility that purchases by Forbes from Timken were to be on the condition, agreement, or understanding that Forbes was to handle Timken products exclusively and eliminate from his stock any competitive products. It fits exactly into what may be reasonably argued to be the matrix of respondent's consistent general policy of exclusive dealing, and the exhibit clearly is relevant evidence on this phase of the case.

Another typical rejected exhibit is marked for identification 90A and is a letter from respondent's general manager, Austin, to respondent's Atlanta, Ga., branch manager. It has reference to a salesman's report of a call on a customer who had on his shelves "a quantity of A.B.C., Bower and unboxed bearings." The document reads as follows:

Judging from their sales volume and Jones' report of March 17, the subject company are not entitled to contract jobber arrangements with us.

Since they apparently are not loyal to us as a source of supply, I think we should do one of two things—either get their support or eliminate this account.

This may indicate that respondent's salesmen "policed" their customers, reporting the presence of competitive bearings in the customer's place of business. The general manager's comment that the customer "is not loyal to us as a source of supply" and his conclusion that the customer's support should be secured or the account eliminated speaks for itself. This exhibit likewise is relevant to the main issue in this case and should have been admitted.

Other relevant evidence of policing of accounts appears in rejected Commission's exhibit for identification 97A, a salesman's report of a call on Modern Automotive Parts Co., Dorchester, Mass., in which the following appears:

Leo Abrahamson would like to be recognized as an Authorized Distributor but at the same time he did not hesitate to purchase a quantity of L & S bearings the early part of this year. We pointed out to Leo that consideration for an A.D. depends very much on volume and, by diverting some of his business to L & S, he

certainly does not strengthen his position with Timken. We told him that we have ample distribution in this area.

\* \* \* Leo assured us that he has not purchased from L & S in the last six months and that it was not his intention to do so in the future.

We will keep close check on this stock and, if additional L & S bearings are purchased, we will take necessary action."

The foregoing are but a few typical examples of the rejected documents. As indicated, we have examined each of them and have concluded that those listed in the margin below <sup>2</sup> are all relevant to the issue of exclusivity presented by the pleadings in this case.<sup>3</sup> Respondent's contentions in opposition to receipt of these documents in evidence essentially are directed to the weight they should be accorded rather than to the question of their admissibility or relevance. Listed also <sup>4</sup> are the other documents rejected by the examiner, the relevancy of which is not so apparent and the exclusion of which is not found to be erroneous.

In view of the foregoing considerations the appeal of counsel supporting the complaint will be granted, with the result that the initial decision will be vacated and the matter remanded to the hearing examiner for further proceedings in due course. An appropriate order will be entered.

Commissioner Gwynne dissented to the decision in this matter.

#### ORDER REMANDING CASE TO HEARING EXAMINER

Counsel supporting the complaint having filed an appeal from the initial decision of the hearing examiner, dated October 14, 1957, dismissing the complaint in this proceeding; and the matter having been heard by the Commission upon the whole record, including briefs and oral argument; and the Commission having rendered its decision granting said appeal:

*It is ordered*, That the aforesaid initial decision be, and it hereby is, vacated and set aside.

*It is further ordered*, That this case be, and it hereby is, remanded to the hearing examiner for further proceedings.

<sup>2</sup> Commission Exhibits for identification 38, 45A and B, 69, 70, 71, 79, 90A, 90B, 91A, 91B, 92, 94, 95, 96, 97A, 97B, 98, 99A, 99B, 100, 101, 103A, 103B, 103C, 104, 105, 106A, 106B, 106C, 107, 108A, 108B, 108C, 108D, 111, 112, 114A, 114B, 114C, 117, 118A and B, 119A and B, 120, 121, 125A and B, 126, 127, 128, 129A, 129B, 130A and B, 131, 132, 133, 134, 135, 136A, 136B, 137, 138A, 138B, 139A and B, 140, 141, 143, 144, 145, 146A, 146B, 148A, 148B, 149, 151, 153A, 153B, 157A and B, 158, 160, 161, 162, 163, 164.

<sup>3</sup> Illustrative of the important part such evidence may play in the disposition of a case such as this is the consideration given similar documentary matter, including salesmen's reports of calls on customers, in the matter of *Harley-Davidson Motor Co.*, Docket No. 5698, where it was found that the respondent was selling its motorcycles on the condition, agreement or understanding that the purchaser would deal in Harley-Davidson products exclusively.

<sup>4</sup> Commission Exhibits for identification 76, 89A, 89B and C, 93, 102A, 102B, 110A and B, 147, 152, 154, 159.

## HAFNER COFFEE CO.

*Docket 6961. Order and Opinion, June 4, 1958*

Order remanding motion for amendment of complaint to hearing examiner for his determination.

## OPINION OF THE COMMISSION

By the COMMISSION:

This matter is before the Commission on a motion filed by counsel in support of the complaint requesting the hearing examiner, in effect, (1) to permit the substitution of Simon Hafner, an individual, as the party respondent in lieu of Hafner Coffee Company, a corporation, and (2) to issue and direct service on Mr. Hafner of an amended complaint. The hearing examiner, being of the opinion that he had no authority to entertain the motion, certified it to the Commission for consideration.

In stating that he has no authority to issue and direct the service of an amended complaint the hearing examiner was correct. However, to the extent that he stated or implied that he has no authority to allow an amendment of an outstanding complaint he was in error. The difference lies in the distinction between the issuance of a complaint, which the Commission reserves to itself and in the performance of which it exercises the administrative function of determining when there is reason to believe the law has been violated and, in the case of proceedings under the Federal Trade Commission Act, when the public interest requires action, as well as that of framing the charges, and the amendment of a complaint already issued, the authority to accomplish which the Commission has expressly delegated to its hearing examiners under the conditions and subject to the limitations prescribed in § 3.9 of its Rules of Practice. Thus, a hearing examiner, when presented with a motion for amendment of a complaint, should consider it, and if it meets the requirements of § 3.9(a)(1) he may, in the exercise of his discretion, allow it, being careful, however, that the action he takes is but an exercise of his quasi-judicial power to permit the amendment of an outstanding complaint and not an impingement on the Commission's administrative responsibility to issue a new or substitute complaint.

Under section 3.9(a)(1) of the Rules, the only limitation on a hearing examiner's authority to allow an amendment of a complaint is that the amendment must be one which is reasonably within the scope of the proceeding initiated by the original complaint. Whether or not this is so must of necessity depend on the circumstances of each case. In this case, the pertinent facts are that the Commission, on November 26, 1957, issued the complaint, alleging violation by

"Hafner Coffee Co., a corporation" of section 2(d) of the Clayton Act, as amended. On April 18, 1958, an answer to the complaint was filed by Simon Hafner, "an individual trading and doing business as Hafner Coffee Co., a sole proprietorship, incorrectly termed a corporation, as respondent herein." In his answer, Mr. Hafner admitted in part and denied in part the allegations of the complaint, and stated, among other things, that "Hafner Coffee Co. is not a corporation but is a sole proprietorship constituting the individual business of Simon Hafner." On May 7, counsel in support of the complaint filed his motion for amendment.

The essence of the complaint is that in connection with the operation of the business of Hafner Coffee Co. certain alleged violations of law have occurred. The Commission, it appears, was under the impression that Hafner Coffee Co., the party engaged in the practices, was a corporation, and accordingly so designated the party respondent. It developed, however, that Hafner Coffee Co. is not in fact a corporation but a trade name under which Mr. Hafner, an individual carries on the same business. The sole purpose of the amendment is to correct this misnomer. No new or different acts or practices are alleged. No changes in the circumstances which led the Commission to issue the complaint are present. No different determinations with respect to the belief that a violation of law has occurred are necessary. The Commission's previous actions on all these questions remain unchanged, and the proposed amendment, while it would redesignate the respondent, is actually only an effort to correctly identify the party engaging in the activities dealt with and thus effectuate the Commission's purpose in issuing the complaint. In these circumstances, the amendment is clearly one "reasonably within the scope of the proceeding initiated by the original complaint," and consideration of it is well within the authority conferred upon the hearing examiner by the rule.

The situation here differs materially from that existing in *Waltham Watch Company, et al.*, Docket No. 6914, cited by the hearing examiner. In that case, the original corporate respondent, Waltham Watch Co., a Massachusetts corporation, was shown to have changed its name to Waltham Precision Instrument Co., and to have gone out of the business with which the complaint was concerned. This business had been taken over by a new corporation, Waltham Watch Co., a Delaware corporation, which was not a party to the proceeding and whose operation of the business was said to be different from that of the respondent. These and other changes in circumstances raised questions as to the adequacy of the complaint and required a complete reappraisal of the facts, with the result that the Commission, after

considering them anew, issued and caused to be served an amended and supplemental complaint in which allegations appropriate in the light of the new developments were made.

One further point perhaps needs clarification. The motion of counsel in support of the complaint requesting the amendment was served on Mr. Hafner on May 9, who, on May 19, requested an extension to May 26 within which to file an answer. In the meantime, on May 13, the hearing examiner had entered his order certifying the motion to the Commission. In view of the disposition to be made of this matter, it is here noted that while section 3.9(a)(1) of the rules refers to a move for amendment of a complaint as an "application for amendment," it is nevertheless a motion within the meaning of section 3.8(e) and is subject to the provisions thereof, including the right of a party to answer.

The motion for amendment of the complaint will be remanded to the hearing examiner for appropriate action in conformity with the foregoing views.

ORDER REMANDING MOTION FOR AMENDMENT TO HEARING EXAMINER

The hearing examiner, by order filed on May 13, 1958, having certified to the Commission a motion for amendment of the complaint, theretofore filed by counsel in support of the complaint; and

The Commission, for the reasons set forth in its accompanying opinion, having determined that said motion should have been considered and ruled upon by the hearing examiner:

*It is ordered*, That the aforesaid motion be, and it hereby is, remanded to the hearing examiner for appropriate action in conformity with the Commission's opinion.

WARD BAKING CO.

*Docket 6833. Order and Opinion, June 23, 1958*

Order vacating initial decision dismissing complaint in section 2(d) Clayton Act proceeding and remanding matter to hearing examiner for further consideration of effectiveness of discontinuance of challenged practices, etc.

OPINION OF THE COMMISSION

By TAIT, Commissioner:

The complaint in this matter, charging a violation of section 2(d) of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C., title 15, sec. 13), was dismissed without prejudice in an initial decision by the hearing examiner on the ground that respondent voluntarily abandoned the alleged practices under exceptional circumstances. Counsel supporting the complaint has appealed from this holding.

The sole question is whether the examiner, under the circumstances, properly ordered the dismissal.

It appears that the allegations of the complaint are specifically directed to a certain sales promotion plan employed by respondent during the past several years in connection with sales of bakery products to retail establishments. Under the plan, agreements were entered into with many of its customers whereby, if a customer's purchases from respondent exceeded \$50 a week, the customer, in return for certain in-store advertising, was paid a 5 percent discount from such purchases.

The complaint was issued July 8, 1957. Thereafter, on December 3, 1957, respondent, prior to a hearing on the merits, moved for dismissal. Attached to its motion are the affidavit of Alexander M. Grean, Jr., vice president and general counsel for Ward Baking Co., and other exhibits. One of the exhibits is the form of the announcement distributed to customers participating in the contested plan advising that, in view of the Commission's proceedings, the advertising program was to terminate on December 28, 1957. The affidavit declares that respondent has wholly discontinued the challenged program and that it has no intention of entering into any other contracts having the same provisions or provisions having substantially the same effect.

The discontinuance of a practice found by the Commission to constitute a violation of law does not render the controversy moot. *Federal Trade Commission v. Goodyear Tire & Rubber Company*, 304 U.S. 257 (1938). Nevertheless, where the practice has been surely stopped by the act of the party offending and the object of the proceeding has been attained, no order is necessary, nor should one be entered. *Eugene Dietzgen Co. v. Federal Trade Commission*, 142 F. 2d 321 (1944). The cases most commonly dismissed on such grounds are those in which the practice has been long abandoned and/or in which the conditions which led to the violation have so changed as to render a resumption highly unlikely. *Federal Trade Commission v. Civil Service Training Bureau, Inc.*, 79 F. 2d 113 (1935); *National Lead Co., et al. v. Federal Trade Commission*, 227 F. 2d 825 (1955), reviewed on other grounds, 352 U.S. 419 (1957); *Stokely Van Camp, Inc., et al. v. Federal Trade Commission*, 246 F. 2d 458 (1957); In the Matter of *Bell & Howell Company*, Docket No. 6729 (Decided July 19, 1957).

Dismissal is rarely warranted, however, in cases where a party waits until the Commission has acted and only then discontinues his illegal practice. *Federal Trade Commission v. Wallace*, 75 F. 2d 733 (1935); *Perma-Maid Company, Inc. v. Federal Trade Commission*, 121 F. 2d 282 (1941); *Eugene Dietzgen Co. v. Federal Trade Commission*,

*supra*; *Galter v. Federal Trade Commission*, 186 F. 2d 810 (1951). In the *Dietzgen* case, the court's view was that "parties who refused to discontinue the practice until proceedings are begun against them and proof of their wrongdoing obtained, occupy no position where they can demand a dismissal." It is apparent that the Commission would have no power at all if it lost jurisdiction every time a practice is halted just as the Commission is about to act or has acted. *Hershey Chocolate Corporation, et al. v. Federal Trade Commission*, 121 F. 2d 968 (1941).

In any case of the discontinuance of a practice, the Commission is vested with a broad discretion in the determination of whether the practice has been surely stopped and whether an order to cease and desist is proper. *Deer, et al. v. Federal Trade Commission*, 152 F. 2d 65 (1945); *Keasbey & Mattison Co. et al. v. Federal Trade Commission*, 159 F. 2d 940 (1947); *Eugene Dietzgen Co. v. Federal Trade Commission, supra*; *Automobile Owners Safety Insurance Company v. Federal Trade Commission* (C.A. 8, May 16, 1958). This discretion is limited only to the extent that it may be abused. *National Lead Co., et al. v. Federal Trade Commission, supra*.

The Commission, in the exercise of its proper discretion, may dismiss a complaint even after proceedings have been initiated, but we believe that a dismissal in any such circumstance should be limited to the truly unusual situation. One such situation was involved in the matter of *Argus Cameras, Inc.*, Docket No. 6199 (Decided October 20, 1954), the case largely relied upon by the examiner in support of his holding. In that matter, there was a clear showing of unusual circumstances which in the interest of justice required dismissal. Such circumstances included the Commission's finding that the course of dealing over the years between Federal Trade Commission representatives and Argus was such as to justify that respondent in the belief, prior to the issuance of the complaint, that no challenge was being made to its practices. While the discontinuance did not take place until after the Commission had acted, this fact had no great significance in view of the nature of the assurances to respondent by Commission personnel, and, consequently, the matter could be treated the same as if the practices had been abandoned on an entirely voluntary basis. The *Argus* case, however, is not precedent for a dismissal where, in ordinary circumstances, a respondent discontinues practices only in response to Commission action in the apparent hope that it will thereby avoid the issuance of an order to cease and desist. The rule in such a situation is that the abandonment comes too late.

The instant proceeding contains none of the unusual circumstances which existed in the *Argus* case, or any other factors so out of the

ordinary that they would call for dismissal. The plain fact is that here we have simply a showing of a discontinuance following the issuance of the complaint and a promise not to resume in the future. On the other hand, the same competitive conditions which allegedly induced respondent to initiate the challenged advertising program apparently still exist. Clearly, the Commission would not be required to rely on the promise not to further engage in the practices. *Sears Roebuck & Co. v. Federal Trade Commission*, 258 Fed. 307 (1919); *Moir, et al. v. Federal Trade Commission*, 12 F. 2d 22 (1926).

The hearing examiner based his conclusion for dismissal, it seems, on the several numbered findings in the initial decision. These include findings as to the effectiveness of the discontinuance and the likelihood that the practices have been permanently abandoned. In addition, he found that respondent, when inaugurating its sale-promotion program, openly and publicly announced it to all customers alike in the trading areas affected and that respondent acted in good faith in the belief that the plan did not violate the law. If the latter findings have a bearing on respondent's good faith, they still do not constitute such exceptional circumstances as to be proper grounds for dismissal where the respondent discontinues the practices subsequent to the issuance of the complaint.

We conclude that the hearing examiner was in error in dismissing the complaint. Accordingly, the appeal of counsel supporting the complaint is granted. In the order to accompany this opinion, the initial decision will be vacated and set aside and the matter will be remanded for further proceedings consistent with the views herein expressed.

ORDER VACATING INITIAL DECISION AND REMANDING CASE TO HEARING  
EXAMINER

This matter having come on to be heard upon the appeal of counsel in support of the complaint from the hearing examiner's initial decision dismissing the complaint, and the briefs and oral argument in support thereof and in opposition thereto; and

The Commission, for the reasons stated in the accompanying opinion, having determined that the hearing examiner was in error in dismissing the complaint:

*It is ordered*, That the initial decision be, and it hereby is, vacated and set aside.

*It is further ordered*, That this case be remanded to the hearing examiner for further proceedings consistent with the Commission's opinion.

## STIPULATIONS<sup>1</sup>

### DIGEST OF STIPULATIONS EFFECTED AND HANDLED THROUGH THE COMMISSION'S DIVISION OF STIPULATIONS

8496.<sup>2</sup> **Book Reprints—Abridgement and New Title.**—Stipulation No. 8496 has been amended so that it now reads: Popular Library, Inc., a New York corporation with place of business in New York City agreed that in connection with the offer and sale of reprints and abridged editions of books known as "Popular Library" books, it will cease and desist from:

1. Offering for sale or selling any abridged copy of a book unless one of the following words, namely: "abridged," "abridgement," "condensed," or "condensation," or any other word or phrase stating with equal clarity that said book is abridged, appears in clear, conspicuous type upon the front cover and upon the title page of the book either in immediate connection with the title or in another position adapted readily to attract the attention of a prospective purchaser;

2. Using or substituting a new title for, or in place of, the original title of a reprinted book unless a statement which reveals the original title of the book and that it has been published previously thereunder appears in clear, conspicuous type upon the front cover and upon the title page of the book, either in immediate connection with the new title or in another position adapted readily to attract the attention of a prospective purchaser;

3. Disseminating advertising pertaining to any abridged copy of a book or to a book reprint having a substitute title, unless such advertising discloses the fact of abridgement or contains a statement revealing the original title and that the book has been previously published thereunder, or both, as the case may be, in clear, conspicuous type either in immediate connection with the title under which the book is sold or in another position adapted readily to attract the attention of prospective purchasers. (23916, Sept. 5, 1957.)

4045.<sup>3</sup> **Epinephrin Preparation—Danger in Use.**—Stipulation No. 4045 has been amended by elimination of paragraphs (g) and (h) so that it now reads: S-K Research Laboratories, Inc., an Arizona corporation with place of business at Phoenix, Ariz., engaged in the sale and distribution of a medicinal preparation designated "Adreno-Mist," in interstate commerce, in competition with corporations,

<sup>1</sup> These stipulations have been entered into pursuant and subject to sections 1.54 and 1.55 of the Commission's rules of practice. They do not constitute admission by the respondents that they have engaged in any method, act or practice violative of law.

<sup>2</sup> Amendment. See 50 F.T.C. 1142.

<sup>3</sup> Amendment. See 40 F.T.C. 792.

firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

S-K Research Laboratories, Inc., in connection with its sale and distribution of Adreno-Mist or other commodities in commerce as defined by the Federal Trade Commission Act, or the advertising thereof by the means or in the manner above set forth, agreed that it will forthwith cease and desist from representing, directly or inferentially:

(a) That Adreno-Mist or any similar product is a competent treatment or an adequate remedy for the relief of asthma; that by its use asthma will be relieved in 60 seconds or any other length of time; or by any presentation, that it could afford more than a temporary relief from the paroxysms of asthma.

(b) That Dr. James B. Graeser or any other authority has reported excellent results with 94 percent, or any comparable proportion, of patients tested with the 1 percent epinephrine solution treatment by inhalation; or otherwise, that clinical results obtained have been uniformly or generally satisfactory.

(c) That inhalation of Adreno-Mist will give, or frequently gives, relief where a hypodermic injection has failed; that it will avoid, in most cases or at all, severe heart reaction or nervousness produced by the injection treatment; or otherwise, that it is any more effective or beneficial than said injection treatment.

(d) That regular daily inhalation of Adreno-Mist, or any inhalation thereof, helps to ward off future attacks of asthma or to any degree serves to prevent such attacks; that such treatment may be repeated as often as necessary, or as often as the user himself may determine; that even with continued use stronger solutions are not needed; or that said medication is "safe," or free from potential danger.

(e) That persons suffering from chronic bronchitis have found the Adreno-Mist treatment beneficial; or otherwise, that it is a suitable or appropriate remedy for bronchial irritation.

Said respondent further agrees to cease and desist from:

(f) The use of the words "Research Laboratories," "Laboratories" or any similar term as a part of its corporate or trade name, or in any way which may import or imply that it owns and operates a laboratory wherein it employs qualified scientists and maintains facilities for scientific research; unless and until such time as said respondent actually owns and operates a research laboratory; and from representing that Adreno-Mist is a "product" of said corporation, or that its customers buy direct from the manufacturer or save money by reason thereof; unless and until said product is actually purchased direct from said manufacturer thereof. (1-17346, Feb. 11, 1958.)

8912. **"ACC" Arthritis—Therapeutic Properties.**—Alfalfa Concentrate, Inc., an Indiana corporation, with place of business in Portland, Ind., and Richard R. Senour, James Ramsey, Cora Senour, and Maurice Elberson, its officers, agreed that they will forthwith cease and desist from disseminating or causing to be disseminated, any advertisement for the product now designated "ACC," or any other product of substantially similar composition or properties, whether sold under that name or any other name, which represents directly or by implication:

(a) That the product has any therapeutic effect upon any of the symptoms or manifestations of rheumatism, neuralgia or arthritis, or any related condition, in excess of the affording of temporary relief of the minor aches or pains of said conditions;

(b) That the alfalfa in the product, or any constituent of the alfalfa, has any therapeutic value in (1) affording any relief of any ache, pain or discomfort due to rheumatism, neuralgia or arthritis, or any related condition or (2) in relieving muscular aches or pains. (5420676, June 3, 1957.)

8913. **"Life Stride" Shoes—"Hand Sewn".**—Brown Shoe Co., Inc., a New York corporation with place of business in St. Louis, Mo., agreed that in connection with the offer and sale in commerce of "Life Stride" shoes or other footwear, it will forthwith cease and desist from representing, directly or by implication, that such products are hand sewn except as to such part or parts as may be sewn by hand or otherwise representing that such products embody hand operations in their manufacture except in accordance with the facts. (5723408, July 1, 1957.)

8914. **Fur Products—Noncompliance With Labeling Act.**—Hudson Garment Co., Inc., a New York corporation with place of business in New York City, and Samuel Zigman, Pearl Zigman, and Simon Ginsberg, its officers, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product," and "commerce" are defined in the Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from:

(1) Failing to affix labels to fur products showing:

(a) That the fur product contains or is composed of used fur, when such is the fact;

(b) Such other information as may be required by section 4(2) of the Fur Products Labeling Act.

(2) Failing to furnish invoices to purchasers of fur products showing:

(a) That the fur product contains or is composed of used fur, when such is the fact;

(b) Such other information as may be required by section 5(b)(1) of the Fur Products Labeling Act. (5723613, July 9, 1957.)

8915. **Hooked Rugs—Wool and Rayon Content.**—Toyo Rug Co., Ltd., a California corporation with place of business in Los Angeles, Calif., and Masaichi Ohno, Hideo Ohno, Takao Yoshikawa, and Masami Koyama, its officers, agreed that in connection with the offer and sale in commerce of hooked rugs, they, and each of them, will forthwith cease and desist from:

(1) Using the word “wool,” or any word or term indicative of wool, to designate or describe any product or portion thereof which is not composed wholly of wool, the fiber from the fleece of the sheep or lamb, or hair of the Angora or Cashmere goat, or hair of the camel, alpaca, llama, or vicuna, which has never been reclaimed from any woven or felted product; provided, that in the case of products or portions thereof which are composed in substantial part of wool and in part of other fibers or materials, such terms may be used as descriptive of the wool content of the product or portion thereof if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully designating each constituent fiber or material thereof in the order of its predominance by weight; provided further, that if any fiber or material so designated is not present in a substantial quantity, the percentage thereof shall be stated. Nothing herein shall prohibit the use of the terms “reprocessed wool” or “reused wool” when the products or those portions thereof referred to are composed of such fibers;

(2) Labeling, advertising, or otherwise offering for sale or selling products composed in whole or in part of rayon without clearly disclosing such rayon content. (5723054, July 9, 1957.)

8916. **“Cashmere” Sweaters—Noncompliance With Wool Products Labeling Act.**—Morton Hill, Morris Bloom, and Frances Bloom, copartners trading as Atlantic City Knitting Co. with place of business in Atlantic City, N.J., agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution in commerce of sweaters, or any other wool product within the meaning of the Wool Products Labeling Act, they and each of them will forthwith cease and desist from misbranding wool products by:

(1) Stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers included therein in any manner not in accordance with the facts;

(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:

(a) The percentage of the total fiber weight of such 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 where said percentage by weight of such fiber is 5 per centum or more, and (5) the aggregate of all other fibers;

(b) The maximum percentage of the total weight of such wool product of any nonfibrous loading, filling, or adulterating matter;

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939. (5723093, July 9, 1957.)

8917. **"Cashmere" Sweaters—Noncompliance With Labeling Act.**—Barton Knitting Mills, Inc., an Ohio corporation with place of business in Cleveland, Ohio, and Otto R. Miller, its executive vice president, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution in commerce of sweaters, or any other wool product within the meaning of the Wool Products Labeling Act, they and each of them will forthwith cease and desist from misbranding wool products by:

(1) Stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers included therein in any manner not in accordance with the facts;

(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:

(a) The percentage of the total fiber weight of such 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 where said percentage by weight of such fiber is 5 per centum or more, and (5) the aggregate of all other fibers;

(b) The maximum percentage of the total weight of such wool product of any nonfibrous loading, filling, or adulterating matter;

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution, or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939. (5723045, July 9, 1957.)

8918. **Radio Broadcasting Facilities—Time in Business.**—Springfield Broadcasting Co., Inc., a Missouri corporation, with place of

business in Springfield, Mo., agreed that in connection with the offer and sale of radio broadcasting facilities in commerce it will forthwith cease and desist from representing, directly or by implication:

(1) That radio station KGBX was the first radio station to operate in Springfield, Mo., or otherwise representing the relative position of that station with other radio stations not in accordance with the facts;

(2) That radio station KGBX has served Springfield, Mo., for any period in excess of the time it has actually been operating in that city. (5723476, July 18, 1957.)

**8919. Fur Products—Noncompliance With Labeling Act.**—All American Sportswear Co., a New York corporation, with place of business in New York City, and Samuel Werber and Nathan Klimmerman, its officers, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product," and "commerce" are defined in the Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from:

(1) Failing to affix labels to fur products showing:

(a) That the fur product contains or is composed of used fur, when such is the fact;

(b) Such other information as may be required by section 4(2) of the Fur Products Labeling Act.

(2) Failing to furnish invoices to purchasers of fur products showing:

(a) That the fur product contains or is composed of used fur, when such is the fact;

(b) Such other information as may be required by section 5(b)(1) of the Fur Products Labeling Act. (5723312, July 18, 1957.)

**8920. "Cashmerized" Hosiery—Wool and Rayon Content.**—Southland Sox, Inc., an Alabama corporation with place of business in Fort Payne, Ala., and R. E. Davis, Jr., Monroe J. Davis, and E. L. Davis, its officers, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution in commerce of hosiery, they and each of them will forthwith cease and desist from:

(1) Representing, through use of the term "Cashmerized" or of any other word or term suggestive of cashmere, that a product is composed in whole or in part of the hair or fleece of the cashmere goat, when such is not a fact.

(2) Labeling, invoicing, advertising or otherwise offering for sale or selling hosiery or other products which are composed in whole or

in part of rayon without clearly disclosing such rayon content in the order of predominance. (5723085, Aug. 7, 1957.)

8921. **Shoes—"Hand Sewn."**—International Shoe Co., a Delaware corporation with principal place of business in St. Louis, Mo., a manufacturer of shoes and related items, engaged in the offer and sale of Florsheim shoes through its Florsheim Shoe Co. division, agreed that in connection with the offering for sale, sale and distribution in commerce of Florsheim shoes, it will forthwith cease and desist from representing, directly or by implication, that such products are hand sewn except as to such part or parts as may be sewn by hand, or otherwise representing that such products embody hand operations in their manufacture except in accordance with the facts. (5723449, Aug. 7, 1957.)

8922. **Book Reprints—Nondisclosure of Original Titles.**—Ballantine Books, Inc., a New York corporation, with its principal place of business in New York City, and Ian Ballantine, Robert Arnold, and Betty Ballantine, its officers, agreed that in connection with the offer, sale and distribution of books in commerce they, and each of them, will forthwith cease and desist from:

1. Offering for sale or selling any abridged copy of a book unless one of the following words, namely: "abridged," "abridgement," "condensed" or "condensation," or any other word or phrase stating with equal clarity that said book is abridged, appears in clear, conspicuous type upon the front cover and upon the title page of the book either in immediate connection with the title or in another position adapted readily to attract the attention of a prospective purchaser;
2. Using or substituting a new title for, or in place of, the original title of a reprinted book unless a statement which reveals the original title of the book and that it has been published previously thereunder appears in clear, conspicuous type upon the front cover and upon the title page of the book, either in immediate connection with the new title or in another position adapted readily to attract the attention of a prospective purchaser. (5723155, Aug. 7, 1957.)

8923. **Juice Extractor—Relevant Facts, Comparative Tests, Individual as Corporation.**—Albert D. Grau, an individual trading as Vita-Sphere Manufacturing Co., with place of business at Tacoma, Wash., agreed that in connection with the offer and sale in commerce of the juice extractor now designated "Vita-Sphere Juicer," he will forthwith cease and desist from representing, directly or by implication:

- (a) That the consumption of fruit juices or vegetable juices extracted by the product will assure health or vitality;

(b) That comparison tests with other centrifugal juicers prove that the product gives 25 percent more juice, vitamins or minerals, or any amount not in accordance with the facts;

(c) That the business is operated as a corporation when such is not a fact or that it is operated under any other business setup except in accordance with the facts. (5723326, Aug. 7, 1957.)

**8924. Automobile Engines—Horsepower.**—Chrysler Corp., a Delaware corporation with its principal place of business in Detroit, Mich., agreed that in connection with the offer and sale in commerce of its automobiles, including its Plymouth automobiles, it will forthwith cease and desist from representing, directly or by implication, that those of its automobiles which are equipped with a V-8 engine, or other engine, are all equipped with the same engine or engines of the same horsepower, whenever such is not a fact. (5723483, Aug. 7, 1957.)

**8925. Book Reprints—Nondisclosure of New Titles.**—Lion Books, Inc., a New York corporation with principal place of business in New York City; Martin Goodman, its president, and Jean Goodman, copartners doing business as Magazine Management Co., sole owner of the stock of Lion Books, Inc.; and Frank Torpey, its secretary-treasurer, agreed that in connection with the offer and sale of paper-cover books designated "Lion Books" in commerce they, and each of them, will forthwith cease and desist from:

Using or substituting a new title for, or in place of, the original title of a reprinted book unless a statement which reveals the original title of the book and that it has been previously published thereunder appears in clear, conspicuous type upon the front cover and upon the title page of the book, either in immediate connection with the new title or in another position adapted readily to attract the attention of a prospective purchaser. (5723154, Aug. 7, 1957.)

**8926. Collection Questionnaires—Obtaining Information by Subterfuge.**—National Finance Co., a California corporation with place of business in San Francisco, Calif., and Martin Labe and Arnette Labe, its officers, agreed that in connection with obtaining information relating to delinquent debtors and collecting delinquent debts in commerce, they and each of them will forthwith cease and desist from:

1. Using any form, questionnaire, or other material, printed or written, which represents directly or by implication that the purpose for which the information is requested is other than that of obtaining information concerning delinquent debtors;

2. Using the term "Refunds and Disbursements" or any other word or phrase of similar import to designate, describe or refer to their business; or otherwise representing, directly or by implication, that money is being held for or is due persons concerning whom information is sought, or is collectible by such persons, unless money is in fact due

and collectible by such persons and the amount of such money is accurately stated;

3. Using the terms "Claims Division," "Claims Office," or "Comptroller's Office," or a picture of an eagle, or any other word, phrase, symbol, or picturization of similar import to designate, describe or refer to their business; or otherwise representing, directly or by implication, that requests for information concerning delinquent debtors are from the U.S. Government or any agency or branch thereof, or that their business is in any way connected with the U.S. Government. (5723144, Aug. 7, 1957.)

8927. **Hats—Nondisclosure of Foreign Origin.**—Alpine Hat Co., Inc., a New York corporation with its place of business in New York City, and Murray Zimmerman, its officer, agreed that they will forthwith cease and desist from offering for sale, selling or distributing in commerce, hats containing fur or wool felt bodies which were made in a foreign country unless such hats bear a marking or stamping on an exposed surface thereof disclosing the foreign country of origin of the hat bodies, such disclosure to be sufficiently conspicuous as to be clearly visible to prospective purchasers, so placed and affixed as not readily to be hidden or obliterated, and of such a degree of permanency as to remain on the hats until consummation of consumer purchase. (5623133, Aug. 7, 1957.)

8928. **Fur Products—Noncompliance With Labeling Act.**—Carson Union May Stern, Inc., a Missouri corporation with place of business in St. Louis, Mo., and Alexander H. Fihn and Arthur I. Fihn, its officers, agreed that 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, or 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, as the terms "fur," "fur product," and "commerce" are defined in the Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from:

(1) Failing to affix labels to fur products showing:

(a) That the fur product contains or is composed of used fur when such is the fact;

(b) Such other information as may be required by section 4(2) of the Fur Products Labeling Act.

(2) Mingling, on labels, nonrequired information with required information.

(3) Failing to show, on labels, the term "Second Hand" when the fur product being offered for sale had been previously used by an ultimate consumer.

(4) Using on labels attached to fur products the name of an animal other than the name of the animal actually producing the fur.

(5) Failing to furnish invoices to purchasers of fur products showing:

(a) That the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur, when such is the fact;

(b) Such other information as may be required by section 5(b)(1) of the Fur Products Labeling Act.

(6) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 7(c) of the act.

(b) Does not show that the fur product or fur is bleached, dyed or otherwise artificially colored fur when such is the fact.

(c) Fails to set out the term "Second Hand used fur" when the fur product being offered for sale had been previously used by an ultimate consumer.

(d) Uses the name of a fictitious or nonexistent animal in describing a fur or fur product.

(e) Makes use of comparative prices or percentage savings claims unless such compared price or claims are based upon the current market value of the fur product or upon a bona fide compared price at a designated time. (5723674, Aug. 20, 1957.)

**8929. Fur Products—Noncompliance With Labeling Act.**—Gorman's Inc., a Kansas Corporation, with place of business in Kansas City, Kans., and Sam Gorman, Joe Gorman, and Louis Gorman, its officers, agreed that 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, or 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, as the terms "fur," "fur product," and "commerce" are defined in the Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from:

(1) Mingling, on labels, nonrequired information with required information.

(2) Setting forth on labels required information in handwriting.

(3) Failing to show, on labels affixed to fur products an item number or mark assigned to such product for identification purposes.

(4) Failing to furnish invoices to purchasers of fur products showing:

(a) The name or names of the animal or animals producing the

fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(c) Such other information as may be required by section 5(b)(1) of the Fur Products Labeling Act.

(5) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show that the fur product or fur is bleached, dyed, or otherwise artificially colored fur when such is the fact.

(b) Does not show the name of the country of origin of any imported furs or those contained in a fur product.

(c) Makes use of comparative prices or percentage savings claims unless such compared prices or claims are based upon the current market value of the fur product or upon a bona fide compared price at a designated time. (5723685, Aug. 20, 1957.)

8930. **Trusses—Effectiveness, Unique Qualities, etc.**—Albert A. Rucinski, an individual trading as A. A. Rush Rupture Correction Service, with place of business in Hammond, Ind., agreed that he will forthwith cease and desist from disseminating or causing to be disseminated, any advertisement for the trusses or any other device of substantially the same design, style and workmanship, which represents, directly or by implication:

(a) That the use of the trusses will retain hernias or ruptures unless limited to reducible hernias or ruptures;

(b) That the trusses offer a new type of relief, or relief that is different from or more extensive than that provided by competing products;

(c) That the trusses will cure or correct a hernia or rupture;

(d) That springs are not employed in the trusses;

(e) That the trusses will cause rupture or hernia miseries to disappear or that they will hold a rupture or hernia securely in place under all conditions.

The said Albert A. Rucinski further agrees that in connection with the offering for sale, sale, and distribution in commerce of the trusses, or any other device of substantially the same design, style and workmanship, he will forthwith cease and desist from (1) using the word "correction," or other word or term of like connotation, as a part of his trade name, and from (2) representing, directly or by implication, that the business is operated as a corporation when such is not a fact or that it is operated under any other business setup except in accordance with the facts. (5723518, Aug. 20, 1957.)

8931. **"Thymolac" Skin Medicine—Effectiveness, Comparative Merits, etc.**—Hyman Freedman, an individual trading as The

Thymolac Co., with place of business in Buffalo, N.Y., agreed that he will forthwith cease and desist from disseminating or causing to be disseminated any advertisement for a medicinal preparation now designated "Thymolac," or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under that name or any other name, which represents directly or by implication:

1. That the preparation is effective in the treatment of skin problems or skin infections unless limited to specific conditions for which the product is effective;

2. That Thymolac is different from or more effective than competing products; or that results from its use are more permanent or longer lasting than those from the use of competing products;

3. That the preparation acts quickly, unless limited to the relief of itching and burning. (5723445, Aug. 20, 1957.)

8932. **Birth Control Calendar—Effectiveness.**—Ruth G. Herbert and Annette P. Lancaster, copartners trading as Garlan Calendars, with place of business in Philadelphia, Pa., agreed that in connection with the offer and sale in commerce of a calendar-disk device designated "Garlan Rythm Calendar," or any similar calculating device, they will forthwith cease and desist from representing directly or by implication that such device provides an unfailing system of birth spacing, or that it enables a woman to ascertain her fertile and sterile days with certainty. (5723266, Aug. 27, 1957.)

8933. <sup>4</sup> **Fur Products—Noncompliance With Labeling Act.**—B. Gertz, Inc., a New York corporation, with place of business in Jamaica, N.Y., and Ralph F. Waltz, Gerald McCarthy, and Louis Gertz, its officers, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, B. Gertz, Inc. will forthwith cease and desist from:

1. Failing to affix labels to fur products showing the information required by section 4(2) of the Fur Products Labeling Act.

2. Failing to show on labels affixed to fur products an item number or mark assigned to such product for identification purposes.

3. Failing to furnish to purchasers of fur products invoices disclosing the information required by section 5(b)(1) of the Fur Products Labeling Act.

<sup>4</sup> Inhibitions 3, 5, and 6 were rescinded as to B. Gertz, Inc., Oct. 27, 1959.

4. Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur and such qualifying statement as may be required pursuant to section 7(c) of the act.

(b) Does not show that the fur product or fur is bleached, dyed or otherwise artificially colored fur when such is the fact.

(c) Does not properly show the country of origin of any imported furs or those contained in a fur product.

5. Using comparative price statements in advertisements unless there is maintained by said corporation an adequate record disclosing the facts upon which such claims or representations are based.

6. Failing to maintain records showing all of the required information relative to fur products or furs in such manner as will readily identify each fur or fur product. (5723467, Aug. 27, 1957.)

8934. **Fur Products—Noncompliance With Labeling Act.**—Schlossman's Inc., a New York corporation with place of business in New York City, agreed that in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product," and "commerce" are defined in the Fur Products Labeling Act, it will forthwith cease and desist from:

(1) Failing to affix labels to fur products showing:

(a) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(b) Such other information as may be required by section 4(2) of the Fur Products Labeling Act.

(2) Failing to show on labels affixed to fur products an item number or mark assigned to such product for identification purposes.

(3) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show the name or names of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 7(c) of the act.

(b) Does not show that the fur product or fur is bleached, dyed or otherwise artificially colored fur when such is the fact.

(c) Does not show that the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact.

(d) Abbreviates required information.

(e) Contains the name of an animal other than that producing the fur.

(f) Does not properly show the name of the country of origin of any imported furs or those contained in a fur product. (5723630, Aug. 27, 1957.)

**8935. Curtains and Draperies—Fictitious Pricing.**—Ronnie Sales, Inc., a New York corporation with place of business in Fairview, N.J., and Stanley Cohen, its officer, agreed that in connection with the offer and sale of curtains and draperies, or similar products in commerce, they and each of them shall forthwith cease and desist from:

(1) Representing directly or by implication that a certain amount is the usual and regular retail price of merchandise being offered for sale when such amount is in excess of the price at which said merchandise is usually and regularly sold at retail.

(2) Representing directly or by implication that any savings are afforded on the sale of merchandise represented as having a certain price or value, unless the represented savings are based upon the price at which said merchandise is usually and regularly sold at retail, or representing directly or by implication that any savings are afforded to purchasers of said merchandise in excess of those actually afforded. (5521191, Aug. 27, 1957.)

**8936. Civil Service Correspondence Courses—State Approval, Public Relations Activities, “Institute” Status.**—Southeastern Training Institute, Inc., a Tennessee corporation with place of business in Kingsport, Tenn., and Frank G. Williams, its officer, agreed that in connection with the offer and sale of home study correspondence courses in commerce, they and each of them will forthwith cease and desist from:

1. Representing that their business is approved as a correspondence school under the laws of the State of Tennessee or otherwise representing its status except in accordance with the facts.

2. Using the title “Director of Public Relations” or otherwise representing that they operate a public relations department or are engaged in public relations work.

3. Using the word “Institute” or any word of similar import as a part of their corporate name, or otherwise representing, directly or by implication, that their school is a resident institution of higher learning. (5723158, Aug. 27, 1957.)

**8937. Textile Fabrics—Misrepresenting Composition, Nondisclosure of Rayon Content.**—Crestwood Textile Corp., a New York corporation, with place of business in New York City and Stanley Elkins and Morton Goldman, its officers, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the

sale, transportation, or distribution in commerce of textile fabrics, they and each of them will forthwith cease and desist from:

(1) Representing, through use of the term "Cassimere" or of any other word or term suggestive of cashmere, that a product is composed in whole or in part of the hair or fleece of the cashmere goat, when such is not a fact;

(2) Labeling, invoicing, advertising, or otherwise offering for sale or selling products composed in whole or in part of rayon without clearly disclosing such rayon content in the order of predominance. (5723289, September 5, 1957.)

**8938. Fur Products—Noncompliance With Labeling Act.**—Morris Gold, Inc., a Pennsylvania corporation with place of business in Philadelphia, Pa., and Morris Gold and Ethel Gold, its officers, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product," and "commerce" are defined in the Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from:

(1) Failing to attach to fur products labels disclosing the information required by section 4(2) of the Fur Products Labeling Act.

(2) Setting forth on labels required information in abbreviated form.

(3) Failing to furnish invoices to purchasers of fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(c) The name of the country of origin of any imported furs contained in a fur product;

(d) Such other information as may be required by section 5(b)(1) of the Fur Products Labeling Act.

(4) Failing to set forth on invoices the item number or mark assigned to the fur product for purposes of identification. (5723825, Sept. 5, 1957.)

**8939.<sup>5</sup> Fur Products—Noncompliance With Labeling Act.**—German-town Fur, Inc., a Pennsylvania corporation with place of business in Philadelphia, Pa., and Herman Aronovitz and Louis Aronovitz, its officers, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in

<sup>5</sup> Inhibitions (1), (2), (4), (5), and (6) rescinded Oct. 15, 1959.

whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the transportation or distribution in commerce of any fur product, as the terms "fur," "fur product," and "commerce" are defined in the Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from:

(1) Mingling, on labels, nonrequired information with required information.

(2) Setting forth on labels required information in abbreviated form.

(3) Describing dyed lamb as "Dyed Mouton Lamb" provided, however, that this should not be construed as preventing the use of the term "Dyed Mouton-Processed Lamb."

(4) Failing to furnish invoices to purchasers of fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) That the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur, when such is the fact;

(c) The name of the country of origin of any imported furs contained in a fur product;

(d) Such other information as may be required by section 5(b)(1) of the Fur Products Labeling Act.

(5) Setting forth on invoices required information in abbreviated form.

(6) Failing to set forth on invoices the item number or mark assigned to the fur product for purposes of identification. (5723710, Sept. 5, 1957.)

8940. **Arthritis Treatment—Effectiveness.**—International Distributors, Inc., a Tennessee corporation, with place of business in Memphis, Tenn., formerly operated under the corporate name of the Mundo Corp., agreed that it will forthwith cease and desist from disseminating or causing to be disseminated any advertisement for the products now designated "MUNDO," or any other products of substantially similar composition or properties, whether sold under that name or other name, which represents, directly or by implication:

(a) That either product will afford any relief of severe aches, pains, or discomforts of rheumatism, arthritis, bursitis, neuritis, lumbago, or any other arthritic or rheumatic condition, or have any therapeutic effect upon any of the symptoms or manifestations of any such condition in excess of affording temporary relief of minor aches or pains thereof; or

(b) That either product will afford complete relief of twinges or pain in arms, back, legs, or shoulders, or of sore, strained, overworked, or overtired muscles, or have any beneficial effect in any of such con-

ditions or discomforts in excess of affording temporary relief of the minor aches or pains thereof. (5723195, Sept. 5, 1957.)

**8941. Fur Products—Noncompliance With Labeling Act.**—Berdan Furs, Inc., a Pennsylvania corporation with place of business in Philadelphia, Pa., and Daniel Lieberman and Bernard Koff, its officers, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur", "fur product", and "commerce" are defined in the Fur Products Labeling Act, they, and each of them will forthwith cease and desist from:

(1) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 7(c) of the act.

(b) Does not show that the fur product or fur is bleached, dyed, or otherwise artificially colored fur, when such is the fact.

(c) Does not show the name of the country of origin of any imported furs or those contained in a fur product.

(d) Makes use of comparative prices or percentage savings claims unless such compared prices or claims are based upon the current market value of the fur product or upon a bona fide compared price at a designated time.

(2) Using comparative price statements in advertisements unless there is maintained by said corporation an adequate record disclosing the facts upon which such claims or representations are based. (5723802, Sept. 5, 1957.)

**8942. Fur Products—Noncompliance With Labeling Act.**—Hens & Kelly, Inc., a New York corporation with place of business in Buffalo, N.Y., and Allen E. Neil, Robert deFreitas, and Edward Hens, its officers, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product," and "commerce" are defined in the Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from:

(1) Failing to furnish to purchasers of fur products invoices disclosing:

(a) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact.

(b) Such other information as may be required by section 5(b)(1) of the Fur Products Labeling Act.

(2) Describing dyed lamb as "Charcoal Mouton Lamb" or "Mouton Lamb," provided, however, that this should not be construed as preventing the use of the term "Dyed Mouton-processed Lamb."

(3) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 7(c) of the act.

(b) Does not show that the fur product or fur is bleached, dyed or otherwise artificially colored fur when such is the fact.

(c) Does not show that the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact.

(d) Contains the name of an animal other than that producing the fur.

(4) Using comparative price statements in advertisements unless there is maintained by said corporation an adequate record disclosing the facts upon which such claims or representations are based. (5723507, Sept. 5, 1957.)

8943. **Fur Products—Noncompliance With Labeling Act.**—Barney Landsberg, an individual doing business as Landsberg Bros. with place of business in San Francisco, Calif., agreed that in connection with the sale, advertising, offering for sale, transportation or distribution of furs or any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of furs or any fur product, as the terms "fur," "fur product," and "commerce" are defined in the Fur Product Labeling Act, he will forthwith cease and desist from:

(1) Setting forth on invoices required information in abbreviated form.

(2) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 7(c) of the act.

(b) Fails to disclose that the fur product is secondhand used fur when such is the fact.

(c) Does not show that the fur product or fur is bleached, dyed, or otherwise artificially colored fur when such is the fact.

(d) Does not show the name of the country of origin of any imported furs or those contained in a fur product.

(e) Abbreviates required information.

(f) Makes use of comparative prices or percentage savings claims unless such compared prices or claims are based upon the current market value of the fur product or upon a bona fide compared price at a designated time.

(2) Using comparative price statements in advertisements unless there is maintained by said individual an adequate record disclosing the facts upon which such claims or representations are based. (5723729, Sept. 5, 1957.)

8944.<sup>6</sup> **Fur Products—Noncompliance With Labeling Act.**—George Schwartz and Stephen Lisle, copartners doing business as Stephen-George Wholesale Furs; Minnesota Wholesalers, Inc., a Minnesota corporation, and S. H. Libman, Jack Libman, and Eugene Fefferman, its officers, all with place of business in Minneapolis, Minn., agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received<sup>1</sup> in commerce, or the introduction into commerce, or the transportation or distribution in commerce of any fur product, as the terms "fur," "fur product," and "commerce" are defined in the Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from using comparative price statements in advertisements unless there is maintained by said corporation and individuals an adequate record disclosing the facts upon which such claims or representations are based.

It is further agreed by George Schwartz and Stephen Lisle that they, and each of them, will forthwith cease and desist from:

(1) Failing to furnish to purchasers of fur products invoices showing:

(a) The name of the country of origin of any imported furs contained in a fur product;

(b) Such other information as may be required by section 5(b)(1) of the Fur Products Labeling Act.

(2) Failing to maintain records showing all of the required information relative to fur products or furs in such manner as will readily identify each fur or fur product. (5723496, Sept. 5, 1957.)

8945. **Watches—Composition and Guarantees.**—Webster Watch Co., Inc., a New York corporation with place of business in New York City, and Bernard Schaffel, Jules Robbins, and Clair Schaffel, its officers, agreed that in connection with the offering for sale, sale, and distribution of watches in commerce, they and each of them will forthwith cease and desist from:

<sup>6</sup> Rescinded, insofar as it pertains to respondents Stephen Lisle and George Schwartz, Dec. 9, 1958.

1. Offering for sale or selling watches, the cases of which are composed of base metal manufactured or otherwise processed to simulate or have the appearance of precious metal, without marking such cases so as to disclose clearly the true metal composition thereof.

2. Representing directly or by implication that a watch is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed. (5723138, Sept. 5, 1957.)

8946. **Watch Straps, Jewelry, etc.—Dealer as Manufacturer.**—Bertram Kalisher, an individual trading under the name Kalbe Co., with place of business in New York City, agreed that in connection with the offer and sale of watch straps, watch attachments, jewelry, or other products in commerce he will forthwith cease and desist from representing through use of the word "Manufacturers," or any other term, word, or words, or in any other manner, that he manufactures any of the products sold by him, unless he does in fact manufacture the products in connection with which such representation is made. (5623700, Sept. 5, 1957.)

8947. **Thumb Tacks—Foreign Source, Unique Nature, Manufacture, etc.**—A & W Products Co., Inc., a New York corporation with place of business in Port Jervis, N.Y., and Albert Augustin and Alex Augustin, its officers, agreed that in connection with the offer, sale, and distribution of thumb tacks or other similar products in commerce, they and each of them will forthwith cease and desist from:

1. Representing riveted head thumb tacks as solid head thumb tacks, or otherwise representing the construction of thumb tacks in any manner not in accordance with fact.

2. Representing that foreign made products are made in the United States, or otherwise representing the origin of such products in any manner not in accordance with fact.

3. Offering for sale, selling, or distributing foreign made thumb tacks without clearly and conspicuously disclosing on the packages or containers in which they are sold the country of origin of such products.

4. Representing that the thumb tacks which they sell are the only solid head thumb tacks available. (5623363, Sept. 10, 1957.)

8948. **Fur Products—Noncompliance With Labeling Act.**—Norman N. Silverman, Martin Silverman, and Sarah L. Silverman, copartners doing business as Maple Furriers with place of business Oak Park, Ill., agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product," and "commerce" are defined in the Fur Products Labeling Act, they and each of them will forthwith cease and desist from advertising fur products in any manner or by any means where the advertisement makes use of comparative prices or percentage savings claims unless such compared prices or claims are based upon the current market value of the fur product or upon a bona fide compared price at a designated time. (5723675, Sept. 10, 1957.)

8949. **Collection Questionnaires—Acquiring Information by Subterfuge.**—Eli Levine, an individual with place of business in Elizabeth, N.J., operating a collection agency under the name National Business Service, agreed that in connection with obtaining information concerning delinquent debtors and collecting delinquent debts in commerce he will forthwith cease and desist from:

1. Using the words "Disbursement Office," the picturization of an eagle, or any other word or phrase or picturization of similar import to designate or describe the business conducted; or otherwise representing, directly or by implication, that requests for information concerning delinquent debtors are from the U.S. Government or any agency or branch thereof, or that the business is in any way connected with the U.S. Government;

2. Representing, directly or by implication, that a sum of money will be sent in the form of a check or otherwise to the person from whom the information is requested, unless the amount thereof is clearly stated;

3. Using any form, questionnaire or other material which represents, directly or by implication, that the purpose for which the information is requested is other than that of obtaining information concerning delinquent debtors. (5723140, Sept. 10, 1957.)

8950. **"Havana" Cigars—Place of Origin, Manufacture, Composition.**—Vincent Ruilova, an individual trading as Vincent Cigar Co. with place of business at Tampa, Fla., agreed that in connection with the offer and sale of products for smoking in commerce, he will forthwith cease and desist from:

- (a) Representing through use of the word "Havana" or other word or words connoting Cuban origin, in the brand name, or in any other manner, that a product is composed entirely of tobacco grown on the island of Cuba, when such is not a fact;

- (b) Representing through use of "Havana Filled" as descriptive of the filler of a product, or in any other manner, that the filler of a product is composed entirely of tobacco grown on the island of Cuba, when such is not a fact;

- (c) Representing through use of "hand made" as descriptive of a product, or in any other manner, that such product is entirely made

by hand, when such is not a fact, and from otherwise representing the extent to which a product is made by hand except in accordance with the facts;

(d) Failing to disclose in the labeling and advertising that a product has a paper binder when such is a fact. (5623539, Sept. 10, 1957.)

8951. **"Havana" Cigars—Place of Origin, Manufacture.**—The Antonio Co., a Florida corporation with place of business at Tampa, Fla., and Karl Cuesta, Eugene Simon and Dalia J. Menendez, its officers, agreed that in connection with the offer and sale of products for smoking in commerce they will forthwith cease and desist from:

(a) Representing through use of the word "Havana," or other word or words connoting Cuban origin, in the brand name, or in any other manner that a product is composed entirely of tobacco grown on the island of Cuba, when such is not a fact.

(b) Failing to disclose in the labeling and advertising that a product contains a paper binder when such is a fact. (5623141, Sept. 10, 1957.)

8952. **Snow Suits—"Nylon."**—Supak & Sons Manufacturing Co. Inc., a Minnesota corporation with place of business in Elizabeth City, N.C., and Nathan Supak and Shirley Supak, its officers, agreed that in connection with the offer and sale of snow suits and other textile products in commerce, they and each of them will forthwith cease and desist from using the word "nylon" or any word or term indicative of nylon, to designate or describe any product or portion thereof which is not composed wholly of nylon; provided, that in the case of products or portions thereof which are composed in substantial part of nylon and in part of other fibers or materials, such terms may be used as descriptive of the nylon content of the product or portion thereof if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully designating each constituent fiber or material thereof in the order of its predominance by weight; provided further, that if any fiber or material so designated is not present in a substantial quantity, the percentage thereof shall be stated. (5723221, Sept. 10, 1957.)

8953. **"Dermel" Dandruff Treatment—Effectiveness, Relevant Facts, etc.**—Dermel Corp., a Virginia corporation with place of business in Roanoke, Va., and Joseph E. Berna, Margaret R. Berna, and Harold E. Little, its officers, agreed that they, and each of them, will forthwith cease and desist from disseminating or causing to be disseminated any advertisement for a preparation now designated "Dermel," or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under that name or any other name, which represents directly or by implication:

- (1) That the preparation permanently eliminates dandruff or cures dandruff;
- (2) That the preparation restores the scalp to health or keeps the scalp healthy;
- (3) That the preparation prevents loss of hair, or has any effect in keeping the hair from falling out;
- (4) That the preparation is the result of ten years of scientific research or any other period of time not in accordance with the facts;
- (5) That Dermal is the only such preparation sold under a money-back guarantee;
- (6) That the corporation maintains offices in New York and Los Angeles or any place other than where such offices or places of business are in fact maintained. (5723402, Sept. 17, 1957.)

8954. **"Cuban" Tobacco Products—Place of Origin, Composition.**—Harry E. Herman, an individual trading under his own name with place of business at Windsor, Pa., agreed that in connection with the offer and sale of products for smoking in commerce, he will forthwith cease and desist from:

- (a) Representing through use of the word "Cuban," or other word or words connoting Cuban origin, in the brand name, or in any other manner, that a product is composed entirely of tobacco grown on the island of Cuba, when such is not a fact;
- (b) Failing to disclose in the labeling and advertising that a product contains a paper binder, when such is a fact. (5723393, Sept. 17, 1957.)

8955. **Fur Products—Noncompliance With Labeling Act.**—Block & Kuhl Co., an Illinois corporation with place of business in Peoria, Ill., agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product," and "commerce" are defined in the Fur Products Labeling Act, it will forthwith cease and desist from:

- (1) Failing to affix labels to fur products showing:
  - (a) The name or names of the animal or animals producing the fur contained in the fur product as set forth in the Fur Products Name Guide and as permitted under the rules and regulations;
  - (b) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;
  - (c) Such other information as may be required by section 4(2) of the Fur Products Labeling Act.

(2) Mingling, on labels, nonrequired information with required information.

(3) Failing to disclose the name of the animal producing the fur used in the trim of a fur product.

(4) Failing to furnish invoices to purchasers of fur products showing:

(a) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(b) The name of the country of origin of any imported furs contained in a fur product;

(c) Such other information as may be required by section 5(b)(1) of the Fur Products Labeling Act.

(5) Setting forth on invoices required information in abbreviated form.

(6) Failing to set forth on invoices the item number or mark assigned to the fur product for purposes of identification.

(7) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 7(c) of the Act.

(b) Does not show that the fur product or fur is bleached, dyed, or otherwise artificially colored fur when such is the fact.

(c) Does not show the name of the country of origin of any imported furs or those contained in a fur product.

(d) Contains the name of an animal other than that producing the fur.

(8) Using comparative price statements in advertisements unless there is maintained by said corporation an adequate record disclosing the facts upon which such claims or representations are based. (5723793, Sept. 19, 1957.)

**8956. Fur Products—Noncompliance With Labeling Act.**—Jack Sandler, an individual doing business as Sandler's Fur Shop with place of business in Chicago, Ill., agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of furs or any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of furs or any fur product, as the terms "fur," "fur product," and "commerce" are defined in the Fur Products Labeling Act, he will forthwith cease and desist from:

1. Failing to furnish invoices to purchasers of fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(c) The name of the country of origin of any imported furs contained in a fur product;

(d) Such other information as may be required by section 5(b)(1) of the Fur Products Labeling Act.

2. Failing to maintain records showing all of the required information relative to fur products or furs in such manner as will readily identify each fur or fur product. (5723792, Sept. 26, 1957.)

8957. **Vending Machines—Services, Safety of Investment, Earnings.**—Richard J. Tennes, an individual doing business as Vend-Rite Manufacturing Co., with place of business in Chicago, Ill., agreed that in connection with the offer and sale in commerce of vending machines or other similar products, he will forthwith cease and desist from representing:

1. That satisfactory locations will be obtained for the use of purchasers unless such locations are in fact so obtained and made available to purchasers;

2. That investments required to purchase his machines are fully secured by equipment, or otherwise representing the security afforded in any manner not in accordance with the facts;

3. That purchasers of his machines will realize profits and returns in excess of those which have in fact been customarily and regularly earned by operators of such machines;

4. That purchasers of said machines incur no risk of losing their investment;

5. That he will resell machines for his customers when such is not the fact. (5723705, Sept. 26, 1957.)

8958.<sup>7</sup> **Fur Products—Noncompliance With Labeling Act.**—Albert A. Smith, Arnold T. Smith, and Rose Smith, copartners doing business as Smith's Fur Shop with place of business in Pittsburgh, Pa., agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product," and "commerce" are defined in the Fur Products Labeling Act, they and each of them will forthwith cease and desist from:

(1) Failing to affix labels to fur products showing:

(a) The name or names of the animal or animals producing the fur contained in the fur product as set forth in the Fur Products Name Guide and as permitted under the rules and regulations;

<sup>7</sup> Rescinded as to respondent Arnold T. Smith Mar. 24, 1950.

(b) The name or other identification issued and registered by the Commission of one or more persons who manufactured such fur product for introduction into commerce, introduced it in commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce;

(c) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(d) The name of the country of origin of any imported furs used in a fur product;

(e) Such other information as may be required by section 4(2) of the Fur Products Labeling Act.

(2) Using on labels attached to fur products the name of an animal other than the name of the animal actually producing the fur.

(3) Mingling, on labels, nonrequired information with required information.

(4) Setting forth on labels required information in handwriting.

(5) Failing to set forth on labels required information in the proper sequence.

(6) Failing to furnish invoices to purchasers of fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) The name of the country of origin of any imported furs contained in a fur product;

(c) Such other information as may be required by section 5(b)(1) of the Fur Products Labeling Act.

(7) Failing to set forth on invoices the item number or mark assigned to the fur product for purposes of identification.

(8) Failing to maintain records showing all of the required information relative to fur products or furs in such manner as will readily identify each fur or fur product. (5723801, Sept. 26, 1957.)

8959. **Fur Products—Noncompliance With Labeling Act.**—Engel and Fetzer Co., an Ohio corporation with place of business in Cleveland, Ohio, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms “fur,” “fur product,” and “commerce” are defined in the Fur Products Labeling Act, it will forthwith cease and desist from:

(1) Failing to affix labels to fur products showing:

(a) The name or names of the animal or animals producing the fur contained in the fur product as set forth in the Fur Products Name Guide and as permitted under the rules and regulations;

(b) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(c) Such other information as may be required by section 4(2) of the Fur Products Labeling Act.

(2) Using on labels attached to fur products the name of an animal other than the name of the animal actually producing the fur.

(3) Mingling, on labels, nonrequired information with required information.

(4) Setting forth on labels required information in abbreviated form.

(5) Failing to furnish invoices to purchasers of fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) That the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur, when such is the fact;

(c) The name of the country of origin of any imported furs contained in a fur product;

(d) Such other information as may be required by section 5(b)(1) of the Fur Products Labeling Act.

(6) Setting forth on invoices required information in abbreviated form.

(7) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 7(c) of the act;

(b) Does not show that the fur product or fur is bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(c) Contains the name of an animal other than that producing the fur;

(d) Abbreviates required information;

(e) Does not show, or improperly shows, the name of the country of origin of any imported furs or those contained in a fur product. (5723766, Sept. 26, 1957.)

8960. **Fur Products—Noncompliance With Labeling Act.**—Buffums', a California corporation with place of business in Long Beach, Calif., and Harry Buffum, George H. Brown, John Carr, and Vaile G. Young, its officers, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product

made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product," and "commerce" are defined in the Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from:

- (1) Failing to furnish invoices to purchasers of fur products showing:
  - (a) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;
  - (b) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;
  - (c) Such other information as may be required by section 5(b)(1) of the Fur Products Labeling Act.
- (2) Setting forth on invoices required information in abbreviated form.
- (3) Using on invoices the name of an animal other than that producing the fur.
- (4) Advertising fur products in any manner or by any means where the advertisement:
  - (a) Does not show that the fur product or fur is bleached, dyed, or otherwise artificially colored fur when such is the fact;
  - (b) Uses comparative price statements in advertisements unless there is maintained by said corporation an adequate record disclosing the facts upon which such claims or representations are based.
- (5) Failing to maintain records showing all of the required information relative to fur products or furs in such manner as will readily identify each fur or fur product. (5723188, Sept. 26, 1957.)

8961. **Vitamin-Mineral Preparation—Nutritive and Therapeutic Properties, Relevant Facts.**—Felix R. May, an individual trading as Physical Culture Products Co. with place of business at Pine Orchard, Conn., engaged in the offer and sale of a preparation designated "Naturessence," agreed that he will forthwith cease and desist from disseminating or causing to be disseminated any advertisement for said preparation or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under that name or any other name, which represents directly or by implication:

- (1) That the preparation supplies all the essential vitamins, minerals, or amino acids in adequate amounts or supplies any vitamin, mineral, or amino acid other than those which the preparation contains in adequate amounts.

(2) That the preparation is effective in correcting or preventing any vitamin deficiency or symptom thereof except to the extent that it supplies vitamin A, vitamin D, or vitamin C;

(3) That deficiencies of vitamins or minerals are so common in the average diet that it is necessary to supplement the diet with the elements supplied by the preparation;

(4) That the preparation is of value in the treatment or prevention of arthritis, heart disease, or cancer;

(5) That the preparation will give the user perfect health or will make or keep one healthy;

(6) That synthetic vitamins are inferior in potency to naturally occurring vitamins or otherwise falsely disparaging synthetic vitamins. (5723779, Oct. 8, 1957.)

8962. **Cotton Pile Fabric—Exclusive Distributor.**—Vanetta Mills, Inc., a New York corporation with place of business in New York City, and Ross Washer, its officer, engaged in the offer and sale of a cotton pile fabric designated "Cantoni Velveteen," agreed that in connection with the offer and sale of fabrics in commerce they, and each of them will forthwith cease and desist from representing, directly or by implication, that any fabric is manufactured exclusively for Vanetta Mills, Inc., or that Vanetta Mills, Inc., is the exclusive or sole distributor of any fabric sold by it, when such is not the fact. (5623720, Oct. 10, 1957.)

8963. **Fur Products—Noncompliance With Labeling Act.**—Bernard Milenbach and Adolph Milenbach, copartners doing business as S. Milenbach & Sons with place of business in Chicago, Ill., agreed that in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product," and "commerce" are defined in the Fur Products Labeling Act, they and each of them will forthwith cease and desist from:

(1) Failing to affix labels to fur products showing:

(a) The name or other identification issued and registered by the Commission of one or more persons who manufactured such fur product for introduction into commerce, introduced it in commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce;

(b) Such other information as may be required by section 4(2) of the Fur Products Labeling Act.

(2) Using on labels attached to fur products the name of an animal other than the name of the animal actually producing the fur.

(3) Setting forth on labels required information in abbreviated form or in handwriting.

(4) Mingling, on labels, nonrequired information with required information.

(5) Using labels that do not comply with the minimum size requirements prescribed by rule 27 of the regulations under the Fur Products Labeling Act.

(6) Failing to set forth on labels required information in the proper sequence.

(7) Failing to precede the name of the country of origin with the term "fur origin."

(8) Failing to furnish invoices to purchasers of fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) The name of the country of origin of any imported furs contained in a fur product;

(c) Such other information as may be required by section 5(b)(1) of the Fur Products Labeling Act.

(9) Failing to set forth on invoices the item number or mark assigned to the fur product for purposes of identification.

(10) Failing to maintain records showing all of the required information relative to fur products or furs in such manner as will readily identify each fur or fur product. (5723834, Oct. 15, 1957.)

**8964. Fur Products—Noncompliance With Labeling Act.**—Reinstein-Berger, Inc., a New York corporation with place of business in New York City, agreed that in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product," and "commerce" are defined in the Fur Products Labeling Act, it will forthwith cease and desist from:

(1) Failing to affix labels to fur products showing:

(a) The name or names of the animal or animals producing the fur contained in the fur product as set forth in the Fur Products Name Guide and as permitted under the rules and regulations;

(b) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(c) Such other information as may be required by section 4(2) of the Fur Products Labeling Act.

(2) Mingling, on labels, nonrequired information with required information.

(3) Failing to furnish invoices to purchasers of fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(c) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(d) The name of the country of origin of any imported furs contained in a fur product;

(e) Such other information as may be required by section 5(b)(1) of the Fur Products Labeling Act.

(4) Setting forth on invoices required information in abbreviated form. (5723822, Oct. 15, 1957.)

8965. **Blankets—Nondisclosure of Rayon Content.**—Parker-Allen Industries, Inc., an Illinois corporation with place of business in Chicago, Ill., and Sidney H. Cohen, Harold Sparks, and Marvin H. Shapiro, its officers, agreed that in connection with the offer and sale of blankets and other textile products in commerce, they and each of them will forthwith cease and desist from:

(1) Using the word "nylon" or any word or term indicative of nylon, to designate or describe any product or portion thereof which is not composed wholly of nylon; provided, that in the case of products or portions thereof which are composed in substantial part of nylon and in part of other fibers or materials such terms may be used as descriptive of the nylon content of the product or portion thereof if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully designating each constituent fiber or material thereof in the order of its predominance by weight; provided further, that if any fiber or material so designated is not present in a substantial quantity, the percentage thereof shall be stated.

(2) Advertising or otherwise offering for sale or selling products composed in whole or in part of rayon or of acetate without clearly disclosing such rayon or acetate content. (5723646, Oct. 15, 1957.)

8966. **Melamine Plastic Dinnerware—Durability, Prices, Guarantees.**—Ernest E. Hellmich, Edward J. Hellmich, Emil Hellmich, and Karl Kress, copartners trading as Branchell Co. and as Hellmich Manufacturing Co., with place of business in Missouri, agreed that

in connection with the offer and sale of melamine plastic dinnerware and tableware in commerce, they and each of them will forthwith cease and desist from:

1. Representing that melamine plastic dinnerware and melamine plastic handles of tableware are "accident proof" or will not break or that melamine plastic dinnerware will not crack or chip.

2. Representing that the usual or regular selling price or value of an article or combination of articles is an amount in excess of the price at which said article or combination of articles has sold in recent, regular course of business.

3. Representing directly or by implication that an article is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

4. Using the term "lifetime," or any word of similar meaning, in such manner as to import or imply that an article is guaranteed for the lifetime of the user, when such is not the fact.

5. Representing that an article is certified except under the following conditions:

(a) The identity of the certifier be clearly and plainly disclosed.

(b) The certifier be qualified and competent to know what has been certified is true.

(c) If the certifier is some one other than the seller, any connection between the certifier and the seller be clearly shown. (5623413, Oct. 15, 1957.)

8967. **Packing and Shipping Household Goods—Government Connection.**—United States Dispatching Corp., a Virginia corporation with place of business in Arlington, Va., agreed that in connection with the offer and sale of packing, crating, and freight forwarding services in commerce, it will forthwith cease and desist from using the name "United States Dispatching Corp." or any other name, word or phrase of similar import to designate, describe, or refer to its business; or otherwise representing directly or by implication that its business is in any way connected with the U.S. Government or any agency or branch thereof. (5723595, Oct. 17, 1957.)

8968. **Collection Questionnaires—Obtaining Information by Subterfuge.**—Charles Fiske and Joseph Freedman, copartners trading as R & R Associates with place of business in New York City, agreed that in connection with obtaining information concerning delinquent debtors and collecting delinquent debts in commerce, they and each of them will forthwith cease and desist from:

(1) Using the words "Security Reverification Office" or any other word or phrase of similar import to designate or describe the business conducted; or otherwise representing, directly or by implication, that

requests for information concerning delinquent debtors are from the U.S. Government or any agency or branch thereof, or that the business is in any way connected with the U.S. Government;

(2) Using any form, questionnaire, or other material, which represents, directly or by implication, that the purpose for which the information is requested is other than that of obtaining information concerning delinquent debtors. (5723156, Oct. 17, 1957.)

8969. **Vinyl Tile Floor Covering—Durability.**—Robbins Floor Products, Inc., an Alabama corporation with place of business in Tusculum, Ala., agreed that in connection with the offer and sale of floor covering material in commerce it will forthwith cease and desist from representing directly or by implication that said material will last for a lifetime or any specified period other than in accordance with fact; provided, however, that nothing herein shall prevent use of a trade mark containing the term "Lifetime" if in immediate conjunction therewith a clear disclosure is made that such wording is a trade mark only and not a representation concerning the material. (5623187, Oct. 17, 1957.)

8970. **Investment Weekly—Securing Signatures Unfairly.**—Carl Hougard, Leo Cherne, and Joseph Ardleigh, copartners trading as Institute Publishing Co. with place of business in New York City, agreed that in connection with the offer and sale of a weekly publication now designated Research Institute Recommendations in commerce, they, and each of them, will forthwith cease and desist from:

(A) Using the word "free" or any other word or words of similar import or meaning, in advertising or in other offers to the public, to designate or describe a publication or other commodity:

(1) When all of the conditions, obligations, or other prerequisites to the receipt and retention of the "free" article of merchandise are not clearly and conspicuously explained or set forth at the outset so as to leave no reasonable probability that the terms of the advertisement or offer might be misunderstood; or

(2) When, with respect to any article of merchandise required to be purchased in order to obtain the "free" article, the offerer either (a) increases the ordinary and usual price; or (b) reduces the quality; or (c) reduces the quantity or size of such article of merchandise.

(B) Failing to disclose clearly and adequately on subscription cards and in other advertising material that persons signing and returning such cards are, in fact, subscribing for a weekly publication at a cost of \$24 a year, or for such other publication and at such terms as may be applicable;

(C) Representing directly or by implication that the regular price of any publication or other commodity is greater than the price at

which it is customarily sold in the regular course of business. (5723588, Oct. 17, 1957.)

8971. **Blankets—Nondisclosure of Cotton and Rayon Content.**—Theodore Robbins, Isidore Leon Robbins, Ida Rubin Robbins, and Mamie Robbins, copartners trading as Robbins Co., with place of business in New Orleans, La., agreed that in connection with the offer and sale of blankets and other textile products in commerce, they and each of them will forthwith cease and desist from:

(1) Using the word "nylon" or any word or term indicative of nylon, to designate or describe any product or portion thereof which is not composed wholly of nylon; provided, that in the case of products or portions thereof which are composed in substantial part of nylon and in part of other fibers or materials such terms may be used as descriptive of the nylon content of the product or portion thereof if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully designating each constituent fiber or material thereof in the order of its predominance by weight; provided further, that if any fiber or material so designated is not present in a substantial quantity, the percentage thereof shall be stated.

(2) Advertising or otherwise offering for sale or selling products composed in whole or in part of rayon or of acetate without clearly disclosing such rayon or acetate content. (5723173, Oct. 17, 1959.)

8972. **Truss—Unique Nature, Comfort and Security.**—Linden L. Moore, an individual trading as Security Truss Co. with place of business in Dallas, Tex., agreed that he will forthwith cease and desist from disseminating or causing to be disseminated any advertisement for a device now designated "Hernia Guard," or any other device of substantially the same construction, whether sold under that name or any other name, which represents directly or by implication:

(1) That said device is revolutionary or a new kind of truss or invention, or that it operates in a different manner or upon a different principle from other trusses or affords greater security than other trusses;

(2) That use of said device will retain or control hernias or ruptures unless expressly limited to reducible hernias or ruptures;

(3) That said device prevents the rupture from growing larger or more difficult to control or that it has any effect on the rupture in excess of retention of reducible hernias or ruptures while worn;

(4) That said device will not gouge or bind or that it does away with the discomforts caused by elastic or other steel trusses or otherwise misrepresenting the relief or comfort which the said device will afford. (5723436, Oct. 22, 1957.)

8973. **Arthritis Treatment—Effectiveness, Unique Nature, etc.**—Lodolyn Products Co., Inc., a corporation with place of business in Lakewood, Ohio, and Roy S. Lodolyn and Amelia M. Lodolyn, its officers agreed that they will forthwith cease and desist from disseminating or causing to be disseminated any advertisement for the product now designated “R-Tra-Dol,” or any other product of substantially similar composition or properties, which represents, directly or by implication:

(a) That the taking of the product will constitute an adequate, effective or reliable treatment for arthritis, rheumatism, back ailments, muscular stiffness, joint aches or pain in walking or any other kind of arthritic or rheumatic condition;

(b) That the product will afford any relief of severe aches, pains or other discomforts of arthritis or rheumatism or any other arthritic or rheumatic condition, or have any therapeutic effect upon any of the symptoms or manifestations of any such condition in excess of affording temporary relief of minor aches and pains thereof;

(c) That either the passiflora or phytolacea contained in the product contribute any therapeutic effect thereto;

(d) That the product is new or amazing or substantially different in speed or mode of action or effect than competing products in comparable dosage. (5723316, Oct. 22, 1957.)

8974. **Fur Products—Noncompliance With Labeling Act.**—The Komiss Co., an Illinois corporation with place of business in Chicago, Ill., and Justin Komiss, its officer, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms “fur,” “fur product,” and “commerce” are defined in the Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from:

(1) Failing to affix labels to fur products showing:

(a) The name or names of the animal or animals producing the fur contained in the fur product as set forth in the Fur Products Name Guide and as permitted under the rules and regulations;

(b) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(c) Such other information as may be required by section 4(2) of the Fur Products Labeling Act.

(2) Setting forth on labels required information in handwriting.

(3) Failing to furnish to purchasers of fur trimmed products invoices

disclosing the information required by section 5(b)(1) of the Fur Products Labeling Act.

(4) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 7(c) of the act.

(b) Does not show that the fur product or fur is bleached, dyed, or otherwise artificially colored fur, when such is the fact.

(c) Does not show that the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur when such is the fact.

(d) Does not properly show the name of the country of origin of any imported furs or those contained in a fur product.

(e) Makes use of comparative prices or percentage savings claims unless such compared prices or claims are based upon the current market value of the fur product or upon a bona fide compared price at a designated time.

(5) Using comparative price statements in advertisements unless there is maintained by said corporation an adequate record disclosing the facts upon which such claims or representations are based. (5723730, Oct. 22, 1957.)

8975. **Watch Cases—Base Metal as Gold.**—Gem Watch Case Co., Inc., a New York corporation with place of business in New York City, and Hector Moret and Gustavo Moret its officers, agreed that in connection with the offer, sale, and distribution of watch cases in commerce, they and each of them will forthwith cease and desist from:

1. Representing directly or by implication that a watch case or part thereof is composed of rolled gold plate, or gold plate, or plate, unless such watch case or part thereof is coated or covered throughout with not less than one and one-half thousandths inch of gold alloy of at least 10 karat fineness; provided, however, that nothing herein shall prevent unavoidable deviations from the minimum thickness of one and one-half thousandths inch within the limits of paragraph (c) of section II of rule 2 of the trade practice rules for the watch case industry; and provided further that to warrant description as aforesaid, the plating must have been affixed by mechanical means and any reference to the plating shall be accompanied by a statement of the karat fineness.

2. Offering for sale or selling watch cases composed in whole or in part of a stock of base metal manufactured or otherwise processed to simulate or have the appearance of precious metal without marking

such case or part to disclose clearly the true metal composition thereof. (5420448, Oct. 22, 1957.)

8976. **Nursery Stock—Guarantees.**—W. Russell Wilson, an individual doing business as Russell Wilson Nurseries with place of business in Winnsboro, Tex., agreed that in connection with the offer and sale of nursery stock in commerce, he will forthwith cease and desist from representing directly or by implication that such products are guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed. (5623089, Oct. 24, 1957.)

8977. **Fur Products—Noncompliance With Labeling Act.**—Charles Main Street Corp., a New York corporation with place of business in Buffalo, N.Y., and Charles L. Morrison and Seth R. Morrison, its officers, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product," and "commerce" are defined in the Fur Products Labeling Act, they, and each of them, directly or through any corporate or other device, will forthwith cease and desist from:

(1) Failing to affix labels to fur products showing:

(a) The name or other identification issued and registered by the Commission of one or more persons who manufactured such fur product for introduction into commerce, introduced it in commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce;

(b) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(c) The name of the country of origin of any imported furs used in a fur product;

(d) Such other information as may be required by section 4(2) of the Fur Products Labeling Act.

(2) Failing to show on labels affixed to fur products an item number or mark assigned to such product for identification purposes.

(3) Failing to furnish invoices to purchasers of fur products disclosing the information required by section 5(b)(1) of the Fur Products Labeling Act.

(4) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the

fur, and such qualifying statement as may be required pursuant to section 7(c) of the act;

(b) Does not show that the fur product or fur is bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(c) Does not show the name of the country of origin of any imported furs or those contained in a fur product;

(d) Contains the name of an animal other than that producing the fur.

(5) Using comparative price statements in advertisements unless there is maintained by said corporation an adequate record disclosing the facts upon which such claims or representations are based.

(6) Advertising fur products in any manner or by any means whereby the advertisement represents directly or by implication that the regular or usual price of any fur product is any amount in excess of the price at which said corporation has usually and customarily sold such products in the recent regular course of its business. (5723468, Oct. 29, 1957.)

8978. **Stainless Steel Cooking Ware—Dealer as Manufacturer, Opportunities, etc.**—Trade Winds Co., Inc., a Missouri corporation with place of business in Kansas City, Mo., and Thomas C. Porter, Russell Riley, and Jennie Riley, its officers, agreed that in connection with the offer and sale of stainless steel cookware in commerce, they, and each of them, will forthwith cease and desist from representing directly or by implication:

(1) That they are the manufacturers of the stainless steel cookware offered for sale and sold by them unless and until such products are actually manufactured in a plant or factory owned and operated, or directly and absolutely controlled, by them;

(2) That Trade Winds Co., Inc., has been in existence 80 years or any other period of time not in accordance with the facts;

(3) That any specified sum of money is possible as earnings or profits for any stated period of time to distributors or salesmen of stainless steel cookware, which sum of money is not a true representation of the net earnings or profits which have been made by a substantial number of distributors or salesmen of such product in the ordinary course of business under normal conditions and circumstances. (5723720, Oct. 29, 1957.)

8979. **Watches—"Jeweled," Guarantees, Fictitious Pricing, etc.**—Fred Waldman and Helga Waldman, copartners trading as Fewa Watch Co., with place of business in New York City, agreed that in connection with the offer and sale of watches in commerce, they and each of them will forthwith cease and desist from:

(1) Representing directly or by implication that a watch is a "jeweled" watch, or that it contains a jeweled movement, unless said

watch contains at least seven jewels, each of which serves a mechanical purpose as a frictional bearing.

(2) Representing directly or by implication that watches are guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

(3) Offering for sale or selling watches, the cases of which are composed in whole or in part of base metal manufactured or otherwise processed to simulate or have the appearance of precious metal, without marking such case or part to disclose clearly the true metal composition thereof.

(4) Supplying purchasers of watches or other merchandise with price tags having prices or amounts which are in excess of the usual or regular retail selling prices of said watches or other merchandise, or otherwise representing that the usual or regular retail price of merchandise is any amount greater than the price at which such merchandise is usually and regularly sold. (5723307, Oct. 29, 1957.)

8980. **Greeting Cards—Earnings.**—Colonial Studios, Inc., a Massachusetts corporation with place of business in White Plains, N.Y., and Thomas Doran, its officer, agreed that in connection with the offer and sale of greeting cards and stationery in commerce, they and each of them will forthwith cease and desist from representing:

1. That salesmen selling such cards or stationery may reasonably expect earnings of \$35 per day or any other amount in excess of the net average earnings made by a substantial number of salesmen selling such products in the ordinary and usual course of business and under normal conditions and circumstances;

2. That the salesman's profit on cards or stationery is any amount greater than is a fact. (5723032, Oct. 31, 1957.)

8981. **Hooked Rugs—Wool and Rayon Content.**—James Boghosian and Ralph P. Boghosian, copartners trading as Boghosian Bros., with principal place of business in Oakland, Calif., agreed that in connection with the offer and sale in commerce of hooked rugs they, and each of them, will forthwith cease and desist from:

1. Using the word "wool" or any word or term indicative of wool, to designate or describe any product or portion thereof which is not composed wholly of wool, the fiber from the fleece of the sheep or lamb, or hair of the angora or cashmere goat, or hair of the camel, alpaca, llama, or vicuna, which has never been reclaimed from any woven or felted product; provided, that in the case of products or portions thereof which are composed in substantial part of wool and in part of other fibers or materials, such terms may be used as descriptive of the wool content of the product or portion thereof if there are used in immediate connection or conjunction therewith, in letters

of at least equal size and conspicuousness, words truthfully designating each constituent fiber or material thereof in the order of its predominance by weight; provided further, that if any fiber or material so designated is not present in a substantial quantity, the percentage thereof shall be stated. Nothing herein shall prohibit the use of the terms "reprocessed wool" or "reused wool" when the products or those portions thereof referred to are composed of such fibers;

2. Labeling, advertising or otherwise offering for sale or selling products composed in whole or in part of rayon without clearly disclosing such rayon content. (5520365, Nov. 7, 1957.)

8982. **Fur Products—Noncompliance With Labeling Act.**—Blums Inc., an Illinois corporation doing business as Blum's Vogue with place of business in Chicago, Ill., agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product," and "commerce" are defined in the Fur Products Labeling Act, it, directly or through any corporate or other device, will forthwith cease and desist from:

(1) Failing to affix labels to fur products showing:

(a) The name or names of the animal or animals producing the fur contained in the fur product as set forth in the Fur Products Name Guide and as permitted under the rules and regulations;

(b) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(c) Such other information as may be required by section 4(2) of the Fur Products Labeling Act.

(2) Mingling, on labels, nonrequired information with required information.

(3) Setting forth on labels required information in handwriting.

(4) Failing to set forth on labels affixed to fur products an item number or mark assigned to such product for identification purposes.

(5) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 7(c) of the act.

(b) Does not show that the fur product or fur is bleached, dyed, or otherwise artificially colored fur, when such is the fact. (5823104, Nov. 19, 1957.)

8983. **Fur Products—Noncompliance With Labeling Act.**—Gerald Walter, an individual doing business as Walter's Furs with place of business in Port Huron, Mich., agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of furs or any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of furs or any fur product, as the terms "fur," "fur product," and "commerce" are defined in the Fur Products Labeling Act, he will forthwith cease and desist from:

(1) Failing to affix labels to fur products showing:

(a) The name or names of the animal or animals producing the fur contained in the fur product as set forth in the Fur Products Name Guide and as permitted under the rules and regulations;

(b) That the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur, when such is the fact;

(c) Such other information as may be required by section 4(2) of the Fur Products Labeling Act.

(2) Mingling, on labels, nonrequired information with required information.

(3) Setting forth on labels required information in handwriting. (5823090, Nov. 21, 1957.)

8984. **Book Reprints—Undisclosed Change of Titles.**—Berkley Publishing Corp., a New York corporation, with place of business in New York City, and Charles Byrne and Stephen Conland, its officers, agreed that in connection with the offer and sale of books in commerce, they, and each of them, will forthwith cease and desist from:

Using or substituting a new title for, or in place of, the original title of a reprinted book unless a statement which reveals the original title of the book and that it has been published previously thereunder appears in clear, conspicuous type upon the front cover and upon the title page of the book, either in immediate connection with the new title or in another position adapted readily to attract the attention of a prospective purchaser. (5723498, Nov. 21, 1957.)

8985. **Fur Products—Noncompliance With Labeling Act.**—House of Erdrich, Inc., a New York corporation with place of business in New York City, and Harold Erdrich, its officer, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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 as the terms "fur," "fur product," and "commerce" are defined in the

Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from:

(1) Failing to affix labels to fur products showing:

(a) The name or names of the animal or animals producing the fur contained in the fur product as set forth in the Fur Products Name Guide and as permitted under the rules and regulations;

(b) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(c) Such other information as may be required by section 4(2) of the Fur Products Labeling Act.

(2) Failing to show on labels affixed to fur products an item number or mark assigned to such product for identification purposes.

(3) Failing to furnish invoices to purchasers of fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(c) Such other information as may be required by section 5(b)(1) of the Fur Products Labeling Act.

(4) Failing to set forth on invoices the item number or mark assigned to the fur product for purposes of identification. (5823112, Dec. 3, 1957.)

8986. **Athletic Trophies, Awards, etc.**—“Ebony,” “Marbelette,” and “Onyx” Composition.—Arlen Trophy Co., Inc., a New York corporation with place of business in Brooklyn, N.Y., and David Greenhouse and Irving Greenhouse, its officers, agreed that in connection with the offer and sale of athletic trophies, plaques, awards and giftware in commerce, they, and each of them, will forthwith cease and desist from:

(1) Using the word “Ebony” or any other word or words implying genuine ebony to describe articles not made of genuine ebony, provided, however, that this shall not prevent representations, not implying genuineness, that the said articles have the color of ebony;

(2) Using the word “Marbelette” or any other word or words implying genuine marble to describe articles not made of genuine marble without revealing the fact that such articles are not made of genuine marble;

(3) Using the word “Onyx” or any other word or words implying genuine onyx to describe articles not made of genuine onyx, provided, however, that this shall not prevent representations, not implying genuineness, that the said articles have the color of onyx. (5623492, Dec. 12, 1957.)

8987. **Arthritis Treatment—Effectiveness, Comparative Merits, etc.**—Ivan D. Hussey, an individual trading as Hussey Distributing Co. with place of business in Atlanta, Ga., agreed that he will forthwith cease and desist from disseminating or causing to be disseminated any advertisement for the product now designated “Ar-Thry-Go,” or any other product of substantially similar composition or properties, which represents, directly or by implication:

(a) That the taking of the product will constitute an adequate, effective or reliable treatment for sciatica, neuritis, bursitis, lumbago, or any other kind of arthritic or rheumatic condition;

(b) That the product will arrest the progress or correct the underlying causes of, or will cure, sciatica, neuritis, bursitis, lumbago, or any other kind of arthritic or rheumatic condition;

(c) That the product will afford any relief of severe aches, pains, or discomforts of sciatica, neuritis, bursitis, lumbago, or any other arthritic or rheumatic condition, or have any therapeutic effect upon any of the symptoms or manifestations of any such condition in excess of affording temporary relief of minor aches, pains, or fever, when taken in adequate dosage;

(d) That the product, either because of its salicylamide content or otherwise, is more effective as an analgesic than is aspirin in comparable dosage;

(e) That calcium succinate, thiamine hydrochloride, or ascorbic acid contribute any analgesic or other therapeutic effect to the product, in the relief or treatment of sciatica, neuritis, bursitis, lumbago, arthritis or rheumatism, or any symptom or manifestation thereof;

(f) That the product, either because of the enteric coating or otherwise, will afford relief faster or as fast as other analgesic products not so coated. (5723283, Dec. 17, 1957.)

8988. **Fur Products—Noncompliance With Labeling Act.**—Charles Glickman, an individual doing business under his own name with place of business in New York City, agreed that in connection with the sale, advertising, offering for sale, transportation or distribution of furs or any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of furs or any fur product, as the terms “fur,” “fur product,” and “commerce” are defined in the Fur Products Labeling Act, he will forthwith cease and desist from failing to furnish to purchasers of fur products invoices showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) That the fur product contains or is composed of used fur, when such is the fact;

(c) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(d) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(e) The name of the country of origin of any imported furs contained in a fur product;

(f) Such other information as may be required by section 5(b)(1) of the Fur Products Labeling Act. (5723748, Jan. 2, 1958.)

8989. **"Wool" Hooked Rugs—Nondisclosure of Rayon Content.**—Berven Carpets Corp., a California corporation with place of business in San Francisco, Calif., and Philip Berven, its president and treasurer, agreed that in connection with the offer and sale in commerce of hooked rugs they, and each of them, will forthwith cease and desist from:

1. Using the word "wool" or terms indicative of wool, to designate or describe any product or portion thereof which is not composed wholly of wool, the fiber from the fleece of the sheep or lamb, or hair of the angora or cashmere goat, or hair of the camel, alpaca, llama, or vicuna, which has never been reclaimed from any woven or felted product; provided, that in the case of products or portions thereof which are composed in substantial part of wool and in part of other fibers or materials, such terms may be used as descriptive of the wool content of the product or portion thereof if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully designating each constituent fiber or material thereof in the order of its predominance by weight; provided further, that if any fiber or material so designated is not present in a substantial quantity, the percentage thereof shall be stated. Nothing herein shall prohibit the use of the terms "reprocessed wool" or "reused wool" when the products or those portions thereof referred to are composed of such fibers;

2. Labeling, advertising or otherwise offering for sale or selling products composed in whole or in part of rayon without clearly disclosing such rayon content. (5420325, Jan. 2, 1958.)

8990. **Watches—Guarantees.**—Gimbel Bros., Inc., a New York corporation with its principal place of business in New York City, agreed that in connection with the offer and sale of watches and related products in commerce, it will forthwith cease and desist from representing that such products are guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed. (5723290, Jan. 2, 1958.)

8991. **Fur Products—Noncompliance With Labeling Act.**—Rizik Bros., Inc., a District of Columbia corporation with place of business in Washington, D.C., and Joseph Rizik and Michel Rizik, its officers, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms “fur,” “fur product,” and “commerce” are defined in the Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from:

(1) Failing to affix labels to fur products showing:

(a) The name or names of the animal or animals producing the fur contained in the fur product as set forth in the Fur Products Name Guide and as permitted under the rules and regulations;

(b) Such other information as may be required by section 4(2) of the Fur Products Labeling Act.

(2) Mingling, on labels, nonrequired information with required information.

(3) Failing to furnish invoices to purchasers of fur products showing:

(a) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(b) The name of the country of origin of any imported furs contained in a fur product;

(c) Such other information as may be required by section 5(b)(1) of the Fur Products Labeling Act.

(4) Setting forth on invoices required information in abbreviated form.

(5) Failing to set forth on invoices the item number or mark assigned to the fur product for purposes of identification.

(6) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 7(c) of the act.

(b) Does not show that the fur product or fur is bleached, dyed or otherwise artificially colored fur when such is the fact.

(c) Abbreviates required information. (5723539, Jan. 7, 1958.)

8992. **Book Reprints—Nondisclosure of Abridgement and Original Title.**—Fawcett Publications, Inc., a Delaware corporation, with place of business in New York City, and Wilfred Fawcett and Gordon Fawcett, its officers, agreed that in connection with the offer and

sale of books in commerce, they, and each of them, will forthwith cease and desist from:

(1) Offering for sale or selling any abridged copy of a book unless one of the following words, namely: "abridged," "abridgement," "condensed," or "condensation," or any other word or phrase stating with equal clarity that said book is abridged, appears in clear, conspicuous type upon the front cover and upon the title page of the book either in immediate connection with the title or in another position adapted readily to attract the attention of a prospective purchaser.

(2) Using or substituting a new title for, or in place of, the original title of a reprinted book unless a statement which reveals the original title of the book and that it has been published previously thereunder appears in clear, conspicuous type upon the front cover and upon the title page of the book, either in immediate connection with the new title or in another position adapted readily to attract the attention of a prospective purchaser.

(3) Disseminating advertising pertaining to any abridged copy of a book or to a book reprint having a substitute title, unless such advertising discloses the fact of abridgement or contains a statement revealing the original title and that the book has been previously published thereunder, or both, as the case may be, in clear conspicuous type either in immediate connection with the title under which the book is sold or in another position adapted readily to attract the attention of prospective purchasers. (5723133, Jan. 17, 1958.)

8993. "Wool" Hooked Rugs—Nondisclosure of Rayon Content.—D. N. & E. Walter & Co., a California corporation with its place of business in San Francisco, Calif., agreed that in connection with the offer and sale of hooked rugs it will forthwith cease and desist from:

(1) Using the word "wool," or any word or term indicative of wool, to designate or describe any product or portion thereof which is not composed wholly of wool, the fiber from the fleece of the sheep or lamb, or hair of the angora or cashmere goat, or hair of the camel, alpaca, llama or vicuna, which has never been reclaimed from any woven or felted product; provided, that in the case of products or portions thereof which are composed in substantial part of wool and in part of other fibers or materials, such terms may be used as descriptive of the wool content of the product or portion thereof if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully designating each constituent fiber or material thereof in the order of its predominance by weight, provided further, that if any fiber or material so designated is not present in a substantial quantity, the percentage thereof shall be stated. Nothing herein shall prohibit the use of the

terms "reprocessed wool" or "reused wool" when the products or those portions thereof referred to are composed of such fibers;

(2) Labeling, advertising, or otherwise offering for sale or selling products composed in whole or in part of rayon without clearly disclosing such rayon content. (5520364, Jan. 17, 1958.)

8994. **Reconditioned Files—Nondisclosure of Used Nature.**—Adolf Buchwald and Alfred Barish, copartners trading as Bird Specialty Co., with place of business in New York City, agreed that in connection with the offer and sale of reconditioned and rebuilt files in commerce, they and each of them will forthwith cease and desist from representing that such files are new or unused by failing to stamp said products with the words "reconditioned" or "rebuilt" conspicuously and legibly and in such manner as not to be readily obliterated or removed, and from representing in any other manner that such files are new. (5823029, Jan. 21, 1958.)

8995. **Watches—Accuracy, Shockproof Qualities, Guarantees.**—Ward Import Co., Inc., a New York corporation, and Egon Raymond Wachner and George J. Davidson, its officers, also trading as Ward Watch Co., with principal places of business in New York City agreed that in connection with the offering for sale, sale, and distribution of watches in commerce, as "commerce" is defined by the Federal Trade Commission Act, they and each of them will forthwith cease and desist from representing directly or by implication:

1. Through use of the term "Railway Timekeeper," or otherwise, that their watches are railroad watches or meet the requirements for use by railway employees or other specified requirements for accuracy, when such is not a fact;

2. That their watches are shockproof or shock protected or otherwise representing that the capacity of such watches to withstand shock is greater than is a fact;

3. That their watches are guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in close conjunction therewith. (5723070, Jan. 21, 1958.)

8996. **Automobile Seat Covers and Convertible Tops—Prices, Durability, "Custom-made".**—Charles M. Levinson and Maurice Bernstein, copartners trading as Sure Fit Seat Cover Center with place of business in the District of Columbia, agreed that in connection with the offer and sale of automobile seat covers and convertible tops in commerce, they and each of them will forthwith cease and desist from:

(1) Representing that the usual or regular price of a product is any amount in excess of the price at which said product has sold in recent, regular course of business.

(2) Representing that the price at which a product is offered for sale constitutes a reduction of any stated percentage or amount which is in excess of the actual reduction from the price at which such product has sold in recent, regular course of business.

(3) Using the word "lifetime" as descriptive of their seat covers or otherwise representing the durability of their products except in accordance with the facts.

(4) Representing that their seat covers are custom made.

(5) Offering convertible tops at specified prices which do not include the cost of a zipper or rear window curtain, unless clear and conspicuous disclosure of such fact is made. (5823143, Jan. 23, 1958.)

8997. **Dresses—Rayon Content.**—Gaynor Junior Dresses, Inc., trading as Natlynn Jr. Originals, a New York corporation with place of business in New York City, and Nat Grossman, Max Grossman, and Mildred Grossman, its officers, agreed that in connection with the offer and sale of dresses and other textile products in commerce, they and each of them will forthwith cease and desist from advertising or otherwise offering for sale or selling products composed in whole or in part of rayon without clearly disclosing such rayon content in the order of predominance. (5723763, Jan. 23, 1958.)

8998. **Woolen Interlinings—Noncompliance With Labeling Act.**—Seneca Quilting Co., Inc., a New York corporation with place of business in Brooklyn, N.Y., and Arthur Eisenberg and Paul Melinger, its officers, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution in commerce of woolen interlinings, or any other wool product within the meaning of the Wool Products Labeling Act, they and each of them will forthwith cease and desist from:

(1) Stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein in any manner not in accordance with the facts;

(2) Failing to securely affix to or place on each such product a stamp, tag, label or other means of identification showing in clear and conspicuous manner;

(a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding 5 percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is 5 percentum or more, and (5) the aggregate of all other fibers;

(b) The maximum percentage of the total weight of such wool product of any nonfibrous loading, filling, or adulterating matter;

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for

sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

It is further agreed by Seneca Quilting Co., Inc. and Arthur Eisenberg and Paul Melinger, individually and as officers of said corporation, that in connection with the offering for sale, sale or distribution of woolen interlining, or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, they and each of them will forthwith cease and desist from misrepresenting the percentages or amounts of the constituent fibers of which their products are composed, in sales invoices, shipping memoranda or in any other manner. (5823169, Feb. 4, 1958.)

**8999. Fur Products—Noncompliance With Labeling Act.**—Sanford A. Specht and Annette Specht, copartners doing business as S. A. Specht Associates with place of business in New York City, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product," and "commerce" are defined in the Fur Products Labeling Act, they and each of them will forthwith cease and desist from:

(1) Placing in the hands of others the means of misrepresenting the price of a fur product, through use of a price purporting to be the suggested retail price but which is in fact in excess of the price at which such product is expected to be sold or has usually and customarily been sold in the recent regular course of business, or otherwise misrepresenting the price at which fur products are sold or offered for sale.

(2) Advertising fur products in any manner or by any means where the advertisement contains the name of an animal other than that producing the fur. (5723599, Feb. 4, 1958.)

**9000. Fur Products—Noncompliance With Labeling Act.**—Baum Furs, Ltd., a New York corporation with place of business in New York City, and Phillip Baum and Sadye Baum, its officers, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product," and "commerce" are defined in the Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from:

- (1) Failing to affix labels to fur products showing:
  - (a) The name of the country of origin of any imported furs used in a fur product;
  - (b) Such other information as may be required by section 4(2) of the Fur Products Labeling Act.
- (2) Failing to set forth on labels affixed to fur products an item number or mark assigned to such product for identification purposes.
- (3) Setting forth on labels required information in pencil.
- (4) Failing to furnish invoices to purchasers of fur products showing:
  - (a) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;
  - (b) The name of the country of origin of any imported furs contained in a fur product;
  - (c) Such other information as may be required by section 5(b)(1) of the Fur Products Labeling Act.
- (5) Failing to set forth on invoices the item number or mark assigned to the fur product for purposes of identification.
- (6) Failing to maintain records showing all of the required information relative to fur products or furs in such manner as will readily identify each fur or fur product. (5823011, Feb. 4, 1958.)

9001. **Fur Products—Noncompliance With Labeling Act.**—Sam M. Zerkowsky, an individual doing business as Keller-Zander with place of business in New Orleans, La., agreed that in connection with the sale, advertising, offering for sale, transportation or distribution of furs or any fur products made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of furs or any fur product, as the terms “fur,” “fur product,” and “commerce” are defined in the Fur Products Labeling Act, he will forthwith cease and desist from advertising fur products in any manner or by any means whereby the advertisement represents directly or by implication that the regular or usual price of any fur product is any amount in excess of the price at which said individual has usually and customarily sold such product in the recent regular course of his business. (5723775, Feb. 4, 1958.)

9002. **Fur Products—Noncompliance With Labeling Act.**—Stone & Thomas, Inc., a West Virginia corporation with place of business in Charleston, W. Va., and W. S. Jones, R. G. Guter and David Goldberg, its officers, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product," and "commerce" are defined in the Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from:

(1) Failing to affix labels to fur products showing:

(a) The name or names of the animal or animals producing the fur contained in the fur product as set forth in the Fur Products Name Guide and as permitted under the rules and regulations;

(b) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(c) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(d) Properly, the name of the country of origin of any imported furs used in a fur product;

(e) Such other information as may be required by section 4(2) of the Fur Products Labeling Act.

(2) Mingling, on labels, nonrequired information with required information.

(3) Setting forth on labels required information in handwriting or in abbreviated form.

(4) Failing to furnish invoices to purchasers of fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) Such other information as may be required by section 5(b)(1) of the Fur Products Labeling Act.

(5) Using on invoices the name of an animal other than that producing the fur.

(6) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 7(c) of the act.

(b) Does not show that the fur product or fur is bleached, dyed, or otherwise artificially colored fur when such is the fact.

(c) Does not properly show the name of the country of origin of any imported furs or those contained in a fur product.

(d) Fails to set out all of the required information in legible and conspicuous type of equal size. (5823181, Feb. 4, 1958.)

9003. **Woolen Blankets—Composition and Maker.**—Roy Weaving Co., Inc., and Perth Woolen Co., Inc., New York corporations with place of business in Brooklyn, N.Y., and Morris Seideman, Emanuel Seideman and Bella Seideman, their officers, agreed that in connection with the introduction, or manufacture for introduction, into commerce,

or the sale, transportation, or distribution in commerce of woolen blankets, or any other wool product within the meaning of the Wool Products Labeling Act, they and each of them will forthwith cease and desist from:

(1) Stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein in any manner not in accordance with the facts;

(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;

(a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding 5 percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is 5 percentum or more, and (5) the aggregate of all other fibers;

(b) The maximum percentage of the total weight of such wool product of any nonfibrous loading, filling, or adulterating matter;

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution, or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

(3) Failing to maintain proper fiber content records as required by the Wool Products Labeling Act:

(a) Showing the percentage of wool, reprocessed wool, and reused wool, and of each kind of fiber other than wool, placed in the respective wool products of Roy Weaving Co., Inc. and Perth Woolen Co. in the form of fiber, yarn, fabric, or other form;

(b) Showing such numbers, information, marks, or means of identification as will identify the said records with the respective wool products to which they relate; and

(c) By keeping and maintaining as records under the act all invoices, purchase contracts, orders or duplicate copies thereof, bills of purchase, business correspondence received, factory records, and other pertinent documents and data showing or tending to show (a) the purchase, receipt, or use by said Roy Weaving Co., Inc. and Perth Woolen Co., Inc. of all fiber, yarn, fabric or fibrous material, or any part thereof, introduced in or made a part of any such wool products of said Roy Weaving Co., Inc. and Perth Woolen Co., Inc.; (b) the content, composition or classification of such fiber, yarn, fabric or fibrous material with respect to the information required to appear upon the label of the wool products of said Roy Weaving Co., Inc. and Perth Woolen Co., Inc.; and (c) the name and address of the

person or persons from whom such fiber, yarn, fabric or fibrous materials were purchased or obtained by said Roy Weaving Co., Inc. and Perth Woolen Co., Inc.

It is further agreed by Roy Weaving Co., Inc., Perth Woolen Co., Inc., Morris Seideman, Emanuel Seideman and Bella Seideman, individually and as officers of said corporations, that in connection with the offering for sale, sale or distribution of woolen blankets, or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, they and each of them will forthwith cease and desist from misrepresenting the percentages or amounts of the constituent fibers of which their products are composed, in sales invoices, shipping memoranda or in any other manner. (5723058, Feb. 4, 1958.)

9004. "Listerine Antiseptic"—Asian-Flu Preventive.—Warner-Lambert Pharmaceutical Co., a Delaware corporation, operating, among other names, under the name of Lambert Pharmacal Co., with its principal office and place of business located at Morris Plains, N.J., agreed that it will forthwith cease and desist from disseminating or causing to be disseminated any advertisement for the product now designated "Listerine Antiseptic," or any other product of substantially similar composition or properties, which represents, directly or by implication that the use of the product will provide protection against Asian Flu (Influenza) unless and until it has been established by adequate scientific evidence that such protection results to a substantial or significant degree. (5823187, Feb. 6, 1958.)

9005. Blankets—Nylon, Silk, and Wool Content.—Fairbanks Ward Industries, Inc., an Illinois corporation with place of business in Chicago, Ill., and Michael Wolfson, Alfred H. Howard, and Harry Zaidler, its officers, agreed that in connection with the offering for sale, sale, and distribution of blankets and other textile products in commerce, they and each of them will forthwith cease and desist from:

(1) Using the word "nylon" or any word or term indicative of nylon, to designate or describe any product or portion thereof which is not composed wholly of nylon; provided, that in the case of products or portions thereof which are composed in substantial part of nylon and in part of other fibers or materials such terms may be used as descriptive of the nylon content of the product or portion thereof if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully designating each constituent fiber or material thereof in the order of its predominance by weight; provided further, that if any fiber or material so designated is not present in a substantial quantity, the percentage thereof shall be stated.

(2) Using the word "wool" or any word or term indicative of wool, to designate or describe any product or portion thereof which is not composed wholly of wool; provided, that in the case of products or portions thereof which are composed in substantial part of wool and in part of other fibers or materials such terms may be used as descriptive of the wool content of the product or portion thereof if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully designating each constituent fiber or material thereof in the order of its predominance by weight; provided further, that if any fiber or material so designated is not present in a substantial quantity, the percentage thereof shall be stated.

(3) Advertising or otherwise offering for sale or selling products composed in whole or in part of rayon or of acetate without clearly disclosing such rayon or acetate content.

(4) Using the term "satin," or other word or term descriptive of a weave or construction, to describe a product or portion thereof which is composed in whole or in part of rayon or of acetate without clear and conspicuous identification of the fiber content set forth with equal prominence and in close conjunction therewith. (5723695, Feb. 6, 1958.)

9006. **"Belli-Dol" Arthritis Treatment—Effectiveness, Unique Qualities, etc.**—Lido Belli, an individual trading as Bellido Products with place of business in New York City, agreed that he will forthwith cease and desist from disseminating or causing to be disseminated any advertisement for the product now designated "Belli-Dol", or any other product of substantially the same composition or possessing substantially the same properties, which represents, directly or by implication:

(a) That the product will afford any relief of severe aches, pains, or discomforts of arthritis, rheumatism, neuritis, sciatica, or bursitis, or any other arthritic or rheumatic condition, or have any therapeutic effect upon any of the symptoms or manifestations of any such condition in excess of affording temporary relief of minor aches or pains thereof or of other minor muscular aches or pains;

(b) That the product will afford relief where other products fail or is an ultramodern achievement of modern science and from otherwise representing that it is substantially different in composition or in type or degree of pain relief from other analgesic preparations;

(c) Through use of "Lido Belli, Pres.," or in any other manner, that the business is operated as a corporation when such is not a fact or that it is operated under any other business setup except in accordance with the facts. (5723781, Feb. 6, 1958.)

9007. **Fur Products—Noncompliance With Labeling Act.**—Bernard Mirrow and Ethel Mirrow, copartners doing business as Mirrow's with place of business in Philadelphia, Pa., agreed that in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product," and "commerce" are defined in the Fur Products Labeling Act, they and each of them will forthwith cease and desist from:

(1) Failing to affix labels to fur products showing:

(a) The name or names of the animal or animals producing the fur contained in the fur product as set forth in the Fur Products Name Guide and as permitted under the rules and regulations;

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

(c) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(d) Properly, the name of the country of origin of any imported furs used in a fur product;

(e) Such other information as may be required by section 4(2) of the Fur Products Labeling Act.

(2) Mingling, on labels, nonrequired information with required information.

(3) Setting forth on labels required information in handwriting.

(4) Failing to set forth on labels affixed to fur products an item number or mark assigned to such products for identification purposes.

(5) Failing to furnish to purchasers of fur products invoices disclosing the information required by section 5(b)(1) of the Fur Products Labeling Act.

(6) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 7(c) of the act;

(b) Does not properly show the name of the country of origin of any imported furs or those contained in a fur product;

(c) Uses comparative price statements unless there is maintained by said individuals an adequate record disclosing the facts upon

which such claims or representations are based. (5823266, Feb. 11, 1958.)

9008. Coats—Nondisclosure of Interlining Fiber Content.—Debutogs, Inc., a New York corporation with place of business in New York City, and David Sheer, its president, and Samuel Horowitz, its vice president, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution in commerce of coats containing woolen interlinings, or any other wool product within the meaning of the Wool Products Labeling Act, they and each of them will forthwith cease and desist from:

(1) 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:

(a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding 5 percent of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is 5 percent or more, and (5) the aggregate of all other fibers;

(b) The maximum percentage of the total weight of such wool product of any nonfibrous loading, filling, or adulterating matter;

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

(2) Failing to set forth separately on the stamp, tag, label or other means of identification the true character and amount of the constituent fibers of the interlinings of any such wool products.

(3) Failing to maintain proper fiber content records as required by the Wool Products Labeling Act:

(a) Showing the percentage of wool, reprocessed wool, and reused wool, and of each kind of fiber other than wool, placed in the respective wool products of Debutogs, Inc., in the form of fiber, yarn, fabric, or other form;

(b) Showing such numbers, information, marks, or means of identification as will identify the said records with the respective wool products to which they relate; and

(c) By keeping and maintaining as records under the act all invoices, purchase contracts, orders, or duplicate copies thereof, bills of purchase, business correspondence received, factory records, and other pertinent documents and data showing or tending to show (a) the purchase, receipt, or use by said Debutogs, Inc., of all fiber, yarn,

fabric or fibrous material, or any part thereof, introduced in or made a part of any such wool products of said Debutogs, Inc.; (b) the content, composition or classification of such fiber, yarn, fabric, or fibrous material with respect to the information required to appear upon the label of the wool products of said Debutogs, Inc.; (c) the name and address of the person or persons from whom such fiber, yarn, fabric, or fibrous materials were purchased or obtained by said Debutogs, Inc.

It is further agreed by Debutogs, Inc., and David Sheer and Samuel Horowitz, individually and as officers of said corporation, that in connection with the offering for sale, sale, or distribution of raincoats or other products which are composed in whole or in part of rayon in commerce, as "commerce" is defined in the Federal Trade Commission Act, they and each of them will forthwith cease and desist from invoicing, advertising or otherwise offering for sale or selling such products without clearly disclosing the rayon content thereof in the order of predominance. (5723761, Feb. 20, 1958.)

9009. "Pain-O-Way" Arthritis Treatment—Effectiveness.—Victoria Chemical Co., a New Jersey corporation, with place of business at Bloomfield, N.J., and Sara Schwartz, Ira I. Schwartz, Esther I. Schwartz, and Joel J. Schwartz, its officers, agreed that they, and each of them, will forthwith cease and desist from disseminating or causing to be disseminated any advertisement for the product now designated "Pain-O-Way", or any other product of substantially the same composition or possessing substantially the same properties, which represents, directly or by implication, that the product is an adequate, effective, or reliable treatment for, or will afford complete relief of, any kind of rheumatism or arthritis, or has a therapeutic effect upon the symptoms or manifestations thereof, or has any beneficial effect in any of such conditions or disorders in excess of affording temporary relief of the minor aches or pains thereof. (5623323, Feb. 25, 1958.)

9010. "EN-AR-CO" Arthritis Treatment—Effectiveness and Therapeutic Properties.—National Remedy Co., Inc., a New York corporation with place of business at Tuckahoe, N.Y., and Ernest C. Beebe and William J. Nole, its officers, agreed that they, and each of them, will forthwith cease and desist from disseminating or causing to be disseminated any advertisement for the product now designated "EN-AR-CO," or any other product of substantially the same composition or possessing substantially the same properties, which represents, directly or by implication:

(a) That the product is an adequate, effective, or reliable treatment for, or will afford complete relief of, any kind of rheumatism, arthritis, neuralgia, sciatica, or lumbago, or has a therapeutic effect upon the symptoms or manifestations thereof; or has any beneficial effect in

any of such conditions or disorders in excess of affording temporary relief of the minor aches or pains thereof;

(b) That the product penetrates into areas or structures below the skin or has a substantial direct effect upon structures of the body underlying the area of application; but this is not to be construed as prohibiting a representation that this product affords temporary relief of the minor aches and pains arising in structures underlying the area of application. (5521173, Feb. 25, 1958.)

9011. **Belts—Preticketing With Fictitious Prices.**—Milton Ostrower, Fred Ostrower, and Harry Ostrower, copartners trading as Yankee Leather Goods Co., with place of business in New York City, agreed that in connection with the offer and sale of belts or other products in commerce, they and each of them will forthwith cease and desist from:

1. Representing by preticketing or in any manner that certain amounts are the usual and regular retail prices for their products when such amounts are in excess of the prices at which their products are usually and regularly sold at retail.

2. Putting into operation any plan whereby retailers or others may misrepresent the regular and usual retail price of merchandise. (5723828, Feb. 25, 1958.)

9012. **Water Pumps—Capacity.**—LeRoy Higgins Labaw, an individual doing business as Labawco Pumps and as L. R. H. Labaw & Co., with place of business in Belle Mead, N.J., agreed that in connection with the offering for sale, sale, and distribution in commerce of water pumps, he will forthwith cease and desist from representing that a stated capacity of a pump can be achieved with a motor of designated horsepower, when such is not a fact. (5623312, Feb. 27, 1959.)

9013. **“BATHRITIS” Arthritis Treatment—Effectiveness, Therapeutic Properties, Comparative Merits.**—Bator Drug Corp., an Illinois corporation with place of business at Chicago, Ill., operating under the names of Bator Drug Co. and Bathritis Co., and Ida Korkein and Rozlyn Korkein, its officers, agreed that they, and each of them, will forthwith cease and desist from disseminating or causing to be disseminated any advertisement for the product now designated “BATHRITIS”, or any other product of substantially the same composition or possessing substantially the same properties, which represents, directly or by implication:

(a) That the product is an adequate, effective, or reliable treatment for, or will afford complete relief of, any kind of arthritis, rheumatism, neuritis, or neuralgia, or has a therapeutic effect upon the symptoms or manifestations thereof; or has any beneficial effect in any of such conditions or disorders in excess of affording temporary relief of the minor aches or pains thereof;

(b) That the product penetrates into areas or structures below the skin or has a substantial direct effect upon structures of the body underlying the area of application; but this is not to be construed as prohibiting a representation that this product affords temporary relief of the minor aches and pains arising in structures underlying the area of application;

(c) That the product provides a new type of relief, or a different or more extensive type of relief than that provided by competing products. (5623535, Feb. 27, 1958.)

9014. **"Surin" Arthritis Treatment—Effectiveness, Comparative Merits.**—McKesson & Robbins, Inc., a Maryland corporation with place of business in Bridgeport, Conn., agreed that it will forthwith cease and desist from disseminating or causing to be disseminated any advertisement for the product now designated "Surin", or any other product of substantially the same composition or possessing substantially the same properties, which represents, directly or by implication:

(a) That the product is an adequate, effective, or reliable treatment for, or will afford complete relief of, any kind of rheumatism or arthritis, or has a therapeutic effect upon the symptoms or manifestations thereof; or has any beneficial effect in any of such conditions or disorders in excess of affording temporary relief of the minor aches or pains thereof.

(b) That the product penetrates into areas or structures below the skin or has a substantial direct effect upon structures of the body underlying the area of application; but this is not to be construed as prohibiting a representation that this product affords temporary relief of the minor aches and pains arising in structures underlying the area of application.

(c) That the product provides a new type of relief, or a different or more extensive type of relief than that provided by competing products.

(d) That the product provides any relief of pain for any period of time not in accordance with the facts. (5521062, Feb. 12, 1958.)

9015. **Storm Doors and Windows—Fictitious Pricing.**—The Winton Churchill Corp., a Virginia corporation with place of business in Norfolk, Va., and Abe M. Swersky, its officer, agreed that in connection with the offering for sale, sale, and distribution of storm windows and other products in commerce, they and each of them will forthwith cease and desist from representing directly or by implication that the usual and regular price of merchandise offered for sale is any amount in excess of the price at which said merchandise had been regularly and customarily sold by it in the normal and usual course of business. (5823091, Mar. 4, 1958.)

9016. **Hosiery—Preticketing With Fictitious Prices.**—Harold Blumberg, as trustee for the estate of A. Blumberg, David Blumberg, Evelyn Blumberg, and Murray Lappen, copartners trading as Princess Royal Knitting Mills, with their principal place of business in Reading, Pa., agreed that in connection with the offering for sale, sale, and distribution of hosiery or other products in commerce, they and each of them will forthwith cease and desist from ticketing such merchandise with prices or amounts which are in excess of the usual or regular retail selling prices thereof, or otherwise representing, directly or indirectly, or placing in the hands of others a means of representing, that the usual or regular retail price of merchandise is any amount greater than the price at which such merchandise is usually and regularly sold. (5723832, Mar. 4, 1958.)

9017. **“Atomic Jewel” Polonium-Containing Device—Danger in Use.**—Robins Industries Corp. is now and has been for more than 1 year last past engaged in the business of offering for sale and selling in commerce, as defined by said act, a device for use in neutralizing static electric charges generated in the playing of phonograph records, designated “Atomic Jewel,” which contains polonium, a radioactive substance.

The said device is about three-eighths of an inch in diameter and is equipped with a metal clip for attachment to the player arm of a phonograph record player. The polonium is contained in a ¼-inch square piece of foil which is recessed in and cemented to the bottom of the device.

Polonium is hazardous if inhaled into the lungs or ingested. The amount of polonium which the product involved contains is small. However, the effects of the ingestion or inhalation of polonium in amounts however minute are cumulative. Access to any source of radioactive material involves a health risk even though the risk factor with respect to particular devices or a particular device may be remote.

It is in the public interest that the purchaser of a device containing a radioactive substance be informed of the precautions which should be taken in handling and using it. The products herein involved have not always carried a statement calling attention to the precautions which should be taken in handling and using them.

Robins Industries Corp., a New York corporation with place of business in Bayside, N.Y., and Herman D. Post, its officer, agreed that they will forthwith cease and desist from offering for sale, selling, and distributing in commerce, devices designated as aforesaid, or any other device containing polonium as an active ingredient, unless adequate cautionary or warning notices are clearly and conspicuously impressed or imprinted upon said device or the carton or permanent container in which it is shipped and kept or permanently attached to

the device or the said carton or container, indicating possible harmful effects of ingesting or inhaling polonium and directing the user not to touch the polonium element and to keep the device away from children: *Provided*, That such warning or cautionary notices may be condensed if they clearly refer to and are amplified by adequate directions for use separately printed and enclosed in the carton or permanent container in which said device is shipped and kept. (5723824, Mar. 6, 1958.)

9018. **Shoes—"Handsewn."**—General Shoe Corp., a Tennessee corporation with principal place of business at Nashville, Tenn., agreed that in connection with the offer and sale of shoes in commerce it will forthwith cease and desist from representing directly or by implication that shoe products are hand sewn except as to such part or parts as may be sewn by hand, or that such products embody hand operations in their manufacture, except in accordance with the facts. (5823030, Mar. 11, 1958.)

9019. **Fur Products—Noncompliance With Labeling Act.**—Jacob Packer, an individual doing business under his own name with place of business in New York City, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of furs or any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce, of furs or any fur product, as the terms "fur," "fur product," and "commerce" are defined in the Fur Products Labeling Act, he will forthwith cease and desist from:

(1) Failing to attach to fur products the labels required by the Fur Products Labeling Act and the rules and regulations promulgated thereunder;

(2) Mingling, on labels, nonrequired information with required information;

(3) Setting forth on labels required information in handwriting;

(4) Using on invoices the name of an animal other than that producing the fur;

(5) Placing in the hands of others the means of misrepresenting the price of a fur product, through use of a price purporting to be the suggested retail price but which is in fact in excess of the price at which such product is expected to be sold or has usually and customarily been sold in the recent regular course of business, or otherwise misrepresenting the price at which fur products are sold or offered for sale.

(6) Advertising fur products in any manner or by any means where the advertisement contains the name of an animal other than that producing the fur. (5823209, Mar. 18, 1958.)

9020. **Ladies' Sportswear—Nondisclosure of Rayon Content.**—Hyman Schreier, Ethel Schreier, and Max Borenstein, copartners trading as H. Schreier Co. with place of business in New York City, agreed that in connection with the offer and sale of ladies' sportswear and other textile products in commerce, they and each of them will forthwith cease and desist from advertising or otherwise offering for sale or selling products composed in whole or in part of rayon without clearly disclosing such rayon content in the order of predominance. (5723762, Mar. 18, 1958.)

9021. **"T-Tone Rub" Arthritis Treatment—Effectiveness, Comparative Merits, etc.**—Plough, Inc., a Delaware corporation with principal place of business at Memphis, Tenn., agreed that it will forthwith cease and desist from disseminating or causing to be disseminated any advertisement for the product now designated "T-Tone Rub," or any other product of substantially the same composition or possessing substantially the same properties, which represents, directly or by implication:

(a) That the product is an adequate, effective, or reliable treatment for, or will afford complete relief of, any kind of rheumatism, neuralgia, neuritis, sciatica, or lumbago, or has a therapeutic effect upon the symptoms or manifestations thereof; or has any beneficial effect in any of such conditions or disorders in excess of affording temporary relief of the minor aches or pains thereof;

(b) That the product penetrates into areas or structures below the skin or has a beneficial effect upon structures of the body underlying the area of application; but this is not to be construed as prohibiting a representation that this product affords temporary relief of the minor aches and pains arising in structures underlying the area of application;

(c) That the product provides a new type of relief, or a different or more extensive type of relief than that provided by competing products.

(d) That the product provides long lasting pain relief, or any relief of pain for any period of time not in accordance with the facts. (5521065, Mar. 25, 1958.)

9022. **"Soltice" Arthritis Treatment—Effectiveness, Comparative Merits, etc.**—The Chattanooga Medicine Co., a Tennessee corporation, with place of business in Chattanooga, Tenn., agreed that it will forthwith cease and desist from disseminating or causing to be disseminated any advertisement for the product now designated "Soltice," or any other product of substantially the same composition or possessing substantially the same properties, which represents, directly or by implication.

(a) That the product is an adequate, effective, or reliable treatment for, or will afford complete relief of, any kind of rheumatism or lum-

bago, or has a therapeutic effect upon the symptoms or manifestations thereof; or has any beneficial effect in any of such conditions or disorders in excess of affording temporary relief of the minor aches or pains thereof.

(b) That the product penetrates into areas or structures below the skin or has a substantial direct effect upon structures of the body underlying the area of application; but this is not to be construed as prohibiting a representation that this product affords temporary relief of the minor aches and pains arising in structures underlying the area of application.

(c) That the product provides a new type of relief, or a different or more extensive type of relief than that provided by competing products.

(d) That the product provides lasting pain relief or any relief of pain for any period of time not in accordance with the facts. (5521122, Mar. 25, 1958.)

9023. "Curtis" Drug Preparations—Effectiveness.—A. W. Curtis Laboratories, Inc., a Michigan corporation, with place of business at Detroit, Mich., and Austin W. Curtis, Jr., Ernest Shell, and Richard H. Austin, its officers, agreed that they, and each of them, will forthwith cease and desist from disseminating or causing to be disseminated any advertisements for the products below referred to, or any other products of substantially the same compositions or possessing substantially the same properties which represents, directly or by implication:

(a) That Curtis rubbing oil is an adequate, effective, or reliable treatment for, or will afford complete or permanent relief of, any kind of arthritis or rheumatism, or has a therapeutic effect upon the symptoms or manifestations thereof; or has any beneficial effect in any of such conditions or disorders in excess of affording temporary relief of the minor aches or pains thereof;

(b) That Curtis rubbing oil penetrates into areas or structures below the skin or has a substantial direct effect upon structures of the body underlying the area of application; but this is not to be construed as prohibiting a representation that this product affords temporary relief of the minor aches and pains arising in structures underlying the area of application.

(c) That Curtis rubbing oil provides a new type of relief, or a different or more extensive type of relief than that provided by competing products;

(d) That Curtis rubbing oil provides lasting pain relief or any relief of pain for any period of time not in accordance with the facts;

(e) That the products referred to as Curtis scalp oil, Curtis shampoo, Curtis pressing oil, Curtis cream oil for women, Curtis hair tonic, Curtis hair beautifier, or Curtis hair oil, used separately or in combina-

tion, (1) will enable the user to retain hair, (2) will prevent hair loss, (3) will restore hair, cause hair to grow, or stimulate the growth of hair, or (4) constitute a cure for dandruff. (5623033, Apr. 1, 1958.)

9024. **Juice Extractors—Health-inducing Qualities.**—Walter J. Woock, Bernice Woock, Walter R. Woock, Laverne Trovinger, and Evelyn Trovinger, copartners trading as W. R. Laboratories with place of business in Lodi, Calif., engaged in offering for sale and selling juice extractors designated “Champion Juicer” agreed that in connection with the offer and sale of the juice extractors in commerce, they will forthwith cease and desist from representing that the consumption of fruit juices or vegetable juices extracted by said juice extractors will assure health or will prevent poor health. (5823259, Apr. 1, 1958.)

9025. **Radium Sulfate-Containing Device—Safety.**—Fen-Tone Corp., a New York corporation with place of business at New York City, and Adolph Grossman and Anne Grossman, its officers, are now and have been for several months last past engaged in offering for sale and selling devices designated “Fen-Tone B&O A+ Standard” and “Fen-Tone B&O A+ Special” which are designed for installation on the player arms of record players for use in connection with the reproduction of recorded sounds. Each of the devices contains radium sulfate, a radioactive substance.

Radium sulfate is hazardous if inhaled into the lungs or ingested. The amount of such substance which the products involved contain is small. However, the effects of the ingestion or inhalation of radium sulfate in amounts however minute are cumulative. Access to any source of radioactive material involves a health risk even though the risk factor with respect to a particular device may be remote.

Fen-Tone Corp., Adolph Grossman, and Anne Grossman, and each of them, agreed that they will forthwith cease and desist from offering for sale, selling, and distributing in commerce, the devices designated as aforesaid, or any other device containing radium sulfate as an active ingredient, unless adequate cautionary or warning notices are clearly and conspicuously impressed or imprinted upon said devices, or permanently attached thereto, indicating possible harmful effects of ingesting or inhaling radium sulfate and directing the user not to touch the radium sulfate substance and to keep the device away from children: *Provided, however,* That such warning or cautionary notices may be condensed if they clearly refer to and are amplified by adequate directions for use separately printed and enclosed in the cartons or permanent containers in which said devices are shipped and kept. (5723439, Apr. 3, 1958.)

9026. **Ladies' Skirts—Noncompliance With Wool Products Labeling Act.**—Correct Garment Co., Inc., a New York corporation with its

place of business in New York City, and Henry J. Perahia and Joseph Soury, its officers, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution in commerce of ladies' skirts, or any other wool product within the meaning of the Wool Products Labeling Act, they and each of them will forthwith cease and desist from:

(1) Stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers included therein in any manner not in accordance with the facts;

(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:

(a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding 5 percent of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is 5 percent or more, and (5) the aggregate of all other fibers;

(b) The maximum percentage of the total weight of such wool product of any nonfibrous loading, filling, or adulterating matter;

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution, or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939. (5823366, Apr. 3, 1958.)

9027. **Directory—Government Connection.**—Robert G. Feeney, an individual doing business as the Educational Press and Federal Classified Directory with place of business in Silver Spring, Md., agreed that in connection with the offering for sale or sale in commerce of advertising in the directory he publishes, or in any other publication, he will forthwith cease and desist from using the name "Federal Classified Directory" or any other name, word, or phrase of similar import to designate, describe, or refer to such publication or to his business, or otherwise representing directly or by implication that such publication or his business is connected with the U.S. Government or any agency or branch thereof. (5723691, Apr. 15, 1958.)

9028. **Japanese Sunglasses—Foreign Source.**—Hallmark Optical Products, Inc., a New York corporation with place of business in New York City, and Milton Ober and Leah Lapidus, its officers, agreed that in connection with the offering for sale, sale, and distribution of sunglasses or other similar products in commerce, they and each of them will forthwith cease and desist from:

(1) Offering for sale or selling, separately or as a part of completed reading or sunglasses, lenses or glasses which are imported from any

foreign country without clearly disclosing thereon or in immediate connection therewith the country of origin of such products.

(2) Representing in any manner that lenses or glasses of foreign manufacture, whether or not they are mounted in frames, are of domestic origin. (5723671, Apr. 15, 1958.)

**9029. Fur Products—Noncompliance With Labeling Act.**—City Stores Co., a Delaware corporation operating a department store in Philadelphia, Pa., under the trade name Lit Brothers, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms “fur,” “fur product,” and “commerce” are defined in the Fur Products Labeling Act, it will forthwith cease and desist from:

(1) Failing to affix labels to fur products showing:

(a) The name or names of the animal or animals producing the fur contained in the fur product as set forth in the Fur Products Name Guide and as permitted under the rules and regulations;

(b) Such other information as may be required by section 4(2) of the Fur Products Labeling Act.

(2) Using on labels attached to fur products the name of an animal other than the name of the animal actually producing the fur.

(3) Mingling, on labels, nonrequired information with required information.

(4) Setting forth on labels required information in handwriting.

(5) Failing to set forth on labels affixed to fur products an item number or mark assigned to such product for identification purposes.

(6) Failing to furnish invoices to purchasers of fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) The name of the country of origin of any imported furs contained in a fur product;

(c) Such other information as may be required by section 5(b)(1) of the Fur Products Labeling Act.

(7) Setting forth on invoices required information in abbreviated form.

(8) Failing to set forth on invoices the item number or mark assigned to the fur product for purposes of identification. (5823284, Apr. 15, 1958.)

**9030. “Sloan’s Liniment” Arthritis Treatment—Effectiveness, Comparative Merits, Relevant Facts.**—Standard Laboratories, Inc., a

Delaware corporation, with place of business at Morris Plains, N.J., agreed that it will forthwith cease and desist from disseminating or causing to be disseminated any advertisement for the product now designated "Sloan's Liniment," or any other product of substantially the same composition or possessing substantially the same properties, which represents, directly or by implication:

(a) That the product is an adequate, effective, or reliable treatment for, or will afford complete or permanent relief of, any kind of rheumatism, arthritis, neuralgia, or lumbago, or has a therapeutic effect upon the symptoms or manifestations thereof; or has any beneficial effect in any of such conditions or disorders in excess of affording temporary relief of the minor aches or pains thereof.

(b) That the product penetrates into areas or structures below the skin or has a substantial direct effect upon structures of the body underlying the area of application; but this is not to be construed as prohibiting a representation that this product affords temporary relief of the minor aches and pains arising in structures underlying the area of application;

(c) That the product provides a new type of relief, or a different or more extensive type of relief than that provided by competing products.

(d) That the product feeds or nourishes the tissues or carries away poisons. (5723681, Apr. 22, 1958.)

9031. "Dencorub" Arthritis Treatment—Effectiveness, Comparative Merits.—The Denver Chemical Mfg. Co., Inc., a Colorado corporation with place of business at New York, N.Y., agreed that it will forthwith cease and desist from disseminating or causing to be disseminated any advertisement for the product now designated "Dencorub," or any other product of substantially the same composition or possessing substantially the same properties, which represents, directly or by implication:

(a) That the product is an adequate, effective, or reliable treatment for, or will afford complete relief of, any kind of arthritis, rheumatism, neuritis, bursitis, lumbago, or neuralgia, or has a therapeutic effect upon the symptoms or manifestations thereof; or has any beneficial effect in any of such conditions or disorders in excess of affording temporary relief of the minor aches or pains thereof;

(b) That the product penetrates into areas or structures below the skin or has a substantial direct effect upon structures of the body underlying the area of application; but this is not to be construed as prohibiting a representation that this product affords temporary relief of the minor aches and pains arising in structures underlying the area of application;

(c) That the product is an adequate, effective, or reliable treatment for, or will afford complete relief of, any kind of skeletal muscular ache or pain, or has a beneficial effect in such conditions in excess of affording temporary relief of minor skeletal muscular aches or pains;

(d) That the product relieves or reduces congestion, swelling, or pressure;

(e) That the product provides any relief of pain for any period of time not in accordance with the facts. (5623320, Apr. 29, 1958.)

9032. **Fur Products—Noncompliance With Labeling Act.**—Aristo Furs of New Jersey, Inc., a New Jersey corporation, and Israel Gittelman, its president, and William J. Welding, its secretary-treasurer, operating the fur department of Snellenburgs, a department store in Philadelphia, Pa., agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms “fur,” “fur product,” and “commerce” are defined in the Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from:

(1) Failing to affix labels to fur products showing:

(a) The name or names of the animal or animals producing the fur contained in the fur product as set forth in the Fur Products Name Guide and as permitted under the rules and regulations;

(b) That the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur, when such is the fact;

(c) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(d) Such other information as may be required by section 4(2) of the Fur Products Labeling Act.

(2) Setting forth on labels required information in abbreviated form or in handwriting.

(3) Failing to show on labels affixed to fur products an item number or mark assigned to such product for identification purposes.

(4) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 7(c) of the act;

(b) Does not show that the fur product or fur is bleached, dyed, or otherwise artificially colored fur when such is the fact;

(c) Does not properly show the name of the country of origin of any imported furs or those contained in a fur product;

(d) Uses comparative price statements in advertisements unless there is maintained by said corporation an adequate record disclosing the facts upon which such claims or representations are based. (5823163, Apr. 29, 1958.)

9033. **Fur Products—Noncompliance With Labeling Act.**—Bankers Securities Corp., a Pennsylvania corporation operating a retail store in Philadelphia, Pa., under the name of Snellenburgs, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms “fur,” “fur product,” and “commerce” are defined in the Fur Products Labeling Act, whether through its Snellenburgs Division or other division, or through any store which is owned and operated by the said corporation, it will forthwith cease and desist from:

(1) Failing to affix labels to fur products showing:

(a) The name or names of the animal or animals producing the fur contained in the fur product as set forth in the Fur Products Name Guide and as permitted under the rules and regulations;

(b) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(c) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(d) Such other information as may be required by section 4(2) of the Fur Products Labeling Act.

(2) Setting forth on labels required information in abbreviated form or in handwriting.

(3) Failing to show on labels affixed to fur products an item number or mark assigned to such product for identification purposes.

(4) Failing to furnish to purchasers of fur-trimmed products invoices disclosing the information required by section 5(b)(1) of the Fur Products Labeling Act.

(5) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 7(c) of the act.

(b) Does not show that the fur product or fur is bleached, dyed, or otherwise artificially colored fur when such is the fact.

(c) Does not properly show the name of the country of origin of any imported furs or those contained in a fur product.

(d) Uses comparative price statements in advertisements unless there is maintained by said corporation an adequate record disclosing the facts upon which such claims or representations are based. (5723505, Apr. 29, 1958.)

9034. **Water Pumps—Capacity, Dealer Being Manufacturer.**—Cecilia M. Moore, trading as Moore Manufacturing Co., with place of business at Swedesboro, N.J., and Eugene A. Moore, general manager, agreed that in connection with the offer and sale of pumps in commerce, they, and each of them, will forthwith cease and desist from representing directly or by implication:

(1) That the pump known as Moore No. 7 will pump 2,800 gallons of water per hour using a  $\frac{1}{2}$ -horsepower motor, will pump 4,000 gallons of water per hour using a  $\frac{3}{4}$ -horsepower motor, will pump 420 gallons of water per hour to a height of 75 feet using a  $\frac{1}{2}$ -horsepower motor, or will pump any other quantity of fluid not in accord with fact;

(2) That a stated capacity of a pump can be achieved with a motor of designated horsepower, when such is not a fact;

(3) That the capacity of a pump, or the power needed to motivate it, is any amount not in accord with fact;

(4) Through use of the word "manufacturing" or any other word of similar import or meaning in the trade name, or by any other means, that they manufacture products sold or distributed by them, when such is not a fact. (5623313, May 1, 1958.)

9035. **"Oxo Bouillon Cubes"—Asian Flu Protection.**—Oxo (United States of America), Limited, a corporation with place of business in Brookline, Mass., and Platt & O'Donnell Advertising, Inc., with place of business in New York City, and Thomas O'Donnell and Rutherford Platt, officers of the latter, agreed that they will forthwith cease and desist from disseminating or causing to be disseminated any advertisement for the product now designated as "Oxo Bouillon Cubes" and "Oxo Beef Cubes" or any other product of substantially the same composition or properties, which represents, directly or by implication, that the product possesses any value in the prevention of Asian Flu. (5823291, Apr. 14, 1958.)

9036. **Road Construction Machinery—Manufacturer as Institute, Misleading Surveys.**—Clark Equipment Co., a Michigan corporation with place of business in Buchanan, Mich., agreed that in connection with the offer and sale of road construction machinery and other products in commerce, it will forthwith cease and desist from representing, directly or by implication:

By the use of the names "Road Machinery Manufacturers Association," "National Rubber Research Institute," or any other name,

fictional or otherwise, or by any other means, that the business is an association or institute or anything other than a private commercial enterprise operated for profit, or that the purpose for which information is requested is for use by an independent organization making market surveys or is for any purpose other than for use in promoting the activities of the Clark Equipment Co. in the manufacture, advertising, offering for sale, and sale of its products. (5723733, May 1, 1958.)

9037. **Safety Pins—English as “Made in U.S.A.”**—Tru-Pak Products Co., Inc., a North Carolina corporation with place of business in Rutherfordton, N.C., and Irene Siegel, its officer, agreed that in connection with the offering for sale, sale, and distribution of pins or other similar products in commerce, as “commerce” is defined by Federal Trade Commission Act, they and each of them will forthwith cease and desist from:

(1) Representing that foreign-made products are made in the United States, or otherwise representing the origin of such products in any manner not in accordance with fact.

(2) Offering for sale, selling, or distributing foreign-made pins without clearly and conspicuously disclosing on the packages or containers in which they are sold the country of origin of such products. (5723577, May 1, 1958.)

9038. **“Scott’s Emulsion”—Asiatic Flu Preventive.**—Harold F. Ritchie, Inc., a New Jersey corporation, with place of business at Clifton, N.J., agreed that it will forthwith cease and desist from disseminating or causing to be disseminated any advertisement for the products in liquid and capsule form now designated “Scott’s Emulsion,” or any other products of substantially similar compositions or properties, which represents, directly or by implication, that the use of “Scott’s Emulsion,” either in liquid or capsule form, will prevent the contraction of, shorten the duration of, cure or serve as an adequate treatment for influenza, including the type referred to as Asiatic flu. (5823235, May 1, 1958.)

9039. **“Bovril”—Asiatic Flu Preventive.**—Red Line Commercial Co., Inc., a New York corporation with place of business in New York City, and E. C. Lutzer, Z. M. Hendricks, F. W. Yater, D. A. Dibble, and J. F. Cordes, its officers, agreed that they will forthwith cease and desist from disseminating or causing to be disseminated any advertisement for the product now designated “Bovril,” or any other product of substantially the same composition or possessing substantially the same properties, which represents, directly or by implication, that the product possesses value as a preventative for or in building resistance against colds or influenza, including the type of influenza referred to as Asiatic flu. (5823294, May 6, 1958.)

9040. **Fur Products—Noncompliance With Labeling Act.**—Erlebacher of Connecticut Avenue, Inc., a District of Columbia corporation with place of business in Washington, D.C., and Jules C. Winkelman, its officer, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms “fur,” “fur product,” and “commerce” are defined in the Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from:

- (1) Failing to affix labels to fur products showing:
  - (a) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;
  - (b) Such other information as may be required by section 4(2) of the Fur Products Labeling Act.
- (2) Mingling, on labels, nonrequired information with required information.
- (3) Setting forth on labels required information in handwriting.
- (4) Failing to set forth on one side of the label all of the required information with respect to the fur product.
- (5) Failing to furnish invoices to purchasers of fur products showing:
  - (a) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;
  - (b) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;
  - (c) The name of the country of origin of any imported furs contained in a fur product;
  - (d) Such other information as may be required by section 5(b)(1) of the Fur Products Labeling Act.
- (6) Setting forth on invoices required information in abbreviated form.
- (7) Failing to set forth on invoices the item number or mark assigned to the fur product for purposes of identification.
- (8) Advertising fur products in any manner or by any means where the advertisement:
  - (a) Does not show that the fur product or fur is bleached, dyed, or otherwise artificially colored fur when such is the fact;
  - (b) Does not properly show the name of the country of origin of any imported furs or those contained in a fur product;
  - (c) Represents directly or by implication that the regular or usual price of any fur product is any amount in excess of the price at which

said corporation has usually and customarily sold such products in the recent regular course of its business. (5823268, May 6, 1958.)

9041. **Fur Products—Noncompliance With Labeling Act.**—Polonsky, Kane & Shuman, a New Jersey corporation with place of business in Atlantic City, N.J., and Charles Polonsky, its officer, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms “fur,” “fur product,” and “commerce” are defined in the Fur Products Labeling Act, they, and each of them will forthwith cease and desist from:

(1) Failing to affix labels to fur products showing:

(a) The name or names of the animal or animals producing the fur contained in the fur product as set forth in the Fur Products Name Guide and as permitted under the rules and regulations;

(b) Such other information as may be required by section 4(2) of the Fur Products Labeling Act.

(2) Mingling, on labels, nonrequired information with required information.

(3) Failing to furnish invoices to purchasers of fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(c) The name of the country of origin of any imported furs contained in a fur product;

(d) Such other information as may be required by section 5(b)(1) of the Fur Products Labeling Act.

(4) Setting forth on invoices required information in abbreviated form.

(5) Failing to set forth on invoices the item number or mark assigned to the fur product for purposes of identification. (5823377, May 8, 1958.)

9042. **Collection Forms—Acquiring Information by Subterfuge.**—Rose Fields, an individual trading as Universal Message Service with place of business in Brooklyn, N.Y., agreed that in connection with the business of obtaining information concerning delinquent debtors, in commerce as defined by the Federal Trade Commission Act, she will forthwith cease and desist from:

1. Representing through use of the words “Universal Message Service,” or any other word or words of similar import, that she operates a

message service; or otherwise misrepresenting the nature of her business;

2. Using or placing in the hands of others for use any forms, letters, questionnaires, or material, printed or written, which do not clearly and expressly state that the purpose for which the information is requested is that of obtaining information concerning delinquent debtors. (5823023, May 8, 1958.)

9043. **Fur Products—Noncompliance With Labeling Act.**—Nathan Levin, an individual doing business as Levin's Fur Shop with place of business in Atlantic City, N.J., agreed that in connection with the sale, advertising, offering for sale, transportation or distribution of fur or any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of furs or any fur product, as the terms "fur," "fur product," and "commerce" are defined in the Fur Products Labeling Act, he will forthwith cease and desist from:

(1) Failing to affix labels to fur products showing:

(a) The name or names of the animal or animals producing the fur contained in the fur product as set forth in the Fur Products Name Guide and as permitted under the rules and regulations;

(b) The name or other identification issued and registered by the Commission of one or more persons who manufactured such fur product for introduction into commerce, introduced it in commerce, sold it in commerce, or transported or distributed it in commerce;

(c) Such other information as may be required by section 4(2) of the Fur Products Labeling Act.

(2) Mingling, on labels, nonrequired information with required information.

(3) Setting forth on labels required information in abbreviated form or in handwriting.

(4) Failing to set forth on labels affixed to fur products an item number or mark assigned to such product for identification purposes.

(5) Failing to furnish to owners of fur products repaired, restyled, or remodeled and to which has been added used fur or fur an invoice disclosing the information required under the Fur Products Labeling Act and Regulations respecting the used fur or fur added to the product. (5823375, May 8, 1958.)

9044. **"Hi-Protein Bread"—Reducing Qualities.**—Borck & Stevens, Inc., a Connecticut corporation with place of business at Bridgeport, Conn., and Chester E. Borck and Jessie L. Borck, its officers, agreed that they will forthwith cease and desist from disseminating or causing to be disseminated any advertisement for the bread product now

designated "Borck & Stevens Hi-Protein Bread," or any other bread product of substantially similar composition or properties, which:

(a) Represents, directly or indirectly, that said bread is a low calorie food or that the consumption of said bread as part of the diet will cause the consumer to lose weight or will prevent the consumer from gaining weight;

(b) Represents, directly or indirectly, that the caloric value of said bread is significantly less than ordinary bread;

(c) Represents, directly or indirectly, that no other bread has less calories. (5823114, May 13, 1958.)

**9045. Lawn Mowers—Dealer as Manufacturer, Fictitious Pricing.**—Omaha Merchandise Mart, Inc., a Nebraska corporation with its principal place of business located in Omaha, Nebr., and Charles E. Gannett, its officer, agree that in connection with the offering for sale, sale and distribution of lawn mowers or other products in commerce, they and each of them will forthwith cease and desist from representing directly or by implication:

(1) Through use of the words "From Factory to You" or in any other manner that they manufacture the merchandise which they sell; or otherwise misrepresenting the nature or status of their business.

(2) That the usual and regular selling price or value of a product is any amount in excess of the price at which said product has sold in recent, regular course of business. (5823036, May 20, 1958.)

**9046. Fur Products—Noncompliance With Labeling Act.**—Wayne Pepper Furs, Inc., a Colorado corporation with place of business in Denver, Colo., and W. Wayne Pepper, its officer, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product," and "commerce" are defined in the Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from:

(1) Failing to affix labels to fur products showing:

(a) The name or other identification issued and registered by the Commission of one or more persons who manufactured such fur product for introduction into commerce, introduced it in commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce;

(b) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(c) Properly, the name of the country of origin of any imported furs used in a fur product;

(d) Such other information as may be required by section 4(2) of the Fur Products Labeling Act.

(2) Mingling, on labels, nonrequired information with required information.

(3) Setting forth on labels required information in abbreviated form or in handwriting.

(4) Using on labels attached to fur products the name of an animal other than the name of the animal actually producing the fur.

(5) Failing to furnish invoices to purchasers of fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(c) The name of the country of origin of any imported furs contained in a fur product;

(d) Such other information as may be required by section 5(b)(1) of the Fur Products Labeling Act.

(6) Setting forth on invoices required information in abbreviated form.

(7) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show that the fur product or fur is bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(b) Contains the name of an animal other than that producing the fur;

(c) Uses comparative price statements unless there is maintained by said corporation an adequate record disclosing the facts upon which such claims or representations are based. (5823236, May 20, 1958.)

9047. **Folding Doors—Fictitious Pricing.**—Reverso Products, Inc., a New York corporation with place of business in Brooklyn, N.Y., agreed that in connection with the offering for sale, sale, and distribution of doors and other products in commerce, as “commerce” is defined by the Federal Trade Commission Act, it will forthwith cease and desist from:

(1) Representing in any manner that a certain amount is the regular and usual retail price of a product when such amount is in excess of the price at which such product is usually and regularly sold at retail.

(2) Representing in any manner that a certain amount is the sale price of a product when such amount is in fact the price at which such product is usually and regularly sold at retail.

(3) Supplying retail outlets with any literature, advertising, suggested advertising or price data whereby such retail outlets or others

may misrepresent the regular and usual retail prices of merchandise. (5823273, June 3, 1958.)

9048. **Fur Products—Noncompliance With Labeling Act.**—Sydna Wynn, a New Jersey corporation with place of business in Atlantic City, N.J., and Sydna Winn and Esther Weintrob, its officers, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms “fur,” “fur product,” and “commerce” are defined in the Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from:

(1) Failing to affix labels to fur products showing:

(a) The name or names of the animal or animals producing the fur contained in the fur product as set forth in the Fur Products Name Guide and as permitted under the rules and regulations;

(b) The name or other identification issued and registered by the Commission of one or more persons who manufactured such fur product for introduction into commerce, introduced it in commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce;

(c) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(d) The name of the country of origin of any imported furs used in a fur product;

(e) Such other information as may be required by section 4(2) of the Fur Products Labeling Act.

(2) Mingling, on labels, nonrequired information with required information.

(3) Setting forth on labels required information in handwriting.

(4) Failing to set forth on labels required information in the proper sequence.

(5) Failing to furnish invoices to purchasers of fur products showing:

(a) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(b) The name of the country of origin of any imported furs contained in a fur product;

(c) Such other information as may be required by section 5(b)(1) of the Fur Products Labeling Act.

(6) Failing to set forth on invoices the item number or mark assigned to the fur product for purposes of identification. (5823380, June 3, 1958.)

9049. **Woolen Stocks—Fiber Content.**—Millbury Carbonizing Corp., a Massachusetts corporation with place of business in Millbury, Mass., and Peter Miller and Bernard Valenti, its officers, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution in commerce of woolen stocks, or any other wool product within the meaning of the Wool Products Labeling Act, they and each of them will forthwith cease and desist from failing to maintain proper fiber content records as required by the said act and rules and regulations:

(1) Showing the percentage of wool, reprocessed wool, and reused wool, and of each kind of fiber other than wool, placed in the respective wool products of Millbury Carbonizing Corp. in the form of fiber, yarn, fabric, or other form;

(2) Showing such numbers, information, marks, or means of identification as will identify the said records with the respective wool products to which they relate; and

(3) By keeping and maintaining as records under the act all invoices, purchase contracts, orders, or duplicate copies thereof, bills of purchase, business correspondence received, factory records, and other pertinent documents and data showing or tending to show (a) the purchase, receipt, or use by said Millbury Carbonizing Corp. of all fiber, yarn, fabric, or fibrous material, or any part thereof, introduced in or made a part of any such wool products of said Millbury Carbonizing Corp.; (b) the content, composition, or classification of such fiber, yarn, fabric, or fibrous material with respect to the information required to appear upon the label of the wool products of said Millbury Carbonizing Corp.; (c) the name and address of the person or persons from whom such fiber, yarn, fabric, or fibrous materials were purchased or obtained by said Millbury Carbonizing Corp. (5823285, June 3, 1958.)

9050. **Wool Skirts—Fiber Content.**—Alvin Creations, Inc., a New York corporation with place of business in New York City, and Alvin Weinstein and William Pokress, its officers, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution in commerce of ladies' skirts, or any other wool product within the meaning of the Wool Products Labeling Act, they and each of them will forthwith cease and desist from:

(1) Stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers included therein in any manner not in accordance with the facts;

(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:

(a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding 5 percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is 5 percentum or more, and (5) the aggregate of all other fibers;

(b) The maximum percentage of the total weight of such wool product of any nonfibrous loading, filling, or adulterating matter;

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939. (5723360, June 5, 1958).

9051. **Tire Valve Cores and Caps—German Origin.**—Syracuse Gauge Co., Inc., a New York corporation with place of business in Manlius, N.Y., and John Mezzalingua and Richard F. Edwards, its officers, agreed that in connection with the offering for sale, sale, and distribution in commerce, of tire valve cores and caps or other similar products imported from a foreign country, they and each of them will forthwith cease and desist from offering for sale, selling, or distributing such products without clearly and conspicuously disclosing the country of origin thereof on the packages or containers in which they are sold and shipped. (5823211, June 5, 1958.)

9052. **Fur Products—Noncompliance With Labeling Act.**—Livingston Bros. Inc., a California corporation with place of business in San Francisco, and Carl Livingston, Sr., Carl Livingston, Jr., and John K. Livingston, its officers, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product," and "commerce" are defined in the Fur Products Labeling Act, they, and each of them, will forthwith cease and desist from:

(1) Mingling, on labels, nonrequired information with required information.

(2) Failing to furnish invoices to purchasers of fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(c) The name of the country of origin of any imported furs contained in a fur product;

(d) Such other information as may be required by section 5(b)(1) of the Fur Products Labeling Act.

(3) Setting forth on invoices required information in abbreviated form.

(4) Failing to set forth on invoices the correct item number or mark assigned to the fur product for purposes of identification.

(5) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 7(c) of the act.

(b) Contains the name of an animal other than that producing the fur.

(c) Represents, directly or by implication, through the use of percentage savings claims or otherwise, that the prices of the fur products being offered for sale are reduced from the regular or usual prices charged for such products by the amount or percentage stated, when such is not the fact, or otherwise misrepresents the prices of such fur products. (5723165, June 10, 1958.)

9053. **Fur Products—Noncompliance With Labeling Act.**—Samuel Hafter and Philip Pinsky, copartners doing business as Hafter-Pinsky with place of business in Atlantic City, N.J., agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or 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, as the terms "fur," "fur product," and "commerce" are defined in the Fur Products Labeling Act, they and each of them will forthwith cease and desist from:

(1) Failing to affix labels to fur products showing:

(a) The name or names of the animal or animals producing the fur contained in the fur product as set forth in the Fur Products Name Guide and as permitted under the rules and regulations;

(b) The name or other identification issued and registered by the Commission of one or more persons who manufactured such fur product for introduction into commerce, introduced it in commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce;

(c) Such other information as may be required by section 4(2) of the Fur Products Labeling Act.

(2) Mingling, on labels, nonrequired information with required information.

(3) Setting forth on labels required information in abbreviated form or in handwriting.

(4) Failing to set forth on invoices the item number or mark assigned to the fur product for purposes of identification. (5823374, June 12, 1958.)

9054. **Dresses—"Cotton Cashmere."**—Helen Whiting, Inc., a New York corporation with place of business in New York City, and Myron Sterngold and Myra Meyers, its officers, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution in commerce of dresses, they and each of them will forthwith cease and desist from representing, through use of the term "Cashmere" or of any other word or term suggestive of cashmere, that a product is composed in whole or in part of the hair or fleece of the cashmere goat, when such is not a fact. (5723339, June 12, 1958.)

9055. **Fur Products—Noncompliance With Labeling Act.**—Haskell Aronovitz, an individual doing business as Fur Outlet with place of business in Atlantic City, N.J., agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of furs or any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of furs or any fur product, as the terms "fur," "fur product," and "commerce" are defined in the Fur Products Labeling Act, he will forthwith cease and desist from:

(1) Failing to affix labels to fur products showing:

(a) The name or names of the animal or animals producing the fur contained in the fur product as set forth in the Fur Products Name Guide and as permitted under the rules and regulations;

(b) That the fur product contains or is composed of used fur when such is the fact;

(c) The name or other identification issued and registered by the Commission of one or more persons who manufactured such fur product for introduction into commerce, introduced it in commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce;

(d) The name of the country of origin of any imported furs used in a fur product;

(e) Such other information as may be required by section 4(2) of the Fur Products Labeling Act.

(2) Using on labels attached to fur products the name of an animal which is fictitious or nonexistent or the name of an animal other than that producing the fur.

(3) Setting forth on labels required information in abbreviated form or in handwriting.

(4) Mingling, on labels, nonrequired information with required information.

(5) Failing to show on labels affixed to fur products an item number or mark assigned to such product for identification purposes.

(6) Failing to show, on labels, the term "Second Hand" when the fur product being offered for sale has been previously used by an ultimate consumer.

(7) Misrepresenting, on labels, the country of origin of the animal that produced the fur.

(8) Failing to furnish invoices to purchasers of fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) That the fur product contains or is composed of used fur when such is the fact;

(c) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(d) The name of the country of origin of any imported furs contained in a fur product;

(e) Such other information as may be required by section 5(b) (1) of the Fur Products Labeling Act.

(9) Setting forth on invoices required information in abbreviated form.

(10) Failing to disclose on invoices that the fur product is second hand when such is the fact. (5823415, June 17, 1958.)