

Syllabus

IN THE MATTER OF

LESTER ROTHSCHILD TRADING AS GEN-O-PAK COMPANY, AMERICAN DEPOSIT SYSTEM, AND MANPOWER CLASSIFICATION BUREAU

COMPLAINT, DECISION, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5853. Complaint, May 23, 1951¹—Decision, Mar. 27, 1952

Where an individual engaged in the interstate sale of post cards and letters, coupled with a service to creditor purchasers for obtaining information concerning their delinquent debtors, under a plan whereby said customers addressed the cards, identified by a serial number, to their debtors or others from whom information was sought, and sent them to said individual who mailed them and thereafter returned from his Chicago place of business to the proper customers such replies as he received, and sent to the debtor or person supplying the information three pen points, worth about three cents and covered in the cards' purchase price, together with circulars advertising other products he sold;

In making use, in said connection of (1) a form of double post card which, headed by said individual's Chicago office and trade name, advised the consignee that "we are holding a package which we will send to you, upon receipt of the attached post card with complete identification filled in," and on the reply portion, addressed to said individual's trade name Chicago address, provided, under the instruction to "send the above package to", for the consignee's name and address, and under the caption, "party must be identified", for the name and address of the consignee's employer, "bank and friends", along with the caution that "all questions must be answered or package will not be sent"; and (2) another form of double post card designed to be sent to persons other than the debtor, and to elicit, on the same pretext, the desired information as to the debtor—

- (a) Falsely represented and placed in the hands of his customers a means of falsely representing to the customers' debtors and others from whom information concerning such debtors was sought, that the latter were consignees of packages of substantial value sent by firms other than said individual and in his hands, and that delivery could not be made because of lack of identification or address;

The facts being that said individual business had nothing to do with transportation or delivery of packages; the packages to which the cards referred were those he made up, containing the pen points and advertising matter; and his whole scheme was one of obtaining information by subterfuge; and

Where said individual making use of other form letters under the trade name, "Manpower Classification Bureau", followed by his Chicago address, and the caption "CLASSIFICATION NO. D" and the words "AREA 6 ZONE 211-51", requesting similar information from the addressee debtor or other person—

- (b) Falsely represented through the statements therein and the name "Manpower Classification Bureau", and placed in the hands of his customers

¹ Amended and supplemental.

a means of falsely representing to the customers' debtors and others, that he was engaged in operating a labor classification bureau or other bureau for the purpose of obtaining information as to the employment situation, or the availability of manpower in certain areas, and that the information desired was in connection therewith;

When his only purpose was to place in the hands of his customers the means of obtaining information relating to debtors by subterfuge; and

Where said individual, in making use of other form letters under the trade name "The American Deposit System", with his Chicago address, and such matter as "(Type 'C')" preceded by the words "re: DISBURSEMENT NO. C", advising the addressee that "if you are the party as addressed above, and you will fill in the answers to the information requested below, we will forward to you a small sum of money deposited with us, for you", and calling for a variety of information concerning the addressee—

(c) Falsely represented and placed in the hands of his customers a means of falsely representing that he had been named as depository of a reasonably substantial sum of money, to be delivered to the recipient of said form letter upon proper identification by furnishing all the information requested;

The facts being the only money sent to recipients of the form letters was three cents, which was included in the price charged his customers for the form letters;

With tendency and capacity to mislead and deceive many persons to whom the cards and form letters were sent, into the erroneous belief that the representations were true, and by reason thereof into furnishing him and his customers information which they would not otherwise supply:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

As respects respondent's appeal from the initial decision of the hearing examiner (which became the decision of the Commission following the Commission's denial), on the ground that the activities concerned did not as a matter of law constitute any deception or tendency to deceive and that the representations were true: such statements and representations, including those implicit in the use of the aforesaid trade names, when in fact his business, so far as the recipients of the form letters were concerned, had nothing to do with manpower classification or employment service, and no money had been deposited with him for such addressees, clearly had the capacity and tendency to mislead the recipients of the cards and letters, and it was immaterial that the record did not contain evidence of actual deception.

As respects respondent's contentions, in connection with his aforesaid appeal, that the Commission was without jurisdiction because he was not engaged in interstate commerce and because the relief sought was an attempt to regulate the use of the mails, and such power, if any, vested solely in the Post Master General: the acts and practices concerned, involving the sending and return of letters, clearly constituted commerce and fell within the jurisdiction of the Commission under its duty and authority to prevent unfair and deceptive acts and practices therein. The fact that respondent might have used the mails in connection with such acts and practices did not serve to divest the Commission of its authority and responsibility in said respect.

As respects respondent's contention, in connection with his said appeal, that the examiner's findings and conclusion and his order against the continuation of the acts and practices involved were not sustained by the evidence in the record: the Commission was of the opinion that such findings were supported by substantial probative evidence, that the conclusion contained therein was correct, and that the order was adequate and appropriate to provide proper relief from the respondent's unlawful acts and practices.

Before *Mr. Webster Ballinger*, hearing examiner.

Mr. J. W. Brookfield, Jr. for the Commission.

Wilhartz & Hirsch, of Chicago, Ill., for respondent.

AMENDED AND SUPPLEMENTAL COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Lester Rothschild, an individual trading as Gen-O-Pak Company, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended and supplemental complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Lester Rothschild is an individual trading and doing business under the name of Gen-O-Pak Company, with his office and principal place of business located at 139 North Clark Street, Chicago, Illinois (Room 900).

PAR. 2. Respondent is now, and for more than two years last past has been, engaged in the sale and distribution of double post cards, form letters, and other literature designed and intended to be used by creditors and collection agencies in obtaining information concerning debtors. Respondent causes said post cards, form letters, and other literature to be transported from his aforesaid place of business in the State of Illinois to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said post cards, form letters and other literature in commerce between and among various States of the United States. Respondent's volume of trade in said commerce is substantial.

PAR. 3. Respondent sells two forms of post cards, one designed to be sent to the debtor and one to be sent to others. On the form to be sent to the debtor the following language appears:

Dear Friend:

We are holding a package which we will send to you, upon receipt of the attached post card, with complete identification filled in. We will hold same at YOUR risk, subject to YOUR forwarding directions for 30 days and full and

complete identification. There are NO charges whatsoever, and package will be sent to you all charges PREPAID.

On reply portion of this card, which is addressed to Gen-O-Pak Company, there is printed a form containing questions with respect to the debtor as follows:

MAIL THIS CARD TO US AT ONCE

THE GEN-O-PAK COMPANY
CITY HALL SQUARE BLDG.
CHICAGO 2, ILLINOIS

Package Identification Number	Checked Dept. Unidentified Charges No Charges
----------------------------------	---

Please send package (fully prepaid) to me. My correct address and identification is as follows.

SEND THE ABOVE PACKAGE TO

Print
Correct
Name -----

Print
Correct
Address -----

Print
City ----- State -----

PARTY MUST BE IDENTIFIED

For identification I refer you to my employer, my bank and friend.

Bank -----
Address ----- City -----

Employer -----
Address ----- City -----

Dept. ----- Check No. -----

Friend -----
Address ----- City -----

ALL questions must be ANSWERED, or package will NOT be sent

GENERAL DESCRIPTION OF MYSELF

Color Hair ----- Color Eyes -----
Height ----- Weight ----- Age -----

If Married
Mate's First Name -----

NO POSTAGE OR ADDRESSING NECESSARY

Copyrighted 1948 by Gen-O-Pak Co.

CITY STATE NAME ADDRESS

On the card designed to be sent to others than the debtor the following language appears:

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Dear Friend:

We have on hand a package which we wish to deliver to the party whose name and last known address appears in the left hand margin of the attached postcard, but we are unable to make delivery, since we do not know where he now resides.

Will you be kind enough to give us the CORRECT address of the attached PREPAID reply card, to enable us to effect delivery? If, however, you do not know the correct address of this party, can you suggest SOMEONE who may be able to assist us?

Thanking you in advance for any help you can give, and appreciating a prompt reply, we remain

Cordially yours,

THE GEN-O-PAK COMPANY.

The reply portion of this card, which is also addressed to the Gen-O-Pak Company, also contains questions with respect to the debtor and is as follows:

PLEASE REPLY PROMPTLY

IDENTIFICATION NUMBER	Checked ----- Dept. ----- ADDRESS ----- Charges -----
--------------------------	---

PLEASE PRINT ANSWERS
CORRECT ADDRESS OF PARTY IS

Employer -----	-----
City -----	State -----
Address -----	

NAME AND ADDRESS OF RELATIVE OR FRIEND

Name (A) -----	
Address -----	
City -----	State -----
Name (B) -----	
Address -----	
City -----	State -----

IF YOU ARE UNABLE TO HELP US
Whom Do You Suggest?

Name -----	
Address -----	
City -----	State -----

THE GEN-O-PAK COMPANY
CHICAGO 2, ILLINOIS

Copyrighted 1950 by Gen-O-Pak Co.

Respondent's purchasers or customers address the cards to the debtors or others from whom information concerning debtors is sought and cause them to be delivered to respondent in Chicago,

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Illinois. Respondent then deposits the individual cards in the United States mail. Such of the return cards as are filled out and mailed are received by respondent and sent by him to the proper customer, whom he is able to identify by a serial number stamped on the cards prior to delivery to the customer. Respondent then sends to the debtor or to the person who supplies the information as aforesaid three pen points enclosed in a small envelope, together with advertising circulars of other products sold by him. The pen points have negligible monetary value.

PAR. 4. By the use of the aforesaid cards respondent has falsely represented, and placed in the hands of his customers a means of falsely representing, directly or by implication, to customers' debtors, and others from whom information concerning such debtors is sought, that such debtors are consignees of packages sent by firms other than respondent and in the hands of respondent in the usual course of his business; that the shipments or packages held for the persons to whom the cards were addressed have been prepaid by the consignor and that the packages are held by respondent only for forwarding purposes; that the packages are of substantial value and that delivery cannot be made because of lack of identification or address.

PAR. 5. The said representations are false and misleading. In truth and in fact, respondent's business has, so far as the recipients of said cards are concerned, nothing to do with transportation of packages or their delivery to the proper consignees. The persons concerning which information is sought are not consignees of packages sent by others and in the hands of respondent for delivery. The packages to which the cards refer are those made up by respondent containing the pen points and advertising matter above referred to and respondent's whole scheme is that of obtaining information by subterfuge. In truth and in fact, respondent's only purpose in connection with the sale and distribution of the cards is to place in the hands of his customers the means of obtaining information by subterfuge, and the said cards have no substantial connection with the sale and distribution of other products sold by respondent.

PAR. 6. Respondent also sells and distributes in commerce, as aforesaid, form letters which are used by his customers to secure information from debtors and others and which are designed to be sent by respondent's customers to debtors and others from whom information is sought. Among such form letters is one designated "Manpower Classification Bureau Type D Information Letter." This letter reads as follows:

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MANPOWER CLASSIFICATION BUREAU
139 NORTH CLARK BLDG.
CHICAGO 2, ILLINOIS

(Space for
name and address)

CLASSIFICATION NO. D

AREA 6 ZONE 811-50

You are requested to promptly fill out and return this Questionnaire, answering each question where applicable, so that this Bureau can properly classify the kind of work you are best qualified to perform.

1. If in Military Service, check here -- and do not answer any other question.
2. If *unable* to work at all—check here ----.
3. If male check here ----. If female check here ----.
4. Are you subject to Military Service Yes ----. No ----. Rejected ----.
5. What kind of work are you best fitted for—check one:
Industrial ----. Agricultural ----. Selling ----. Professional ----.
Unskilled labor ----. Skilled labor (State kind) -----.
6. By whom are you now employed? Employer -----
Address ----- City ----- State -----
Dept. ----- Clock No. ----- Type of work -----

OR

- If not employed NOW name LAST employer:
Address ----- City ----- State -----
Dept. ----- Clock No. ----- Type of work -----
7. Are you willing and able to accept employment in some other part of the United States?
Yes ----. No ----.
 8. Approximate wages you are now or last received \$----- weekly.
 9. Are you Married? ----. Single ----. Separated ----. Divorced-----
Mate deceased -----.
 10. If married, what kind of work does your mate perform? ----.
 11. If married, is your mate willing to accompany you to a new geographical location?
Yes ----. No ----.
 12. Your approximate age ----. Your mate's name -----
Age-----.
 13. Is the above address correct? Yes ----. No ----. If not give correct address here ----- City ----- State -----
 14. Do you own an automobile- Yes ----. No ----.
If yes, what make ----- Year ----- License Number -----
- Sign here -----

PLEASE TYPE or PRINT ANSWERS AND RETURN IN THE PREPAID
SELF ADDRESSED ENVELOPE ENCLOSED

This Bureau is not a part of any U. S. Government Division

DO NOT WRITE IN THIS SPACE			
AREA -----	Class. -----	Trans. -----	Non-Tr. -----
Voc. -----	Spec. -----	Mil. -----	Non-Mil. -----
Male -----	Fem. -----	File -----	Age -----

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This letter is accompanied by a business reply envelope addressed to the Manpower Commission Bureau, 139 North Clark Bldg., Chicago 2, Illinois.

Respondent also sells in commerce as aforesaid a form letter designated "The American Deposit System Type C Information Letter" which is printed in the following form:

(Double eagle coat of arms or crest)

THE AMERICAN DEPOSIT SYSTEM
139 NORTH CLARK STREET
CHICAGO 2, ILLINOIS

(Type "C")

Date _____

(Space for
name and address)

Re: DISBURSEMENT NO. C (Your File Number Here)
Vol. _____ Book _____ Page 251

If you are the party as addressed above, and you will fill in the answers to the information requested below, we will forward to you a small sum of money deposited with us, for you, for that purpose. ALL questions must be answered, so we can determine if you are the proper party.

VOID 90 DAYS AFTER ABOVE DATE

1. Are you the party as addressed above? YES ____ NO ____
- 1a. If your answer to the above is NO, then what relation are you? _____
If your answer was YES, you need not answer this question.
2. Is the above address correct? YES ____ NO ____
If your answer is NO, what is the correct address _____
City _____ State _____
3. Are you SINGLE _____ MARRIED _____ DIVORCED _____
- 3a. If married, what is your mate's complete name _____
4. Are you employed NOW. Yes ____ No ____
5. If your answer to the above is YES, by whom are you employed?
Name _____ Address _____ City _____
State _____ Dept. _____ Check No. _____
- 5a. If your answer is NO, then answer by whom you were LAST employed.
Name _____ Address _____ City _____
State _____ Dept. _____ Check _____
6. If married, state by whom your mate is employed. _____
City _____ State _____ Dept. _____
Check No. _____
- 6a. If single, do not answer this question.
7. At what address did you LAST reside? _____
City _____ State _____
8. Give name and addresses of two references who can identify you.
1. _____
2. _____
9. My automobile license number is _____ or: I do not own an automobile.

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10. Where do you bank? -----
 or: I have no bank account.
11. I hereby affirm that I am the above party.

SIGN HERE -----

PLEASE TYPE OR PRINT INFORMATION AND RETURN IN THE
 PREPAID SELF ADDRESSED ENVELOPE HEREWITH ENCLOSED

Copyright 1950 Amer. Dep. Sys.

This form also is accompanied by self addressed envelopes addressed to American Deposit System, 139 North Clark Street, Chicago 2, Illinois, which is the business address of respondent. Respondent's purchasers or customers address the form letters to the debtors or others from whom information concerning debtors is sought and cause them to be delivered to respondent in Chicago, Illinois. Respondent then deposits the individually addressed form letters in the United States mails. Such of the forms as are filled out and mailed by the recipients and are received by respondent are sent by him to the proper customer whom he is able to identify by a serial number stamped on the forms prior to delivery to the customer.

PAR. 7. The recipients of the form letter headed American Deposit System who send in the information requested are then sent a sum of money consisting of a few cents.

PAR. 8. By the use of the statements in the Manpower Classification Bureau form letters and the name Manpower Classification Bureau, respondent has falsely represented and placed in the hands of his customers a means of falsely representing, directly or by implication, to customers' debtors and others from whom information concerning such debtors is sought, that respondent is engaged in operating a labor classification bureau or other bureau for the purpose of obtaining information as to the manpower or employment situation or the availability of manpower in certain areas and that the information desired is in connection with such manpower or employment situation.

PAR. 9. The said representations are false and misleading. In truth and in fact respondent's business has, so far as the recipients of said form letters are concerned, nothing to do with manpower classification or employment surveys and respondent's only purpose in connection with the sale and distribution and mailing of said form letters is to place in the hands of its customers the means of obtaining information by subterfuge.

PAR. 10. By the use of the statements in the American Deposit System form letters and the name American Deposit System, respondent has falsely represented and placed in the hands of his customers a means of falsely representing, directly or by implication, to cus-

tomers' debtors and others from whom information concerning such debtors is sought, that respondent has been named as depository of a sum of money to be delivered to the recipients of said form letter upon proper identification by furnishing all of the information requested.

PAR. 11. The said representations are false and misleading. In truth and in fact respondent is not engaged in any fiduciary or other capacity to receive money for the persons to whom the form letters are sent, and the only money sent them is a small amount which is included in the price charged respondent's customers for the form letters.

PAR. 12. The use hereinabove set forth of the cards and form letters containing the false and misleading statements and representations have the tendency and capacity to mislead and deceive many persons to whom the cards and form letters were sent into the erroneous and mistaken belief that the statements and representations contained thereon and therein were true and by reason thereof to furnish the respondent and his customers information which they would not otherwise supply.

PAR. 13. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDERS AND DECISION OF THE COMMISSION

Order denying appeal from initial decision of hearing examiner and decision of the Commission and order to file report of compliance, Docket 5853, March 27, 1952, follows:

This matter came on to be heard by the Commission upon the respondent's appeal from the initial decision of the hearing examiner herein and upon the briefs and oral argument of counsel in support of and in opposition to said appeal.

Respondent contends in said appeal that the hearing examiner's findings as to the facts and conclusion that the respondent has engaged in unfair and deceptive acts and practices in connection with the sale and use of certain post cards and form letters to obtain information from or concerning delinquent debtors, and his order against the continuation of such acts and practices, are not substantiated by the evidence in the record; and that the hearing examiner erred in failing to make certain conclusions of law to the effect that the activities of the respondent challenged in the amended and supplemental complaint are not in interstate commerce, that the relief sought is an attempt by the Commission to regulate the use of the mails, that the activities of the respondent do not as a matter of law constitute any deception

or tendency to deceive, that the statements and representations made by the respondent are true, and that all of the acts and practices of the respondent are lawful, valid, and legitimate.

The record herein shows that the respondent sells certain post cards and form letters which are used to obtain information from or concerning delinquent debtors. The post cards and form letters are shipped by the respondent from his place of business in Illinois to customers located in various other States of the United States. Such customers address such cards and letters and return them to the respondent, who then mails them. Respondent trades under the names of "Gen-O-Pak Company," "Manpower Classification Bureau," and "American Deposit System." One of the cards sold and distributed by respondent contains the representation that the respondent is holding a package for the person from whom or about whom information is requested. The package referred to on the card is made up by the respondent and contains pen points and advertising matter relating to pen points. One of the form letters sent out by the respondent, under the trade name of "Manpower Classification Bureau," contains the representation that the respondent is operating a labor classification bureau or other bureau for the purpose of obtaining information as to the manpower or employment situation or the availability of manpower in certain areas. Another form sent out by the respondent, under the trade name of American Deposit System, contains the representation that a sum of money has been deposited with the respondent for the person from whom or about whom information is requested. Respondent's business, so far as recipients of the form letters are concerned, has nothing to do with manpower classification or employment surveys and no money has been deposited with the respondent for persons to whom the letters are sent. The only money sent by the respondent to such persons is 3¢. The statements and representations contained in the post cards and form letters so sold and distributed by the respondent, as well as his use of the trade names "Manpower Classification Bureau" and "American Deposit System," clearly have the capacity and tendency to mislead and deceive the recipients of such cards and letters. It is immaterial that the record does not contain evidence of actual deception.

Respondent's contentions that the Commission is without jurisdiction in this matter because the respondent is not engaged in interstate commerce and also because the relief sought is an attempt to regulate the use of the United States mails, which power, if it exists, is vested solely in the Postmaster General of the United States, are without merit. As stated hereinabove, respondent sells and ships the cards

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and form letters to customers located in States other than the State of Illinois. After such cards and letters are addressed by such customers, they are returned to the respondent for mailing to the addressees and information received by respondent is forwarded to his customers. These acts and practices clearly constitute commerce as "commerce" is defined in the Federal Trade Commission Act. The Federal Trade Commission is vested with the duty and authority to prevent unfair and deceptive acts and practices in commerce. The fact that the respondent may have used the United States mails in connection with his engaging in the aforesaid unfair and deceptive acts and practices in commerce does not serve to divest the Commission of its authority and responsibility in this respect.

The Commission is of the opinion that the findings as to the facts in the hearing examiner's initial decision are supported by substantial, probative evidence in the record; that the conclusion contained therein is correct; and that the order is adequate and appropriate to provide proper relief from the respondent's unlawful acts and practices.

The Commission, therefore, being of the opinion that the respondent's appeal is without merit and that the initial decision of the hearing examiner is appropriate in all respects to dispose of this proceeding:

It is ordered, That the respondent's appeal from the initial decision of the hearing examiner be, and it hereby is, denied.

It is further ordered, That the initial decision of the hearing examiner, a copy of which is attached, shall, on the 27th day of March, 1952, become the decision of the Commission.

It is further ordered, That the respondent 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.

Said initial decision, thus adopted by the Commission as its decision, follows:

INITIAL DECISION BY WEBSTER BALLINGER, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 23, 1951, issued and subsequently served its amended complaint in this proceeding upon respondent Lester Rothschild, individually and trading as Gen-O-Pak Company, charging him with the use of unfair and deceptive acts or practices in commerce in violation of the provisions of said Act. After the issuance of said amended complaint and the filing of respondent's answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations

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Findings

of said amended complaint were introduced before the above-named Trial Examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said Trial Examiner on the amended complaint, the answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by respective counsel, oral argument not having been requested; and said Trial Examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Lester Rothschild is an individual and for the past four years has traded and is now trading and has transacted business under the name "Gen-O-Pak Company," with his office and principal place of business located at 139 North Clark Street, Chicago 2, Illinois. As a part of his business and from the same address for the purpose of obtaining information for customers, he has also operated for the past two years under the trade name "American Deposit System" and for the past year under the trade name "Manpower Classification Bureau."

PAR. 2. Respondent's business consists of the sale of post cards and letters, coupled with a service in the use thereof to creditor-purchasers in obtaining information relative to their delinquent debtors, including the furnishing of penpoints and a small sum of money (3 cents), the entire cost of which being included in the price charged and received for the post cards and letters. Respondent formulates, prints or has printed two forms of double post cards, both of which he sells and ships in substantial quantities from Chicago, Illinois, to purchasers located in various States of the United States for use in locating delinquent debtors. One form designed to be sent to the delinquent debtor is as follows:

Office of the Gen-O-Pak Co.
139 North Clark Bldg.
Chicago 2, Illinois.

Dear Friend:

We are holding a package which we will send to you, upon receipt of the attached postcard, with complete identification filled in. We will hold same at YOUR risk, subject to YOUR forwarding directions for 30 days and full and complete identification. There are NO charges whatsoever, and package will be sent to you all charges PREPAID.

Yours very truly,

THE GEN-O-PAK CO.

On the reply portion of this card, which is addressed to Gen-O-Pak Company, there is printed a form containing questions with respect to the debtor as follows:

MAIL THIS CARD TO US AT ONCE

THE GEN-O-PAK COMPANY
CITY HALL SQUARE BLDG.
CHICAGO 2, ILLINOIS

Package Identification Number	Checked Dept. Unidentified Charges No Charges
----------------------------------	--

Please send package (fully prepaid) to me. My correct address and identification is as follows.

SEND THE ABOVE PACKAGE TO

Print
Correct
Name.....

Print
Correct
Address.....

Print
City..... State.....

PARTY MUST BE IDENTIFIED

For identification I refer you to my employer, my bank and friend.

Bank.....

Address..... City.....

Employer.....

Address..... City.....

Dept. Check No.

Friend.....

Address..... City.....

ALL questions must be ANSWERED, or package will NOT be sent

GENERAL DESCRIPTION OF MYSELF

Color Hair..... Color Eyes.....

Height..... Weight..... Age.....

If Married

Mate's First Name.....

NO POSTAGE OR ADDRESSING NECESSARY

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Another double post card form designed to be sent to persons other than the debtor is as follows:

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Findings

The Gen-O-Pak Co.
139 North Clark Bldg.
Chicago 2, Illinois.

Dear Friend :

We have on hand a package which we wish to deliver to the party whose name and last known address appears in the left hand margin of the attached postcard, but we are unable to make delivery, since we do not know where he now resides.

Will you be kind enough to give us the CORRECT address on the attached PREPAID reply card, to enable us to effect delivery? If, however, you do not know the correct address of this party, can you suggest SOMEONE who may be able to assist us?

Thanking you in advance for any help you can give, and appreciating a prompt reply, we remain

Cordially yours,

THE GEN-O-PAK COMPANY.

The reply portion of this card, which is addressed to the Gen-O-Pak Company, contains questions with respect to the debtor as follows:

PLEASE REPLY PROMPTLY

IDENTIFICATION NUMBER	Checked _____ Dept. ADDRESS _____ Charges _____
-----------------------	---

PLEASE PRINT ANSWERS
CORRECT ADDRESS OF PARTY IS

Employer.....
City..... State.....
Address.....

NAME AND ADDRESS OF RELATIVE OR FRIEND

Name (A).....
Address.....
City..... State.....

Name (B).....
Address.....
City..... State.....

IF YOU ARE UNABLE TO HELP US
Whom Do You Suggest?

Name.....
Address.....
City..... State.....

THE GEN-O-PAK COMPANY
CHICAGO 2, ILLINOIS

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PAR. 3. Respondent's customers address the cards purchased from respondent, as set forth in Paragraph Two, to their debtors or others

from whom information concerning their debtors is sought and cause them to be transported from their places of business located in various States of the United States to respondent in Chicago, Illinois. Respondent then deposits the individual cards in the United States mail. The return portion or about one-third of the cards mailed to each customer are filled out by the addressees and returned by mail to respondent who forwards them in commerce from his place of business in Chicago, Illinois, to the proper customer located in a State other than the State of Illinois whom he is able to identify by a serial number stamped on the cards prior to their sale and delivery to the customer. Respondent then sends to the debtor or to the person who supplies the information as aforesaid three pen points enclosed in a small envelope, together with advertising circulars of other products sold by him. The pen points have a monetary value of approximately 3 cents which was included in the purchase price of the cards.

PAR. 4. By the use of the cards described in Paragraph Two, respondent has falsely represented, and placed in the hands of his customers a means of falsely representing, directly or by implication, to customers' debtors, and others from whom information concerning such debtors is sought, that such debtors are consignees of packages sent by firms other than respondent and in the hands of respondent in the usual course of his business; that the shipments or packages held for the persons to whom the cards were addressed have been prepaid by the consignor and that the packages are held by respondent only for forwarding purposes; that the packages are of substantial value and that delivery cannot be made because of lack of identification or address.

PAR. 5. The said representations set forth in Paragraph Two are false and misleading. Respondent's business has, so far as the recipients of said cards are concerned, nothing to do with transportation or packages or their delivery to the proper consignees. The persons concerning whom information is sought are not consignees of packages sent by others and in the hands of respondent for delivery. The packages to which the cards refer are those made up by respondent containing the pen points and advertising matter relating to pen points, collection agencies, etc., and respondent's whole scheme is that of obtaining information by subterfuge. Respondent's only purpose in connection with the sale and distribution of the cards is to place in the hands of his customers the means of obtaining information by subterfuge, and the said cards have no substantial connection with the sale and distribution of other products sold by respondent.

PAR. 6. Respondent also sells and distributes in commerce, as described in Paragraph Two, form letters which are used by his cus-

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tomers to secure information from debtors and others and which are designed to be sent by respondent's customers to debtors and others from whom information is sought. Among such form letters is one designated "Manpower Classification Bureau Type D Information Letter." This letter is as follows:

MANPOWER CLASSIFICATION BUREAU
139 NORTH CLARK BLDG.
CHICAGO 2, ILLINOIS

CLASSIFICATION No. D

AREA 6 ZONE 211-51

You are requested to promptly fill out and return this Questionnaire, answering each question where applicable, so that this Bureau can properly classify the kind of work you are best qualified to perform.

1. If in Military Service give Military Serial Number and check here and do not answer any other questions.
 2. If unable to work at all—check here.....
 3. If male check here If female check here
Race—White Negro Oriental Indian
 4. Are you subject to Military Service? Yes No Rejected
If previously in Military Service give old Military Serial Number here
 5. What kind of work are you best fitted for—check one: Industrial
Agricultural Selling Professional Unskilled labor
Skilled labor (State kind)
 6. By whom are you now employed? Employer
 - Address
 - City
 - State Dept. Social Security No.
..... Type of work Clock No.
- OR
- If not employed NOW name LAST employer
Address City State
- Dept. Clock No. Type of work.....
7. Are you willing and able to accept employment in some other part of the United States?
Yes No
 8. Approximate wages you are now or last received \$..... weekly.
 9. Are you Married Single Separated Divorced
Mate deceased
 10. If married, what kind of work does your mate perform?
 11. If married, is your mate willing to accompany you to a new geographical location? Yes No
 12. Your approximate age Your mate's name Age
 13. Is the above address correct? Yes No If not give correct address here City State
 14. Do you own an automobile? Yes No If yes, what make Year License Number
..... Sign here

PLEASE TYPE or PRINT ANSWERS AND RETURN IN THE
PREPAID SELF ADDRESSED ENVELOPE ENCLOSED

This Bureau is not a part of any U. S. Government Division

DO NOT WRITE IN THIS SPACE			
Area	Class.	Trans.	Non-Tr.
Voc.	Spec.	Mil.	Non-Mil.
Male	Fem.	File	Age

Copyrighted 1950 Man-Cla-Bur.

This letter is accompanied by a business reply envelope addressed to the Manpower Classification Bureau, 139 North Clark Bldg., Chicago 2, Illinois, which is the respondent's business address.

Respondent also sells in commerce as described in Paragraph Two a form letter designated "The American Deposit System Type C Information Letter" which is as follows:

(Double eagle coat of arms or crest)
THE AMERICAN DEPOSIT SYSTEM
 139 NORTH CLARK STREET
 CHICAGO 2, ILLINOIS
 (Type "C")

Date

(Space for name and address)

(Your File Number Here)

Re: DISBURSEMENT NO. C Vol. Book Page 751

If you are the party as addressed above, and you will fill in the answers to the information requested below, we will forward to you a small sum of money deposited with us, for you, for that purpose. ALL questions must be answered, so we can determine if you are the proper party.

VOID 90 DAYS AFTER ABOVE DATE

1. Are you the party as addressed above? YES NO
- 1a. If your answer to the above is NO, then what relation are you?
If your answer was YES, you need not answer this question.
2. Is the above address correct? YES NO If your answer is NO, what is the correct address? City State
3. Are you SINGLE MARRIED DIVORCED SEPARATED
- 3a. If married, what is your mate's complete name
4. Are you employed NOW? YES NO
5. If your answer to the above is YES, by whom are you employed?
Name Address City State Dept. Check No.
- 5a. If your answer is NO, then answer by whom you were LAST employed.
Name Address City State Dept. Check No.

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- 6. If married, state by whom your mate is employed -----
 City ----- State ----- Dept. -----
 Check No. -----
- 6a. If single, do not answer this question.
- 7. At what address did you LAST reside? ----- City -----
 State -----
- 8. Give names and addresses of two references who can identify you.
 1. -----
 2. -----
- 9. My automobile license number is ----- or: I do not own an
 automobile.
- 10. Where do you bank? or: I have no bank account.
- 11. I hereby affirm that I am the above party.

SIGN HERE -----

PLEASE TYPE OR PRINT INFORMATION AND RETURN IN THE
 PREPAID SELF ADDRESSED ENVELOPE HEREWITH ENCLOSED.

Copyright 1950 Amer. Dep. Sys.

This form also is accompanied by self-addressed envelopes ad-
 dressed to American Deposit System, 139 North Clark Street, Chi-
 cago 2, Illinois, which is the business address of respondent.

Respondent's purchasers or customers address the form letters to
 their debtors or others from whom information concerning debtors
 is sought and cause them to be delivered to respondent in Chicago,
 Illinois. Respondent then deposits the individually addressed form
 letters in the United States mails. Such of the forms as are filled out
 and mailed by the recipients and are received by respondent are sent
 by him to the proper customer whom he is able to identify by a serial
 number stamped on the forms prior to their sale and delivery to the
 customer.

The recipients of the form letter headed American Deposit System
 who send in the information requested are then sent a sum of money
 consisting of 3 cents.

PAR. 7. By the use of the statements in the Manpower Classification
 Bureau form letters referred to in Paragraph Six and the name Man-
 power Classification Bureau, respondent has falsely represented and
 placed in the hands of his customers a means of falsely representing,
 directly or by implication, to customers' debtors and others from whom
 information concerning such debtors is sought, that respondent is en-
 gaged in operating a labor classification bureau or other bureau for
 the purpose of obtaining information as to the manpower or employ-
 ment situation or the availability of manpower in certain areas and
 that the information desired is in connection with such manpower or
 employment situation. Respondent's business has, so far as the re-

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recipients of said form letters are concerned, nothing to do with manpower classification or employment surveys and respondent's only purpose in connection with the sale and distribution and mailing of said form letters is to place in the hands of its customers the means of obtaining information relating to delinquent debtors by subterfuge.

By the use of the statements in the American Deposit System form letters referred to in Paragraph Six and the name American Deposit System, respondent has falsely represented and placed in the hands of his customers a means of falsely representing, directly or by implication, to customers' debtors and others from whom information concerning such debtors is sought, that respondent has been named as depository of a reasonably substantial sum of money to be delivered to the recipients of said form letter upon proper identification by furnishing all of the information requested. Respondent is not engaged in any fiduciary or other capacity to receive money for the persons to whom the form letters are sent, and the only money sent them is 3 cents which is included in the price charged respondent's customers for the form letters.

PAR. 8. The use of the cards and form letters, containing the false and misleading statements and representations set forth in the preceding paragraphs, has the tendency and capacity to mislead and deceive many persons to whom the cards and form letters were sent into the erroneous and mistaken belief that the statements and representations contained thereon and therein were true and by reason thereof to furnish the respondent and his customers information which they would not otherwise supply.

CONCLUSION

The acts and practices of the respondent as set forth in the findings of fact are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent Lester Rothschild, individually and trading as Gen-O-Pak Company, or under any other name, and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution, or use in commerce, as "commerce" is defined in the Federal Trade Commission Act, of forms, letters, cards, or any other written or printed material for use in obtaining information concerning debtors or alleged debtors, do forthwith cease and desist from:

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(1) Using, or placing in the hands of others for use, any stationery in connection with the location of delinquent debtors or the collection of money due by a delinquent debtor, containing respondent's name, or any trade name used by him, unless the words "Collection Service" appear immediately in connection or conjunction therewith in type of like or equal size.

(2) Representing, or placing in the hands of others means of representing, directly or by implication, that money or other property is being held for persons concerning whom information is sought or that the information sought is for use in determining whether the person about whom information is requested may be the person for whom money or other property has been deposited, unless money or other property has in fact been so deposited and the amount of money or description or value of the property is accurately stated.

(3) Using the words "Manpower Classification Bureau," or any other words, which import or imply that respondent's business is that of gathering and furnishing information relative to employment, or that respondent's business is other than that of obtaining information concerning debtors or alleged debtors.

(4) Using the name "American Deposit System" or any other name which imports or implies that respondent is a depository or is engaged in the business of receiving and holding money for persons from whom or about whom information is sought.

(5) Using or placing in the hands of others for use forms, letters, cards, or any other printed or written material which represents, directly or by implication, that respondent's business is other than that of obtaining information for use in the collection of debts.

ORDER TO FILE REPORT OF COMPLIANCE

It is further ordered, That the respondent 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 [as required by aforesaid order and decision of the Commission].

IN THE MATTER OF

ZLOTNICK THE FURRIER, INC. ET AL.

COMPLAINT, DECISION, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5799. Complaint, July 17, 1950—Decision, Mar. 31, 1952

Where a corporation and its three officers, engaged in the competitive retail sale and distribution of furs, fur coats, jackets and scarves and related fur products from their places of business in the District of Columbia, in advertising their said products in newspapers and other advertising media of general circulation, including radio—

- (a) Represented certain prices as the regular prices at which their fur products were formerly sold, and that such products were of a grade and quality commensurate with such purported former prices; and
- (b) Represented that their advertised sales prices for such garments constituted sharp reductions from the regular prices, namely, cuts of from 43 to 56 per cent, and thereby provided great savings to purchasers;

The facts being that their so-called former prices were entirely fictitious, and their purportedly reduced sales price for a particular garment was its regular selling price;

- (c) Represented that the fur coats and fur articles depicted in their advertising material, through use of pictures of professional models wearing such garments, were illustrations of identical fur garments which were to be found in their stores, and which were of the grade, type and quality therein represented and offered for sale at the prices stated;

The facts being that they used illustrations of furs and fur garments and of fur coats of styles and quality which they did not have in stock, and in instances also used depictions of more expensive garments than those offered at the prices specified;

- (d) Falsely represented that they sold at lower prices than competitors, and that their prices were so low that other furriers and dealers even tried to purchase merchandise from them;
- (e) Falsely represented that every garment was backed by their reliable guarantee of satisfaction;

The facts being that purchasers' satisfaction was not guaranteed or assured in all cases due to their practice of issuing to purchasers a receipt reading "All sales final—no exchanges—no refunds";

- (f) Represented that a purchaser of their merchandise would obtain high quality, superb style and luxurious pelts;

When in fact the garments they sold in many cases were made of old, damaged, obsolete or otherwise less valuable furs; in other cases were of old or discontinued styles; and under their practice of purchasing furs in job lots, their merchandise, in some instances, was composed of defective and inferior materials and workmanship and would not render satisfactory service as warranted in their advertising;

- (g) Falsely represented that, in connection with the sale of any fur garment, they gave a liberal trade-in allowance on old fur garments;

The facts being that under their practice of raising the price of the merchandise purchased to cover the particular trade-in allowance, the customer paid for his own trade-in allowance;

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(h) Represented that upon payment by the customer of one-third of the purchase price of a fur garment set aside under their lay-away plan, the garment would thereupon be delivered to him;

When in fact, in many instances, they refused to make delivery until the merchandise had been paid for in full, or to open charge accounts, and failed to reveal at the time of sale of the garment that delivery would be dependent entirely upon results of investigation of the customer's credit rating; and

Where said corporation and individuals—

(i) Engaged in the practice of marking garments with prices in excess of those at which they sold in regular course of business;

Where said corporation and individuals, in pursuance of a manifest plan to eliminate purchasers' knowledge respecting the identity of the garments sold or delivered—

(j) Took from the customer at the time he made a payment upon merchandise purchased, his copy of the purchase contract agreement, and issued in exchange their payment receipt which did not describe the particular merchandise purchased and upon which they stamped the words "All sales final—no exchanges—no refunds"; and

(k) Removed all identifying markings from merchandise before delivery; and

Where said corporation and individuals, while making advertising representations to their trade with respect to the guarantee of satisfaction afforded to customers under their code and method of doing business—

(l) Failed to call to the attention of purchasers the legend "All sales final—no exchanges—no refunds", stamped on their receipt blanks as above noted, and which was in derogation of their aforesaid guarantee, and in instances coerced a purchasers to make another selection upon complaint being made;

Where said corporation and individuals—

(m) Engaged in the practice of failing to deliver the garment purchased to the purchaser, and of refusing to refund the payment made by him in situations where they failed so to do; and

(n) Made a practice of selling the same garment to two or more purchasers;

With tendency and capacity to mislead and deceive the purchasing public into the erroneous belief that aforesaid representations were true, and with the effect of causing it, because of such erroneous belief to purchase substantial quantities of their said products; and of placing also in the hands of their employees means to mislead and deceive members of the public in connection with the purchase of their fur products:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

As respects the charge in the complaint that respondents engaged in deceptive and unfair acts and practices through failing to place price marks on their merchandise in conformity with prices contemporaneously advertised therefor, and to supply on merchandise a price label quoting the actual price for which they sell it—matters which, as interpreted under the circumstances, would constitute legal bases for a mandatory requirement that they affix price marks to any merchandise offered by them—consideration was given to the fact that the order being entered requires respondents, among other things, to cease and desist from marking their merchandise with prices in excess of their actual prices, and it was concluded that, upon the basis of the

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record, a provision for mandatory price labeling was not required to protect consumers from the deceptive acts and practices involved, or was not otherwise warranted in the public interest.

A further charge that respondents had falsely represented their prices as low was also dismissed, since the record did not afford adequate basis for an informed conclusion that the prices charged by respondents for the merchandise concerned, were high.

Before *Mr. Henry P. Alden*, hearing examiner.

Mr. Charles S. Cox and *Mr. L. J. Farnsworth* for the Commission.

Mr. William E. Leahy and *Mr. Ben Ivan Melnicoff*, of Washington, D. C., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Zlotnick the Furrier, Inc., a corporation; Samuel D. Zlotnick, Sidney Zlotnick, and Mrs. Renee Z. Kraft, individually and as officers of Zlotnick the Furrier, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Zlotnick the Furrier, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 1201 G Street, N. W., Washington, D. C., and having and operating branch stores respectively at 4439 Connecticut Avenue, Washington, D. C., and 721 11th Street, N. W., Washington, D. C. Individual respondent Samuel D. Zlotnick is President of Zlotnick the Furrier, Inc., a corporation, and has also traded and done business as an individual under the name of Zlotnick the Furrier. Individual respondents Sidney Zlotnick and Renee Z. Kraft are Treasurer and Secretary, respectively, of Zlotnick the Furrier, Inc., a corporation. All of said respondents have offices at 1201 G Street, N. W., Washington, D. C.

The above-named individual respondents in their official capacities as officers of corporate respondent, now act and for more than three years last past have acted in conjunction with each other in formulating, directing and controlling the business, acts, practices, and policies of corporate respondent, including the advertising claims made directly and indirectly by said corporate respondent in connection with the sale of its products in commerce, and so acted in conjunction with

each other in the conduct of the acts, practices and policies of the firm heretofore operated as Zlotnick the Furrier.

PAR. 2. The individual respondents, for more than five years last past, and corporate respondent, subsequent to October 1947, have been engaged in the sale and distribution of furs, fur coats, fur jackets and scarfs, and related fur garments. Respondents cause and have caused the aforesaid products, when sold, to be transported from their aforesaid places of business in the District of Columbia to purchasers thereof at their respective points of location in the various States of the United States, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondents, during the periods herein stated, in the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their said furs, fur coats, fur jackets and scarfs, and related products, have made many statements and representations concerning their said merchandise, regarding the quality and price thereof, the character of their said business, and the methods and plans employed by them in connection with the sale of their said furs and related products. The statements and representations so made by respondents have appeared in advertisements published in newspapers and in and by other advertising media of general circulation, including radio.

Respondents, in the further conduct of their said business, have employed and placed in their said stores in Washington, D. C., numerous salesmen to represent them in offering for sale and selling to the public the products advertised and represented by them. Said salesmen are, and have been, and act, and have acted, and serve as, the agents and sales representatives of respondents in connection with the sale and offering for sale of their said products, and customers and prospective customers accept and deal with them, and have accepted and dealt with them, in such capacity.

Typical of the said advertising representations of respondents, but not all inclusive, are the following:

Pictured above:

Mouton Dyed Lamb, \$98.

Shown in photo above:

DYED CHINA MINK COAT, \$398.

Pictured above:

Let-Out Dyed China Mink Coat, \$698.

Shown in photo above:

NATURAL GREY KIDSKIN COAT, \$198.

Pictured above:

Natural Grey Kidskin Coat, \$148.

Shown in photo above:

SILVER DYED MUSKRAT COAT, \$248.

Can you guess the prices of these * * * fur coats?

* * *

ILLUSTRATED HERE * * * fur coats No. 3 for \$198.

3 Northern Silver blue dyed muskrat.

Can
You
Guess
the prices
of these
Six
fur coats?

1. Mink-dyed Squirrel
cape

Picture of
Woman with Fur
Coat on

2. Northern blue dyed
silver dyed muskrat

Picture of Woman With
Fur Coat on

ZLOTNICK'S

Final Reductions

ILLUSTRATED HERE are some of the amazing fur coat values now being offered during Zlotnick's Final Reductions. Tomorrow you can buy fur cape No. 1 (see Illustration) for only \$148, fur coat No. 2 for \$198, fur coat No. 3 for \$198, fur coat No. 4 for \$348. * * *

3. Northern Silver blue
dyed Muskrat

Picture of Woman with Fur
Coat on

4. Sheared beaver

Picture of Woman with
Fur Coat on

* * * * *

AT RIGHT are
illustrated
two more amazing
values in
Zlotnick's
Final Reductions.

Picture of Woman With
Fur Coat on

5. Black dyed Persian
lamb

Picture of Woman With
Fur Jacket on

6. Silver fox jacket

Coat No. 5 is now priced
at only \$248, and jacket
No. 6 is just \$98! * * *."

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Everybody's
doing it!

Picture of Woman
With Fur Coat On

Can *you* guess the prices of
these furs?

Swirling
flattery in
handsome
blended
ranch mink
The price
?

Shimmer-
ing beauty
in delicate-
ly matched
silver fox.
What
would you
guess
?

Picture of Woman With
Fur Jacket on

Picture of Woman With
Fur Scarfs On

Beautiful
Blending,
intricate
arrange-
ment in
rich, full
mink.
It costs . . .
?

HERE ARE THE PRICES (from top to bottom) :

\$398, \$98, \$98.

Unusual? They're typical of the smashing values in this most unusual final clearance! * * *

* * * offering you savings of from 43 to 56% * * *

* * Mouton-dyed Lamb Coats that were \$169 . . . are now just \$69. And Listen to this . . . Northern-Back Mink-Dyed Muskrat Coats . . . that wonderful silky, long-wearing fur . . . that were \$500 are only \$247 this month! * *

* *. Here's a \$400 Dyed American Broadtail processed Lamb Coat * * * for \$97. And . . . here's a Natural Wolf Coat that was \$500 for \$147 . . . and a mink-dyed Muskrat Coat formerly \$300 for \$147. * *

* * * 3 Natural Grey Kidskin Coats that were \$248, now only \$148.

* * * Natural Skunk Coat formerly \$300, now * * just \$97 . . . Dyed Pony Coats that were \$225, now only \$97 . . . and Black-Dyed Persian Lamb Coats, formerly \$700, now only \$297! * * *

* * * Dyed Kidskin Coats that WERE \$225, now only \$97 . . . Silver Mutation Dyed Muskrat Coats that WERE \$500, now only \$197 . . . and Natural Squirrel Coats, formerly \$600, now just \$297 . . .

* * Mouton-Dyed Lamb Coats that were \$190, now only \$77 . . . Natural Grey Kidskin Coats that were \$450, now just \$197 . . . and Silver Fox Coats, formerly \$600, now only \$247! * * and, remember, you can buy on budget terms or on a Zlotnick charge account. * * *

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* * Naturally, the prices at Washington's *largest* furrier will be far lower than any other furrier . . . because Mr. Zlotnick buys his furs in such tremendous quantities. But the sensational fur buys that are yours NOW in Zlotnick's *Greatest* August Fur Sale Can't last much longer. * * *

* * *. How can he sell furs like these, at his amazing low ANNIVERSARY SALE PRICES? * * * As Washington's largest furrier, Zlotnick has the buying-power to get the finer furs at lower prices, and always he sells them to you for much less. * * *

None will be sold to other furriers or other dealers. * * *

* * * Every fur guaranteed by Zlotnick's Code of Protection!

* * * Zlotnick's Code of Protection is your GUARANTEE OF SATISFACTION! * * *

Remember that ALL FOUR FEATURES OF FINE FURS ARE YOURS when you buy during the ANNIVERSARY SALE at Zlotnick the Furrier's three stores. You get . . . ONE! LOW PRICE! TWO! HIGH QUALITY! THREE! SUPERB STYLE! FOUR! LUXURIOUS PELTS! * * *

Lovely Sheared Beaver Coats selling formerly for \$898 now reduced to \$497.

1 sheared Beaver coat, former price \$1400—Now \$593.

1 Ranch Mink Coat, former price \$3000, now \$1495.

1 Ranch Mink Coat, former price \$3995, now \$1995.

A liberal trade-in allowance on your old fur coat.

Zlotnick the Furrier invites you to buy on the budget plan, the lay-away plan or charge it.

Gorgeous Silver-blue dyed muskrat coats that were \$348. Now for only \$198.

You can luxuriate in a gloriously-fashioned Zlotnick fur coat and pay less than you ever dreamed possible.

Zlotnick the Furrier * * * gives you a choice from A to Z in quality pelts.

House-cleaning time when every rich, luxurious, fur coat, fur jacket, fur scarf takes a terrific cut in price.

You can own a beautifully matched, richly blended fur coat and still stay within your budget.

Beauty, warmth, durability and economy. * * * Every luxurious coat must go—and every one is a bargain.

Smart women * * * want four things—high quality—respected label—luxury pelts—and lowest possible price!

Yes—every gorgeous fur coat—every stunning fur jacket—the handsome fur scarfs—* * * they're sensationally reduced.

Respondents, further in connection with the sale inducements offered by them to customers and prospective customers represent and have represented that upon the payment of one-third of the purchase price of a coat that has been sold and set aside under their lay-away plan, the coat will thereupon be delivered into the possession of the customer.

PAR. 4. By and through means of the foregoing representations, respondents represent and have represented that the furs and fur products sold by them are of the highest quality, of superb workmanship, the latest style and cut, and beautifully matched and blended;

That the prices advertised by respondents as those at which their fur coats and fur products were formerly sold were and are the reg-

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ular prices at which respondents sell and have sold such garments and that such fur coats and products are of a grade and quality worth such former price as advertised, and entitled to be sold at such prices in the competitive fur market;

That the advertised sales prices of such high quality fur products represent sharp reductions in the regular price thereof, and constitute distinct cuts in prices, 43 to 56% to a purchaser under respondents' regular prices, thereby providing great savings to those purchasing products from respondents;

That the fur coats and fur garments represented and illustrated in respondents' advertising material by the use of pictures of professional models wearing such garments are bona fide illustrations of identical fur garments which are to be actually found in respondents' store of the grade, type and quality represented and offered for sale at the prices stated;

That respondents sell at lower prices than competitors ask for like grade and quality;

That respondents' prices are so low that other furriers and dealers even try to purchase said merchandise from respondents;

That every garment is backed by respondents' reliable guarantee of satisfaction;

That a purchaser of respondents' merchandise will obtain low price, high quality, superb style and luxurious pelts;

That in connection with the sale of any fur garment, respondents will and do give a liberal trade-in allowance on old fur coats or garments, and that upon the payment by the customer of one-third of the purchase price of a fur garment that has been laid-away for the customer, said fur garment will be thereupon delivered to the customer.

PAR. 5. The aforesaid representations made by respondents are false, misleading and deceptive. In truth and in fact, respondents have used in their said advertising pictures or illustrations depicting furs and fur garments which are not pictures or illustrations of furs existing or actually to be found in their said stores, and in instances respondents have further used pictures or illustrations of fur coats of styles and quality which they did not and do not have in stock nor available for sale. Respondents use picturizations of other and more expensive fur garments than those actually being offered at prices specified. Respondents' so-called former prices are not real prices, but are entirely fictitious, and the so-called "reduced" sale price listed by respondents for a particular fur garment is actually on approximately the regular selling price for said garment. A purchaser of respondents' said merchandise does not make a saving of from 43 to 56% or any other sum approximating such stated per-

centage savings. Respondents' advertised prices are not actually lower than those of other furriers in Washington for the same quality of merchandise. The prices charged by respondents for their merchandise would not induce their competitors to purchase or attempt to purchase said merchandise. Respondents do not give the purchaser of their said merchandise a written guarantee of satisfaction, but on the contrary issue the customers a receipt which reads:

All Sales final—no exchanges—no refunds.

A purchaser of respondents' said fur products does not receive the four features specified, to wit: low price, high quality, superb style and luxurious pelts, but, on the contrary, in many cases said garments offered for sale and sold by respondents are made of old, damaged, obsolete, or otherwise less valuable furs, and in some cases of old or discontinued styles, which facts are not in any instance revealed to prospective purchasers. Respondents, as occasion presents, purchase furs in job lots and in some instances, their said merchandise is composed of defective and inferior materials and workmanship and will not render satisfactory service as warranted.

Notwithstanding respondents' representation and assurance to customers that a fur garment sold by them will be delivered upon the payment of one-third of the purchase price, respondents, in many instances, have refused to deliver merchandise to purchasers until the merchandise is paid for in full, and have refused to open charge accounts or to make delivery under their advertised lay-away plan upon payment by the customer of one-third of the purchase price of said merchandise. Respondents have repeatedly represented in such connection that they will deliver a fur garment upon payment of one-third of the purchase price, without revealing at the time of the sale of the garment that delivery, whenever made, will be dependent entirely upon investigational facts to be later ascertained regarding the credit rating of the customer and is not determined or governed by the payment of one-third of the purchase price.

Respondents do not make or give "liberal" trade-in allowances on old furs to the purchaser of new ones, since the price of the merchandise purchased in trade-in transactions is raised to cover and take care of the particular trade-in allowance given. In such a manner and by such means the customer is charged and pays for his own trade-in allowance.

PAR. 6. In addition to the foregoing, the respondents are also engaged in false and misleading and unfair acts and practices as follows:

(1) Placing tags on merchandise of prices which are far in excess of those for which respondents will, do, or expect to sell, said merchandise, and failing to place thereon a price label quoting the actual price for which respondents actually sell said merchandise;

(2) Failing to place price tags on said merchandise on sale in conformity with the advertised price;

(3) Using a payment receipt blank form on which they stamp the words "All sales final—no exchanges—no refunds." which does not describe the particular commodity of merchandise purchased;

(4) Failing to call to the attention of purchasers the legend "All sales final—no exchanges—no refunds." appearing on said payment receipt blank given to a purchaser when payment thereon is made;

(5) Taking from the customer the customer's copy of the purchase contract agreement at the time of making a payment thereon and issuing in exchange therefor a receipt for the payment which does not describe the particular merchandise purchased;

(6) Coercing a purchaser into making another selection of merchandise when a complaint is made by the customer concerning the merchandise received, by referring to and enforcing the policy "All sales final—no exchanges—no refunds.";

(7) Removing all identifying markings from merchandise before the same is delivered to a purchaser, so as to eliminate a purchaser's knowledge as to the exact garment that is being delivered;

(8) Selling the same garment to two or more purchasers;

(9) Failing to deliver the garment purchased to a purchaser;

(10) Refusing to make refund of the payment made by a purchaser where respondents fail to deliver to the purchaser the garment purchased;

(11) Refusing to deliver the merchandise to a purchaser unless the same is paid for in full, irrespective of promises at the time of the purchase that credit would be extended to the purchaser and the merchandise delivered upon payment of one-third thereon.

PAR. 7. Respondents, in the conduct of said business, as aforesaid, have been and are in substantial competition, in commerce, with other corporations, individuals, partnerships and others engaged in the sale of the same kinds of merchandise as that sold by respondents. Among such competitors are many who do not make any misrepresentations concerning their practices, the prices charged for their merchandise or otherwise.

PAR. 8. The use by respondents of the foregoing false, misleading and deceptive statements and representations as aforesaid and the unfair and deceptive acts and practices above set forth, has had, and now has, a tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that such representa-

tions are true and has caused and causes the purchasing public, because of such erroneous and mistaken belief, so engendered, to purchase substantial quantities of respondents' said merchandise. By such acts and practices, respondents have also placed in the hands of their employees and agents means and instrumentalities designed to enable, and capable of enabling said employees and agents to mislead and deceive members of the public in connection with the purchase of respondents' furs, fur coats and other fur garments.

PAR. 9. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 17, 1950, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging said respondents with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondents' joint answer, pursuant to leave to withdraw such original answer and to file a substitute answer dated September 20, 1950, as granted by the hearing examiner of the Commission duly designated in the complaint to act in this proceeding, respondents' substitute answer was filed, in which answer the respondents admitted all the material allegations of the fact set forth in the complaint and waived all intervening procedure and further hearing as to the facts. On January 3, 1951, the hearing examiner filed his initial decision.

Thereafter, within the time permitted by the Rules of Practice of the Commission, counsel supporting the complaint and respondents filed notice of their intention to appeal from the initial decision of the hearing examiner, said appeals subsequently were filed herein, and the proceeding regularly came on for final consideration by the Commission upon the complaint, the substitute answer, the initial decision of the hearing examiner, the appeals therefrom, briefs filed in support of and in opposition to said appeals, and oral argument; and the Commission, having duly considered the record and having ruled upon said appeals and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusions drawn therefrom, and order, the same to be in lieu of the initial decision of the hearing examiner:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Zlotnick The Furrier, Inc., is a Maryland corporation with its office and principal place of business located at 1201 G Street, N. W., Washington, D. C. It also operates branch stores in Washington, D. C., located at 4439 Connecticut Avenue and at 721 11th Street, N. W.

Respondent Samuel D. Zlotnick is president of Zlotnick The Furrier, Inc., a corporation, and has also traded and done business as an individual under the name of Zlotnick The Furrier. Respondents Sidney Zlotnick and Mrs. Renee Z. Kraft are treasurer and secretary, respectively, of respondent Zlotnick The Furrier, Inc., and all of the respondent individuals have offices at the foregoing address. The respondent individuals, in their individual capacities as officers of the respondent corporation, now act and for more than three years last past have acted in conjunction with each other in formulating, directing and controlling the business, acts, practices and policies of corporate respondent, including the advertising claims made directly and indirectly by said corporate respondent, and so acted in the conduct of the business of the firm formerly operated under the name of Zlotnick The Furrier.

PAR. 2. The respondent individuals for more than five years last past and the respondent corporation subsequent to 1947 have been engaged in the sale and distribution of furs, fur coats, fur jackets and scarfs and related fur products. Respondents cause and have caused their products, when sold, as aforesaid, to be transported from their places of business in the District of Columbia to purchasers thereof at their respective points of location in the District of Columbia and in the various States of the United States. Respondents maintain, and during all times mentioned herein have maintained, a course of trade in their products in commerce among the various States of the United States and in the District of Columbia.

PAR. 3. Respondents, during the periods herein stated, in the course and conduct of their business and for the purpose of inducing the purchase of their aforesaid fur products, have made many statements and representations concerning such merchandise, the nature of their business and the methods and policies employed by them in connection with the sale of their fur garments. These statements and representations have appeared in advertisements published in newspapers and in other advertising media of general circulation, including radio. Respondents, in the further conduct of their business, have employed and placed in their stores numerous salesmen to represent them in offering for sale and selling to the public the products advertised by

them. These salesmen are, and have acted as, the agents and sales representatives of respondents in connection with the sale and offering for sale of their merchandise, and customers and prospective customers accept and deal, and have accepted and dealt, with them in such capacity. Typical of the advertising statements and representations made by respondents as stated above, but not all inclusive, are the following:

Pictured above:

Mouton Dyed Lamb, \$98.

Shown in photo above:

DYED CHINA MINK COAT, \$398.

Pictured above:

Let-Out Dyed China Mink Coat, \$698.

Shown in photo above:

NATURAL GREY KIDSKIN COAT, \$198.

Pictured above:

Natural Grey Kidskin Coat, \$148.

Shown in photo above:

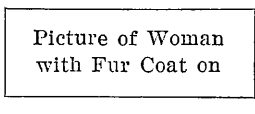
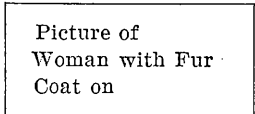
SILVER DYED MUSKRAT COAT, \$248.

Can you guess the prices of these * * * fur coats? * * *

Can You Guess the prices of these Six fur coats?

1. Mink - dyed Squirrel cape

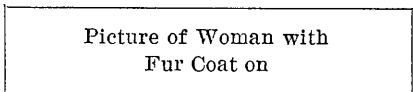
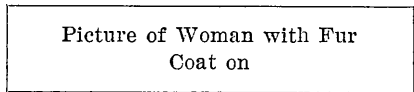
2. Northern blue dyed silver dyed muskrat



ZLOTNICK'S Final Reductions

ILLUSTRATED HERE are some of the amazing fur coat values now being offered during Zlotnick's Final Reductions. Tomorrow you can buy fur cape No. 1 (see Illustration) for only \$148, fur coat No. 2 for \$198, fur coat No. 3 for \$198, fur coat No. 4 for \$348. * * *

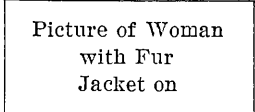
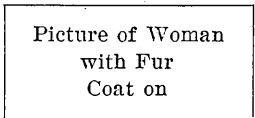
3. Northern Silver blue dyed Muskrat 4. Sheared beaver



AT RIGHT are illustrated two more amazing values in Zlotnick's Final Reductions.

5. Black dyed Persian lamb

6. Silver fox jacket



Coat No. 5 is now priced at only \$248, and jacket No. 6 is just \$98! * * *

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* * * Mouton-dyed Lamb Coats that were \$169 . . . are now just \$69. And Listen to this . . . Northern-Back Mink-dyed Muskrat Coats . . . that wonderful silky, long-wearing fur . . . that were \$500 are only \$247 this month! * * *

* * *. Here's a \$400 Dyed American Broadtail processed Lamb Coat * * * for \$97. And . . . here's a Natural Wolf Coat that was \$500 for \$147 . . . and a mink-dyed Muskrat Coat formerly \$300 for \$147. * * *

* * * 3 Natural Grey Kidskin Coats that were \$248, now only \$148.

* * * Natural Skunk Coat formerly \$300, now * * * just \$97 . . . Dyed Pony Coats that were \$225, now only \$97 . . . and Black-Dyed Persian Lamb Coats, formerly \$700, now only \$297! * * *

* * * Dyed Kidskin Coats that WERE \$225, now only \$97 . . . Silver Mutation Dyed Muskrat Coats that WERE \$500, now only \$197 . . . and Natural Squirrel Coats, formerly \$600, now just \$297 . . .

* * * Mouton-Dyed Lamb Coats that were \$190, now only \$77 . . . Natural Grey Kidskin Coats that were \$450, now just \$197 . . . and Silver Fox Coats, formerly \$600, now only \$247! * * * and, remember, you can buy on budget terms or on a Zlotnick charge account. * * *

Lovely Sheared Beaver Coats selling formerly for \$898 now reduced to \$497.

1 sheared Beaver coat, former price \$1400—Now \$593.

1 Ranch Mink Coat, former price \$3000, now \$1495.

1 Ranch Mink Coat, former price, \$3995, now \$1995.

Gorgeous Silver-blue dyed muskrat coats that were \$348. *Now* for only \$198.

House-cleaning time when every rich, luxurious, fur coat, fur jacket, fur scarf takes a terrific cut in price.

* * * offering you savings of from 43 to 56% * * *

* * * Naturally, the prices at Washington's *largest* furrier will be far lower than any other furrier . . . because Mr. Zlotnick buys his furs in such tremendous quantities. But the sensational fur buys that are yours NOW in Zlotnick's *Greatest* August Fur Sale Can't last much longer. * * *

* * * How can he sell furs like these, at his amazing low ANNIVERSARY SALE PRICES? * * * As Washington's largest furrier, Zlotnick has the buying-power to get the finer furs at lower prices, and always he sells them to you for much less. * * *

None will be sold to other furriers or other dealers. * * *

* * * Every fur guaranteed by Zlotnick's Code of Protection!

* * * Zlotnick's Code of Protection is your GUARANTEE OF SATISFACTION! * * *

Remember that ALL FOUR FEATURES OF FINE FURS ARE YOURS when you buy during the ANNIVERSARY SALE at Zlotnick the Furrier's three stores. You get . . . ONE! LOW PRICE! TWO! HIGH QUALITY! THREE! SUPERB STYLE! FOUR! LUXURIOUS PELTS! * * *

A liberal trade-in allowance on your old fur coat.

Respondents, further in connection with the sale inducements offered by them to customers and prospective customers, represent and have stated that, upon the payment of one-third of the purchase price of a coat that has been sold and set aside under their lay-away plan, the coat will thereupon be delivered into the possession of the customer.

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PAR. 4. Through and by means of the foregoing statements and representations, respondents have represented as follows:

That the prices advertised by them as those at which their fur products were formerly sold, were and are the regular prices at which respondents sell and have sold such garments and that such garments are of a grade and quality commensurate with such purported former prices; that their advertised sales prices for such garments represent sharp reductions from the regular prices thereof and that such advertised prices constitute distinct cuts in prices, namely, 43% to 56% under respondents' regular prices, thereby providing great savings to those purchasing garments from respondents;

That the fur coats and fur articles depicted and illustrated in respondents' advertised material, through use of pictures of professional models wearing such garments, are bona fide illustrations of identical fur garments which are to be actually found in respondents' stores and which are of the grade, type and quality therein represented and offered for sale at the prices stated;

That respondents sell at lower prices than competitors ask for merchandise of like grade and quality; and that respondents' prices are so low that other furriers and dealers even try to purchase said merchandise from respondents;

That every garment is backed by respondents' reliable guarantee of satisfaction;

That a purchaser of respondents' merchandise will obtain high quality, superb style and luxurious pelts;

That in connection with the sale of any fur garment, respondents will and do give a liberal trade-in allowance on old fur garments, and that upon payment by the customer of one-third of the purchase price of a fur garment which has been laid away for the customer such garment will be thereupon delivered to the customer.

PAR. 5. The aforesaid representations as made by respondents are false, misleading and deceptive. In truth and in fact respondents' so-called former prices have not been real or actual prices but have been entirely fictitious and the purportedly reduced sales price listed as aforesaid by respondents for a particular fur garment has been actually or approximately the regular selling price for such garment. A purchaser of respondents' said merchandise manifestly has not made a saving of from 43% to 56% or of any other sum approximating such stated percentage savings. The Commission, therefore, concludes that the sales prices listed by respondents in the sales promotions referred to above have not represented reductions from their customary or regular prices and that significant savings therefrom have not been afforded to those purchasing products from respondents at such prices.

Although certain of the pictures contained in respondents' advertising have purported to be bona fide illustrations of identical fur garments which are to be found in respondents' stores and which are of the grade, type and quality therein represented, and offered at the prices designated, respondents in such advertising, however, have used pictures or illustrations depicting or otherwise identifying furs and fur garments which are not pictures or illustrations of furs existing or furs actually to be found in their stores, and in instances respondents have used pictures or illustrations of fur coats of styles and quality which they did not have in stock or available for sale. In instances also, respondents have used picturizations of other and more expensive fur garments than those actually being offered at the prices specified in their advertising.

Respondents' advertised prices are not actually lower than those of other furriers in Washington, D. C. for the same quality of merchandise and the prices charged by respondents for their merchandise would not induce their competitors to purchase or attempt to purchase such merchandise.

To purchasers of their merchandise, respondents issue a receipt which reads "All sales final—no exchanges—no refunds" and, in such circumstances, respondents' garments, when sold, have not been backed by a guarantee of purchasers' satisfaction. Purchasers' satisfaction with respondents' garments, therefore, has not been guaranteed or assured in all cases. In instances, furthermore, purchasers of respondents' aforesaid fur products have not received garments of high quality, superb style or containing luxurious pelts. On the contrary, the garments offered for sale and sold by respondents in many cases have been made of old, damaged, obsolete or otherwise less valuable furs, and in other cases have comprised old or discontinued styles, which facts have not been revealed in any instance to prospective purchasers. Respondents, as occasion presents, purchase furs in job lots and in some instances their aforesaid merchandise has been composed of defective and inferior materials and workmanship and will not render satisfactory service as warranted in their advertising.

Respondents do not make or give "liberal" allowances on old or previously used fur garments to purchasers of new garments inasmuch as the price of the merchandise purchased in trade-in transactions is raised to cover and take care of the particular trade-in allowance given. In these circumstances, the customer is charged and pays for his own trade-in allowance.

Notwithstanding respondents' representations and assurances to customers that a fur coat sold and set aside under their lay-away plan will be delivered to the purchaser upon payment completed of one-

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third of the purchase price, in many instances respondents have refused to deliver merchandise to purchaser until such merchandise is paid for in full and have refused to open charge accounts or to make delivery under their advertised lay-away plan upon payment by the purchaser of one-third of the purchase price of the garment. Respondents repeatedly have represented in such connection that they will deliver a fur garment upon payment of one-third of the purchase price, without revealing at the time of sale of the garment that delivery, whenever made, will be dependent entirely upon investigational facts to be later ascertained regarding the credit rating of the customer and is not determined or governed by the payment of one-third of the purchase price.

PAR. 6. (a) In addition to the foregoing, respondents, in connection with the offering for sale of their garments, have engaged in an unfair and deceptive practice by placing tags on their merchandise setting forth as the prices thereof prices which have been far in excess of those for which respondents will, do, or expect to sell their merchandise. In the opinion of the Commission, the practice of marking garments with prices in excess of those at which respondents will and do sell such merchandise, or expect to sell it, in regular course of business, as here engaged in, has the tendency and capacity to mislead the purchasing public with respect to the value of respondents' merchandise.

(b) Other acts and practices which have been engaged in by respondents in the conduct of their business relate to use by them of a payment receipt blank on which they stamp the words "All sales final—no exchanges—no refunds," which form does not describe the particular commodity of merchandise purchased, and to respondents taking from the customer the customers' copy of the purchase contract agreement at the time of making a payment thereon and issuing in exchange therefor a receipt for the payment which does not describe the particular merchandise purchased. Another act and practice closely related thereto is respondents' practice of removing all identifying markings from merchandise before it is delivered to a purchaser so as to eliminate a purchaser's knowledge as to the exact garment that is being delivered. These matters manifestly constitute a plan or program on the part of respondents, the object of which is to eliminate and suppress purchasers' knowledge, including documentary data and information, respecting the identity of the garments being sold or delivered in transactions consummated through the various other sales methods and practices which the record shows have been used by respondents. The Commission accordingly has concluded that respondents' use of these acts, practices and methods has constituted unlawful conduct.

(c) Another of respondents' business practices pertains to their failure to call to the attention of purchasers the legend "All sales final—no exchanges—no refunds" which is stamped and appears as aforesaid on the receipt blanks given by respondents or their representatives to purchasers when payment on merchandise is made. During the periods when the practice here under consideration has been engaged in, respondents simultaneously have made advertising representations to their trade with respect to the guarantee of purchasers' satisfaction afforded to customers under respondents' code and method of doing business. The legend appearing on these business forms, therefore, has been in derogation of these representations. Pertinent hereto also is respondents' practice of coercing a purchaser, in instances, into making another selection of merchandise upon complaint being made concerning the merchandise received. In the circumstances here, the Commission is of the opinion that these acts, practices and methods of respondents constitute deceptive and unfair acts and practices and methods.

(d) Respondents, in the course and conduct of their business, additionally have engaged in the practices of failing to deliver the garment purchased to the purchaser and of refusing to make refund of the payment made by the purchaser in situations where respondents fail to deliver to the purchaser the garment purchased. Another practice used by respondents has been the selling of the same garment to two or more purchasers. The Commission is of the view that these acts and practices, singly and in the aggregate, as here engaged in by respondents in dealing with members of the purchasing public who have complied with the terms and conditions of the sales agreements, constitute unfair and deceptive acts and practices.

(e) Respondents have also engaged in unfair and deceptive acts and practices in those situations wherein they refuse to deliver merchandise to a purchaser unless the same is paid for in full irrespective of promises made by respondents at the time of purchase that credit would be extended to the purchaser and the merchandise delivered upon payment of one-third thereon. The essential unfairness of this practice, both to respondents' competitors and the consuming public, is obvious.

PAR. 7. Respondents, in the conduct of said business, as aforesaid, have been and are in substantial competition, in commerce, with other corporations, individuals, partnerships and others engaged in the sale of the same kinds of merchandise as that sold by respondents. Among such competitors are many who do not make any misrepresentations concerning their practices, their prices, or otherwise.

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PAR. 8. The use by respondents of the foregoing false, misleading and deceptive statements and representations as aforesaid and the unfair and deceptive acts and practices above set forth, has had a tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that such representations are true and has caused the purchasing public, because of such erroneous and mistaken belief, so engendered, to purchase substantial quantities of respondents' said merchandise. By such acts and practices, respondents have also placed in the hands of their employees and agents means and instrumentalities designed to enable, and capable of enabling said employees and agents to mislead and deceive members of the public in connection with the purchase of respondents' furs, fur coats and other fur garments.

CONCLUSION

The aforesaid acts and practices of respondents as herein found are all to the prejudice and injury of the public and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Other charges of the complaint allege that respondents also have engaged in deceptive and unfair acts and practices through failing to place price marks on their merchandise in conformity with prices contemporaneously advertised therefor and through failing to display on merchandise a price label quoting the actual price for which respondents actually sell their merchandise. The language contained in these allegations has been interpreted to constitute charges that, in the circumstances here presented, failure by respondents to attach any price marking to garments on display represents unlawful conduct and it follows that, if sustained by the record in this proceeding, such matters would constitute legal bases for a mandatory requirement that respondents affix price marks to any merchandise being offered for sale by them. Pertinent hereto, however, is the fact that, responsive to other findings of violation of law recited in the decision of the Commission, the order being entered here requires respondents, among other things, to cease and desist from marking their merchandise with prices which are in excess of their actual or bona fide prices.

Upon the basis of the record in this proceeding, it is not to be concluded that a provision for mandatory price labeling is required in order to protect consumers from the deceptive acts and practices found heretofore to have been engaged in by respondents or is otherwise warranted in the public interest. These charges of the complaint, ac-

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cordingly, are being dismissed. The same provision is being made with respect to the charge that respondents have falsely represented their prices to be low prices inasmuch as the record does not afford adequate basis for an informed conclusion that the prices charged by respondents for merchandise in the categories to which this charge of the complaint relates were high prices.

ORDER

It is ordered, That the respondent, Zlotnick The Furrier, Inc., a corporation, and its officers, representatives, agents, and employees, and respondents, Samuel D. Zlotnick, Sidney Zlotnick, and Mrs. Renee Z. Kraft, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of fur products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing, directly or by implication, that the customary or regular price of respondents' merchandise is any amount in excess of the price at which such merchandise is being offered for sale or has been sold by respondents in recent regular course of business, or otherwise misrepresenting the customary or regular price of respondents' merchandise.

(2) Representing, directly or by implication, that respondents' regular prices are reduced prices or that any savings are afforded to purchasers of respondents' garments in excess of those savings actually afforded.

(3) Using pictures or illustrations purporting to be bona fide illustrations of garments therein identified as to grade, type or price which are being offered in respondents' stores, unless any garment so designated is in stock or otherwise available to customers under the conditions stated in such advertising matter and at such price as may be designated in the advertisement.

(4) Representing, directly or by implication, that respondents' prices are lower than those charged by competitors unless respondents' prices are lower than prevailing competitive prices for merchandise of like grade and quality or representing that respondents' prices are so low as to cause competitors to seek to buy respondents' garments for resale when such is not the case.

(5) Representing, directly or by implication, that respondents' garments are in any manner guaranteed unless the terms of such guarantee or warranty are clearly disclosed in immediate conjunction therewith and unless respondents in fact afford the guarantee or security

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represented, or enforcing or attempting to enforce any policy of refusing to permit the return of merchandise or to make refunds therefor when the enforcement of any such policy would be in derogation of any guarantee made in connection with the sale of respondents' merchandise.

(6) Representing that such of respondents' garments as are characterized by defective or inferior materials or workmanship are of high quality, that merchandise fashioned in old or discontinued styles are superbly or modernly styled or that garments made from damaged, or old or obsolete less valuable furs contain luxurious peltries.

(7) Representing that trade-in allowances on old or previously used fur coats may be obtained by purchasers of new garments from respondents when the prices of respondents' merchandise have been advanced above respondents' regular prices in any amount serving to nullify or offset such allowances.

(8) Representing, directly or by implication, that delivery of merchandise will be made to purchasers upon payment made or completed of one-third or any other part of the purchase price of garments sold or which have been laid aside for the customer under respondents' lay-away plan without clearly and simultaneously disclosing that the time of delivery depends upon establishment of a credit rating acceptable to respondents for payment of the balance due; or using any other sales plan which misleads or deceives purchasers or enables respondents' salesmen to mislead or deceive purchasers respecting the terms and conditions under which possession of respondents' merchandise will be accorded to the customer.

(9) Marking respondents' merchandise with prices in excess of those at which respondents expect to sell such merchandise in regular course of business.

(10) Removing or stripping identifying markings from garments at the time of delivery thereof to purchasers for the purpose of eliminating purchasers' knowledge as to the exact garment being delivered or failing to provide customers with written data identifying the garments purchased by them in instances in which respondents have appropriated from or required the return from customers of purchase contract agreements or other documentary identification of the garments being sold.

(11) Failing to deliver to any purchaser complying with the terms of the sales agreement the garment selected and bought by such purchaser.

(12) Refusing to refund the payments of any purchaser who has complied with the terms of the sales agreement in instances in which respondents fail to deliver to the purchaser the garment bought and selected by him.

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It is further ordered, That the charges of the complaint referred to hereinbefore in the last two paragraphs of the "Conclusion" be, and the same hereby are, dismissed.

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

IN THE MATTER OF

THE DOBBS TRUSS COMPANY, INC. ET. AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5808. Complaint, Sept. 11, 1950—Decision, Apr. 3, 1952

Where a corporate manufacturer of the Dobbs patented truss, engaged in the interstate sale thereof to distributors in numerous cities throughout the country, to whom it issued exclusive territorial franchises and furnished with advertising mats with a request that they use them so as to make the advertising nationally uniform and at the same time satisfactory to the Commission (which had requested said corporation to submit specimens of its advertising); together with most of its said distributors—

- (a) Represented by implication, through circulars reprinting a newspaper story published in a Birmingham paper, which described the history of the device and stated that its inventor, the founder of the corporation here concerned, "*was cured*", that the said device would cure the rupture of the reader;

The facts being that no truss, appliance or device can do anything for irreducible hernia, and that reducible hernia can only be cured by surgery; and

Where said corporation and four officers thereof—

- (b) Falsely represented through newspaper advertisements that the device in question kept a rupture tightly closed at all times, while its wearer was working, lifting, walking, or swimming;

The facts being that to close a reducible rupture means to close the aperture through which it has protruded anatomically, and not merely to hold the protrusion in; and

Where said corporation and most of its said distributors—

- (c) Represented that their advice (1) would not hinder circulation of the blood, did away with all chafing, rubbing, irritation, binding, slipping, and constricting pressure; (2) would "help nature help you"; and (3) might be worn with complete security and comfort;

The facts being that the aforesaid representations were false as to nonreducible rupture and were false as to reducible rupture with regard to the claim that it would not hinder circulation of the blood and would "help nature help you";

- (d) Represented that their device was a marvelous invention for rupture treatment; that it did not spread or strut the rupture, and that with it the wearer got maximum relief;

The facts being that said representations were false as to nonreducible rupture; and

Where its distributors, for whose advertising, insofar as it was not based on the mats and circulars disseminated by it, it was not responsible; variously—

- (e) Falsely represented that said device would hold the abdominal muscles together; would free the wearer of his rupture completely and permanently; would not slow up the circulation of the blood or exert any constricting pressure; and would correct a hernia and restore the muscles to their original state;

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Syllabus

- (f) Falsely represented that said device would draw the opening of the rupture together, keep the rupture tightly closed at all times, help nature strengthen muscles and tissues, and give nature a chance to repair the rupture; and
- (g) Represented that said device would control a hernia, would not enlarge a rupture, would permit complete freedom of bodily movement without displacement of the truss pad, and would do away with all chafing or binding and would not spread muscles;

When said representations were false as applied to non-reducible hernia or rupture;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and thereby to induce it to purchase the said device:

Held. That such representations were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Respondents' claim that the truss in question was different from and superior to other trusses, challenged by the complaint, was not found upon consideration of the evidence to have been shown as false or misleading, notwithstanding substantial and credible medical opinion that the device was no different from or superior to other trusses in the sense that the principle of all trusses is the same—to keep the protrusion in—since there are different means of accomplishing a given end, as may be illustrated by the old-fashioned wooden leg and the modern artificial one, both of which have the same function.

As respects the challenged claim that respondents' device did not bind, chafe, rub, irritate or slip, the evidence did not sustain the falsity of said claim as applied to non-reducible ruptures, and as reasonably understood by readers.

In considering the challenged claim that the device was a marvelous invention for rupture treatment, the word "marvelous" was found to constitute simply descriptive puffing. Considered further, the device was patented and therefore had some *prima facie* novelty, and it was found, on the basis of the evidence, that the device was an invention and that the representation that it was a treatment for rupture was not false as applied to reducible rupture.

Other challenged representations which were weighed in the light of the evidence and found not to have been shown as false or misleading when not applied to non-reducible rupture, included claims that the device would control a hernia; would not enlarge a rupture; would permit complete freedom of bodily movement without displacement of the truss pad; would do away with all chafing, binding, irritation or slipping; would not spread muscles or strut or enlarge the rupture; would give relief; and would control a hernia.

In considering the various claims of respondents as hereinabove set out, the Commission weighed the testimony and evidence applicable, including that of the medical experts and that of the lay witnesses, and, as applied to the question as to whether the device was both secure and comfortable, and the testimony of users that it was, accepted that of the users, since "actual usage on such a point is superior in weight to opinion, no matter how distinguished and extensive the general background thereof."

As to the challenged claim that respondents' device gave maximum effective relief, the Commission took the words "maximum" and "effective" as simply

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descriptive "puffing," and found that the device did give the relief advertised to those with reducible rupture in the sense of the only definition appearing in the record.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Jesse D. Kash for the Commission.

Taylor, Higgins, Windham & Purdue, of Birmingham, Ala., for respondents.

COMPLAINT¹

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the corporations, officials, and individuals named in the caption hereof, hereinafter referred to as respondents, have violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent The Dobbs Truss Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Alabama with its office and principal place of business located at 753 Lomb Boulevard, S. W., Birmingham, Alabama.

Respondents Homer C. Dobbs, J. Wood Dobbs and Gladys W. Clark are president, vice-president, secretary and treasurer, respectively, of corporate respondent The Dobbs Truss Company, Inc.

Respondent Ellie H. Vines, Sr., is an individual trading as Dobbs Truss and Appliance Company with his office and principal place of business located at 1725 Third Avenue, North, Birmingham, Alabama.

Respondent Clarence L. Clark is an individual trading as Dobbs

¹ The Commission on November 1, 1950, issued an order adding party respondent, as follows:

This matter coming before the Commission upon the request of the attorney supporting the complaint to add O. C. Dobbs, Jr., individually and as an officer of the Dobbs Truss Company, Inc., pursuant to the recital set out in the answer filed herein, and the Commission having duly considered the matter and the request herein, and being now fully advised in the premises:

It is ordered, That the complaint be amended by adding O. C. Dobbs, Jr., individually and as an officer of the Dobbs Truss Company, Inc., as a respondent and that such other grammatical corrections be made in the complaint as may be necessary by such action.

The Commission on February 8, 1951, issued an order adding party respondent, as follows:

This matter coming before the Commission upon the motion of the attorney supporting the complaint to add Dobbs Truss Sales Company, Inc., as a party respondent pursuant to the recital set out in said motion, and the Commission having duly considered the matter and the motion herein, and being now fully advised in the premises;

It is ordered, That the complaint be amended by adding Dobbs Truss Sales Company, Inc., as a respondent and that such other grammatical corrections be made in the complaint as may be necessary by such action.

Truss Appliance Company with his office and principal place of business located at 205 Whitehall St. S. W. Atlanta, Georgia.

Respondent Vic L. Brandon is an individual trading under his own name with his office and principal place of business located at 623 North Quincy Street, Clinton, Illinois.

Respondent Lemuel S. Dobbs is an individual trading as Dobbs Truss Company with his office and principal place of business located at 83 South High Street, Columbus, Ohio.

Respondent Scott C. McClelland is an individual trading as Dobbs Truss Distributing Company with his office and principal place of business located at 631 Maison-Blanche Building, New Orleans, Louisiana.

Respondent Dobbs Truss Company of New York, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its office and principal place of business located at 1475 Broadway, New York, N. Y.

Respondents Edward Nolin, Rose Nolin and Rosamond Nolin are officers of respondent Dobbs Truss Company of New York, Inc., with their office and principal place of business located at the same address.

Respondent Edward Nolin, with his New York office located at 1475 Broadway, New York, N. Y., also trades under the names of Dobbs Truss Company, Chicago, Illinois, Dobbs Truss Company, Los Angeles, California, Dobbs Truss Company, Boston, Massachusetts, and Dobbs Truss Company, Philadelphia, Pennsylvania.

Respondent Irvin O. Taylor is an individual trading as The Dobbs Truss with his office and principal place of business located at 541 Virginia Drive, Orlando, Florida.

Respondents William L. Powell and Ed. F. Hill are individuals and copartners trading as The Dobbs Truss Distributing Company, with their office and principal place of business located at 705 Olive Street, St. Louis, Missouri.

Respondent John C. Dobbs is an individual trading as Dobbs Truss Company, with his offices and principal place of business located at 1122 Market Street, San Francisco, California, and also trading as Dobbs Truss Sales Company of the Western States with its office and principal place of business located at 577 14th Street, Oakland, California.

Respondent George R. Gardner is an individual trading as Dobbs Truss Co., with his office and principal place of business located at 866 Spitzer Building, Toledo, Ohio.

Respondent Henry J. Watkins, Jr., is an individual trading as The Dobbs Truss Distributing Company with his office and principal place of business located at 913 Woodward Building, Washington, D. C.

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The individuals named as officers of the aforesaid corporations formulated, directed and controlled the policies, acts and practices of the respective corporations with which they were and are connected.

PAR. 2. Respondents are now, and for more than one year last past, have been engaged in selling and distributing a device, as "device" is defined in the Federal Trade Commission Act. Said device is designated as "Dobbs Truss."

PAR. 3. Respondents cause and have caused the said device, when sold, to be transported from their various places of business designated in Paragraph One hereof to purchasers located at various other States of the United States and in the District of Columbia, and at all times mentioned herein maintain and have maintained a course of trade in the said device in commerce among and between the various States of the United States and in the District of Columbia. Their volume of business in such commerce is substantial.

PAR. 4. Respondent, The Dobbs Truss Company, Inc., of Birmingham, Alabama, was founded by O. C. Dobbs about ten years ago. Said corporate respondent is engaged primarily in the manufacture and sale of the Dobbs Truss. The corporation issues franchises to its distributors for certain territorial rights and sells its products to them wholesale. It furnishes its distributors with advertising folders and with mats for suggested newspaper advertisements, many or all of which are used by said distributors. Said respondent advertises that it has offices in every large city in the United States. It allows its distributors to use its name, Dobbs Truss Company, in their corporate or trading capacity. By reason of the aforesaid and other facts, the various distributors are the agents of the Dobbs Truss Company, Inc., in the advertising and selling of said device.

PAR. 5. In the course of conduct of their business, respondents subsequent to March 31, 1938, disseminated and caused the dissemination of certain advertisements concerning said device by the United States mails and by various means in commerce, as commerce is defined in the Federal Trade Commission Act, including but not limited to advertisements in various newspapers and magazines hereinafter designated and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce the purchase of said device; and respondents have disseminated and caused the dissemination of advertisements concerning said device; including but not limited to the advertisements referred to above for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said device in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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PAR. 6. Among and typical, but not all inclusive, of the advertisements disseminated by the various respondents are the following which, for convenience and in order to avoid duplication, are numbered and the advertisements alleged to have been disseminated by each respondent are hereinafter referred to by such numbers.

(1) BIRMINGHAM MINISTER'S INVENTION BASIS FOR BIG INTERNATIONAL TRADE

O. C. Dobbs—and his 10 children have company offices in every large city in the United States * * *

Dobbs Truss is being worn in many lands * * * and here in the United States, it is fairly well known that the Dobbs Truss Company has an office in every large city.

How Mr. Dobbs * * * came to invent the Dobbs truss sounds much like the testimonials the company receives from time to time * * *.

For his lower abdominal rupture, he relates, he had tried everything—surgery, “other trusses” and, at the time he thought up the Dobbs truss, he was taking “lying-in-bed” treatment.

“But after three days,” he says, “I just couldn't lie in that bed any longer.” * * * From a junk pile he got an automobile seat spring and a discarded tire casing. With these he fashioned the first model of the present day Dobbs truss * * * Professing no prior knack for “making things,” he says that in his case it was simply the old tenet that “necessity is the mother of invention.”

HE WAS CURED

Within six months, he claims, he was able to return the parts to the junk pile, “a cured man.”

(Disseminated by means of a circular designated “newspaper in Birmingham reports interesting story concerning Dobbs truss.”)

(2) Is your RUPTURE getting worse each year? Then you must be wearing the wrong type of truss * * * See the DOBBS TRUSS * * * Keeps rupture tightly closed at all time while working, lifting, walking or swimming. Lightweight. Reason should teach you not to place a bulb or ball in opening of rupture which keeps muscles spread apart. Holds like the palm of your hand.

No matter what truss you now wear, you owe it to yourself to come see the DOBBS TRUSS.

Free Examination and Demonstration by Mr. Dobbs, son of inventor, who comes here direct from factory, Birmingham, Alabama, FRANCIS HOTEL.

(Disseminated by advertisement in Monroe, La., Morning World, February 13, 1949 issue.)

(3) * * * This marvelous invention for rupture treatment is *different* from any truss you have ever tried. . . .

The Dobbs Truss is different and far superior to the old fashioned truss . . . Do not hinder the circulation of the blood by wearing a constricting band around the body.

* * * does away with all chafing, binding, rubbing and all constricting pressure * * *.

* * * The DOBBS TRUSS has no bulbs or knobs to push into and irritate the ruptured opening * * *

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* * * swivel joint permits the body to move about freely in any direction without displacing the pad. In the bath, swimming, crawling, stooping, walking—the Dobbs Truss exerts the same even, protective pressure and may be worn with complete security and comfort * * *

* * * If you are wearing an old style truss, with but little or no benefits, give the modern Dobbs Truss a trial.

* * * will help Nature help you * * *

(Disseminated by means of circular designated “Dobbs Truss” bearing a picture of “O. C. Dobbs, inventor.”)

(4) No bulk to spread weak muscles.

(5) RUPTURED? Sure, you can get Relief with the New Dobbs Truss * * * Why, man! Rupture doesn't stop me! * * * no bulb to spread the rupture * * * maximum relief * * *.

(6) RUPTURED? Enjoy Life Again with a Comfortable DOBBS TRUSS * * * Stop suffering from reducible rupture! * * * No bulk to spread or strut the rupture * * * maximum relief * * *.

(7) Reason should teach you not to spread rupture with a ball or bulb.

(8) RUPTURED? *Stop suffering.* * * * maximum relief * * *.

(9) RUPTURED? Real Relief with Dobbs Truss * * *.

(10) *Don't let rupture stop you!* For relief, wear Dobbs Truss * * *.

(11) Comfortable relief * * *.

(Disseminated by means of mats furnished distributors.)

(12) RUPTURE needs the most modern scientific appliance for relief. Don't put on a truss which does not comply with modern science * * *.

(13) RUPTURED? The DOBBS TRUSS is different. It does not spread the rupture. It holds with a soft concave pad. No rubs, belts, or straps * * *.

(Disseminated by means of newspaper advertisements circulated in Missouri, Tennessee and Alabama.)

(14) RUPTURED? Sure, you can get Relief with the New DOBBS TRUSS. Why, man! Rupture doesn't stop me. * * * no bulb to spread the rupture. * * * Get maximum relief—.

(15) RUPTURED? Stop Suffering. Wear a DOBBS TRUSS. Don't let rupture stop you. For relief wear a Dobbs Truss.

(Disseminated by newspaper advertisements in Georgia, South Carolina, and Tennessee.)

(16) RUPTURED? See this new DOBBS TRUSS. It holds muscles with a soft concave pad. Light weight, touches body in but two places. Reason should teach you not to place a bulb or ball in opening of rupture, which keeps muscles spread apart. * * * It does not slip.

(Disseminated by advertisements in the Tecumseh Chieftain, Tecumseh, Nebraska, January 22, 1948, issue; Butler County Press, David City, Nebraska, January 15, 1948; Atkinson, Nebraska “Graphic,” January 30, 1948.)

(17) Keep Healthy. The proper control of a hernia is most important to your health. CORRECTIVE MEASURES. Restore the muscles to their original

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state * * * This swivel joint permits the body to move about freely in any direction without displacing the pad * * *. Walking, crawling, stooping or swimming. * * * does away with all chafing, binding and constricting pressure that slows up the circulation of the blood which is essential to a healthy body. Should a rupture return after an operation a DOBBS TRUSS should be worn for six months; watch results before having a second operation. An egg-shaped pad acts as a dilating wedge which stretches the muscles and tissues, causing the opening to enlarge.

(Disseminated by means of a circular designated "The Dobbs Truss".)

(18) RUPTURED? Would you like to be free of your rupture and kept so—100%—for balance of your life without further expense, worry or trouble? then wear THE DOBBS TRUSS. The basic design and the application of the DOBBS SLIGHTLY-CUPPED PAD TRUSS has proved both useful and practical to the mutual satisfaction of the medical profession and the people who wear them. The Dobbs Truss holds just like the hand.

(Disseminated by ad in The Columbus Dispatch of October 27, 1948.)

(19) RUPTURED? Many, even elderly men, report correction in just a few months with—The Dobbs X-Ray Tested Truss * * * It holds like the palm of your hand. Your rupture can be enlarged by an egg-shaped pad, but you CANNOT enlarge it with pressure of the palm of your hand. The Dobbs Truss is just that simple and effective!

(Disseminated in the Columbus Citizen, Columbus, Ohio, February 6, 1949, March 6–20, April 3, 1949, issues.)

(20) RUPTURED, DOBBS TRUSS—No Bulbs, No Belts, No Straps. It holds like the hand. It can be worn while bathing. It does not strut the rupture. It holds with a concave pad. Reason should teach you not to place a bulb or ball in opening of rupture, thus keeping the muscles spread apart.

(Advertisement in The Times Picayune, May 9, 1949, issue.)

(21) RUPTURED? Get amazing efficient relief with Dobbs Truss.

(Advertisement disseminated in Sunday News, New York, February 9, 1947 issue.)

(22) Reason should teach you not to place a bulb or ball in opening of rupture which keeps muscles spread apart.

(Disseminated by advertisement in Chicago Tribune, May 25, 1947, issue.)

(23) Do not hinder the circulation of your blood by wearing a constricting band around the body.

(Disseminated in the Chicago Tribune, June 24, 1947, issue.)

(24) Cannot slip. Keeps rupture tightly closed at all times—while working, lifting, walking, or swimming.

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(Disseminated by means of circular designated "The Dobbs Truss".)

(25) RUPTURED? Get relief with Dobbs Truss. Reason should teach you not to spread rupture with a ball or bulb. Dobbs Truss uses a patented concave pad that supports like your hand * * *.

(Disseminated by advertisement in the Times, Chicago, March 30, 1947, issue.)

(26) RUPTURED? Get amazing effective relief with Dobbs Truss.

(Disseminated by advertisement in Chicago Sun, January 12, 1947, issue.)

(27) RUPTURED? Improved patented Dobbs Truss. It holds the muscles together with soft, concave pad. Keeps rupture tightly closed at all times—while working, lifting, walking or swimming. * * * Cannot slip. Do not hinder the circulation of your blood by wearing a constricting band around the body.

(Disseminated in the Chicago Daily News, September 3, 1946.)

(28) RUPTURED? Ruptured persons who have been delaying treatment are those wearing unsatisfactory trusses. Investigate this most unusual of all trusses, the bulbless, beltless, strapless Dobbs Truss. Its patented concave pad is designed to hold exactly like your hand—automatically adjusts itself to every position—unlike the old-style trusses with fixed, screwed-on, rounded pads. It will not force the muscles further apart enlarging the rupture but gently draws the rupture opening together giving nature a chance to repair.

(Disseminated by advertisement in Orlando Evening Star, Orlando, Florida, December 15, 1948, and by advertisement in Orlando Morning Sentinel, December 16, 1948.)

(29) RUPTURED The New Dobbs Truss is different * * * No pinching, bind, slipping or chafing * * *.

(Disseminated by means of advertisement in the Evening Star, Orlando, Florida, May 12, 1948.)

(30) If your need for a truss is greater this year than last, your truss is not giving you the proper results * * * Dobbs Truss * * * free body action.

(Disseminated by advertisement in St. Louis Post Dispatch, March 21, 1948, issue, and February 15, 1948, issue; and in the Globe Democrat, St. Louis, February 15, 1948, issue.)

(31) RUPTURED? Wear a Dobbs Truss * * *. The Dobbs truss is different from any other truss * * * keeps the rupture closed. Does not hinder circulation. Does not slip up or down. Stays where placed. Why continue to rupture yourself by wearing bulbs and convex pads which spread the muscles further apart. Why not hold your rupture like you do when you hold it in your hand. Stop suffering. Comfortable relief from Dobbs Truss.

(Disseminated by advertisement in Sunday Star News, Wilmington, North Carolina, February 2, 1947, issue.)

(32) RUPTURED? Dobbs Truss . . . Bulbless. Beltless. Strapless. Holds the muscles in place with a soft concave pad. Nature teaches you not to place a ball or bulb in rupture opening, thus spreading weakened muscles apart.

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(Disseminated by advertisement in San Francisco Examiner, April 3, 1949, issue.)

(33) RUPTURED? Improved patented Dobbs Truss CANNOT slip. Holds muscles together * * * keeps rupture tightly closed at all times . . . while lifting, walking or swimming * * * Reason should teach you not to place a bulb or ball in opening of rupture which keeps muscles spread apart.

(Disseminated by advertisement in the San Francisco Examiner, April 10, 1949, April 24, 1949, May 1, 1949; in the Oakland Tribune, April 1949, and in the Sunday Examiner, Oakland, California, 1949.)

(34) Is your rupture getting worse each year? Then you must be wearing the wrong type of truss, perhaps one with a knob * * * Dobbs Truss * * * keeps rupture tightly closed at all times, while working, lifting, walking or swimming. * * * Reason should teach you not to place a bulb or ball in opening of rupture which keeps muscles spread apart. Holds like the palm of your hand.

(Disseminated by means of advertising in the Oakland, California, Post Examiner, September 14, 1948.)

Holds muscles in place * * * Nature teaches you not to place a ball or bulb in rupture opening, thus spreading weakened muscles apart * * * holds like your hand * * *.

(Disseminated in advertisement in the San Francisco Chronicle, July 11, 1948, and August 29, 1948.)

(36) If ruptured * * * wear a Dobbs Truss * * * It's Different. Has a concave pad that holds like your hand. No bulbs spread weak muscles * * * No matter what type truss you are now wearing, you owe yourself a free demonstration of this simple, effective instrument.

(Disseminated by means of Circular styled "The Dobbs Truss".)

(37) Reason should teach you not to place a bulb or ball in opening of rupture, thus keeping the muscles apart. RUPTURED? The Dobbs Truss is different. Worry less. * * * Common sense should teach us not to place a bulb or ball in opening of the rupture, thus separating the muscles * * *.

(Disseminated by advertisements in Washington, D. C., and Richmond, Virginia, papers in 1948.)

(38) * * * This marvelous invention for rupture treatment is different from any truss you have ever tried. The Dobbs Truss is different and far superior to the old-fashioned truss because of these important features: (1) The Dobbs Truss has no straps and no belts. By eliminating straps and web belts, the Dobbs Truss does away with all chafing, binding, rubbing and all constricting pressure. It touches the body in two places only. (2) The Dobbs Truss has no bulbs or knobs to push into and irritate the ruptured opening * * * The Dobbs Truss is more durable than old-fashioned trusses since there is no elastic webbing or straps to deteriorate or not.

(Disseminated by means of Circular "The Dobbs Truss," G. R. Gardner, 866 Spitzer Building, Toledo, Ohio.)

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(39) RUPTURED, reason should tell you that a ball or bulb pressing into the opening acts as a wedge spreading apart the already weakened muscles and tissues. Patented Dobbs Truss. * * * Helps nature to strengthen the muscles and tissues. Reason should tell you a ball or bulb acts as a wedge forcing itself into the opening, keeping muscles and tissues spread apart.

(Disseminated by advertisements in Ashland, Ohio; Toledo, Ohio, and other Ohio papers in 1949.)

(40) The Dobbs Truss has no straps and no bands. By eliminating straps and web belts, the Dobbs Truss does away with all chafing, binding, rubbing and all constricting pressure.

The Dobbs Truss has no bulbs or knobs to push into and irritate the ruptured opening.

The Dobbs Truss has a swivel joint connecting its concave pad with a body band. This swivel joint permits the body to move about freely in any direction without displacing the pad, in the bath, in swimming, in crawling—The Dobbs Truss exerts the same even, protective pressure and may be worn with complete security and comfort.

(Disseminated by Circular designated "The Dobbs Truss," Times Building, New York.)

(41) RUPTURED, relief with Dobbs Truss. Reason should teach you not to spread with a ball or bulb. Dobbs Truss uses a patented concave pad that supports like your hand. May be worn at work, play and bathing. * * *

(Disseminated by advertisement in "Sunday News" New York, April 20, 1947, issue.)

(42) RUPTURED, improved Dobbs Truss cannot slip, holds muscles together with a soft concave pad * * * reason should teach you not to place a bulb or ball in opening of ruptures which keeps muscles spread apart.

(Disseminated by advertisement in Los Angeles Examiner, Los Angeles, California, February 16, 1947, issue.)

(43) RUPTURED, improved Dobbs Truss cannot slip, holds muscles together with a soft concave pad * * * reason should teach you not to place a bulb or ball in opening of rupture which keeps muscles spread apart.

(Disseminated by advertisement in Boston Post, Boston, Mass., September 13, 1946.)

PAR. 7. The advertisements disseminated by respondents the Dobbs Truss Company, Inc., and Homer C. Dobbs, J. Wood Dobbs and Gladys W. Clark, individually and as officers of the Dobbs Truss Company, Inc., either in their own behalf or by their authorized agents are the following:

Nos. 1 to 43, inclusive.

Advertisements disseminated by respondent Ellie H. Vine, Sr., trading as Dobbs Truss Appliance Company, are as follows: 1, 3, 4, 12, 13.

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Advertisements disseminated by respondent Clarence L. Clark, trading as Dobbs Truss Appliance Company, are as follows: 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15.

Advertisements disseminated by respondent Vic L. Brandon, are as follows: 1, 3, 16.

Advertisements disseminated by respondent Lemuel S. Dobbs, trading as Dobbs Truss Company, are as follows: 17, 18, 19.

Advertisements disseminated by respondent Scott C. McClellan, trading as Dobbs Truss Distributing Company, are as follows: 1, 3, 20.

Advertisements disseminated by respondent Dobbs Truss Company of New York, Inc., and respondents Edward Nolin, Rose Nolin and Rosamond Nolin, individually, and as officers of Dobbs Truss Company of New York, Inc., are as follows: 1, 21, 40, 41.

Advertisements disseminated by respondent Edward Nolin, trading as Dobbs Truss Company, are as follows: 1, 3, 22, 23, 25, 26, 27, 24, 40, 42, 43.

Advertisements disseminated by respondent Irvin O. Taylor, trading as The Dobbs Truss, are as follows: 1, 3, 28, 29.

Advertisements disseminated by respondents William L. Powell and Ed F. Hill, trading as the Dobbs Truss Company of the Western States, are as follows: 3, 32, 33, 34, 35.

Advertisements disseminated by respondent G. R. Gardner, trading as The Dobbs Truss Company, are as follows: 3, 38, 39.

Advertisements disseminated by respondent Henry J. Watkins, Jr., trading as Dobbs Distributing Company are as follows: 3, 36, 37.

PAR. 8. Through the use of advertising contained in the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondents The Dobbs Truss Company, Inc., Homer C. Dobbs, J. Wood Dobbs and Gladys W. Clark, individually and as officers of The Dobbs Truss Company, Inc., represented directly and by implication, that the use of their device, The Dobbs Truss, is a remedy or cure for ruptures; that it will control and correct hernias; that it is an adequate and effective treatment for all kinds and types of ruptures; that it will relieve all kinds and types of ruptures; that it assists nature in healing ruptures; that it will keep ruptures tightly closed at all times; that it will hold a rupture securely and comfortably in place at all times and permit complete freedom of bodily movement and physical activity without being displaced; that it does not hinder circulation of the blood and does away with all irritation, chafing, binding, rubbing, pinching, slipping, and constricting pressure; that it will hold muscles together and prevent muscles from spreading apart; that it will prevent a rupture from spreading or becoming struted or enlarged; that it will strengthen

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and restore the muscles to their original state; that it is a marvelous scientifically designed invention for the treatment of ruptures materially different from, and superior to, other trusses.

The Dobbs Truss Company, Inc., and its officers as aforesaid and respondent Clarence L. Clark, represented directly and by implication that said device is a remedy or cure for rupture; that it is an adequate and effective treatment for all kinds and types of ruptures; that it will relieve all kinds and types of ruptures; that it assists nature in healing ruptures; that it will hold a rupture securely and comfortably in place at all times and permit complete freedom of bodily movement and physical activity without being displaced; that it does not hinder circulation of the blood and does away with all irritation, chafing, binding, rubbing and constricting pressure; that it will prevent a rupture from spreading or becoming strutted; that it is a marvelous scientifically designed invention for the treatment of ruptures materially different from, and superior to, other trusses.

The Dobbs Truss Company, Inc., and its officers aforesaid and respondent Ellie H. Vines, Sr., an individual trading as Dobbs Truss and Appliance Company, represented directly and by implication that said device is a remedy or cure for rupture; that it is an adequate and effective treatment for all kinds and types of ruptures; that it will relieve all kinds and types of ruptures; that it assists nature in healing ruptures; that it will hold a rupture securely and comfortably in place at all times and permit complete freedom of bodily movement and physical activity without being displaced; that it does not hinder circulation of the blood and does away with all irritation, chafing, binding, rubbing and constricting pressure; that it will prevent muscles from spreading; that it will prevent a rupture from spreading; that it is a marvelous scientifically designed invention for the treatment of ruptures materially different, and superior to, other trusses.

The Dobbs Truss Company, Inc., and its officers aforesaid and Vic L. Brandon, represented directly and by implication that said device is a remedy or cure for rupture; that it is an adequate and effective treatment for all kinds and types of ruptures; that it assists nature in healing ruptures; that it will hold a rupture securely and comfortably in place at all times and permit complete freedom of bodily movement and physical activity without being displaced; that it does not hinder circulation of the blood and does away with all irritation, chafing, binding, rubbing, slipping and constricting pressure; that it will hold muscles together and prevent them from spreading apart; that it is a marvelous invention for the treatment of ruptures materially different from, and superior to, other trusses.

The Dobbs Truss Company, Inc., and its officers named as aforesaid and Lemuel S. Dobbs, trading as Dobbs Truss Company, represented that said device is a remedy or cure for rupture; that it will control and correct hernias; that it is an adequate and effective treatment for all kinds and types of ruptures; that it will hold a rupture in place at all times and permit complete freedom of bodily movement and physical activity without being displaced; that it does not hinder circulation of the blood and does away with all chafing, binding, and constricting pressure; that it will restore the muscles to their original state and prevent them from spreading apart; that it will prevent a rupture from becoming enlarged.

The Dobbs Truss Company, Inc., and its officers named aforesaid and Scott C. McClelland, trading as Dobbs Truss Distributing Company, represented that said device is a remedy or cure for rupture; that it is an adequate and effective treatment for all kinds and types of ruptures; that it assists nature in healing ruptures; that it will hold a rupture securely and comfortably in place at all times and permit complete freedom of bodily movement and physical activity without being displaced; that it does not hinder circulation of the blood and does away with all irritation, chafing, binding, rubbing and constricting pressure; that it will prevent the muscles from spreading apart and prevent the rupture from becoming struttred; that it is a marvelous invention for the treatment of ruptures materially different from, and superior to, other trusses.

The Dobbs Truss Company, Inc., and its officers named aforesaid, and Dobbs Truss Company of New York, Inc., a corporation, Edward Nolin, Rose Nolin and Rosamond Nolin, individually and as officers of corporate respondent Dobbs Truss Company of New York, Inc., and respondent Edward Nolin, trading as Dobbs Truss Company, represented directly and by implication that said device is a remedy or cure for rupture; that it is an adequate and effective treatment for all kinds and types of ruptures; that it will relieve all kinds and types of ruptures; that it will hold a rupture securely and comfortably in place at all times and permit complete freedom of bodily movement and physical activity without being displaced; that it does away with all irritation, chafing, binding, rubbing and constricting pressure; that it will prevent a rupture from spreading.

The Dobbs Truss Company, Inc., and its officers aforesaid and Edward Nolin, an individual trading as Dobbs Truss Company, represented directly and by implication that said device is a remedy or cure for rupture; that it is an adequate and effective treatment for all kinds and types of ruptures; that it will relieve all kinds and types of ruptures; that it assists nature in healing ruptures; that it will keep

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ruptures tightly closed at all times; that it will hold a rupture securely and comfortably in place at all times and permit complete freedom of bodily movement and physical activity without being displaced; that it does not hinder circulation of the blood and does away with all irritation, chafing, binding, rubbing, slipping and constricting pressure; that it will hold muscles together and prevent them from spreading apart; that it will prevent a rupture from spreading; that it is a marvelous invention for the treatment of ruptures materially different from, and superior to, other trusses.

The Dobbs Truss Company, Inc., and its officers aforesaid, and Irvin O. Taylor, trading as The Dobbs Truss, represented that said device is a remedy or cure for rupture; that it is an adequate and effective treatment for all kinds and types of ruptures; that it assists nature in healing ruptures; that it will hold a rupture securely and comfortably in place at all times and permit complete freedom of bodily movement and physical activity without being displaced; that it does not hinder circulation of the blood and does away with all irritation, chafing, binding, rubbing, pinching, slipping and constricting pressure, that it will hold muscles together and prevent them from spreading apart; that it will prevent the rupture from becoming enlarged; that it is a marvelous invention for the treatment of ruptures materially different from, and superior to, other trusses.

The Dobbs Truss Company, Inc., and its officers named aforesaid and William L. Powell and Ed F. Hill, co-partners trading as The Dobbs Truss Distributing Company, represented directly and by implication that said device is a remedy or cure for rupture, that it is an adequate and effective treatment for all kinds and types of ruptures; that it will relieve all types and kinds of ruptures; that it assists nature in healing ruptures; that it will hold a rupture securely and comfortably in place at all times and permit complete freedom of bodily movement and physical activity without being displaced; that it does not hinder circulation of the blood and does away with all the irritation, chafing, binding, rubbing, slipping and constricting pressure; that it will prevent muscles from spreading apart; that it is a marvelous invention for the treatment of ruptures materially different from, and superior to, other trusses.

The Dobbs Truss Company, Inc., and its officers named aforesaid and John C. Dobbs, trading as Dobbs Truss Company and as Dobbs Truss Sales Company of the Western States, represented that said device is a remedy or cure for rupture; that it is an adequate and effective treatment for all kinds and types of ruptures; that it assists nature in healing ruptures; that it will keep ruptures tightly closed at all times; that it will hold a rupture securely and comfortably

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in place at all times and permit complete freedom of bodily movement and physical activity without being displaced; that it does not hinder circulation of the blood and does away with all irritation, chafing, binding, rubbing, slipping and constricting pressure; that it will hold muscles together and prevent them from spreading apart; that it is a marvelous invention for the treatment of ruptures materially different from, and superior to, other trusses.

The Dobbs Truss Company, Inc., and its officers named aforesaid and George R. Gardner, trading as Dobbs Truss Company, represented directly and by implication that said device is a remedy or cure for rupture; that it is an adequate and effective treatment for all kinds and types of ruptures; that it assists nature in healing ruptures; that it will hold a rupture securely and comfortably in place at all times and permit complete freedom of bodily movement and physical activity without being displaced; that it does not hinder circulation of the blood and does away with all irritation, chafing, binding, rubbing and constricting pressure; that it will strengthen muscles and prevent them from spreading apart; that it is a marvelous invention for the treatment of ruptures materially different from, and superior to, other trusses.

The Dobbs Truss Company, Inc., and its officers named aforesaid and Henry J. Watkins, Jr., trading as The Dobbs Truss Distributing Company, represented directly and by implication that said device is a remedy or cure for rupture; that it is an adequate and effective treatment for all kinds and types of ruptures; that it assists nature in healing ruptures; that it will hold a rupture securely and comfortably in place at all times and permit complete freedom of bodily movement and physical activity without being displaced; that it does not hinder circulation of the blood and does away with all irritation, chafing, binding, rubbing and constricting pressure; that it will prevent the muscles from spreading apart; that it is a marvelous invention for the treatment of ruptures materially different from, and superior to, other trusses.

PAR. 9. The said advertisements are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act.

In truth and in fact, the use of said device is not a remedy or cure for ruptures. It will not control or correct hernias. It is not an adequate and effective treatment for any kind or type of rupture. It will not relieve any kind or type of rupture. It will not assist nature in healing ruptures. It will not keep ruptures tightly closed at any time. It will not hold a rupture securely and comfortably in place at all times, and will not permit complete freedom of bodily move-

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ment and physical activity without displacement. The use of said device will hinder circulation of the blood and will not do away with irritation, chafing, binding, rubbing, pinching, slipping and constricting pressure. Said device will not hold muscles together or prevent muscles from spreading apart. It will not prevent a rupture from spreading or becoming strutted or enlarged. It will not strengthen or restore muscles to their original state. Said device is not a marvelous scientifically designed invention for the treatment of ruptures and is not materially different from, or superior to, other trusses.

PAR. 10. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 11, 1950, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with unfair and deceptive acts and practices in commerce through the dissemination of false and misleading advertisements of a device, in violation of the provisions of said Act. After the issuance of said complaint and the filing of an answer thereto on behalf of all respondents, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before a hearing examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. On November 1, 1950, O. C. Dobbs, Jr., individually and as an officer of The Dobbs Truss Company, Inc., and on February 8, 1951, Dobbs Truss Sales Company, Inc., a corporation, were added as respondents in this matter by order of the Commission, with the consent of all parties. The answer of all respondents filed October 9, 1950, was adopted by respondent O. C. Dobbs, Jr., as his answer. A separate answer on behalf of Dobbs Truss Sales Company, Inc., was filed on February 14, 1951. It was agreed by all parties that these respondents would be regarded as having been party respondents to this proceeding from its inception. Thereafter, the proceeding regularly came on for final consideration by said hearing examiner on the complaint, the answer thereto, testimony and other evidence, and proposed findings of fact and conclusions presented by counsel, and said hearing examiner on March 12, 1951, filed his initial decision.

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Within the time permitted by the Commission's Rules of Practice, respondents filed with the Commission an appeal from said initial decision, and thereafter this proceeding regularly came on for final consideration by the Commission upon said appeal and the briefs in support of and in opposition thereto; and the Commission, having issued its order granting said appeal in part and denying it in part, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts, conclusions drawn therefrom and order, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent The Dobbs Truss Company, Inc., is a corporation organized and existing under the laws of the State of Alabama with its office located at 753 Lomb Boulevard, S. W., Birmingham, Alabama.

PAR. 2. In 1949 respondent The Dobbs Truss Company, Inc., whose stock was held by O. C. Dobbs, Sr., his wife, ten children and six sons-in-law, was foreclosed, although not dissolved. Two new corporations were formed simultaneously. The O. C. Dobbs Manufacturing Company, not a respondent herein, took over its functions, and respondent Dobbs Truss Sales Company, Inc., under contract from The O. C. Dobbs Manufacturing Company, began the sale and distribution of the Dobbs Truss. The latter corporation is owned, through stockholding, by respondents Homer C. Dobbs, O. C. Dobbs, Jr., and J. Wood Dobbs; and Homer C. Dobbs is president thereof. Respondent Homer C. Dobbs is and since 1945 has been president of The Dobbs Truss Company, Inc., and since March of 1949 has also been vice-president thereof. Prior to that date, respondent J. Wood Dobbs was vice-president of said corporation. Until 1949, respondent Gladys W. Clark was secretary-treasurer of said corporation but since that date has had no connection therewith, being succeeded in said office by respondent O. C. Dobbs, Jr., who presently exercises the functions of that office.

PAR. 3. Respondent Ellie H. Vines, Sr., is an individual trading as Dobbs Truss and Appliance Company with his office and principal place of business located at 1725 Third Avenue, North, Birmingham, Alabama.

PAR. 4. Respondent Clarence L. Clark is an individual trading as Dobbs Truss Appliance Company with his office and principal place of business located at 205 Whitehall Street, S. W., Atlanta, Georgia.

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PAR. 5. Respondent Vic L. Brandon is an individual trading under his own name with his office and principal place of business located at 623 North Quincy Street, Clinton, Illinois.

PAR. 6. Respondent Lemuel S. Dobbs is an individual trading as Dobbs Truss Company located until 1949 at 83 South High Street, Columbus, Ohio, and since then at 2132 East 9th Street, Cleveland, Ohio.

PAR. 7. Respondent Scott C. McClelland is an individual trading as Dobbs Truss Distributing Company with his office and principal place of business located at 631 Maison-Blanche Building, New Orleans, Louisiana.

PAR. 8. Respondent Dobbs Truss Company of New York, Inc., is a corporation organized and existing under the laws of the State of New York with its office and principal place of business located at 1475 Broadway, New York, N. Y., and respondents Edward Nolin, Rose Nolin and Rosamond Nolin are officers thereof. Respondent Edward Nolin also trades under the name of Dobbs Truss Company at 1475 Broadway, New York, N. Y., and in Philadelphia, Pennsylvania. Up until April of 1950, respondent Edward Nolin traded under the name of Dobbs Truss Company in Los Angeles, California, but has not done so since that date. He also maintained an office under the same trade name in Boston, Massachusetts, until 1949, at which time it was closed. He also maintained an office under the name of Dobbs Truss Company in Chicago, Illinois, until July 1, 1950.

PAR. 9. Respondent Irvin O. Taylor is an individual trading as The Dobbs Truss with his office and principal place of business located at 541 Virginia Drive, Orlando, Florida.

PAR. 10. Respondents William L. Powell and Ed. F. Hill are individuals who up until 1947 or 1948 traded as co-partners under the name of The Dobbs Truss Distributing Company with their office and principal place of business located at 705 Olive Street, St. Louis, Missouri. At that time respondent William L. Powell removed to Indianapolis, Indiana, where he has since traded from 6172-B Compton Street, Indianapolis, Indiana. Respondent Ed. F. Hill ceased doing business in St. Louis, Missouri, in May or June 1950 but has since traded in North Carolina with an office at Kannapolis, N. C.

PAR. 11. Respondent John C. Dobbs is an individual trading as Dobbs Truss Company who, up until 1948 or 1949, was located in San Francisco, California, and also, under the name of Dobbs Truss Sales Company of the Western States, in Oakland, California. For two or three months in 1950 he also was located in Los Angeles, California, but at the present time is not in business.

PAR. 12. Respondent George R. Gardner is an individual trading as Dobbs Truss Co. with his office and principal place of business located at 866 Spitzer Building, Toledo, Ohio.

PAR. 13. Respondent Henry J. Watkins, Jr., is an individual trading as The Dobbs Truss Distributing Company with his office and principal place of business located at 913 Woodward Building, Washington, D. C.

PAR. 14. The individual respondents named as officers of the corporations described in Paragraphs One, Two and Eight, above, have formulated, directed and controlled the policies, acts and practices of the respective corporations with which they are now or were connected.

PAR. 15. Respondents are now, and for some years last past, within the limitations set out in the preceding paragraphs above, have been, engaged in selling and distributing a patented device, as "device" is defined in the Federal Trade Commission Act. Said device is designated and trade-marked as "Dobbs Truss."

This is a length of tension spring steel, covered with rubber, long enough to encircle half of the lower abdomen, sufficiently flexible to be bent to conform to body contours, and on each end of which are affixed concave rubber pads, varying in diameter, which turn on the steel rod as upon an axis, to obviate slipping. Sizes for infants, for the very obese and for those with double hernias are also sold.

Hernia and rupture to the layman are synonymous terms, and as used in respondents' truss advertisements both connote to the layman that type of hernia called by the medical profession inguinal hernia. This is a protrusion of part of the contents of the abdominal cavity, usually the intestines, downward and outward into the inguinal canal and toward the scrotum. In early life in all males the lining of the abdominal cavity protrudes below the abdomen into the inguinal canal. In most people, however, this "sac" is obliterated during growth and the aperture through which it extended grows over with tissue. In some people this obliteration does not occur and the sac remains. It is into this sac usually in later life, as weight increases and bodily tone diminishes, that the abdominal contents descend. There can be no rupture unless this defect (sac) of body structure exists. The protrusion itself of the abdominal contents, which are essential and vital parts of the body, is a defect in the bodily structure. Respondent's appliance is intended and sold to retain this protrusion within the abdominal cavity where it belongs, for the proper functioning of the body. Examination of the truss itself and the demonstration in the hearings of how it is applied to the body show that respondents'

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product is an instrument, apparatus or contrivance intended to affect the structure or function of the body of man.

PAR. 16. Respondent The Dobbs Truss Company, Inc., until 1949 and since then respondent Dobbs Truss Sales Company, Inc., have caused said product, when sold, to be transported from Birmingham, Alabama, to other respondents herein, located as hereinabove described, maintaining thereby a course of trade in said product in commerce between and among the various States of the United States and the District of Columbia, which has been constant and the volume of which has been and is substantial.

PAR. 17. Respondent The Dobbs Truss Company, Inc., was founded by O. C. Dobbs about ten years ago. It was, until 1949, engaged in the manufacture, sale and distribution of the Dobbs Truss. It issued territorially exclusive franchises to and sold at wholesale to distributors, most of whom are respondents herein. These franchises provided that the distributor would undertake to promote the sale of the device in his territory and to that end would do such advertising as may seem to him proper and advisable. They further provided for cancelation by Dobbs Truss Sales Company, Inc., in the event that the distributor did not always conduct himself in such a way as to reflect credit on the manufacturer or was guilty of any immoral or illegal conduct or failure to pay bills in connection with the sale of the device. It was further provided that, when sold to the distributor, the device became the property of the latter and the distributor was liable for all refunds, guarantees or claims made by him to his customers. The franchise was couched in the usual terms of party of the first part and party of the second part. Nowhere therein does the word "agent" appear, except in the expression following the second party's name—"is desirous of becoming sole agent for the sale and distribution of said product for the territory described as follows:"—and in the paragraph permitting party of the second part to appoint agents and subagents within his territory.

On February 25, 1947, the Federal Trade Commission wrote The Dobbs Truss Company, Inc., as to claims made for the Dobbs Truss in various advertising, asking whether it had placed such advertising, either radio or periodical, and to submit specimens. No reply to this letter is in the record. However, shortly thereafter, on March 26, 1947, and on April 3, 1947, The Dobbs Truss Company, Inc., sent out a "special bulletin" to distributor respondents stating that the Federal Trade Commission had objected to certain advertised claims for the Dobbs Truss and that if the distributor were so advertising, to please stop doing so; that the company at some expense had made up various

advertising mats and had supplied them to distributor respondents; that it wanted the distributor respondents to use the mats so as to make the advertising nationally uniform and at the same time satisfactory to the Commission. These bulletins further offered the mats free of charge and stated that by their use The Dobbs Truss Company, Inc., could control and know what its distributors were using in the way of advertising.

Respondent The Dobbs Truss Company, Inc., made no objection to any of the trade names used by the various distributors nor to the use of the trade-marked name Dobbs Truss but did object to the use of its corporate name, The Dobbs Truss Company, Inc. Only one meeting of the distributor respondents was ever held at the offices of The Dobbs Truss Company, Inc., and advertising discussions at that meeting were limited to consideration of the mats of suggested advertisements and various printed circulars furnished to the distributor respondents. The Dobbs Truss Company, Inc., did not give its approval to any advertisement disseminated by any distributor respondent other than by furnishing the mats and circulars prepared by it. It did not pay any advertising allowance or furnish any other financial aid to the distributor respondents. All of the advertisements disseminated by the distributor respondents bear the name and temporary local or territorial address of the distributor disseminating it. These advertisements, other than those prepared from circulars furnished by The Dobbs Truss Company, Inc., contain no reference whatever to The Dobbs Truss Company, Inc.

The franchise agreements did not give The Dobbs Truss Company any control over the advertising policies of its distributors. Nor did it attempt to exercise any. The evidence of record, including the bulletins above referred to, only shows that The Dobbs Truss Company, Inc., attempted in an advisory capacity to assist its distributors to avoid misrepresentation of their product in their advertisements.

From this record it is concluded that The Dobbs Truss Company, Inc., had no connection with or responsibility for any of the advertisements disseminated by the respondent distributors other than those which were prepared from the advertising mats and circulars furnished by it.

In 1949, after respondent Dobbs Truss Sales Company, Inc., contracted with The O. C. Dobbs Manufacturing Company to buy and resell the entire output of Dobbs Trusses, it issued its franchise, in substantially the same form, to most of the individuals and corporations which had been distributors of The Dobbs Truss Company, Inc. There is no substantial evidence in the record, however, that it composed, issued, distributed or disseminated any circular, mat or ad-

vertisement or that it knew of, authorized, controlled or subsidized any advertising or representation by any distributor.

PAR. 18. In the course and conduct of their business, all respondents have, since March 31, 1938, disseminated and caused the dissemination of advertisements concerning said device by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce the purchase of said device, and said respondents have disseminated and caused the dissemination of advertisements concerning said device for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said device in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 19. Hernia and rupture are synonymous to the layman, and as used in respondents' truss advertisements both terms connote inguinal hernia to him. Inguinal hernia may be simple or uncomplicated, in which cases the extrusion recedes by itself upon reclining or can be pushed back into the abdominal cavity from which it came, by the patient or by another. Inguinal hernia may also be non-reducible, in which cases it adheres to the inguinal canal into which it has protruded and cannot be put back into the abdominal cavity. The only cure, remedy or treatment is surgery. Some non-reducible hernias become strangulated, whereby the blood supply to the extrusion is cut off or materially reduced by the pressure of tissues surrounding the aperture or in the inguinal canal. Strangulation, untreated, shortly results in gangrene and death. Immediate surgery is the only cure, remedy or treatment in such cases. The only purpose of any truss, including respondents', is to keep the contents of the abdominal cavity from protruding. It is obvious, therefore, that in the case of irreducible or strangulated hernias, respondents' device cannot cure, remedy, treat, relieve, control or correct, nor will it hold the rupture tightly closed at any time, hold the muscles together, keep them from spreading or strutting, or restore them to their original state. Neither can it assist nature to do any of these things. Nor will it do away with all chafing, binding, rubbing, constricting pressure or hindrance to the circulation, since the pressure of respondents' device would necessarily be on the extrusion instead of on the abdominal wall through which it protruded. Nor can it be worn with either security or comfort. Any and all such representations are, therefore, necessarily false, misleading and deceptive as to the effect of the use of the Dobbs Truss in cases of irreducible inguinal rupture. The record is silent as to the prevalence of irreducible inguinal rupture. However, it is inferred that irreducible inguinal rupture is common,

since the medical experts were all familiar with it and since one of the respondents' advertisements cautions that unless even a small rupture is held in by a truss, it may soon become an irreducible rupture. The advertisements and circulars disseminated by the various respondents herein are unlimited in appeal. Nowhere are the words "rupture" and "hernia" qualified by the word "reducible" or any other expression of similar import, nor is there any statement in such advertisements and circulars suggesting that the promised benefits of purchase and use do not and cannot apply to irreducible rupture and hernia. Respondents' representations which so refer to rupture or hernia without any further qualification include both reducible and irreducible hernia and rupture in their meaning.

PAR. 20. One of the two circulars describing the Dobbs Truss, printed and disseminated by The Dobbs Truss Company, Inc., to various distributor respondents is a reprint of a story written by a reporter for and printed in the Birmingham Post on June 19, 1946, describing how O. C. Dobbs came to invent the device and the extent of the business done in it. This circular contains the statement, "*He was cured.*" Within six months he (Dobbs) claims, he was able to return the parts to the junk pile, 'a cured man.'" Although this is the statement of the newspaper reporter, by adopting and disseminating it respondents made it their own. Although it is a statement only as to the therapeutic effect of the device on one man, a reader who has a rupture would reasonably conclude that the Dobbs Truss would cure his rupture also. This circular was also disseminated, as found in Paragraph Eighteen, supra, by respondents Ellie H. Vines, Sr., trading as Dobbs Truss and Appliance Company; Vic L. Brandon; Scott C. McClelland, trading as Dobbs Truss Distributing Company; Dobbs Truss Company of New York, Inc.; Edward Nolin, Rose Nolin and Rosamond Nolin, as officers of Dobbs Truss Company of New York, Inc.; Edward Nolin, trading as Dobbs Truss Company; and Irvin O. Taylor, trading as The Dobbs Truss.

PAR. 21. The representation contained in the foregoing paragraph is false, misleading and deceptive. No truss, appliance or device can do anything for an irreducible hernia. The great weight of the evidence is that reducible hernia can only be cured by surgical removal of the hernial sac and the surgical closing of the aperture through which it extends. For obvious reasons, the testimony of laymen that they were cured by wearing respondents' device is of little weight. Respondents' medical expert testified as to one case of cure he said he had seen, but he also said he recommends and performs surgery on his own patients to cure hernia. This "cure" testimony cannot outweigh the longer years of actual experience by experts in this field. There

was some testimony that hernias in very young infants can sometimes be cured by a truss but there is no unanimity of medical opinion as to the efficacy of such therapy. Surgical correction is now used on very young infants. Even where truss treatment has succeeded, it is limited to four years or younger. Cure by truss in these rare cases is impossible unless the hernial sac is obliterated and the size of the aperture reduced—a natural process possible only in infants and not in adults. The record does not show whether the medical experts testifying as to cure in infants were discussing only inguinal hernia or hernias in general, of which the umbilical type naturally accounts for a number of infancy ruptures. It is, therefore, inferred that cures of hernia in young infants by the wearing of a truss is so rare and uncertain as to be negligible.

PAR. 22. By newspaper advertisement respondents The Dobbs Truss Company, Inc., Homer C. Dobbs, J. Wood Dobbs, Gladys W. Clark and O. C. Dobbs, Jr., as officers thereof, disseminated, as found in Paragraph Eighteen, supra, a representation that their device keeps a rupture tightly closed at all times, while working, lifting, walking or swimming. This representation is false, deceptive and misleading as to any hernia. To close a reducible rupture means to close the aperture through which it has protruded, to close it anatomically. It does not mean merely to hold the protrusion in. The preponderance of the testimony is that anatomical closure can only be accomplished surgically. Lay witness testimony that the Dobbs Truss kept the rupture closed is rejected because a layman does not have the detailed anatomical knowledge necessary to give such a statement weight. Non-reducible hernia cannot be closed at all by any device.

PAR. 23. All respondents, except Dobbs Truss Sales Company, Inc., Dobbs Truss Company of New York, Inc., and its officers as such, John C. Dobbs and Lemuel S. Dobbs, by means of a circular, have disseminated, as found in Paragraph Eighteen, supra, representations that the Dobbs Truss when used in rupture cases:

- (1) Is different from and superior to other trusses;
- (2) Does not hinder circulation of the blood and does away with all chafing, rubbing, irritation, binding, slipping and constricting pressure;
- (3) Will "help nature help you";
- (4) May be worn with complete security and comfort; and
- (5) Is a marvelous invention for rupture treatment.

The second, third and fourth of these representations are false as to non-reducible rupture for reasons set out in Paragraph Nineteen, supra. As to reducible hernia, the third one of these representations is false, misleading and deceptive in its breadth and implications.

"It [respondents' device] will help nature help you" plainly implies cure for rupture through a combination of the device and bodily recuperative powers. There was evidence from layman-purchaser-wearers of respondents' device that their protrusions extruded less and less the longer the device was worn, and from a medical expert user to the same effect; however, the latter recommended surgery for his hernia patients and the preponderance of qualified medical opinion was that no device or combination of devices allied with "nature" could effect a cure for rupture except possibly in very young infants—that the only cure was surgical repair. The opinion testimony of respondents' medical expert that if the protrusion is completely reduced and maintained, natural bodily processes will eventually close the aperture, is rejected as unsubstantial.

PAR. 24. On the first representation set out in Paragraph Twenty-Three, supra, there is substantial and credible medical opinion that respondents' device is no different from, nor superior to, other trusses in the sense that the principle of all trusses is the same—to keep the protrusion in. There are, however, different and superior means of accomplishing a given end. For example, although, the old-fashioned wooden leg and the modern artificial leg both have the same basic function of furnishing artificial support, there is a wide difference between them, and the modern artificial limb is a superior product. Respondents' device and a number of other trusses as well are in the record. Still other trusses were described. The application and fitting of respondents' device was demonstrated in the hearings. Upon consideration of the hearing examiner's findings based upon the visual and other evidence and upon a consideration of the other evidence of record, it is concluded that the allegations of the complaint as to respondents' representations that their device is different from and superior to other trusses have not been sustained.

As to the second representation set out in Paragraph Twenty-Three above, there is some opinion evidence that some of the claims made for respondents' device are untrue. This evidence came, however, from men who had never seen respondents' device before. Other evidence indicates that some of these claims are true only if the device is well fitted. However, there is no evidence in the record that respondents' device is not well fitted when sold. There is testimony that care is taken to fit the Dobbs Truss when it is sold. Also, actual users of the Dobbs Truss, including a medical expert user, testified that it did not bind, chafe, rub, irritate or slip. On such points, opinion testimony from witnesses without previous experience with this device is outweighed by the testimony of equally credible witnesses who have had actual experience with its use. In a very strict or

narrow sense, the Dobbs Truss does chafe, bind, rub, irritate and slip upon occasion and to a minor degree. Long wearing will show a thickening of the skin where the two concave pads press the body. But comfortable clothes and shoes do all these things at times and under some circumstances. It is obvious from the advertising itself that these claims were made in comparison with other trusses, such as are in the record, and these claims are to be taken in a general sense. It is concluded that respondents' advertising reasonably would be, and was, so understood by readers. It is obvious that the satisfied wearers were testifying that the Dobbs Truss did not slip, chafe, bind, pinch, rub or irritate them to any appreciable degree, nor to the extent caused by other trusses which they had worn. Therefore, the record does not sustain the allegations of the complaint as to respondents' representations that the Dobbs Truss does not chafe, bind, rub, slip or irritate, where the rupture is reducible. As applied to non-reducible ruptures, these representations are false for the reasons set out, supra, in Paragraph Nineteen.

On the question of the device hindering the circulation of the blood, the medical evidence was unanimous that there was some hindrance or impairment of circulation. This overcomes any law witness testimony to the contrary and, accordingly, the finding is that such representation is false, misleading and deceptive. By the same reasoning, if the device impairs the circulation of the blood, it must exert constricting pressure and, accordingly, the representation that it does not is found to be false, misleading and deceptive, as to any inguinal rupture.

As to the representation that respondents' device may be worn with complete security and comfort by those with reducible rupture, there is no evidence it will not keep the protrusion in. There was medical opinion evidence that no truss would hold a hernia under all conditions and that any truss is uncomfortable. This opinion evidence was not based on any acquaintanceship with the Dobbs Truss. On the other hand, users of it testified as a fact that the device was both secure and comfortable, far more so than other trusses, and that it did hold the rupture under conditions of exercise, work and rest. Actual usage on such points is superior in weight to opinion, no matter how distinguished and extensive the general background thereof. Consequently, the record does not sustain the allegation of the complaint that these representations are false, misleading and deceptive as to the use of the Dobbs Truss by those having a reducible rupture. However, upon this record it is found that these representations are false as to the use of a Dobbs Truss by those having non-reducible ruptures, for the reasons set out, supra, in Paragraph Nineteen.

PAR. 25. The representation that the device is a marvelous invention for rupture treatment raises the questions of whether it is an invention and whether it is a treatment for rupture. The word "marvelous" is found to be simply descriptive puffing. The device is patented and therefore has some *prima facie* novelty. Visual comparison alone with other trusses in the record shows that it is different in construction, fitting and application. There is no evidence in the record that it is not an invention except the opinion of two medical experts that its principle was the same as all other trusses—namely, to keep the protrusion in. The weight of the evidence is with the affirmative. The finding, therefore, is that that part of the representation—that the device is an invention—is neither false, misleading nor deceptive. Neither of the two medical experts testifying in support of the complaint was asked whether the device was a treatment for rupture. The medical expert testifying for the respondent defined rupture treatment as reduction and maintenance of the reduction, which the Dobbs Truss will do with a reducible rupture. His distinguished treatment from cure or remedy and, in effect, said that this device is a treatment for reducible rupture. There is no evidence to the contrary on this point. The medical opinion was unanimous that where surgery was contraindicated, trusses were recommended, obviously as a treatment or control. These cases amounted to about 2 percent of the total patients seeking cure. Therefore, the record does not sustain the allegation of the complaint that this representation is false, misleading and deceptive as to reducible rupture. However, upon this record it is found that this representation is false as to non-reducible rupture, for reasons stated, *supra*, in Paragraph Nineteen.

PAR. 26. All respondents, except Dobbs Truss Sales Company, Inc., William L. Powell, Ed. F. Hill and John C. Dobbs, have disseminated, as found in Paragraph Eighteen, *supra*, advertisements representing that the Dobbs Truss when used in rupture cases does not spread the muscles apart or spread or strut the rupture, and that with it the wearer gets maximum effective relief. As to those people with non-reducible rupture, these representations are false, for reasons set forth, *supra*, in Paragraph Nineteen. As to reducible rupture, on the first of these claims there is a conflict of evidence. One medical expert, testifying in support of the complaint, was of the opinion that respondents' device prevents a rupture from spreading or enlarging; a second expert was of the opinion that it cannot prevent muscles from spreading and that it does not hold the muscles in place. Respondents' expert was of the opinion that the ordinary truss does spread the muscles apart, but that respondents' device does not strut (expand) the muscles. The latter was a statement of fact rather than an opinion,

since the witness had worn the device for about a year himself. Lay witnesses who wear respondents' device testified it did not spread their abdominal muscles. Upon this record it is believed that the allegations of the complaint that these representations are false, misleading and deceptive have not been sustained as to reducible rupture.

The representation that respondents' device gives maximum effective relief has not been proven on this record to be false, misleading or deceptive as to reducible rupture. Only one of the two experts tendered in support of the complaint was queried on this point, his reply being that the device would relieve the symptoms of hernia. Respondents' expert testified that relieving a hernia meant simply putting the protrusion back in the abdomen and keeping it there, and that the device does that. Several lay users of the device testified it gave them relief from pain and protrusion. The words "maximum" and "effective" are taken simply as descriptive "puffing." There has been a failure of proof that respondents' device does not give the relief advertised to those with reducible rupture in the sense of the only definition appearing in this record.

PAR. 27. Respondents Ellie H. Vines, Sr., trading as Dobbs Truss and Appliance Company, and Clarence L. Clark, trading as Dobbs Truss Appliance Company, have disseminated, as found in Paragraph Eighteen, supra, an advertisement representing that the Dobbs Truss is different from other trusses. The allegation of the complaint that this representation is false, misleading and deceptive has not been sustained, for the reasons stated in Paragraph Twenty-Four, supra.

PAR. 28. Respondent Vic L. Brandon has disseminated, as found in Paragraph Eighteen, supra, an advertisement representing that the Dobbs Truss when used in rupture cases holds the abdominal muscles together. Although one medical expert implied that it would hold the abdominal muscles together as claimed, the greater weight of the expert testimony on this point is that it would not. It is found, therefore, that this representation is misleading and deceptive, as to both reducible and non-reducible rupture.

PAR. 29. Respondent Lemuel S. Dobbs, trading as Dobbs Truss Company, has disseminated, as found in Paragraph Eighteen, supra, advertisements and a circular representing directly and by implication that the Dobbs Truss when used in rupture cases will:

- (1) Correct a hernia;
- (2) Control a hernia;
- (3) Restore the muscles to their original state;
- (4) Free the wearer of his rupture completely and permanently;
- (5) Do away with all chafing, binding and constricting pressure;
- (6) Not slow up the circulation of the blood;

- (7) Not enlarge the rupture;
- (8) Permit complete freedom of bodily movement without displacement of the truss pad.

All of these representations are false as to non-reducible hernia, for reasons set out, supra, in Paragraph Nineteen. As to reducible hernia, the representations numbered 5, 7 and 8, above, have not been proven to be false, misleading or deceptive, for the reasons stated in Paragraphs Twenty-Four and Twenty-Six, respectively, except that the representation that the device exerts no constricting pressure is found to be false, misleading and deceptive, for reasons stated in Paragraph Twenty-Four, supra. Number 6, above, for reasons stated in Paragraph Twenty-Four, supra, is found to be false, misleading and deceptive. Number 4 clearly implies a complete and permanent cure and is found to be false, misleading and deceptive, for the reasons stated in Paragraphs Nineteen and Twenty-One, supra.

PAR. 30. Only one of the three medical experts testifying in this proceeding was asked whether respondents' device would correct a hernia. His opinion was that it would not. There is no substantial or direct evidence to the contrary, except one instance of "cure" which is rejected as unsubstantial. Hence, the representation that the device will correct a reducible hernia is found to be false, misleading and deceptive.

One medical expert testified directly, and the other two by implication, that respondents' device will control a rupture. It is obvious from the record that all meant this in the sense of keeping the contents of the abdominal cavity from protruding. The representation does not imply cure, correction, remedy or the removal of the condition or its cause. If it did, it would be false as to any inguinal rupture, for reasons set out, supra, in Paragraphs Nineteen and Twenty-One. At most, it implies symptomatic relief and preventing a worsening. In this sense, the representation has not been proven to be false, misleading or deceptive as to reducible hernia.

While the testimony of one medical expert was that in his opinion respondents' device will restore the abdominal muscles to their original state, the greater weight of the evidence is that it will not, and the finding, accordingly, is that this representation is false, misleading and deceptive.

PAR. 31. Respondent Scott C. McClelland, trading as Dobbs Truss Distributing Company, disseminated, as found in Paragraph Eighteen, supra, an advertisement representing that respondents' device does not strut the rupture and does not spread the muscles apart in rupture cases. These representations are found to be false as to non-reducible hernia, for reasons stated in Paragraph Nineteen, above.

One medical expert was of the opinion that the Dobbs Truss would strut a rupture, a second did not know the meaning of the word, and a third, who had personal experience with the device, stated definitely it did not strut the rupture. Upon this record this representation has not been proven to be false, misleading or deceptive, as to reducible hernia.

The representation that respondents' device does not spread the abdominal muscles apart, as to reducible hernia, has not been proven to be false, misleading or deceptive, for the same reasons stated in Paragraph Twenty-Six, supra.

PAR. 32. Respondents Dobbs Truss Company of New York, Inc., Edward Nolin, Rose Nolin, and Rosamond Nolin, as officers thereof, have disseminated, as found in Paragraph Eighteen, supra, advertisements and a circular representing that the Dobbs Truss gives the wearer amazing, efficient relief in rupture cases and does not spread the rupture. These representations have hereinabove been considered as to reducible hernia in Paragraph Twenty-Six. For the reasons cited therein, the finding here is that they have not been proven to be false, misleading or deceptive as to reducible hernia. Both of them are false as to non-reducible hernia, for reasons stated in Paragraph Nineteen, above.

PAR. 33. Respondent, Edward Nolin, trading as Dobbs Truss Company, has disseminated, as found in Paragraph Eighteen, supra, advertisements and circulars representing that the Dobbs Truss when used in rupture cases:

- (1) Does not spread muscles;
- (2) Does not hinder circulation of the blood;
- (3) Cannot slip;
- (4) Keeps rupture tightly closed at all times;
- (5) Gives relief;
- (6) Holds muscles together;
- (7) Does away with all chafing, binding, rubbing and irritation;
- (8) May be worn with complete security and comfort;
- (9) Does away with all constricting pressure.

All of these representations are false as to non-reducible rupture, for the reasons stated in Paragraph Nineteen, above. Representations numbered 2, 4 and 9 have hereinbefore been found to be false, misleading and deceptive as to reducible rupture and are again so found for the reasons given in Paragraphs Twenty-Four and Twenty-Two, above. The representation that the device holds muscles together when used in connection with a reducible rupture is, by the greater weight of medical evidence in the record, misleading and deceptive

for the reasons stated in Paragraph Twenty-Eight. The remaining representations, above, numbered 1, 3, 5, 7 and 8, have not been proven to be false, misleading or deceptive in cases of reducible rupture, for the reasons hereinabove given in Paragraphs Twenty-Four and Twenty-Six.

PAR. 34. Respondent Irvin O. Taylor, trading as The Dobbs Truss, has disseminated, as found in Paragraph Eighteen, supra, advertisements in newspapers representing that the Dobbs Truss when used in rupture cases will not enlarge the rupture, does not spread muscles, is comfortable to wear and draws the opening together, giving nature a chance to repair; that it is different and does not pinch, bind, slip or chafe. The representation that the device draws the opening together, giving nature a chance to repair, is false, misleading and deceptive as to any inguinal rupture, for the reasons stated hereinabove in Paragraphs Twenty-Two, Twenty-Three, and Twenty-Nine. The remaining representations, except that the Dobbs Truss is different, have not been proven to be false, misleading or deceptive, for the reasons stated hereinabove in Paragraphs Twenty-Four and Twenty-Six as to reducible rupture, but are found to be false as to non-reducible rupture, for the reasons stated in Paragraph Nineteen, above. The representation that the Dobbs Truss is different has not been proven to be false, misleading or deceptive in any respect.

PAR. 35. Respondent John C. Dobbs, trading as Dobbs Truss Company and as Dobbs Truss Sales Company of the Western States, has disseminated, as found in Paragraph Eighteen, supra, advertisements in newspapers representing that the Dobbs Truss when used in rupture cases:

- (1) Holds muscles together;
- (2) Does not spread muscles;
- (3) Keeps rupture tightly closed at all times.

The first and third of these representations are found to be false, misleading and deceptive as to any inguinal hernia, for the reasons stated in Paragraphs Twenty-Two and Twenty-Eight, supra. The second has not been proven to be false, misleading or deceptive as to reducible hernia, for the reasons stated in Paragraph Twenty-Six, but is found to be false as to non-reducible hernia in accordance with Paragraph Nineteen, supra.

PAR. 36. Respondent George R. Gardner, trading as Dobbs Truss Co., has disseminated, as found in Paragraph Eighteen, supra, a circular and newspaper advertisement representing that the Dobbs Truss when used in rupture cases:

- (1) Is a marvelous invention for rupture treatment;
- (2) Is different from other trusses;

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- (3) Does away with all chafing, binding, rubbing and irritation;
- (4) Does away with all constricting pressure;
- (5) Does not spread muscles;
- (6) Helps nature to strengthen muscles and tissues;
- (7) Controls a rupture;
- (8) Is comfortable and secure;
- (9) Does not hinder blood circulation.

Representations numbered 1, 3, 5, 7 and 8 have not been proven to be false, misleading or deceptive as to reducible hernia, for the reasons stated in Paragraphs Twenty-Four, Twenty-Five, Twenty-Six and Thirty herein. Representations numbered 4, 6 and 9 are false, misleading and deceptive as to any inguinal hernia, for the reasons stated in Paragraphs Twenty-Three and Twenty-Four. Representations 1, 3, 4, 5, 6, 7, 8 and 9, inclusive, are false as to non-reducible hernia, for reasons stated in Paragraph Nineteen, above. The allegation that representation numbered 2 is false, misleading and deceptive has not been sustained, for the reasons stated in Paragraph Twenty-Four herein.

PAR. 37. Respondent Henry J. Watkins, Jr., trading as The Dobbs Truss Distributing Company, disseminated, as found in Paragraph Eighteen, supra, advertisements representing that the Dobbs Truss is different and does not spread muscles when used in rupture cases. These have not been proven to be false, misleading or deceptive as to reducible hernia, for the reasons stated in Paragraphs Twenty-Four and Twenty-Six herein. As to nonreducible hernia, the second of these representations is false, for reasons stated in Paragraph Nineteen, above.

PAR. 38. The representations made by respondents as to the effects of using the Dobbs Truss for ruptures or hernias without any qualification, apply equally to reducible and irreducible ruptures and hernias. In the absence of such qualification, those representations which are not true in the case of irreducible rupture or hernia constitute false, misleading and deceptive representations.

PAR. 39. The advertisements which contained the representations hereinabove found to be false, misleading and deceptive were false advertisements. Respondents' use of the aforesaid false, misleading and deceptive representations, disseminated as aforesaid, has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true and to induce a substantial number of the public to purchase the Dobbs Truss because of such erroneous and mistaken belief.

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CONCLUSIONS

1. The representations hereinabove found to be false, misleading and deceptive, disseminated by the various respondents as set out, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

2. The facts found in Paragraph Seventeen of the above findings as to the facts do not constitute the distributor respondents herein agents of The Dobbs Truss Company, Inc., or Dobbs Truss Sales Company, Inc., so as to make the latter companies legally responsible for the advertisements disseminated by such distributor respondents. However, this should not be construed as holding that The Dobbs Truss Company, Inc., is not legally responsible for the representations contained in the advertisements disseminated by the distributor respondents which advertisements were prepared from advertising mats or circulars furnished by it for that purpose.

ORDER

I.

It is ordered, That respondents *The Dobbs Truss Company, Inc.*, a corporation, its officers, representatives, agents and employees; *Homer C. Dobbs, J. Wood Dobbs, Gladys W. Clark* and *O. C. Dobbs, Jr.*, individually and as officers of said corporation, their representatives, agents and employees; *Ellie H. Vines, Sr.*, trading as Dobbs Truss and Appliance Company, or under any other trade name, his representatives, agents and employees; *Vic L. Brandon*, his representatives, agents and employees; *Scott C. McClelland*, trading as Dobbs Truss Distributing Company, or under any other trade name, his representatives, agents and employees; *Dobbs Truss Company of New York, Inc.*, a corporation, its officers, representatives, agents and employees; *Edward Nolin, Rose Nolin* and *Rosamond Nolin*, individually and as officers of Dobbs Truss Company of New York, Inc., their representatives, agents and employees; *Edward Nolin*, trading as Dobbs Truss Company, or under any other trade name, his representatives, agents and employees; and *Irvin O. Taylor*, trading as The Dobbs Truss, or under any other trade name, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the Dobbs Truss, or any product or device of substantially similar construction or design or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly:

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1. Disseminating or causing to be disseminated, by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication, that said device will cure, or has cured, any rupture or hernia.

2. Disseminating or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said device, any advertisement which contains the representation prohibited in Paragraph 1 of Sub-division I of this order.

II.

It is further ordered, That respondents *The Dobbs Truss Company, Inc.*, a corporation, its officers, representatives, agents and employees; *Homer C. Dobbs, J. Wood Dobbs, Gladys W. Clark* and *O. C. Dobbs, Jr.*, individually and as officers of said corporation, their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the Dobbs Truss, or any product or device of substantially similar construction or design or possessing substantially similar properties, whether sold under that name or any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated, by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication, that said device will keep a rupture tightly closed at all times.

2. Disseminating or causing to be disseminated, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said device, any advertisement which contains the representation prohibited in Paragraph 1 of Sub-division II of this order.

III.

It is further ordered, That respondents *The Dobbs Truss Company, Inc.*, a corporation, its officers, representatives, agents and employees; *Homer C. Dobbs, J. Wood Dobbs, Gladys W. Clark* and *O. C. Dobbs, Jr.*, individually and as officers of said corporation, their representatives, agents and employees; *Ellie H. Vines, Sr.*, trading as Dobbs Truss and Appliance Company, or under any other trade name, his

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representatives, agents and employees; *Clarence L. Clark*, trading as Dobbs Truss Appliance Company, or under any other trade name, his representatives, agents and employees; *Vic L. Brandon*, his representatives, agents and employees; *Scott C. McClelland*, trading as Dobbs Truss Distributing Company, or under any other trade name, his representatives, agents and employees; *Edward Nolin*, trading as Dobbs Truss Company, or under any other trade name, his representatives, agents and employees; *Irvin O. Taylor*, trading as The Dobbs Truss, or under any other trade name, his representatives, agents and employees; *William L. Powell* and *Ed. F. Hill*, individually and as copartners, trading as The Dobbs Truss Distributing Company, or under any other trade name, their representatives, agents and employees; *George R. Gardner*, trading as Dobbs Truss Co., or under any other trade name, his representatives, agents and employees; *Henry J. Watkins, Jr.*, trading as The Dobbs Truss Distributing Company, or under any other trade name, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the Dobbs Truss, or any product or device of substantially similar construction or design or possessing substantially similar properties, whether sold under the same or any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated, by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication, that said device does not hinder circulation of the blood, does away with all constricting pressure or will help nature help the wearer.

2. Disseminating or causing to be disseminated, by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication, that said device may be worn with security and comfort, does away with all chafing, binding, rubbing, irritation or slipping or is of any value for rupture treatment, unless such representation be expressly limited to reducible hernia or rupture.

3. Disseminating or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said device, any advertisement which contains any of the representations prohibited in Paragraphs 1 and 2 of Subdivision III of this order.

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IV.

It is further ordered, That respondents *The Dobbs Truss Company, Inc.*, a corporation, its officers, representatives and employees; *Homer C. Dobbs, J. Wood Dobbs, Gladys W. Clark* and *O. C. Dobbs, Jr.*, individually and as officers of said corporation, their representatives, agents and employees; *Ellie H. Vines, Sr.*, trading as Dobbs Truss and Appliance Company, or under any other trade name, his representatives, agents and employees; *Clarence L. Clark*, trading as Dobbs Truss Appliance Company, or under any other trade name, his representatives, agents and employees; *Vic L. Brandon*, his representatives, agents and employees; *Lemuel S. Dobbs*, trading as Dobbs Truss Company, or under any other trade name, his representatives, agents and employees; *Scott C. McClelland*, trading as Dobbs Truss Distributing Company, or under any other trade name, his representatives, agents and employees; *Dobbs Truss Company of New York, Inc.*, a corporation, its officers, representatives, agents and employees; *Edward Nolin, Rose Nolin* and *Rosamond Nolin*, individually, and as officers of Dobbs Truss Company of New York, Inc., their representatives, agents and employees; *Edward Nolin*, trading as Dobbs Truss Company, or under any other trade name, his representatives, agents and employees; *Irvin O. Taylor*, trading as The Dobbs Truss, or under any other trade name, his representatives, agents and employees; *George R. Gardner*, trading as Dobbs Truss Co., or under any other trade name, his representatives, agents and employees; and *Henry J. Watkins, Jr.*, trading as The Dobbs Truss Distributing Company, or under any other trade name, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the Dobbs Truss, or any product or device of substantially similar construction or design or possessing substantially similar properties, whether sold under the same or any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated, by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication, that said device does not spread muscles, that it does not strut or enlarge the rupture or that it will give relief to the wearer, unless such representation be expressly limited to reducible hernia or rupture.

2. Disseminating or causing to be disseminated, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the

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Federal Trade Commission Act, of said device, any advertisement which contains any of the representations prohibited in Paragraph 1 of Subdivision IV of this order.

V.

It is further ordered, That respondent Vic L. Brandon, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the Dobbs Truss, or any product or device of substantially similar design or construction or possessing substantially similar properties, whether sold under the same or any other name, do forthwith cease and desist from directly or indirectly :

1. Disseminating or causing to be disseminated, by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication, that said device holds the abdominal muscles together.

2. Disseminating or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said device, any advertisement which contains the representation prohibited in Paragraph 1 of Subdivision V of this order.

VI.

It is further ordered, That respondent *Lemuel S. Dobbs*, trading as Dobbs Truss Company, or under any other trade name, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the Dobbs Truss, or any product or device of substantially similar design or construction or possessing substantially similar properties, whether sold under the same or any other name, do forthwith cease and desist from directly or indirectly :

1. Disseminating or causing to be disseminated, by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication, that the Dobbs Truss will free the wearer of his rupture completely and permanently, that it will not slow up the circulation of the blood, that it exerts no constricting pressure, that it will correct a hernia, or that it will restore the muscles to their original state.

2. Disseminating or causing to be disseminated, by means of the United States mails, or by any means in commerce, as "commerce" is

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defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication, that said device will control a hernia, will not enlarge a rupture, will permit complete freedom of bodily movement without displacement of the truss pad, or will do away with all chafing or binding, unless such representations be expressly limited to reducible hernia or rupture.

3. Disseminating or causing to be disseminated, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said device, any advertisement which contains any of the representations prohibited by Paragraphs 1 and 2 of Subdivision VI of this order.

VII.

It is further ordered, That respondent *Edward Nolin*, trading as Dobbs Truss Company, or under any other trade name, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the Dobbs Truss, or any product or device of substantially similar construction or design or possessing substantially similar properties, whether sold under the same or any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated, by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication, that said device keeps the rupture tightly closed at all times or that it holds muscles together.

2. Disseminating or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said device, any advertisement which contains any of the representations prohibited in Paragraph 1 of Subdivision VII of this order.

VIII.

It is further ordered, That respondent *Irvin O. Taylor*, trading as The Dobbs Truss, or under any other trade name, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the Dobbs Truss, or any product or device of substantially similar construction or design or possessing substantially similar properties,

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whether sold under the same or any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated, by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication, that said device draws the opening of the rupture together or that it gives nature a chance to repair the rupture.

2. Disseminating or causing to be disseminated, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said device, any advertisement which contains any of the representations prohibited in Paragraph 1 of Subdivision VIII of this order.

IX.

It is further ordered, That respondent *John C. Dobbs*, trading as Dobbs Truss Company and as Dobbs Truss Sales Company of the Western States, or under any other trade name or names, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the Dobbs Truss, or any product or device of substantially similar construction or design or possessing substantially similar properties, whether sold under the same or any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated, by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication, that said device holds muscles together or keeps the rupture tightly closed at all times.

2. Disseminating or causing to be disseminated, by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication, that said device does not spread muscles, unless such representation be expressly limited to reducible hernia or rupture.

3. Disseminating or causing to be disseminated, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said device, any advertisement which contains any of the representations prohibited in Paragraphs 1 and 2 of Subdivision IX of this order.

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X.

It is further ordered, That respondent *George R. Gardner*, trading as Dobbs Truss Co., or under any other trade name, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the Dobbs Truss, or any product or device of substantially similar construction or design or possessing substantially similar properties, whether sold under the same or any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated, by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication, that said device helps nature strengthen muscles and tissues.

2. Disseminating or causing to be disseminated, by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication, that said device will control a hernia, unless such representation be expressly limited to reducible hernia or rupture.

3. Disseminating or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said device, any advertisement which contains any of the representations prohibited in Paragraphs 1 and 2 of Subdivision X of this order.

XI.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to respondent *Dobbs Truss Sales Company, Inc.*

XII.

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

Complaint

IN THE MATTER OF

GRAND ACADEMY SPORTSWEAR, INC. ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5860. Complaint, Mar. 23, 1951—Decision, Apr. 3, 1952

Where a corporation and two officers thereof, engaged in the manufacture and sale and distribution in commerce of wool products, as defined in the Wool Products Labeling Act, including certain ladies' skirts labeled "55% wool 45% rayon"—

- (a) Misbranded said skirts within the intent and meaning of said Act, and the Rules and Regulations promulgated thereunder, in that the aggregate of the woolen fibers therein constituted less than 55% and they contained more than 45% of rayon; and
- (b) Further misbranded said skirts in that the labels affixed thereto did not show the aggregate of all other fibers, each of which constituted less than 5% of the total fiber weight:

Held, That such acts, practices and methods were in violation of said Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

In arriving at said conclusion, due consideration was given to the protestations of good faith and the statements of respondents, contained in their answer, concerning their reputation and standing in the trade as manufacturers of clothing, which, however, were of insufficient cogency to constitute an adequate defense to the present action.

As respects the charge in the complaint that respondents substituted the incorrect tags and labels set forth for the tags which were affixed to the piece goods from which said skirts were made: Said charge was dismissed, under the circumstances and conditions of the instant proceeding, as not properly chargeable as a violation of the Wool Products Labeling Act or of the Rules and Regulations promulgated thereunder or of the Federal Trade Commission Act.

Before *Mr. James A. Purcell*, hearing examiner.

Mr. Russell T. Porter for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Grand Academy Sportswear, Inc., a corporation, and Jack Herbst and Robert Coffield, individually and as

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officers of Grand Academy Sportswear, Inc., hereinafter referred to as respondents, have violated the provisions of said Acts and Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof will be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Grand Academy Sportswear, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of New York State, with its office and principal place of business located at 248 West 35th St., New York, N. Y.

PAR. 2. Subsequent to October 11, 1950, respondents manufactured for introduction into commerce, introduced into commerce, offered for sale in commerce and sold and distributed in commerce as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool products" are defined therein. The said wool products included ladies' skirts which were made by respondents from a fabric designated as "Parker-Wilder 1121," purchased from Strand Woolen Co.

PAR. 3. Upon the labels affixed to the said skirts appeared the following:

55% wool
45% rayon

Grand Academy Sportswear Co., Inc.

PAR. 4. The said skirts are misbranded within the intent and meaning of the said Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively labeled with respect to the character and the amount of their constituent fibers. In truth and in fact, the said skirts were not 55% wool, as "wool" is defined in the said Act; the aggregate of the woolen fibers therein constituted less than 55% of the said skirts and they contained more than 45% of rayon. The said articles were further misbranded in that the labels affixed thereto did not show the aggregate of all other fibers, each of which constituted less than five percentum of the total fiber weight.

PAR. 5. The person by whom the piece goods, from which said skirts were made by respondents, were manufactured for introduction into commerce affixed thereto labels and tags as required by said Act containing information with respect to its fiber content as follows:

20% wool
30% reprocessed wool
50% rayon

Respondents have further violated the provisions of the Wool Products Labeling Act of 1939 by substituting for said tags and affixing

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to the said skirts tags and labels containing information set forth in Paragraph Three herein with respect to the content thereof which was not identical with the information with respect to such content upon the tags and labels as affixed to the wool product from which said skirts were made by the person by whom it was manufactured for introduction into commerce.

PAR. 6. The aforesaid acts and practices of respondents as herein alleged were in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated April 3, 1952, the initial decision in the instant matter of hearing examiner James A. Purcell, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission on March 23, 1951, issued and subsequently served its complaint in this proceeding upon the respondents, Grand Academy Sportswear, Inc., a corporation, and Jack Herbst and Robert Coffield, individually and as officers of the Grand Academy Sportswear, Inc., a corporation, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of said Acts. On April 13, 1951, respondents filed their joint answer specifically admitting the misbranding of their product as charged in the complaint. Said answer alleges that labeling is performed by factory employees by use of rubber stamps showing the fiber content of various cloths used by respondents and that use of the stamp misbranding the goods as to fiber content as charged in the complaint was inadvertent and without intent on the part of respondents to mislead or deceive and that "the officers and the employees will prevent in the future such a repetition of errors." The remaining charges and the conclusions, as set forth in the complaint, are not challenged.

Thereafter, the proceeding regularly came on for final consideration by the above-named Hearing Examiner, theretofore duly designated

by the Commission, upon said complaint, the respondents' answer thereto, and Proposed Findings and Conclusions submitted by the attorney in support of the complaint, none such having been filed by the respondents. Said Hearing Examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusions drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Grand Academy Sportswear, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at No. 248 West 35th Street, New York, New York; that respondents Jack Herbst and Robert Coffield are named in their individual capacities as well also as officers of the corporate respondent; that the address of both individual respondents corresponds to that of the corporate respondent.

PAR. 2. Subsequent to October 11, 1950, respondents manufactured for introduction into commerce, introduced into commerce, offered for sale in commerce and sold and distributed in commerce as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool products" are defined therein. The said wool products included ladies' skirts which were made by respondents from a fabric designated as "Parker-Wilder 1121," purchased from Strand Woollen Co.

PAR. 3. Upon the labels affixed to the said skirts appeared the following:

55% wool
45% rayon
Grand Academy Sportswear Co., Inc.

PAR. 4. The said skirts are misbranded within the intent and meaning of the said Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively labeled with respect to the character and amount of their constituent fibers. In truth and in fact, the said skirts were not 55% wool, as "wool" is defined in the said Act; the aggregate of the woolen fibers therein constituted less than 55% of the said skirts and they contained more than 45% of rayon. The said articles were further misbranded in that the labels affixed thereto did not show the aggregate of all other fibers, each of which constituted less than five percentum of the total fiber weight.

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CONCLUSIONS

The aforesaid acts, practices and methods of respondents were and are in violation of the Wool Products Labeling Act of 1939 and of the Rules and Regulations promulgated thereunder, and also constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

In arriving at the foregoing conclusion the Hearing Examiner has given due consideration to the protestations of good faith and statements of respondents, contained in their answer, concerning their reputation and standing in the trade as manufacturers of clothing, but such protestations and statements are of insufficient cogency to constitute an adequate defense to the present action.

ORDER

It is ordered, That the respondents, Grand Academy Sportswear, Inc., a corporation, and Jack Herbst and Robert Coffield as officers of said Grand Academy Sportswear, Inc., a corporation and also in their individual capacities, their respective representatives, agents and employers, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the sale, transportation or distribution in commerce, as "commerce" is defined in the aforesaid Acts, of ladies' skirts or other wool products, as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain or any way are represented as containing "wool," "reprocessed wool" or "reused wool," as those terms are defined in said Act, do forthwith cease and desist from misbranding such products:

1. By falsely and deceptively stamping, tagging, labeling or otherwise identifying such products;

2. By failing to securely affix to or place on such products 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 products, exclusive of ornamentation not exceeding five 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 five percentum or more, and, (5) the aggregate of all other fibers.

(b) The maximum percentage of the total weight of such wool products of any non-fibrous loading, filling, or adulterating matter.

(c) The name or the registered identification number of the manufacturer of such wool products or one or more persons engaged in

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introducing such wool products into commerce, or in the offering for sale, sale, transportation, or distribution thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939.

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of section 3 of the Wool Products Labeling Act of 1939; *and provided further*, that nothing contained in this order shall be construed as limiting any applicable provisions of said Act or the Rules and Regulations promulgated thereunder.

It is further ordered, That the charge of substitution of tags and labels by respondents, contained in Paragraph Five of the complaint is dismissed, such acts, under the circumstances and conditions of the instant matter, not being properly chargeable as a violation of the Wool Products Labeling Act of 1939, or of the Rules and Regulations promulgated thereunder, nor of the Federal Trade Commission Act.

ORDER TO FILE REPORT OF COMPLIANCE

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 [as required by said declaratory decision and order of April 3, 1952].

Complaint

IN THE MATTER OF

CLINTON STUDIOS, INC., ET AL.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5871. Complaint, Apr. 11, 1951—Decision, Apr. 3, 1952

Where a corporation and its two officers, sole stockholders thereof, doing a substantial volume of business in the interstate sale and distribution of photographs; through sales agents who visited homes in cities, towns, and rural communities in various states to solicit orders—

- (a) Represented falsely to prospective purchasers that a local studio specializing in children's photographs was to be opened in the near future by said corporation, and that photographs of local children were desired for display purposes in the proposed studio;
- (b) Represented that refunds would be made if customers were dissatisfied with their purchases;

The facts being that while, in many instances, they sent dissatisfied purchasers a duplicate set of pictures, they did not make refunds in all instances when requested to do so; and

- (c) Falsely represented, in some instances, that customers would receive oil paintings of the children photographed;

With capacity and tendency to mislead and deceive members of the purchasing public into the erroneous belief that such representations were true and thereby cause them to purchase photographs:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Earl J. Kolb*, hearing examiner.

Mr. B. G. Wilson for the Commission.

Mr. Maurice Schapira, of Newark, N. J., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Clinton Studios, Inc., a corporation, and Edward J. Davis and Ethel Davis, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH. 1. Respondent Clinton Studios, Inc., is a corporation organized and doing business under the laws of the State of New

Jersey with its principal place of business located in the city of Newark, New Jersey. Respondents Edward J. Davis and Ethel Davis are the President and Secretary, respectively, of said Clinton Studios, Inc., and the sole stockholders thereof. By virtue of their positions as officers and stockholders, the individual respondents direct, dominate and control the acts and practices of the corporate respondent.

PAR. 2. Said respondents are now and have been for several years last past engaged in the sale and distribution of photographs, and causing the same when sold to be shipped from their place of business in the city of Newark, New Jersey, to purchasers located in other States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said photographs in commerce between and among the various States of the United States and in the District of Columbia. Respondents' volume of business in such commerce is substantial.

PAR. 3. In the course and conduct of their business, respondents employ sales agents or representatives who visit the homes of prospective customers in cities, towns and rural communities in various States of the United States and in the District of Columbia and solicit orders for their photographs. Said agents and representatives, in soliciting such orders, represent to prospective purchasers that a local studio specializing in children's photographs is to be opened in the near future by the Clinton Studios, Inc., and that photographs of local children are desired for display purposes in the proposed studio. Said agents or representatives also represented that refunds would be made if customers were dissatisfied with their purchases. In some instances, said agents or representatives further represented that customers would receive oil paintings of the children photographed.

PAR. 4. The aforesaid representations were false, misleading and deceptive. In truth and in fact, respondents had no intention of opening local studios and have not in any instance opened such studios. Photographs were not taken for display purposes nor were they ever displayed locally. While respondents, in many instances, sent dissatisfied customers a duplicate set of pictures, they did not make refunds in all instances when requested to do so. Respondents did not furnish oil paintings in accordance with the representation made by their agents or representatives.

PAR. 5. The use by the respondents of the aforesaid acts, practices and methods in connection with the offering for sale and sale of their photographs in commerce had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true and

into the purchase of substantial quantities of their photographs in reliance upon such erroneous belief.

PAR. 6. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated April 3, 1952, the initial decision in the instant matter of hearing examiner Earl J. Kolb, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 11, 1951, issued and subsequently served its complaint in this proceeding upon respondents Clinton Studios, Inc., a corporation, and Edward J. Davis and Ethel Davis, individually and as officers of Clinton Studios, Inc., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After service of said complaint upon respondents and the filing of their answer thereto, a stipulation as to the facts was entered into whereby it was stipulated and agreed that a statement of facts executed by counsel supporting the complaint and counsel for respondents might be taken as the facts in this proceeding and in lieu of evidence in support of, and in opposition to, the charges stated in the complaint, and that such statement of facts might serve as a basis for findings as to the facts and conclusion based thereon and order disposing of the proceeding, without presentation of proposed findings, conclusions or oral argument. The stipulation further provided that upon appeal to, or review by, the Commission such stipulation might be set aside by the Commission and this matter remanded for further proceedings under the complaint. Thereafter, the proceeding regularly came on for final consideration by the above-named Hearing Examiner, theretofore duly designated by the Commission, upon the complaint and stipulation as to the facts, said stipulation having been approved by said Hearing Examiner, who, after duly considering the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Clinton Studios, Inc., is a corporation organized and doing business under the laws of the State of New Jersey with its principal place of business located in the city of Newark, New Jersey. Respondents Edward J. Davis and Ethel Davis are the President and Secretary, respectively, of said Clinton Studios, Inc., and the sole stockholders thereof. By virtue of their positions as officers and stockholders, the individual respondents direct, dominate and control the acts and practices of the corporate respondent.

PAR. 2. Said respondents are now and have been for several years last past engaged in the sale and distribution of photographs, and causing the same when sold to be shipped from their place of business in the city of Newark, New Jersey, to purchasers located in other States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said photographs in commerce between and among the various States of the United States and in the District of Columbia. Respondents' volume of business in such commerce is substantial.

PAR. 3. In the course and conduct of their business, respondents employ sales agents or representatives who visit the homes of prospective customers in cities, towns and rural communities in various States of the United States and in the District of Columbia and solicit orders for their photographs. Prior to September 30, 1949, said agents and representatives, in soliciting such orders, represented to prospective purchasers that a local studio specializing in children's photographs was to be opened in the near future by the Clinton Studios, Inc., and that photographs of local children were desired for display purposes in the proposed studio. Said agents or representatives also represented that refunds would be made if customers were dissatisfied with their purchases. In some instances, said agents or representatives further represented that customers would receive oil paintings of the children photographed.

PAR. 4. The aforesaid representations were false, misleading and deceptive. In truth and in fact, respondents had no intention of opening local studios and have not in any instance opened such studios. Photographs were not taken for display purposes nor were they ever displayed locally. While respondents, in many instances, sent dissatisfied customers a duplicate set of pictures, they did not make refunds in all instances when requested to do so. Respondents did not furnish oil paintings in accordance with the representation made by their agents or representatives.

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PAR. 5. The use by the respondent of the aforesaid acts and practices in connection with the offering for sale and sale of their photographs in commerce has the capacity and tendency to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that such representations are true and to cause them to purchase respondents' photographs in reliance upon such erroneous belief.

CONCLUSION

The aforesaid acts and practices of respondents as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondent Clinton Studios, Inc., a corporation, and its officers, and the respondents Edward J. Davis and Ethel Davis, individually and as officers of said respondent corporation and their respective representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of photographs or other similar merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that photographs which are not locally displayed are being taken for the purpose of exhibition or display in local studios;
2. Representing, directly or by implication, that respondents will make refund of purchase price to dissatisfied customers upon request, when in fact respondents do not in all instances make refund upon demand;
3. Representing, directly or by implication, that respondents will furnish oil paintings of the subjects photographed.

ORDER TO FILE REPORT OF COMPLIANCE

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 [as required by said declaratory decision and order of April 3, 1952].

IN THE MATTER OF
LEON ETTINGOFF ET AL. DOING BUSINESS AS GLOBE
MACHINE COMPANY

COMPLAINT, DECISION, FINDINGS, AND ORDERS IN REGARD TO THE AL-
LEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26,
1914

Docket 5885. Complaint, June 27, 1951—Decision, Apr. 4, 1952

When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public and such articles are not marked or are not adequately marked showing that they are of foreign origin, or if markings are covered or otherwise concealed, such purchasing public understands and believes such articles to be wholly of domestic origin.

There is among the members of the purchasing public a substantial number who have a decided preference for products originating in the United States over products, including sewing machine heads, originating in whole or in part in foreign countries.

Substantial numbers of the purchasing public prefer to deal with concerns which manufacture the products they sell.

Where three partners engaged in the competitive interstate sale and distribution to distributors and retailers of sewing machine heads imported by them from Japan, and of complete sewing machines assembled through attachment of a motor to said imported heads, in which process the words "Made in Occupied Japan" or "Japan" became covered—

(a) Failed adequately to disclose on said heads that said products were made in Japan, notwithstanding upon the front of some of them there appeared a medallion bearing in small and indistinct words the legend "Made in Occupied Japan" or "Japan";

With the result of placing in the hands of dealers a means whereby they might deceive the purchasing public as to their place of origin; and

(b) Falsely represented that they owned or controlled a factory or facilities for manufacturing sewing machines or sewing machine heads through use of the word "Manufacturers", as included in the phrase "Manufacturers and Distributors", displayed, along with their trade name, in their advertising;

With tendency and capacity to lead members of the purchasing public into the mistaken belief that their said product was of domestic origin and was made by them, and thereby induce purchase of sewing machines containing said heads; and unfairly to divert substantial trade in commerce to them from their competitors;

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and their competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. James A. Purcell*, hearing examiner.
Mr. William L. Taggart for the Commission.
Goff & Rubin, of Philadelphia, Pa., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Leon Ettingoff, Edward Ettingoff, and Abraham Ettingoff, copartners doing business as Globe Machine Company have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Leon Ettingoff, Edward Ettingoff, and Abraham Ettingoff, are copartners doing business under the name Globe Machine Company, with their principal place of business at 5045 Market Street, Philadelphia, Pennsylvania.

PAR. 2. Respondents are now, and have been for several years last past, engaged in the sale of sewing machine heads imported by them from Japan, and complete sewing machines of which said imported heads are a part, to distributors and also to retailers who in turn sell to the purchasing public. In the course and conduct of their business respondents cause their said products, when sold, to be transported from their place of business in the State of Pennsylvania to the purchasers thereof located in various other States, and maintain and at all times mentioned herein have maintained a course of trade in said products in commerce among and between the various States of the United States. Their volume of trade in said commerce has been and is substantial.

PAR. 3. When the sewing machine heads are imported by respondents the words "Made in Occupied Japan" or "Japan" appear on the back of the vertical arm. Before the heads are sold to the purchasing public as a part of a complete sewing machine it is necessary to attach a motor to the head in the process of which the aforesaid words are covered by the motor so that they are not visible. In some instances said heads, when received by respondents, are marked with a medalion placed on the front of the vertical arm upon which the words "Made in Occupied Japan" or "Japan" appear. These words are, however, so small and indistinct that they do not constitute adequate notice to the public that the heads are imported.

PAR. 4. When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public and such articles are not marked or are not adequately marked show-

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ing that they are of foreign origin or if marked and the markings covered or otherwise concealed, such purchasing public understands and believes such articles to be wholly of domestic origin.

There is among the members of the purchasing public a substantial number who have a decided preference for products originating in the United States over products originating in whole or in part in foreign countries, including sewing machine heads.

PAR. 5. Respondents, in their advertising, make such statements as the following:

Globe Machine Company, Manufacturers and Distributors.

Through the use of the word "manufacturers" respondents represent that their sewing machine heads and complete sewing machines were manufactured in a factory owned and controlled by them. In truth and in fact, respondents do not own or control a factory or facilities for manufacturing sewing machines or sewing machine heads. Substantial numbers of the purchasing public prefer to deal with concerns who manufacture the products sold by them.

PAR. 6. Respondents, by placing in the hands of dealers their said sewing machine heads, and complete sewing machines in which imported heads are a part, provide said dealers a means and instrumentality whereby they may mislead and deceive the purchasing public as to the place of origin of said sewing machine heads.

PAR. 7. Respondents, in the course and conduct of their business, are in substantial competition in commerce with the makers and sellers of domestic sewing machines and also sellers of imported sewing machines, some of whom disclose to the public that their machines or parts thereof are of foreign origin.

PAR. 8. The failure of respondents to adequately disclose on the sewing machine heads that they are manufactured in Japan and the use of the word "manufacturers" has the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that their said product is of domestic origin, and is manufactured by respondents, and to induce members of the purchasing public to purchase sewing machines containing said heads because of such erroneous and mistaken belief. As a result, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated April 4, 1952, the initial decision in the instant matter of hearing examiner James A. Purcell, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 27, 1951, issued and subsequently served its complaint in the above-entitled proceeding upon respondents Leon Ettingoff, Edward Ettingoff and Abraham Ettingoff, individually and as co-partners doing business as Globe Machine Company, charging them with unfair and deceptive acts and practices in commerce in violation of said Act. On August 31, 1951, respondents filed their answer to the complaint. Thereafter, at a hearing held in Philadelphia, Pennsylvania, October 16, 1951, respondents moved the Hearing Examiner for leave to withdraw the aforesaid answer and to file in substitution thereof an answer admitting all of the material allegations of fact set forth in the complaint, which motion was granted on the record and confirmed by formal order filed herein on October 18, 1951. Such substituted answer reserved to respondents the right and privilege to submit Proposed Findings, Conclusions and Order, as provided by Rule XXI of the Commission's Rules of Practice, and also certain other reservations to respondents not necessary to be here set forth. Thereafter the proceeding regularly came on for final consideration by the above-named Hearing Examiner, theretofore duly designated by the Commission, upon said complaint and substitute answer thereto, proposed findings and conclusions not having been submitted on behalf of any party to the proceeding; and said Hearing Examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Leon Ettingoff, Edward Ettingoff, and Abraham Ettingoff, are copartners doing business under the name Globe Machine Company, with their principal place of business at 5045 Market Street, Philadelphia, Pennsylvania.

PAR. 2. Respondents are now, and have been for several years last past, engaged in the sale of sewing machine heads imported by them from Japan, and complete sewing machines of which said imported heads are a part, to distributors and also to retailers who in turn sell to the purchasing public. In the course and conduct of their business respondents cause their said products, when sold, to be transported from their place of business in the State of Pennsylvania to the purchasers thereof located in various other States, and maintain and at all times mentioned herein have maintained a course of trade in said products in commerce among and between the various States of the United States. Their volume of trade in said commerce has been and is substantial.

PAR. 3. When the sewing machine heads are imported by respondents the words "Made in Occupied Japan" or "Japan" appeared on the back of the vertical arm. Before the heads were sold to the purchasing public as a part of a complete sewing machine it was necessary to attach a motor to the head in the process of which the aforesaid words were covered by the motor so that they were not visible. In some instances said heads, when received by respondents, were marked with a medallion placed on the front of the vertical arm upon which the words "Made in Occupied Japan" or "Japan" appeared. These words were, however, so small and indistinct that they did not constitute adequate notice to the public that the heads are imported.

PAR. 4. When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public and such articles are not marked or are not adequately marked showing that they are of foreign origin or if marked and the markings are covered or otherwise concealed, such purchasing public understands and believes such articles to be wholly of domestic origin.

There is among the members of the purchasing public a substantial number who have a decided preference for products originating in the United States over products originating in whole or in part in foreign countries, including sewing machine heads.

PAR. 5. Respondents, in their advertising, make such statements as the following:

Globe Machine Company, Manufacturers and Distributors.

Through the use of the word "manufacturers" respondents represent that their sewing machine heads and complete sewing machines were manufactured in a factory owned and controlled by them. In truth and in fact, respondents do not own or control a factory or facilities for manufacturing sewing machines or sewing machine heads. Sub-

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stantial numbers of the purchasing public prefer to deal with concerns who manufacture the products sold by them.

PAR. 6. Respondents, by placing in the hands of dealers their said sewing machine heads, and completed sewing machines of which imported heads are a part, provided said dealers a means and instrumentality whereby they might mislead and deceive the purchasing public as to the place of origin of said heads.

PAR. 7. Respondents, in the course and conduct of their business, were in substantial competition in commerce with the makers and sellers of domestic sewing machines and also sellers of imported sewing machines, some of whom disclose to the public that their machines or parts thereof are of foreign origin.

PAR. 8. The failure of respondents to adequately disclose on the sewing machine heads that they were manufactured in Japan, and the use of the word "manufactured," has the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that their said product was of domestic origin, and was manufactured by respondents, and do induce members of the purchasing public to purchase sewing machines containing said heads because of such erroneous and mistaken belief. As a result, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, were all to the prejudice and injury of the public and of respondents' competitors and constituted unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondents, Leon Ettingoff, Edward Ettingoff and Abraham Ettingoff, individually and as co-partners doing business as Globe Machine Company, or trading under any other name, and their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of sewing machine heads or sewing machines in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale, selling or distributing foreign made sewing machine heads, or sewing machines of which foreign made heads are

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a part, without clearly and conspicuously disclosing on the heads, in such a manner that it will not be hidden or obliterated, the country of origin thereof.

2. Representing, through the use in advertising of the word "manufacturer" or "manufacturers," or any other word or term of similar import or meaning, or in any other manner, that said respondents are the manufacturers of the sewing machine heads or sewing machines sold by them, unless and until such respondents actually own and operate, or directly and absolutely control, a manufacturing plant wherein said products are manufactured by them.

ORDER TO FILE REPORT OF COMPLIANCE

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 [as required by said declaratory decision and order of April 4, 1952].