

IN THE MATTER OF
BLACKSTONE COLLEGE OF LAW, INC. ET AL.

DECISION AND OPINION IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 5906. Complaint, July 18, 1951—Decision, June 29, 1954

Where a corporation and its president, engaged in the operation of a correspondence school which sold courses of study and instruction in law, in advertising their said courses (in connection with which they imposed no requirements as to previous formal education for admission) in magazines of national circulation, in which, under the caption "LAW" and "The Law-Trained Man," they invited the reader to send for a free copy of their booklet thus entitled, showing how to qualify at home for the LL. B. degree and a bar examination through their course, and in which they referred to judges and lawyers as among their graduates—

- (a) Falsely represented that their course and the degree of Bachelor of Laws which they there offered to confer upon students successfully completing the same would fulfill the requirements for education and legal training requisite to participating in the bar examination of the respective States;

The facts being that while the minimal requirements for admission for examination vary, those imposed by the vast majority of the jurisdictions concerned follow a pattern which excludes applicants whose legal training has been secured solely through home study, or whose education or legal training are limited to completion of respondents' course, and in only a very few States would recipients of respondents' degrees who are educated or trained as above indicated be allowed to participate in bar examinations; and

- (b) Falsely represented and implied that their school was a college of law within the generally accepted meaning of that term, i. e., an institution of higher learning specializing in legal subjects, with a resident faculty and student body, and library and classroom facilities, through use of the word "college" in the trade name "Blackstone College of Law", featured in all advertisements and in its corporate name and in other statements designating the school as a college;

The facts being the school carried on all its operations from a small office; its full-time employees comprised five persons, four of whom were engaged in clerical work exclusively; the fifth was an attorney who managed the office and did most of the teaching work consisting, among other things, of forwarding lessons to students, grading examination papers, and corresponding with the students; another attorney who assisted the latter, engaged in the practice of law in Chicago, and devoted a portion of his time to the school in return for a small weekly salary; the school had no buildings or facilities for resident study, and its said president, who was not an attorney, spent little time at the school in Chicago, and had his office in New York City:

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

Before *Mr. William L. Pack*, hearing examiner.

Mr. William L. Pencke for the Commission.

Mr. Gunther W. Harms, of Chicago, Ill., for respondents.

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 18, 1951, issued and subsequently served its complaint in this proceeding upon the parties named above, charging them with the use of unfair and deceptive acts and practices in violation of the provisions of that Act. After the filing of respondents' answer, hearings were held before a hearing examiner of the Commission, duly designated to act in this proceeding, and testimony and other evidence were introduced and duly recorded and filed in the office of the Commission. On April 4, 1952, the hearing examiner filed his initial decision sustaining certain allegations of the complaint and closing the proceeding without prejudice insofar as it related to others and, within the period of time permitted by the Commission's Rules of Practice, counsel supporting the complaint appealed from that initial decision.

This matter came on for final hearing upon the entire record, including the brief in support of the appeal and the brief filed by counsel for respondents in opposition to such appeal. The Commission, for the reasons stated in the opinion which is separately issuing herein, having determined that the rulings of the initial decision which are specifically excepted to in the appeal were erroneous rulings and that they should be reversed, hereby grants the appeal of counsel supporting the complaint; and being of the opinion that this proceeding is in the interest of the public, the Commission hereby issues its findings as to the facts, conclusion, and order, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

Blackstone College of Law, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Illinois, its principal office and place of business being at 225 North Michigan Avenue, Chicago, Illinois. Harold R. Lister, who is erroneously referred to in the complaint as Harold L. Lister, is president of the corporate respondent and, as such, controls and directs its policies and practices and is responsible for its operation and management. His business address is 25 West 45th Street, New York, New York. The respondents are engaged in the operation of a correspondence school, selling courses of study and instruction in law which are pursued by correspondence through the medium of the United States mails. During the period to which this proceeding relates, a substantial course of trade in such courses of instruction has been maintained by respondents in commerce between and among the various States of the United States and in the District of Columbia.

The courses have been advertised by respondents in magazines having national circulation, and typical of their advertisements appearing in such media are the following:

Law—Free Book—The Law-Trained Man

Write—Write today for a FREE copy of "The Law-Trained Man" which shows how to qualify at home for the LL. B. degree and a bar examination through the famous Blackstone law course compiled by 60 expert law authorities. Big 17-volume Law Library furnished. Moderate tuition; easy terms. BLACKSTONE COLLEGE OF LAW, 225 N. Michigan Ave., Dept. 157, Chicago 1, Ill. A Correspondence Institution Founded in 1890.

LAW—Free book—The Law-Trained Man

Your FREE copy of "The Law-Trained Man" shows how to gain prestige and greater earnings through Blackstone home law study. All instruction material furnished including 17-volume law Library written by 65 well-known law authorities. Lawyers, judges among our graduates. LL. B. degree. Low cost; easy terms. Write today.

BLACKSTONE COLLEGE OF LAW Dept. 125, Chicago 1, Ill.
225 N. Michigan Ave.

A Correspondence Institution Founded in 1890.

In addition to those charges of the complaint pertaining to use of the word "college" in the corporate name and otherwise which elsewhere are discussed and separately considered in this decision, the complaint has charged that, through statements contained in their advertising including the statement that the degree of Bachelor of Laws is conferred, respondents falsely represent that their enterprise is a recognized and standard law school, that its courses are comparable to those used in recognized and accredited resident schools and that students completing the courses and obtaining respondents' degrees are thereby qualified and eligible to be admitted to the bar examinations of the respective states. Inasmuch as the hearing examiner found that the Commission's action in an earlier proceeding was a bar to consideration of these matters on their merits, no determination thereof appears in the initial decision.

As background to their consideration, it appears here that, among other things, an earned degree represents an academic rank awarded by colleges or universities in recognition of attainments on the part of their scholars. The professional degree of Bachelor of Laws has been awarded for many decades by resident law schools. In all save a few states, in order to be admitted to bar examinations at the outset, candidates must comply with minimum requirements as to education and legal training imposed by the states' local regulations or statutes. The baccalaureate in law, when awarded by an accredited institution, is

accepted by examining authorities of states where these requirements prevail as satisfactory evidence of their completion academically by the applicant. Such applicants accordingly are eligible and enabled to participate in bar examinations providing that they fulfill other requisites unrelated to education and training but instead pertaining to age, moral character or residence.

Testimony was received into the record indicating that the award of an LL. B. degree connotes successful completion by the recipient of a resident course of study at an approved or accredited institution, and tending to show additionally that such degree attests that the recipient has training and competency of the types warranting him to apply for an examination for the practice of law. The greater weight of the evidence manifestly establishes that to members of the legal profession, including teachers and attorneys, the baccalaureate in law, among other things, symbolizes successful completion of a resident course of study in law whereby the holder of such degree has fulfilled the requirements for education and legal training which will enable him, if otherwise eligible, to sit for the bar examinations of the respective states. On the other hand, however, the evidence received into the record appears inadequate for an informed determination as to whether the foregoing beliefs as to the connotation of the LL. B. degree and the impressions necessarily engendered by offers to confer it, likewise are shared by members of the purchasing public to whom respondents' advertising and offers of their courses and degrees are directed. These conclusions notwithstanding however, it seems clear that when made against the background of additional advertising statements expressly referring to lawyers and judges among the corporate respondent's graduates and to the effect that prospective enrollees will be able to qualify at home for bar examinations, respondents' offers to confer the degree of Bachelor of Laws upon students successfully completing the courses indeed serve to represent, and have represented to prospective students, that such course and degree will fulfill the requirements for education and legal training requisite to participating in the bar examinations of the respective states.

No requirements as to previous formal education are imposed by respondents for admission to their course. An intellectual capacity on the part of its prospective students exceeding that necessary to understanding of a news item is deemed desirable by respondents, and if its absence were apparent on the face of the application, it is indicated that enrollment would be denied. Relevant also, among other matters, to a consideration of the truth or falsity of respondents'

representations respecting the eligibility for bar examinations afforded by their degrees and courses is the circumstance that, in 24 States of the United States, admission to the practice of law is limited to those whose legal studies have been pursued in whole or in part in a resident law school. In some of these states, the period of study required is contingent on whether the school is approved by the American Bar Association or local examining authorities and, in such instances, a longer period of study is specified if attendance is at an institution not so approved or in the event studies are to be pursued on a part-time basis. In 20 of the remaining states where an alternative to resident school training and attendance is open to students, study in a law office is permitted. This method is a tradition in the legal profession and contemplates study under the supervision of a practicing member of the bar of the state where the student aspires to practice to the end that his training be secured in the atmosphere of its courts and of the law office. Students whose education and legal training are limited solely to respondents' home study courses would not be admitted to the bar examinations of any of the 44 foregoing states.

As of 1950, the four remaining states did not require that bar candidates' be pursued in a resident law school or law office. Montana, however, required that applicants have two years of college or its equivalent prior to beginning any legal studies. At such time, however, no specific requirements as to education or legal training appear to have been imposed by Georgia as a condition to taking its bar examination, and Mississippi likewise imposed none respecting an aspirant's educational status prior to the beginning of his legal studies although a high school education has been a prerequisite to taking the final examination. California, although requiring two years' pre-legal study of applicants under 25, waives this for those who are over 25 years of age at the time they begin the study of law, and that State requires applicants training outside of accredited law schools to register when their legal studies are begun. It accordingly will be observed that while the minimal requirements for admission to examinations vary among the states, those imposed by the vast majority of the jurisdictions follow a pattern which excludes applicants whose legal training has been secured solely through home study or whose education or legal training is limited to completion of respondents' course. In only a very few states, therefore, may recipients of respondents' degrees who are educated or trained as above indicated be allowed to participate in bar examinations. That respondents' representations respecting the eligibility of recipients of their degrees and of students satisfactorily completing the course to participate in bar examinations of the respective states are false is clearly demonstrated by the record.

Respondents contend that no deception of enrollees stems from their advertising for the reason that possession of an LL. B. degree does not entitle its holder to become a member of the legal profession. The record suggests that the so-called "diploma privilege" under which graduates of certain law schools might be admitted to the bar of a particular jurisdiction without examination may still apply in a very few states. Assuming, however, that the diploma privilege has disappeared entirely, the circumstance that students may know that candidates for the bar must stand for an examination or comply with other requisites pertaining to residence and moral character in no manner supports a view that a capacity to mislead and deceive does not inhere in the previously noted false representations respecting eligibility of recipients of respondents' degrees and the school's graduates for admission to bar examinations.

Respondents have urged also that certain statements in reference to qualifying for bar examinations, as contained in their booklet "The Law-Trained Man," serve to dispel any misunderstanding on the part of their enrollees as to admission to bar examinations. In this connection, it is to be noted at the outset that the information to which respondents refer is entirely absent from those advertisements through which contact with prospective students is initially established by respondents. Their booklet, moreover, when urging that enrollees plan to sit for bar examinations, reiterates that the efficacy of respondents' method is attested by a long list of successful attorneys among their graduates and expressly assures that "the formalities of gaining admittance to the examination are not difficult to meet." On the subject of education preliminary to undertaking the study of law, the booklet reports that a high school education or its equivalent is sufficient in certain designated states, a grammar school education suffices in another, and that in all others "the equivalent" of two years' college work prior to taking up the subject of law meets such requirements. On the subject of legal study, the booklet states that "a few states," there naming 14, demand that the required period of study be in a resident school and that one other stipulates that one year be in a resident school, and thereupon adds that, in the other states, the private attorney who sponsors the applicant certifies that such aspirant has spent the proper length of time in law study. Upon the basis of the analysis of states' requirements set out in the second preceding paragraph, it is readily apparent that certain of the statements of the booklet are untrue and that others, particularly the last one which presumably has reference to law office training and study, are misleading and lacking in candor. It is accordingly concluded that the statements to which respondents refer are entirely inadequate to dispel the false

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impressions elsewhere conveyed in respondents' promotional matter.

The Commission is of the opinion, however, that the record does not suffice for an informed determination as to whether respondents' advertised offers to confer their degrees within themselves, or when made in connection with the additional statements referred to above, have constituted representations to their purchasers, in the circumstances here, that the enterprise is a recognized and standard law school or that its courses are comparable to those used in recognized and accredited resident schools. Further consideration of the additional allegations of the complaint relevant to these matters, therefore, appears unwarranted here and these additional charges accordingly are to be deemed as dismissed hereby.

Another of the issues presented for consideration, as referred to at the outset, relates to the charge of the complaint that, through use of the word "college" in the name of the respondent corporation and otherwise in the advertising, respondents have represented that their enterprise is a college or an educational institution of higher learning specializing in legal subjects. This allegation and others relevant to it are found to have been sustained under the initial decision wherein the conclusion is expressed that respondents' use of such word as a designation for the school is unwarranted and misleading and a provision absolutely forbidding its use or any simulation thereof as a part of the corporate or trade name in promoting sales of the courses likewise appears in that decision's order.

Respondents' use of the word "College" in the trade name "Blackstone College of Law," which is prominently featured in all the advertising, and in its corporate name "Blackstone College of Law, Inc.," and in other statements designating respondents' school as a college, represents and implies that their school is a college of law within the generally accepted meaning of that term, that is, an institution of higher learning specializing in legal subjects with a resident faculty and student body and library and classroom facilities. Supporting conclusions that the corporate respondent is not a college of law, as such term is generally understood, and that respondents' representations in that respect are false, is the circumstance that the school has no buildings but carries on all of its operations from a small office. The full-time employees of the school comprise five persons, four of whom are engaged in clerical work exclusively. The fifth is an attorney who manages the office and also does most of the teaching work which consists, among other things, of forwarding lessons to students, grading examination papers, and corresponding with the students. In this work, he is assisted by another attorney who engages in the practice of law in Chicago but devotes a portion

of his time to the school. For his services to the school, the latter receives a small weekly salary. The school has no facilities for resident study, all work being done exclusively by correspondence. Respondent Harold R. Lister, who is not an attorney, spends little time at the school in Chicago, his office being located in New York City.

In the course of the proceedings, respondents have contended they have never used the word "college" alone in their promotional literature but immediately qualify such word with the phrase "A correspondence institution founded in 1890," and in effect urge that their designation of the school as a college, even if considered false, has lacked any capacity and tendency to mislead. It is to be noted in passing that the term "Incorporated" is omitted from designations of the school in certain of the magazine advertising and other promotional material so respondents in effect there offer their course under a trade name, namely "Blackstone College of Law." The magazine advertisements and the corporate letterhead contain reference to the school's correspondence aspects. The cover of the 32-page booklet, "The Law-Trained Man," is imprinted with the school's trade name. A statement to the effect that the school is chartered as a correspondence institution under the laws of the State of Illinois, together with another affirming that it is empowered by statute to confer degrees, appears on this booklet's first inside page but such statement is not reiterated at points where additional references are made to the corporate respondent by its trade name or as "The College."

Disclaimers are omitted, moreover, from certain of the textbooks known as "Modern American Law" and from various lecture bulletins and lists of answers distributed to enrollees. As evidenced by the facsimile of the respondents' diploma which is featured in the promotional literature, it is apparent that respondents likewise fail to mention the correspondence character of the enterprise on their diplomas. It would not be proper to conclude, therefore, that respondents never use the word "College" alone or without using the qualifying phrase to which they have referred. On the contrary, the omission of language of explanation and disclaimers from certain of the promotional matter and the inadequacy in other instances of such disclosures as do appear are apparent, and the record clearly establishes that respondents' designation of their school as a college has been deceptive and misleading.

Relevant to a consideration of an appropriate form of remedy with respect to the foregoing matters is the circumstance that this enterprise appears to have been established in 1890 and the record contains no indication that its corporate name has not been in use for many years. Among its competitors is La Salle Extension University,

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Chicago, Illinois, named as the respondent in a proceeding earlier instituted by the Commission. Under the terms of the modified order to cease and desist which issued on May 18, 1938, in disposition of that proceeding (26 F. T. C. 1277), use of the expression "University" in its corporate name or otherwise was forbidden to such school unless clear disclosure of the correspondence character of the enterprise appeared whenever used in textbooks, pamphlets and other advertising matter. In the circumstances here, the Commission has concluded that the public interest will be adequately served if a similar requirement for disclosure likewise is imposed respecting any future use by respondents of the word "college" or words of similar import. The requirements of the order to cease and desist as contained in this decision are in accord and the form of order which appears in the initial decision is not being adopted.

CONCLUSION

On the basis of the facts above stated, the Commission has concluded that respondents have falsely represented that recipients of their purported academic degrees in law and students satisfactorily completing the school's courses of study through correspondence will be eligible and enabled by reason of such training to participate in the bar examinations of the respective states, and that the corporate respondent is a college. As made in the circumstances here, respondents' misrepresentations to prospective students manifestly have had the capacity and tendency to deceive members of the public into the erroneous and mistaken belief that such representations are true and to induce the purchase of substantial numbers of respondents' courses of instruction in commerce. The Commission accordingly concludes that respondents' misrepresentations have been to the prejudice and injury of the public and therefore constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Obviously material to persons urged in nation-wide offers of courses of instruction to follow the law as a profession is accurate information as to where or in what jurisdictions the method or form of training offered is acceptable toward fulfilling the goal which such advertising seeks to inspire. A provision insuring such disclosure in connection with any future offers by respondents of their courses likewise directed to encourage such aspirations is plainly warranted and necessary and does not appear burdensome in the circumstances here. The order which follows is in accord.

ORDER

It is ordered, That the respondent Blackstone College of Law, Inc., a corporation, and its officers, agents, representatives and employees, and respondent Harold R. Lister, as an officer of said corporation, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of courses of study and instruction, do forthwith cease and desist from :

(1) Representing directly or by implication that recipients of respondents' purported academic degrees in law or others successfully completing respondents' course of study through correspondence will be admitted to or are otherwise eligible to participate in bar examinations, unless such representations are expressly limited to those states (specifically named) wherein the requirements for education and legal training requisite to participating in such examinations are fulfilled solely by completion of a course of legal study through correspondence.

(2) Using the word "college" or any word or words of similar import or meaning in the corporate name or in any other manner to designate or refer to respondents' school, unless, in bulletins, lesson material, textbooks, diplomas and other promotional material, and sales presentations whenever used, it is clearly and conspicuously stated in immediate conjunction with such word or words that respondents' enterprise is a correspondence school without resident facilities or that it is "a correspondence institution" or "an institution for correspondence students."

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 the order to cease and desist.

Commissioners Howrey and Gwynne not participating.

OPINION OF THE COMMISSION

With respect to all charges of the complaint save and except those challenging the respondent school's designation of itself in its promotional material as a college, the initial decision sustains respondents' contention that the Commission's decision of April 7, 1948, in the matter of *Blackstone College of Law, Inc., et al.*, Docket No. 4929, is *res judicata* as to the issues presented thereunder and bars consideration of them on their merits here. Counsel for respondents did not file notice of intention to appeal and all of the specific exceptions

interposed under the appeal, as filed by counsel supporting the complaint and now before us for consideration, challenge the rulings which sustain this defense to the extent noted and which provide accordingly for closing the proceeding without prejudice in respect to the charges as relevant.

The complaint in the instant proceeding alleges that, through statements contained in their advertising including the statement that the degree of Bachelor of Laws is conferred by the respondent correspondence school, respondents represent, among other things, that their enterprise is a recognized and standard law school whose courses are comparable to those used in recognized and accredited schools, and that students completing the courses and obtaining its degrees are thereby qualified and eligible to be admitted to the bar examinations of the respective states. The complaint in the earlier proceeding challenged, among other things, respondents' advertising of a so-called "Emergency Graduation Plan" under which this same correspondence school was offering for a stated price to confer its LL. B. degrees upon former students who had abandoned their studies.

The earlier proceeding was instituted on March 15, 1943, many of the practices of respondents to which it related were inspired by the fact that World War II was in progress, and the advertising there considered offered respondents' diplomas as important evidence of qualifications which would assist in securing commissions in the armed services. One of the provisions of the order to cease and desist issuing in the earlier proceeding proscribed the conferring of degrees by respondents unless the recipients in fact completed a regularly prescribed course under competent supervision. Should the instant proceeding culminate in issuance of an order absolutely prohibiting respondents from issuing their degrees to students completing their courses of home study through correspondence, the initial decision states, respondents would then be amenable to two contradictory orders respecting the granting of their degrees. Such decision thereupon concludes that an identity of subject matter and issues is in fact presented in the two proceedings.

In its findings in the earlier proceeding, the Commission stated that at the very least the conferring of a degree implied that the recipient has seriously pursued and completed a prescribed course of instruction under competent supervision and that the granting thereof constitutes a representation that they are recognized in the educational field. The Commission found additionally that the school's so-called emergency plan was unfair both to holders of bona fide degrees and to recipients of respondents' degrees and that such program constituted

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an imposition and fraud upon the public and our nation's educational system. Presented for consideration there was a situation where respondents' outright sale of purported academic degrees resulted in unfairness and one wherein the deception involved related primarily to the general public and only incidentally to purchasers. Additional charges of the earlier proceeding likewise pertained to alleged misleading comparisons of respondents' courses with others and alleged misrepresentations respecting the school's standing as a law school. These and the pertinent findings as subsequently issued by the Commission were directed, however, not to respondents' offers of their degrees but to affirmative statements appearing in the advertising instead, one of which was to the effect that the instruction method used by Blackstone was the one used in all schools to which "Class A" approval had been accorded by the American Association of Law Schools. Patently, none of the advertising statements and representations in issue under the earlier proceeding related directly to degree holders' eligibility to participate in bar examinations. The sharp differences between the issues presented for consideration then and now are apparent and the view adopted below that identity of subject matter and issues obtains in the two cases, to us, appears wholly untenable.

It is obvious to us also that the decision below was based on an erroneous premise and view that the instant proceeding looked to prohibiting absolutely respondents' offers to confer degrees in connection with future distribution of their courses in interstate commerce. Unlike the paragraph of the provisional order appended to the complaint in reference to the word "college" which proposed, in the event of a default in filing of answers, to forbid respondents absolutely from "using" that word, the corresponding prohibition in reference to the offers to confer degrees proposed instead that respondents cease through the device of such offers from making the representations which were alleged under the complaint to be inherent in, and otherwise connected with, such offers. Under this latter provision, an intention was manifest not to preclude respondents from advertising that they conferred degrees if the promotional material additionally revealed and disclosed material facts relevant to their limitations and significance, including the circumstance that recipients whose education and legal training were limited to pursuit of respondents' courses of home study, would not be admitted to bar examinations except in a very few of the states.

Having concluded that the decision below was based on the erroneous conclusion that an identity of subject matter and issues

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obtains in the two proceedings, we accordingly sustain the relevant specific exceptions to the initial decision as they appear in the brief in support of the appeal, and the appeal of counsel supporting the complaint is being granted.

In the briefs, counsel for respondents and counsel supporting the complaint additionally submit their respective contentions as to the merits of certain of the issues presented. We have considered these contentions and our decision which is issuing separately contains a discussion of them, and no useful purpose would be served by its repetition here.

Commissioners Howrey and Gwynne did not participate in this case.

Decision

IN THE MATTER OF
LASALLE EXTENSION UNIVERSITY

DECISION AND OPINION IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 5907. Complaint, July 18, 1951—Decision, June 29, 1954

Where a corporation engaged in the sale of courses of study and instruction in law and other subjects by correspondence through the mails; in advertising its courses in legal training through newspapers and magazines of national circulation in which it was stated, in inviting requests for additional information, that students could train at home during their spare time or at night, and that the degree of LL.B. was conferred by respondent "correspondence institution"—

Represented that students completing its courses of study and qualifying for its degree of Bachelor of Laws were eligible from the standpoint of education and legal training for admission to the bar examinations of the respective States, through such statements in the 48-page booklet entitled "LAW TRAINING for LEADERSHIP" and in the booklet "Evidence", furnished to all prospective students, as "Preparations for Bar Examinations Degree of LL. B. Conferred", and the inclusion in the latter booklet of a list containing the names of more than 1,500 former students located in 47 of the States and elsewhere as "* * * members who have been admitted to the bar" followed by the words "THE NAMES IN THIS LIST—which is far from complete—are not confined to lawyers known to be practicing now, although a great many of them are. We have purposely reached back through the years to show how completely—and for how long—LaSalle Law training has demonstrated its thoroughness in preparing candidates for the bar. * * *";

The facts being that while minimal requirements for admission to examinations vary among the States, those imposed by the vast majority of the jurisdictions follow a pattern definitely excluding applicants whose legal training had been secured solely through home study, or whose education or legal training are limited to completion of respondent's course, and in only a very few States, wherein no provision obtains expressly excluding such form of training, might recipients of respondent's degrees who were educated or trained as above indicated be allowed to participate in bar examinations: *Held*, That such misrepresentations were to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. William L. Pack*, hearing examiner.

Mr. William L. Pencke for the Commission.

Stahlin & Jantorni, of Chicago, Ill., for respondent.

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 18, 1951, issued and subsequently served its complaint in this proceeding upon the respondent

named above, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the filing of respondent's answer, hearings were held before a hearing examiner of the Commission, duly designated to act in this proceeding, and testimony and other evidence were introduced and duly recorded and filed in the office of the Commission. On April 4, 1952, the hearing examiner filed his initial decision containing provision for dismissal of the complaint and, within the period of time permitted by the Commission's Rules of Practice, counsel supporting the complaint appealed from that initial decision.

This matter came on for final hearing upon the entire record, including the briefs filed in support of and in opposition to such appeal and the oral arguments of counsel. The Commission, for the reasons stated in the opinion which is separately issuing herein, having determined that such appeal should be granted in part and denied in part, hereby grants the appeal of counsel supporting the complaint to the extent noted in that opinion but otherwise denies such appeal; and being of the opinion that this proceeding is in the interest of the public, the Commission hereby issues its findings as to the facts, conclusion, and order, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

Organized as a corporation under the laws of the State of Illinois, respondent LaSalle Extension University has its office and principal place of business at 417 South Dearborn Street, Chicago, Illinois. The corporation is engaged in the operation of a correspondence school selling courses of study and instruction in law and other subjects which are pursued by correspondence through the medium of the United States mails. During all the periods to which this proceeding relates, a substantial course of trade in respondent's course of instruction in law has been maintained by it in commerce between and among the various States of the United States and in the District of Columbia.

In order to secure inquiries from prospective purchasers, the courses in legal training have been advertised in newspapers and magazines having national circulation. These advertisements, in inviting requests for additional information, state that students enrolling in such courses can train at home during their spare time or at night and that the degree of LL. B. is conferred by LaSalle Extension University which is there designated as a correspondence institution. Prospects responding to the advertisements are contacted by respondent's salesmen or through the mail and are furnished with brochures descriptive of the school and the course and the opportunities and

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advantages stemming from completion of respondent's legal training. At the outset of this 48-page booklet, which is entitled "Law Training For Leadership," the following appears in large type:

LAW
TRAINING
for
LEADERSHIP

An analysis of the opportunities open to the law-trained man—and
a description of

AMERICAN LAW AND PROCEDURE

the LaSalle legal training for executive business positions and preparation for
bar examinations

Degree of LL.B. conferred

In the booklet entitled "Evidence," which likewise is furnished to all prospective students, the following appears, among other statements, in reference to a list containing the names of more than 1500 former students located in 47 of the States and elsewhere, including American territories and possessions:

LASALLE MEMBERS WHO HAVE BEEN
ADMITTED TO THE BAR

THE NAMES IN THIS LIST—which is far from complete—are not confined to lawyers known to be practicing now, although a great many of them are. We have purposely reached back through the years to show how completely—and for how long—LaSalle Law training has demonstrated its thoroughness in preparing candidates for the bar. * * *

Through use of the foregoing statements and representations and others of similar import, respondent represents that students completing its courses of study and qualifying for its degree of Bachelor of Laws are eligible from the standpoint of education and legal training to be admitted to the bar examinations of the respective States.

Respondent's representation that such students are thereby eligible or enabled to participate in the bar examinations of the respective States are false, misleading and deceptive. A high school education fulfills the entrance requirements imposed by respondent for students who are candidates for its degrees. No residence instruction in law is afforded by the school. In 24 States of the United States, however, admission to examinations for the practice of law is limited to those whose legal studies have been pursued in whole or in part in a resident law school. In 20 of the remaining States where an alternative to resident school training and attendance is open to students study and training in a law office is permitted. This method is tradition in the legal profession and contemplates study under th

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supervision of a practicing member of the bar of the State where the student aspires to practice to the end that his training be secured in the atmosphere of its courts and the law office.

Illustrative of the requirements imposed in instances by the States with respect to students' law office studies are those prevailing in Illinois, the State where respondent is incorporated and has its principal place of business. In order to be eligible for its bar, completion of high school and two years of college is required. Prescribed there when the applicant's legal training is to be secured through other than resident school instruction, is four years' study while engaged during usual business hours as a law clerk in the office and under the personal supervision of a licensed attorney there engaged in active practice during which time the applicant must pass monthly oral or written examinations on each subject given by the attorney. Annual examinations may be given by the Board of Examiners. Correspondence study though not in any sense forbidden to students in that State, must be pursued likewise under these conditions in the office and under the tuition of an attorney of that State. Students whose education and legal training are limited solely to respondent's home study courses would not be permitted to participate in the bar examinations of any of the 44 foregoing States.

As of 1950, the four remaining states did not require that bar candidates' studies be pursued in a resident law school or law office. Montana, however, required that applicants have two years of college or its equivalent prior to beginning of legal studies. At such time, however, no specific requirements as to education or legal training appear to have been imposed by Georgia as a condition to taking its bar examination, and Mississippi likewise imposed none as to legal training or respecting an aspirant's educational status prior to the beginning of his legal studies although a high school education has been a prerequisite to taking the final examination. California, although requiring two years' pre-legal study of applicants under 25, waives this for those who are over 25 years of age at the time they begin the study of law, and that State requires applicants training outside of accredited law schools to register when their legal studies are begun. It accordingly will be observed that while the minimal requirements for admission to examinations vary among the states, those imposed by the vast majority of the jurisdictions follow a pattern definitely excluding applicants whose legal training has been secured solely through home study or whose education or legal training is limited to completion of respondents' course. In only a very few states wherein no provision obtains expressly excluding this form of training, may recipients of respondents' degrees who are educated

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or trained as above indicated, therefore, be allowed to participate in bar examinations. That respondent's representations respecting the eligibility of its students and recipients of its degrees to participate in bar examinations of the respective states are false is clearly demonstrated by the record.

CONCLUSION

On the basis of the facts above stated, the Commission has concluded that respondent has falsely represented that recipients of its purported academic degrees in law and students satisfactorily completing its courses of study through correspondence will be eligible and enabled through such training to participate in the bar examinations of the respective states. As made in the circumstances here, the respondent's misrepresentations to prospective students manifestly have had the capacity and tendency to deceive members of the purchasing public into the erroneous and mistaken belief that such representations are true and to induce the purchase of a substantial number of respondent's courses of instruction in commerce. The Commission accordingly concludes that respondent's misrepresentations have been to the prejudice and injury of the public and therefore 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, LaSalle Extension University, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of courses of study and instruction, do forthwith cease and desist from representing, directly or by implication, that recipients of respondent's purported academic degrees in law or others satisfactorily completing respondent's course of study through correspondence will be admitted to or are otherwise eligible to participate in bar examinations, unless such representations are expressly limited to those states (specifically named) wherein the requirements for education and legal training requisite to participating in such examinations are fulfilled solely by completion of a course of legal study through correspondence.

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

Commissioners Howrey and Gwynne not participating for the reason that oral argument was heard prior to their appointment to the Commission.

OPINION OF THE COMMISSION

The initial decision provided for dismissal of the complaint and this case came before us for consideration of the appeal filed by counsel supporting the complaint from such initial decision, the briefs in support of and in opposition to such appeal, and the oral arguments of counsel.

The initial decision in effect expresses views that the allegations of the complaint have not been sustained by the greater weight of the evidence and accordingly concludes that the respondent has not engaged in unfair and deceptive acts and practices in commerce as charged. The complaint, after making reference to certain statements, allegedly appearing in the advertising, which offer courses in law for spare-time home study and which state that the degree of LL. B. is conferred by respondent upon its students, charges in effect that these and others of similar import falsely represent that the school is a recognized and standard law school, that its courses are comparable to those used in recognized and accredited law schools, and that students completing the courses and receiving the degrees which respondent bestows are qualified and eligible to be admitted to the bar examinations of the respective states.

We turn, first, to a consideration of the matters relating to the last of these three charges. Certain of the witnesses appearing in the proceeding expressed opinions to the effect that the degree of LL. B. signifies a rank conferred by a college or university for work in residence and recognized by other institutions in its field and that its holder is eligible, when otherwise qualified as to age of residence, to sit for bar examinations. When alluding to this testimony, the initial decision states that even though such expert testimony is indicative that these concepts and understandings of the LL. B. degree represent the consensus of the legal profession, it is questionable nevertheless if the record establishes that such understanding and impressions likewise are entertained by the general public. Counsel supporting the complaint contends in his appeal that the record here does adequately support inferences that respondent's advertising, including its offers to confer degrees, has been thus understood by the purchasing public.

As background to a consideration of these matters, the record here indicates that, among other things, an earned degree represents an

academic rank conferred by colleges or universities in recognition of their respective scholars' attainments and that the professional degree of Bachelor of Laws has been awarded for many decades by resident law schools. In all save a few states, in order to be admitted to bar examinations at the outset, candidates must comply with the minimum requirements as to education and legal training imposed by the states' local regulations or statutes. The baccalaureate in law, when awarded by an accredited institution, is accepted by examining authorities of the states where their requirements prevail as satisfactory evidence of their completion academically by the applicant. Such applicants, accordingly, are eligible and enabled to participate in bar examinations, provided they fulfill other requisites not primarily related to education and training and pertaining instead to age, moral character, or other matters.

We believe that the greater weight of evidence establishes that to members of the legal profession, including teachers and attorneys, this degree symbolizes successful completion of a course of resident study in law whereby the holder of such degree has fulfilled the minimum requirements for education and legal training which will enable him, if otherwise eligible, to participate in the bar examinations of the respective states. On the other hand, however, it appears to us that the evidence received into the record is inadequate for an informed determination as to whether the foregoing beliefs as to the connotation of the LL. B. degree and the impressions engendered incident to an offer to bestow it, likewise are shared by members of the purchasing public to whom respondent's advertising and offers of its courses have been directed. This conclusion notwithstanding, respondent's invitations to enroll for its courses and become a candidate for its degree have not occurred in a vacuum but are proffered instead against the background of affirmative statements offering this training as preparation for bar examinations and listings contained in its brochures of former students who are members of the bar "to show how completely" respondent's training demonstrates its thoroughness in preparing candidates for the bar. In these circumstances, it can not be gainsaid that the record clearly establishes that respondent has represented that its courses and the degrees bestowed by it will fulfill the requirements for education and legal training requisite to participating in the bar examinations of the respective states. To this extent only, therefore, the pertinent exceptions interposed to the initial decision by counsel supporting the complaint are sustained, and his appeal in such part is being granted.

Reverting now to the two charges mentioned previously, we have concluded, however, that the record does not suffice for an informed

determination as to whether respondent's offers of legal training leading to its degrees, within themselves or when considered in connection with the additional statements appearing in the advertising to which we referred, have constituted representations to purchasers, in the circumstances here, that the enterprise is a recognized and standard law school with courses comparable to those used in recognized and accredited resident schools. Further consideration of the additional allegations of the complaint relevant to these matters, therefore, appears unwarranted, and the appeal, insofar as it challenges the provision of the initial decision for dismissal of these charges, is not being granted.

Brief reference should be made, however, in connection with the foregoing, to counsel's exceptions to certain statements in the initial decision to the effect that the conferring of a degree signifies only that the recipient has satisfactorily completed a regularly prescribed course of study under competent supervision and that a rule sounder and more reasonable than that contended for by counsel supporting the complaint was established by the Commission in an earlier decision involving another school, under which the advertising of offers of degrees in law for studies pursued solely through correspondence was not forbidden absolutely. Under our interpretation of these findings, they represent conclusions to the effect that the offer of a legal degree by a correspondence school which is not accredited by other institutions meeting the requirements of and approved by the American Bar Association's Council of the Section of Legal Education and Admissions to the Bar should not be regarded as actionable as a fraud upon our educational system or as misleading to purchasers in the absence of additional evidence from which deception of students should be inferred. To such extent as the determinations made in the initial decision rest on that view, counsel's pertinent exceptions are without merit. To the extent, however, that the decision below may be construed as an expression that the record supports an affirmative conclusion that the public's understanding of an offer of a degree in connection with legal instruction indeed is limited solely to satisfactory completion under competent supervision of a regular course of correspondence study prescribed by the commercial enterprise vending the course and books used therefor, that determination would be erroneous and counsel's relevant exceptions would be regarded as well taken.

When it was found in the initial decision—albeit erroneously so—that none of the advertising material has represented or implied that respondent's enrollees will be enabled to participate in bar examinations, references also were made to certain advertising statements

counseling students to consult with examining or court officials as to rules applicable in their states and to a provision in the enrollment contract under which enrollees profess awareness that they must qualify under local rules where they will be candidates for examinations, and under which respondent is released from contractual responsibility for students' compliance with them. To the extent that this and other statements in the initial decision may imply that the advertising adequately discloses the limitations of respondent's training in enabling students to participate in examinations, such conclusion is clearly erroneous. In a section of its catalog "Law Training for Leadership," respondent when advising prospective students to inform themselves respecting the rules governing bar admissions in their states, offers upon request to furnish information in that regard, and a generally similar statement appears in the booklet "Evidence." In discussing pre-legal educational requirements, the former additionally states that they vary from high school to four years of college work and that requirements for legal training likewise vary from no specific requirements to three years in a resident school or four in an office or night school. As to study method, the brochure states also that a few states have no specific requirements and many specify resident school solely but usually where the methods are specified more than one is mentioned including private study, study under the direction of a lawyer, clerkship, resident enrollment, or a combination of these. When it is considered that only in these states are students whose education and legal training consist solely of pursuit of respondent's course of home study not foreclosed from examinations, the lack of candor which characterizes the statements in this category is manifest. Instead of revealing matters of relevant fact, they essentially imply, at the very least, that respondent's training will enable aspirants otherwise qualified by reason of age, residence, and moral character to sit for examinations in a large number of states.

Not to be ignored in this connection, moreover, is the circumstance that a purpose is plainly evident throughout the advertising literature to create impressions that respondent's training fulfills states' education and legal training requirements. To illustrate, the catalog elsewhere states that instruction of "university grade" is afforded. Although resident classes are conducted in accounting and other business subjects, this form of training is not afforded by respondent in its legal subjects. Statements appear in the advertising, however, to the effect that respondent's instruction excels inasmuch as LaSalle since 1916 "has been conducting a resident school of the very highest grade." When designating the "university-extension, home-study, correspondence method of training" as new and progressive, the advertising as-

serts that such training method is "Endorsed by University and Government Authorities." We accordingly conclude that the presence in the advertising of the limited disclosures noted in the initial decision has been wholly inadequate to dispel the deception necessarily engendered by the false and misleading representations contained in the advertising insofar as they relate to student eligibility to participate in bar examinations of the respective states.

Obviously material to persons urged in nation-wide offers of courses of instruction to follow the law as a profession is accurate information as to where or in what jurisdictions the method or form of training offered is acceptable toward fulfilling the goal which such advertising seeks to inspire. A provision insuring such disclosure in connection with any future offers by respondent of its courses likewise directed to encouraging that aspiration is plainly warranted and necessary and does not appear burdensome in the circumstances here. The order to cease and desist as contained in our decision which is separately issuing here accordingly provides that the respondent's future representations to the effect that its courses fulfill educational and legal training requisites for participating in bar examinations be limited to those states wherein that is a fact.

In view of the conclusions expressed hereinbefore and the dispositions being made of the various charges, our discussion of matters additionally urged in support of and in opposition to the appeal, but not controlling to those determinations is unwarranted. We accordingly are granting the appeal to the extent noted above but it is otherwise being denied.

Commissioners Howrey and Gwynne did not participate for the reason that oral argument was heard prior to their appointment to the Commission.

Opinion

IN THE MATTER OF

JOHN L. STRAUSS DOING BUSINESS AS AMERICAN
EXTENSION SCHOOL OF LAW

Docket 5932. Complaint, Oct. 26, 1951—Decision and opinion, June 29, 1954

Charge: Falsely advertising correspondence school as a standard law school, and graduates as eligible for bar examinations.

Before *Mr. Abner E. Lipscomb*, hearing examiner.

Mr. R. T. Porter and *Mr. William L. Pencke* for the Commission.

Mayer, Meyer, Austrian & Platt, of Chicago, Ill., for respondent.

DECISION OF THE COMMISSION RULING ON RESPONDENT'S APPEAL AND
DISMISSING COMPLAINT

This matter came before the Commission upon the appeal of respondent from the initial decision of the hearing examiner wherein it was held in effect that the allegations of the complaint were sustained by the greater weight of the evidence.

For the reasons stated in its accompanying opinion, the Commission is of the view that the exceptions urged in support of the appeal, as referred to in such opinion, should be sustained and that the findings and order as contained in the initial decision do not have adequate support in the record.

It is ordered therefore, That the appeal of the respondent be, and the same hereby is, granted as noted in the accompanying opinion.

It is further ordered, That the complaint herein be, and it hereby is, dismissed.

Commissioners Howrey and Gwynne not participating for the reason that oral argument was heard prior to their appointment to the Commission.

OPINION OF THE COMMISSION

Under the initial decision, the allegations of the complaint, in effect, were found to have been sustained by the greater weight of the evidence and this case comes before us for consideration of the respondent's appeal from that decision, the briefs in support of and in opposition to such appeal, and the oral arguments of counsel.

The respondent, since November 1948, has engaged in the operation of a correspondence school. His courses of legal study and instruction are nationally advertised and when sold by him are pursued by student-purchasers through correspondence, no resident instruction being afforded to students. The ultimate question presented for

our determination under the record and appeal is whether the respondent has engaged in unfair and deceptive acts and practices in connection with the sale and distribution of commerce of such courses in the respects charged under the complaint as issued by the Commission and under which this proceeding was instituted. Typical of the advertisements used by the respondent in newspaper and magazine advertising and to which this proceeding in part relates is the following:

STUDY LAW

at home!

Increase earnings and business ability. Win advancement. LLB Degree. Texts furnished. Easy Payments. Learn how law knowledge helps you to success. Write today for FREE book—"Law and Executive Guidance"—NOW.

40 years instruction to 114,000 students.

AMERICAN EXTENSION SCHOOL OF LAW

Dept. E-30, 646 N. Michigan Avenue,
Chicago 11, Illinois.

The complaint charges, in effect, that these statements falsely represent, by implication and otherwise, that the school is a recognized, accredited and standard law school, that its courses are comparable to those used in recognized and accredited law schools, and that students who complete the courses and receive the degree of LL. B. are thereby qualified and eligible to be admitted to the bar examinations of the respective states. The initial decision expresses views that by means of the advertising noted, the respondent has implied that the LL. B. degree as conferred by his school has value and significance equal to those conferred as symbols of scholastic achievement by resident law schools which have been approved by accrediting agencies and that, inasmuch as the chief purpose for which legal studies are undertaken is to achieve admission to the bar, the offer by respondent to confer such degree must be construed to represent that recipients thereof will be admitted to bar examinations of the several states.

It is undisputed that this school has not been accredited by either of the two agencies whose activities are national in scope and which engage in prescribing standards for resident law schools and withhold or extend their approval dependent on the character of the school. At the time this proceeding was instituted, students whose education and legal training consisted solely of respondent's instruction would be permitted to sit for bar examinations in only three of our states. In these circumstances therefore, if the findings of the initial decision to the effect that respondent's advertising implies that students will be admitted to bar examinations of the respective states is a correct find-

ing, it would follow that the representation thus made by the school is false and that the respondent has engaged in unfair and deceptive acts and practices in commerce.

Testimony was received into the record tending to show, among other things, that to members of the legal profession the baccalaureate in law symbolizes successful completion of a resident course of study enabling the bearer to sit for his bar examinations. To members of this segment of the public, considerations as to the manner in which a law course and any degree conferred in recognition of its completion would enable a candidate to participate in bar examinations naturally would be of utmost importance. We do not believe, however, that this and the additional evidence received into the record afford adequate basis for an informed determination as to whether the foregoing beliefs as to the connotation of the LL. B. degree and the impressions engendered under the respondent's offer to bestow it likewise are shared by members of the purchasing public to whom respondent's advertising and offers of its courses have been directed. In these circumstances, therefore, we are of the view that the conclusions of the initial decision, as referred to above, do not have adequate support in the record and that they must be rejected accordingly.

Reverting now to the other charges, we have concluded that the record similarly does not suffice for an informed determination as to whether respondent's offers of courses leading to his degree, within themselves, have constituted representations to prospective students in the circumstances here that the enterprise is a recognized, accredited and standard law school with courses comparable to those used in recognized and accredited resident schools. In the initial decision, it was emphasized that the promotional literature contains statements to the effect that the system employed by the student's instructor has all advantages of the methods used in resident schools and that the school's method combining the case and text systems follows the standard one used in leading universities. Considering the setting in which these statements appear in the advertising, we do not share the view that an adequate showing has been made that the advertising in fact has the capacity and tendency to engender beliefs that the status of this correspondence enterprise is that of a recognized, accredited and standard law school and that it affords instruction in all respects comparable to such institutions. Not to be ignored when appraising these matters is the circumstance that the advertising essentially offers the training for the purpose of increasing earnings and business ability and winning advancement and that absent from the promotional literature is language holding out the course expressly for training for the bar or as

preparation for examinations on the part of those who would follow the law as a profession.

In accordingly granting the appeal here, we are sustaining appellant's exceptions to the various provisions of the order appearing in the initial decision and to certain of its findings to the extent that such exceptions are based on contentions that these matters are not supported by the greater weight of the evidence. Our order, which is separately issuing here, therefore, provides for dismissal of the complaint.

Commissioners Howrey and Gwynne did not participate for the reason that oral argument was heard prior to their appointment to the Commission.

Consent Settlement

IN THE MATTER OF

COHEN-KANIGER, INC. ET AL.

CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND THE WOOL PRODUCTS LABELING ACT

Docket 6158. Complaint, Jan. 21, 1954—Decision, June 29, 1954

Where two corporations and an individual who was president of both, engaged in the interstate sale and distribution of fabrics of which some were wool—

- (a) Falsely represented to their customers that their said fabrics could be labeled "100% Cashmere" and that they were "100% Cashmere" and falsely described the same as such orally, in correspondence, and on invoices; and
- (b) In order to induce the purchase of their said fabrics by manufacturers of garments for resale to retailers and distributors, furnished to such manufacturers labels for attachment thereto which falsely described said fabrics as "100% Imported Cashmere," etc., and "100% Fine Imported Cashmere," etc.; and thereby placed in the hands of such manufacturers means and instrumentalities by which they might mislead the purchasing public by representing said garments as composed entirely of the hair or fleece of the Cashmere goat:

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; and

Where said corporation and its said president, in connection with the introduction into commerce and the offer for sale, etc., of wool products as defined in the Wool Products Labeling Act—

- (a) Misbranded certain of said products in that, invoiced as "100% Cashmere," they were not in fact composed entirely of the hair or fleece of the Cashmere goat but contained substantial quantities of fibers other than cashmere; and
- (b) Misbranded certain of said products in that they were not stamped, tagged, or labeled as required by said Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder:

Held, That such acts and practices, under the circumstances set forth, were in violation of the Wool Products Labeling Act and the said Rules and Regulations and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Abner E. Lipscomb*, hearing examiner.

Mr. Charles F. Canavan for the Commission.

Ducker & Feldman, of New York City, for respondents.

CONSENT SETTLEMENT ¹

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 the Federal Trade Commission, on January 21, 1954, issued and subsequently served its

¹ See footnote on following page.

complaint on the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in violation of the provisions of said Acts.

The respondents, desiring that this proceeding be disposed of by consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of answer to said complaint hereby:

1. Admit all the jurisdictional allegations set forth in the complaint.
2. Consent that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the said respondents, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrain from admitting or denying that they have engaged in any of the acts or practices stated therein to be in violation of law.
3. Agree that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in Paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon, and the order to cease and desist, all of which the respondents consent may be entered herein in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Cohen-Kaniger, Inc. and Lord Saxony Fabrics, Ltd., are corporations organized under and by virtue of the laws of the State of New York. Respondent, Maxwell Kaniger, is the president of both respondent corporations. This individual formulates, directs and controls the policies, acts and practices of the corporate respondent. The offices and principal place of business of all respondents are located at 257 Fourth Avenue, New York, N. Y.

PAR. 2. The respondents are now and for some time last past have been engaged in the business of selling and distributing fabrics, some

¹ The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on June 29, 1954 and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

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Findings

of which are wool products. The respondents cause said fabrics when sold, to be shipped and transported from their place of business in New York, N. Y. to the purchasers thereof located in various other States of the United States. There is now and has been during all the times mentioned herein a course of trade in commerce by said respondents in said fabrics between and among the various States of the United States and in the District of Columbia.

PAR. 3. The respondents, in promoting the sale of some of their fabrics in commerce, as aforesaid, have falsely represented to their customers by oral statements that their fabrics could be labeled "100% Cashmere," and that their said fabrics were "100% Cashmere," and by use of similar false representations, made orally, in correspondence and on invoices the respondents have described their fabrics as "100% Cashmere."

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their said fabrics by manufacturers of garments for resale to retailers and other distributors, the respondents have furnished to said manufacturers of garments, labels for attachment to said garments, reading in some cases as follows:

100%
Imported
Cashmere
Cohen Kaniger N. Y.

100%
Fine Imported
Cashmere
Cohen-Kaniger N. Y.

Said labels were for attachment to garments made by said manufacturers of fabrics purchased from the said respondents which were not made wholly of the hair or fleece of the Cashmere goat. The said representations as set out on said labels were false and misleading.

PAR. 5. Through the use of the labels aforesaid, and by furnishing garment manufacturers with such labels as above stated, the respondents have placed and are now placing in the hands of such manufacturers, means and instrumentalities by which such manufacturers may mislead and deceive the purchasing public, by representing that said garments are composed entirely of the hair or fleece of the Cashmere goat.

PAR. 6. The use by respondents of the representations herein set forth, in the course of selling and offering for sale their fabrics, in commerce, as above described, has the capacity and tendency to, and

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does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were and are true, and to induce the purchase of such fabrics on account of such beliefs induced as aforesaid. As a result thereof purchasers and the purchasing public have been misled and deceived.

PAR. 7. The acts and practices of the respondents as set forth in Paragraphs 3, 4, 5, and 6 hereof were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 8. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since 1951, respondents have introduced into commerce, offered for sale, sold, transported, distributed, and delivered for shipment, in commerce, as "Commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool products" are defined therein.

PAR. 9. Certain of said wool products were misbranded within the intent and meaning of Section 4 (a) (1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations thereunder, in that they were falsely or deceptively stamped, tagged, labeled, or otherwise identified, with respect to the character and amount of the constituent fibers contained therein, in this, that the invoices relating to the sale of the wool products showed the fiber content as "100% cashmere," whereas in truth and in fact, said wool products were not composed entirely of the hair or fleece of the Cashmere goat, but contained substantial quantities of fibers other than cashmere.

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

PAR. 11. The acts and practices of the respondents as set forth in Paragraphs 9 and 10 hereof 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.

CONCLUSION

The acts and practices of respondents Cohen-Kaniger, Inc., a corporation, and Lord Saxony Fabrics, Ltd., a corporation, and Maxwell Kaniger, individually, as hereinbefore found, were and are in violation of the Wool Products Labeling Act of 1939, and the Rules and

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Regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

It is ordered, That the respondents, Cohen-Kaniger, Inc., a corporation and Lord Saxony Fabrics, Ltd., a corporation, and their officers and Maxwell Kaniger, an individual, and respondents' respective agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce as "commerce" is defined in the Federal Trade Commission Act of their fabrics do forthwith cease and desist from:

(1) Misrepresenting in any way the constituent fiber or material used in their fabrics or the respective percentages thereof;

(2) Using the term "100% cashmere" or the word "cashmere" to designate, describe or refer to products not composed entirely of the hair or fleece of the Cashmere goat; provided, however, that nothing herein shall forbid respondents from using the word aforesaid to refer to the cashmere fiber in fabrics composed in part of that fiber and in part of other fibers if, in immediate conjunction therewith wherever the word "cashmere" is used, there appear words truthfully and conspicuously describing all constituent fibers therein contained.

(3) Furnishing to or placing in the hands of others, for use in designating the fiber content of respondents' fabrics or garments made therefrom, stamps, tags, or labels, by means of which said fabrics, or garments made therefrom, may be falsely or deceptively stamped, tagged, labeled or otherwise identified as to the character or amount of the constituent fibers thereon.

It is further ordered, That the respondent Cohen-Kaniger, Inc., a corporation, and Lord Saxony Fabrics, Ltd., a corporation, and their officers, and respondent, Maxwell Kaniger, individually, and respondents' respective agents, representatives and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of fabrics 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 in 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 by:

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(1) Falsely or deceptively stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers included therein;

(2) Failing to securely affix to or place on each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner;

(a) The percentage of the total fiber weight of such wool product, 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 product of any non-fibrous loading, filling, or adulterating matter;

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

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 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.

Cohen-Kaniger, Inc. and
Lord Saxony Fabrics, Ltd.,
corporations.

(sgd) By Maxwell Kaniger,
Cohen-Kaniger, Inc.

Pres.

(sgd) By Maxwell Kaniger,
Lord Saxony Fabrics, Ltd.,

Pres.

(Sgd) Maxwell Kaniger,
Maxwell Kaniger, individually.

Date: March 29, 1954.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and entered of record on this 29th day of June 1954.

Syllabus

IN THE MATTER OF

UNITED PHOTOGRAPHY SERVICE, TRADING AS EDLYN
STUDIOS; AND CHARLES J. AND HELEN M. FISCHERCONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6196. Complaint, Mar. 18, 1954—Decision, June 29, 1954

Where a corporation and its two officers, engaged in the sale and distribution of portraits through the solicitation, mostly, of door-to-door agents who exhibited sample portraits and a coupon or certificate—

- (a) Represented through the use of such printed coupons or certificates and through oral statements of their agents that they had offices in principal cities and operated the largest color studio in the west ;

The facts being that they never had offices in the principal cities; two branch offices formerly operated had been discontinued; the only office or studio then operated by them was that located at their Hollywood address; and in the city of Los Angeles alone there were several color studios whose color equipment and volume of business exceeded those of respondents ;

- (b) Falsely represented that their portraits were Kodachrome portraits and were natural color portraits ;

The facts being that while Kodachrome film was used, the portraits were not printed on Kodachrome paper or processed with Kodachrome chemicals, and, while colored in the sense that they were not a conventional black and white type, they did not portray the true color of the eyes and complexion of the person or persons photographed, and in all instances the portraits evinced a loss of brilliance and in many instances a transposition of colors ;

- (c) Falsely represented that their finished portrait would be equal in appearance, quality, and workmanship to sample portraits and proof slides exhibited to purchasers and prospective purchasers ;

The facts being that the portraits offered and sold by them were inferior to those which purchasers and prospective purchasers were led to believe they would receive as a result of viewing the sample portraits and proof slides exhibited by respondents' agents ; the finished prints, in all instances, were far less brilliant and colorful than such samples and slides and in many instances there was a loss of proper focus and distortion of features and color ;

- (d) Represented that purchasers were guaranteed satisfactory portraits and that portraits ordered by customers would be delivered within three weeks or within a reasonable period of time ;

The facts being that many portraits delivered were unsatisfactory ; in most instances respondents did not honor their guarantee by replacing such portraits with those satisfactory to the purchaser ; and in many instances they did not deliver their product within such a period of time, and in some instances purchasers were forced to wait many weeks and even months for the delivery of portraits fully or partially paid for :

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

Before *Mr. Abner E. Lipscomb*, hearing examiner.

Mr. Edward F. Downs for the Commission.

Mr. Alfred C. Ackerson, of Los Angeles, Calif., for respondents.

CONSENT SETTLEMENT ¹

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 18, 1954, issued and subsequently served its complaint on the respondents named in the caption hereof charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in violation of the provisions of said Act.

The respondents, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, any review thereof, and the enforcement of the order consented to, and conditional upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of the answer to said complaint heretofore filed and which, upon acceptance by the Commission of this settlement, is to be withdrawn from the record, hereby:

1. Admit all the jurisdictional allegations set forth in the complaint.

2. Consent that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease

¹The Commission's "Notice of Acceptance of Consent Settlement and Order to File Report of Compliance" follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was on June 29, 1954, accepted by the Commission, subject only to the condition that the respondents comply with the requirements of the following paragraph with respect to the filing of a report showing the manner and form in which they have complied with the order to cease and desist; and subject to such condition said consent settlement was ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

It is accordingly ordered, That the respondents, United Photography Service, a corporation, trading under the name Edlyn Studios, and Charles J. Fischer and Helen M. Fischer, individually and as officers of said corporation, shall within sixty (60) days after service upon them of this notice and order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist contained in the consent settlement entered herein.

and desist. It is understood that the respondents, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrain from admitting or denying that they have engaged in any of the acts or practices stated therein to be in violation of law.

3. Agree that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon, and the order to cease and desist, all of which the respondents consent may be entered herein in final disposition of this proceeding, are as follows:

PARAGRAPH 1. Respondent United Photography Service is a corporation organized and existing under and by virtue of the laws of the State of California, with its office and principal place of business located at 1514 North Gardner Street, Hollywood, California. It trades and does business under the name of Edlyn Studios. Respondents Charles J. Fischer and Helen M. Fischer are president and vice-president, respectively, of the corporate respondent. These individuals formulate, direct and control the policies, acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now and for several years last past have been engaged in the sale and distribution of portraits. In the course and conduct of their said business respondents caused their portraits, when sold, to be transported from their place of business in the State of California to purchasers thereof located in various other States. They 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. At all times mentioned herein respondents have been, and are now, in direct and substantial competition with other corporations, firms and individuals engaged in the sale and distribution of portraits in commerce.

PAR. 4. In the course and conduct of their business as aforesaid and for the purpose of inducing the purchase of their portraits the re-

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spondents and their agents have engaged in the various acts and practices hereinafter set forth.

PAR. 5. Most of respondents' sales of portraits are effected by means of door to door solicitation. For this purpose they employ three types of agents, namely, coupon salesmen, photographers, and proof passers. Prospective purchasers are first contacted by a coupon salesman who exhibits to the prospect sample portraits and a coupon or certificate which reads in part as follows:

THIS CERTIFICATE WILL ENTITLE HOLDER TO RECEIVE ONE
BEAUTIFUL 3 x 7 NATURAL COLOR PORTRAIT

\$2.00	Edlyn's of Hollywood	\$2.00
Pay this amount	Largest Color Studio	An extra charge of 50¢
to advertising	in the West	for each additional per-
agent		son in the portrait.

Offices in Principal Cities

SATISFACTION GUARANTEED

If the coupon salesman succeeds in selling the prospect a coupon he generally collects the charge of \$2.00 plus 50¢ for each additional person to be included in the portrait. Thereafter the customer is contacted by a photographer who takes a number of different poses of the subject or subjects photographed. After the exposed film has been processed into proof slides, the latter are turned over to a proof passer who exhibits them to the customer for selection. At this time the proof passer attempts to and often does induce the customer to place an order for additional portraits.

PAR. 6. By and through the use of the aforesaid printed coupon or certificate and by and through oral statements made by their agents, respondents have represented, either directly or by implication:

1. That they have offices in principal cities;
2. That they operate the largest color studio in the west;
3. That their portraits are Kodachrome portraits;
4. That their portraits are natural color portraits;
5. That their finished portraits will be equal in appearance, quality and workmanship to sample portraits and proof slides exhibited to purchasers and prospective purchasers;
6. That purchasers are guaranteed satisfactory portraits;
7. That portraits ordered by customers will be delivered within three weeks or within a reasonable period of time.

PAR. 7. The aforesaid representations and implications are false, deceptive and misleading. In truth and in fact:

1. Respondents do not now and never have had offices in principal cities. They formerly had two branch studios, one in San Diego, California, and the other in Portland, Oregon. However, these branch studios or offices were discontinued in September, 1952. The only office or studio presently operated by respondents is that located at the Hollywood address hereinabove set forth.

2. Respondents do not now and never have operated the largest color studio in the west. In the City of Los Angeles alone there are several color studios whose studio equipment and volume of business exceed those of respondents.

3. The pictures offered for sale and sold by respondents are not Kodachrome portraits for the reason that while Kodachrome film is used they are not printed on Kodachrome paper or processed with Kodachrome chemicals.

4. The portraits offered for sale and sold by respondents are not natural color portraits. Although the portraits are colored in the sense that they are not the conventional black and white type, they do not portray the true color of the eyes and complexion of the person or persons photographed. In all instances the portraits evince a loss of brilliance and in many instances a transposition of colors. For example, a pink dress may appear white in the finished print.

5. The portraits offered for sale and sold by respondents are inferior to those which purchasers and prospective purchasers are led to believe they will receive as a result of viewing the sample portraits and proof slides exhibited by agents of the respondents. In all instances the finished prints are far less brilliant and colorful than the samples and slides viewed by purchasers and, in many instances, there is a loss of proper focusing and a distortion of features and colors.

6. Many of the portraits delivered to customers are unsatisfactory. In most such instances respondents do not honor their guarantee by replacing unsatisfactory portraits with portraits satisfactory to the purchaser.

7. In many instances respondents do not deliver their said products to purchasers thereof within three weeks or within a reasonable period of time. In some instances purchasers are forced to wait many weeks or even months for delivery of portraits fully or partially paid for.

PAR. 8. The use by the respondents of the foregoing false, deceptive and misleading statements, representations and implications has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and implications are true and to induce the purchasing public to purchase substantial quantities of respondents' products as the result of such erroneous and mistaken

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belief. As a consequence thereof substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been done to competition in commerce.

CONCLUSION

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

ORDER TO CEASE AND DESIST

It is ordered, That respondent United Photography Service, a corporation, trading under the name of Edlyn Studios, or under any other name, and its officers, and respondents Charles J. Fischer and Helen M. Fischer, individually and as officers of said corporation and said respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of portraits in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing, directly or by implication:

(a) That they have offices in principal cities, or that they have more offices than they in fact have.

(b) That they operate the largest color studio in the west, or that their studio is any larger than it is in fact.

(c) That any portrait not made with Kodachrome film and painted on Kodachrome paper with Kodachrome chemicals is a Kodachrome portrait.

(d) That their portraits are natural color portraits.

(e) That their finished portraits will be equal in appearance, quality or workmanship to sample portraits and proof slides exhibited to purchasers and prospective purchasers, when such is not the fact.

(f) That satisfaction is guaranteed unless purchasers receive satisfactory portraits.

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(2) Misrepresenting the time within which their finished portraits will be delivered to purchasers.

United Photography Service
By (Sgd) Charles J. Fischer
CHARLES J. FISCHER
President.

Edlyn Studios
By (Sgd) Charles J. Fischer
CHARLES J. FISCHER
(Sgd) Charles J. Fischer
CHARLES J. FISCHER
(Sgd) Helen M. Fischer
HELEN M. FISCHER

May 17, 1954.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this 29th day of June, 1954, subject only to the condition that the respondents shall, within sixty (60) days after service upon them of a copy of this consent settlement, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist contained in said consent settlement.

IN THE MATTER OF
PILLSBURY MILLS, INC.

Docket 6000. Order and opinion, June 30, 1954

Before *Mr. Everett F. Haycraft*, hearing examiner.

Mr. L. E. Creel, Jr., Mr. J. Wallace Adair and Mr. Brockman Horne for the Commission.

Hogan & Hartson and Mr. E. Barrett Prettyman, Jr., of Washington, D. C., and Mr. Terrance Hanold, of Minneapolis, Minn., for respondent.

ORDER DISPOSING OF MOTION AND AMENDING AND SUPPLEMENTING
COMPLAINT

This matter having come on to be heard upon a motion, filed by counsel in support of the complaint, requesting that the complaint herein be amended and supplemented to join Duff Baking Mix Corporation as a party respondent in this proceeding, and to aid certain factual allegations pertaining to the transfer by Pillsbury Mills, Inc., to Duff Baking Mix Corporation of a portion of the assets acquired by Pillsbury from American Home Foods, Inc.; and

The Commission being of the view that Duff Baking Mix Corporation should not be joined as a party respondent, but that a recitation in the complaint of the relevant facts pertaining to Pillsbury's transfer of the assets acquired by it from American Home Foods, Inc., would be of material value in the trial and disposition of the issues involved in this case:

It is ordered, That the request contained in counsel's motion that the complaint be amended to join Duff Baking Mix Corporation as a party respondent in this proceeding be, and it hereby is, denied.

It is further ordered, That to the extent the motion requests that the complaint be amended and supplemented to recite the relevant facts pertaining to the transfer by respondent Pillsbury Mills, Inc., to Duff Baking Mix Corporation of certain of the assets acquired by Pillsbury from American Home Foods, Inc., said motion is hereby granted. A copy of the complaint as so amended and supplements which shall forthwith issued and served upon respondent Pillsbury Mills, Inc., attached hereto.

It is further ordered, That the testimony and other evidence heretofore introduced in support of and in opposition to the allegations in the original complaint shall have the same force and effect as though received at hearings held under the complaint as amended and supplemented.

It is further ordered, That a copy of this order, together with a copy of the special concurring opinion by Commissioner Carretta and a copy of the attached complaint, shall be served upon Duff Baking Mix Corporation, to which corporation leave to request intervention is granted if it so desires.

SPECIAL CONCURRING OPINION BY COMMISSIONER CARRETTA

This matter is before the Commission upon a motion filed by counsel supporting the complaint in which they request the Commission to amend and supplement the complaint originally issued herein by naming Duff Baking Mix Corporation as a party to this proceeding, and in other respects set forth in the proposed draft of amended and supplemental complaint filed with their motion. Counsel for the respondent, Pillsbury Mills, Inc., have filed their reply in opposition to said motion.

This proceeding was originally instituted by the Commission on June 16, 1952, upon issuance of a complaint charging the respondent Pillsbury Mills, Inc., with violation of Section 7 of the Clayton Act, as amended, by reason of its acquisition of the assets of two of its competitors, one of which was Duff's Baking Mix Division of American Home Foods, Inc. After answer had been filed by respondent, considerable testimony was taken in support of the complaint. Respondent then moved the Hearing Examiner to dismiss the complaint for the reason that the Commission had failed to prove that the acquisition involved had been effected in violation of Section 7 of the Clayton Act, as amended. After extensive briefs were filed, and after oral argument was heard by the Hearing Examiner, he ultimately granted respondent's motion to dismiss the complaint on the grounds that the allegations of the complaint had not been supported by reliable, probative, and substantial evidence in the record.

Counsel supporting the complaint then filed an appeal with the Commission from the initial decision of the Hearing Examiner. Briefs were filed by both sides, and oral argument was heard by the Commission. On December 21, 1953, the Commission ordered that the initial decision of the Hearing Examiner be set aside, and remanded the matter to the Hearing Examiner for further appropriate proceedings in accordance with the order issued by the Commission.

It appears now from the motion filed by counsel supporting the complaint to amend and supplement the complaint, and from the answer filed by respondent, that on December 21, 1953, the respondent sold a portion of the assets acquired from American Home Foods, Inc., to Duff Baking Mix Corporation, a corporation organized on Decem-

ber 11, 1953, which assets, the motion reports, were acquired by the latter with notice that they were a part of those representing the subject matter of this then pending proceeding.

The amendatory language as proposed in the subject motion seeks to join Duff Baking Mix Corporation only as a nominal party respondent and does not expressly charge that its acquiring of such assets as a successor to and assignee of respondent Pillsbury Mills, Inc., constituted a violation of law at the outset by Duff Baking Mix Corporation. In my opinion, complaints may be issued by the Commission only when the factual matters presented to it give the Commission reason to believe that the person, partnership, or corporation charged is violating or has violated any of the provisions of an Act administered by the Commission. In the light of this statutory requirement pertaining to the issuance of complaints, and in view of the fact that the amendatory language as proposed in the subject motion does not give the Commission reason to believe that the Duff Baking Mix Corporation has violated any provision of a statute administered by the Commission, the request for amendment joining Duff Baking Mix Corporation as a party respondent should accordingly be denied.

The circumstances that a transfer of the assets in question has occurred during the course of these proceedings does not now appear to render moot the issues currently in the course of trial and should not frustrate the legislative intent expressed in the amended statute under which this proceeding was instituted. Upon final determination of this matter upon its merits, should the greater weight of the evidence show that the acquisitions by respondent Pillsbury Mills, Inc., are or have been in violation of Section 7 of the Act, such relief should be directed as may be necessary to restore competition as contemplated by the Act, including divestiture of all stocks, assets, or other interest secured by respondent from Ballard and American, whether such assets be then in the possession of the respondent or of its successors in interest or assigns, including Duff Baking Mix Corporation.

The "Motion to Amend and Supplement the Complaint," filed by counsel supporting the complaint herein, sets forth in great detail the relevant facts concerning the respondent's recent transfer of assets to Duff Baking Mix Corporation. Being of the opinion that such relevant facts may be of material value in the trial and disposition of the issues involved in this case, and that such facts should not be left open to conjecture, I believe that the public interest requires that the complaint be amended to recite such relevant facts.

Because of the interest which Duff Baking Mix Corporation will necessarily have in any further proceedings in this matter, it appears

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necessary to me that Duff Baking Mix Corporation should be served with a copy of the amended and supplemental complaint being issued herein, and should be advised that the Commission would look with favor upon any application made by it to intervene in this proceeding.

Commissioner Mason concurs in the above opinion.

Chairman Howrey and Commissioner Mead and Commissioner Gwynne do not join in that portion of the opinion which holds that the statute does not permit Duff Baking Mix Corporation to be joined as a party respondent. In cases involving transfer of interest, they expressly leave open the question whether an action may be maintained against the party to whom the interest has been transferred.

AMENDED AND SUPPLEMENTAL COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of Section 7 of the Clayton Act (U. S. C. Title 15, Sec. 18) as amended and approved December 29, 1950, hereby issues its amended and supplemental complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Pillsbury Mills, Inc., hereinafter referred to as "Pillsbury," is a corporation organized in 1935 as Pillsbury Flour Mills Co. (present name assumed in 1944) and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located in the Pillsbury Building, 608 Second Avenue South, Minneapolis 2, Minnesota.

Pillsbury, the second largest flour milling company in the United States, operates a number of flour mills located throughout the several States of the United States, and is engaged in the business of milling family and bakery flour. Pillsbury is also engaged in the manufacture of packaged food products having a grain base, including prepared flour-base mixes such as piecrust, hot-roll, cake, and pancake mixes; millfeeds and commercial (or mixed) feeds for livestock and poultry, and dog food; various other food products; products from processed soybeans; and paper and paper bags. Prior to June 12, 1951, Pillsbury's daily flour milling capacity was approximately 82,000 hundredweight, its daily capacity for manufacturing packaged food products was approximately 1,400,000 pounds, and for manufacturing commercial feeds, approximately 2,500 tons. During a twelve-month period in 1949-50, Pillsbury made approximately 9.4% of the total industry sales (in hundredweights) of family flour, 8.2% of bakery flour, 16% of prepared flour-base mixes, and ranked among the

first fifteen companies engaged in the sale of commercial feeds. Pillsbury is also engaged in the buying, selling, and storing of grain, and has a total grain storage capacity of approximately 26,000,000 bushels.

The original business of Pillsbury was established in 1869 under the name of C. A. Pillsbury & Co. and in 1889 was consolidated with Washburn Mill Co., forming the Pillsbury-Washburn Flour Mills Co., Ltd. In 1909 the Pillsbury Flour Mills Co. of Minnesota was established and incorporated, acquiring the quick assets of said Pillsbury-Washburn Flour Mills Co., Ltd., and taking over the operation of its business (later acquiring its remaining assets). When the present corporation was formed in 1935, it acquired the assets of Pillsbury Flour Mills, Inc., a holding company, and said Pillsbury Flour Mills Co. of Minnesota, an operating company, along with the latter's three subsidiaries which had been previously acquired by said operating company.

During the ten-year period, from May 31, 1940 to May 31, 1950, Pillsbury acquired some or all of the assets of six companies. Said acquisition included flour and feed mills, a soybean processing plant, and grain elevators in several States of the United States, thereby substantially increasing Pillsbury's flour milling, feed manufacturing, soybean processing, and grain storage capacities. On or about January 31, 1952, Pillsbury acquired an additional grain elevator of substantial capacity.

During the same ten-year period, Pillsbury's net sales grew from approximately \$47,000,000 to approximately \$201,000,000, its total assets grew from approximately \$30,000,000 to approximately \$59,000,000 and its net worth grew from approximately \$23,000,000 to approximately \$41,000,000.

Pillsbury purchases its grain and other materials used in the manufacture of its various products in commerce, as "commerce" is defined in the Clayton Act, and offers to sell, sells, and ships said products in said commerce throughout the several States of the United States and the District of Columbia. Pillsbury maintains sales offices in twenty-four States and sells its products, primarily through its sales force, to wholesalers, bakeries, retailers, feeders of livestock and poultry, and others, many of whom are located in that part of the United States generally lying east of the Mississippi River and south of the Ohio and Potomac Rivers, hereinafter referred to as the "Southeast."

PAR. 2. Ballard and Ballard Company, hereinafter referred to as "Ballard," was, prior to June 12, 1951, a corporation organized in 1909 as a successor to a partnership of the same name established in 1880, and was doing business under and by virtue of the laws of the State of Kentucky, with its principal office and place of business located at 912

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East Broadway, Louisville, Kentucky. Ballard had one wholly owned subsidiary which it had acquired in 1940.

Ballard was engaged in the milling of family and bakery flour and in the manufacture of packaged food products, including prepared flour-base mixes, such as pie-crust, hot-roll, cake and pancake mixes; prepared dough products; millfeeds and commercial (or mixed) feeds for livestock and poultry, and dog food; various other food products; and cloth sacks.

Ballard had a daily flour milling capacity of approximately 5,500 hundredweight, a daily capacity for manufacturing commercial feeds of approximately 1,000 tons (which it used to manufacture a substantial part of the commercial feeds sold in the Southeast), and a total grain storage capacity of approximately 2,000,000 bushels. In order to meet its market requirements, Ballard purchased approximately 250,000 hundredweight of flour annually from other sources.

During the ten-year period, from June 30, 1940 to June 30, 1950, Ballard's net sales grew from approximately \$8,000,000 to approximately \$30,000,000, its total assets grew from approximately \$2,600,000 to approximately \$11,300,000, and its net worth grew from approximately \$2,400,000 to approximately \$5,800,000.

Ballard purchased its grain and other materials used in the manufacture of its various products in commerce, as "commerce" is defined in the Clayton Act, and offered to sell, sold, and shipped its prepared dough products in said commerce throughout the several States of the United States and the District of Columbia. Ballard offered to sell, sold, and shipped its other products in said commerce throughout the several States of the Southeast through its sales force and marketing system, which included warehouses located in from twenty to thirty cities, to wholesalers, bakeries, retailers, feeders of livestock and poultry, and others.

PAR. 3. American Home Products Corporation, a corporation organized and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 22 East 40th Street, New York, New York, wholly controls the voting stock of its corporate subsidiary, American Home Foods, Inc., hereinafter referred to as "American."

Prior to March 10, 1952, American, doing business as Duff's Baking Mix Division, which business it acquired in 1944 from P. Duff's & Sons, Inc., was engaged in the manufacture of packaged food products including prepared flourbase mixes, such as gingerbread, waffle, hot-roll, muffin, and cake mixes. Said products were sold under the brand name of "Duff's."

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American purchased its materials used in the manufacture of its various products in commerce, as "commerce" is defined in the Clayton Act, and offered to sell, sold, and shipped said products in said commerce, throughout the several States of the United States and the District of Columbia.

PAR. 4. On or about June 12, 1951, Pillsbury acquired all or substantially all of the assets of Ballard and presently operates the former business of Ballard as a division of Pillsbury.

On or about March 10, 1952, Pillsbury acquired all or substantially all of the assets of American which were utilized in conducting the business of its Duff's Baking Mix Division, including the property, equipment, and inventory of a mix manufacturing and packaging plant located at Hamilton, Ohio.

PAR. 5. Both Pillsbury and American were, prior to March 10, 1952, leaders throughout the United States in the sale of prepared flour-base mixes. During a twelve-month period in 1949-50, Pillsbury ranked second nationally with sales of approximately 1,219,000 hundredweight which were approximately 16% of the national market, and American ranked fourth nationally with sales of approximately 453,000 hundredweight which were approximately 6% of the national market.

Both Pillsbury and Ballard were, prior to June 12, 1951, leaders in the Southeast in the sale of family and bakery flour and prepared flour-base mixes. In the year 1950 the approximate positions of Pillsbury, Ballard, and American in the sale of family and bakery flour and prepared flour-base mixes in the Southeast were as follows:

	Rank in southeast sales	Amount sold (in round cwts.)	Percent of total southeast sales
Family Flour:			
Pillsbury.....	5th.....	732, 000	3. 66
Ballard.....	3rd.....	930, 000	4. 65
Total.....		1, 662, 000	8. 31
Bakery Flour:			
Pillsbury.....	3rd.....	680, 000	4. 93
Ballard.....	9th.....	500, 000	3. 62
Total.....		1, 180, 000	8. 55
Prepared flour-base mixes:			
Pillsbury.....	1st.....	151, 000	22. 7
Ballard.....	3rd.....	80, 000	12. 0
American (Duff's).....	5th.....	68, 000	10. 2
Total.....		299, 000	44. 9

For many years prior to June 12, 1951, substantial competition, or potential substantial competition, existed between Pillsbury and Ballard, and between each of them and others, and substantial competition, or potential substantial competition, exists and has existed since on or about June 12, 1951, between Pillsbury and others in the offering to purchase and purchasing in interstate commerce of materials used in the milling of flour and in the manufacture of prepared flour-base mixes, feeds, and other products and in the offering to sell and selling of said products in interstate commerce.

For many years prior to March 10, 1952, substantial competition, or potential substantial competition, existed between Pillsbury and American and between each of them and others in the offering to purchase and purchasing in interstate commerce of materials used in the manufacture of prepared flour-base mixes, and in the offering to sell and selling of said products in interstate commerce.

Pillsbury's previous acquisitions of flour-milling companies and the aforesaid acquisition of Ballard are typical of the mergers which have contributed to the present concentration of ownership and control in the flour-milling industry. From 1945 to 1950 the aggregate capacities of the nine largest flour-milling companies, including Pillsbury, grew from approximately 32.7% of total industry capacity to approximately 38.1% thereof. Although wheat flour and its products constitute a substantial and important part of the American diet, in recent years consumer demand for family flour has decreased and during the same period of time said demand for prepared flour-base mixes, which are relatively new products, has rapidly increased. Ownership and control in the prepared flour-base mix industry is already becoming concentrated in a few companies which distribute and advertise prepared flour-base mixes nationally. During a twelve-month period in 1949-50, seven of these companies, including Pillsbury and American, made approximately 70% of the total sales in said industry.

Prior to the acquisitions of Ballard and American, Pillsbury possessed sufficient economic power to enable it to engage in the granting of price discriminations, and it did in fact exercise and abuse such power by that and other methods, thereby diverting trade from its competitors to itself. Said acquisitions have added substantially to such power and have enabled Pillsbury to further divert trade from its remaining competitors with even more damaging results.

PAR. 6. The effect of the aforesaid acquisitions by Pillsbury of all or substantially all of the assets of Ballard and the Duff's Baking Mix Division of American, or all or substantially all of the assets of either of them, may be substantially to lessen competition, or to tend to create a monopoly in the lines of commerce, as "commerce" is defined

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in the Clayton Act, in which the acquired companies were engaged throughout various sections of the United States.

PAR. 7. The foregoing alleged acts and practices of respondent Pillsbury as set forth herein constitute a violation of Section 7 of the Clayton Act (U. S. C. Title 15, Sec. 18) as amended and approved December 29, 1950.

PAR. 8. In June 1952 the Commission issued and served upon Pillsbury its original complaint in this matter. The charges in said complaint were in all material respects identical to the charges as set forth in Paragraphs 1 through 7 herein. Issue was joined; hearings were held during which the case in chief of counsel supporting the complaint was introduced in evidence; following a motion to dismiss by Pillsbury, the hearing examiner held that a *prima facie* case had not been established and filed his initial decision providing for dismissal of the complaint without prejudice; and upon counsel's appeal therefrom, the Commission on December 21, 1953, set aside the initial decision and remanded the case to the hearing examiner for further appropriate proceedings.

PAR. 9. Duff Baking Mix Corporation, hereinafter referred to as "Duff Corporation," is a corporation organized on December 11, 1953, doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 830 Broad Street, Newark, New Jersey.

On or about December 21, 1953, Pillsbury sold, assigned and transferred to Duff Corporation, pursuant to various arrangements and agreements, one of which was under date of December 15, 1953, certain of its assets which had been acquired by Pillsbury on March 10, 1952, from American. Said assets sold, assigned and transferred by Pillsbury to Duff Corporation included the business of selling and distributing prepared baking mixes, such as waffle, hot muffin, corn muffin, hot roll, layer cake, devil food, spice cake and gingerbread mixes, under the trade name "Duff's," the going-concern value, goodwill, trademarks, copyrights and patents incident to said business; and the formulae and manufacturing methods, processes and techniques used in connection therewith. Said sale by Pillsbury to Duff Corporation did not include, among other things, the physical property and equipment acquired by Pillsbury from American such as land, buildings and machinery.

The terms and conditions of sale of said assets by Pillsbury to Duff Corporation provided for a sales price of \$750,000, of which \$50,000 was paid upon the execution of the sale with the remainder to be paid in the form of a surcharge assessed on all mixes manufactured for sale by the Duff Corporation and beginning in 1955 by the payment

from Duff Corporation to Pillsbury of 50% of all annual net profits of the Duff Corporation in excess of \$75,000. It was further provided, among other things, that for a period of two years Pillsbury would furnish from the Hamilton plant, which it had acquired from American, Duff Corporation's prepared mix requirements, but not in excess of a figure which was represented to be 20% of the 1954 estimated total production of prepared mixes at said Hamilton plant; that Pillsbury would have the option of manufacturing Duff labeled mixes to conform to current formulae used for manufacturing Pillsbury labeled mixes; that Pillsbury would have the option of conforming the types and dimensions of Duff's labeled mixes manufactured to those used in packaging Pillsbury labeled mixes; and until \$500,000 of the purchase price shall have been paid, Duff Corporation could not sell or divest itself of the assets acquired from Pillsbury without the written consent of Pillsbury.

Duff Corporation entered into the agreements and arrangements, as heretofore described in this Paragraph, with Pillsbury with full knowledge that said assets, together with other assets heretofore described in Paragraph 3 herein, were the subject of a proceeding brought by the Federal Trade Commission in which it was charged that the acquisitions by Pillsbury of Ballard and the Duff's Baking Mix division of American, as heretofore described, constituted a violation of Section 7 of the Clayton Act, as amended.

Duff Corporation purchases all, or nearly all, of its prepared mixes in commerce, as "commerce" is defined in the Clayton Act, and offers to sell, sells and distributes said products principally through brokers throughout the several States of the United States and the District of Columbia.

PAR. 10. The sale by Pillsbury of a portion of the assets previously acquired by it from American and the purchase of such portion by Duff Corporation, as set forth in Paragraph 9 herein, does not constitute such a disposition of said assets as to render moot the violations of Section 7 of the Clayton Act, as amended, as charged in Paragraphs 1 through 7 herein.

IN THE MATTER OF

STANRICH MILLS CORP. AND MAURICE MARCUS

Docket 6070. Complaint, Dec. 12, 1952—Decision and opinion, June 30, 1954

Charge: Misbranding interlining fabrics in violation of the Wool Products Labeling Act.

Before *Mr. John Lewis*, hearing examiner.

Mr. George E. Steinmetz for the Commission.

DECISION AND OPINION OF THE COMMISSION

This matter has come before the Commission upon the appeal of counsel supporting the complaint from the initial decision of the hearing examiner. A brief in support of the appeal has been filed. No brief has been filed by respondents. Oral argument has not been requested.

In support of his appeal counsel supporting the complaint contends that the hearing examiner erroneously held that the record did not establish that the fabrics which respondents denied being of their manufacture were their products and that the proof as to the remaining fabrics was not sufficient under the circumstances to justify the issuance of a cease and desist order.

The Commission has carefully reviewed the matter and is of the opinion that the hearing examiner has correctly analyzed the evidence and that his initial decision is proper in all respects.

It is ordered, therefore, That the appeal of counsel supporting the complaint is hereby denied, and that the initial decision is hereby adopted as the decision and opinion of the Commission.

It is further ordered, That the complaint in this proceeding is hereby dismissed.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

This proceeding came on to be considered by the above-named Hearing Examiner, heretofore duly designated by the Commission, upon the complaint of the Commission, the answer of respondents thereto, and testimony and other evidence introduced in support of and in opposition to the allegations of the complaint at hearings held herein. The undersigned, being of the opinion that the evidence of violation is not sufficiently substantial to require any corrective action in the public interest, will order that the complaint herein be dismissed,

without prejudice. The reasons and basis for such dismissal are as follows:

Respondent Stanrich Mills Corporation (hereinafter referred to as Stanrich) is engaged in the manufacture of various types of cloth. Respondent Maurice Marcus is its President and Treasurer and controls its operations. The events at issue occurred during 1951 and the early part of 1952. Until the end of 1951 Stanrich was largely engaged in the weaving of interlining cloth for sale to textile wholesalers and to clothing manufacturers. During this period Stanrich operated a mill in Worcester, Massachusetts, where it performed both spinning and weaving operations, sending out its cloth on a commission basis to be finished and dyed by others. The yarn used in the weaving of its cloth was spun from wool stocks, consisting of thread and card waste from other mills, which Stanrich purchased through a middleman. Toward the end of 1951, Stanrich ceased making interlining cloth almost entirely and began manufacturing cloth which it cut up into blankets and sold as such.

During the middle of 1952, Stanrich bought out the Thayer Woolen Mills, a considerably larger mill, in North Oxford, Massachusetts, and since that time it has been performing many of the operations which were theretofore performed for it on a commission or subcontract basis. It is now engaged almost exclusively in making cloth for blankets which it completes and sells to the trade.

The complaint charges respondents with misbranding certain wool products in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder. Specifically, respondents are charged with falsely labeling as "100% Wool", "100% Virgin Wool", or as "All Wool" certain of its interlining fabrics and blankets which contained reused or reprocessed wool, together with substantial quantities of miscellaneous fibers other than wool, and with failing to disclose on certain interlining fabrics the name or registered identification number of the manufacturer or other proper person.

The evidence offered in support of the complaint revolves about eleven pieces of fabric alleged to have been manufactured by Stanrich. Three of the pieces (Com. Exs. 22, 23 and 24) were obtained from Stanrich by a Commission investigator and purport to be samples of interlining fabrics manufactured by Stanrich for sale to the trade. The remaining eight pieces (Com. Exs. 25-A to 32-A) were obtained by another Commission investigator from various customers of Stanrich. Seven of these eight pieces purport to be samples of interlining fabric actually manufactured and sold by Stanrich and the eighth (Com. Ex. 31-A) is a blanket also alleged to have been manufactured and sold by Stanrich.

Identification tags attached to the various samples of interlining fabric describe them as containing "All Wool—Exclusive of Ornamentation." According to tests made by the National Bureau of Standards these fabrics contain varying amounts of non-wool fibers. The amount of non-wool fiber in most of the samples is approximately 9 percent, although one sample (Com. Ex. 32-A) is as much as 20 percent non-wool and another (Com. Ex. 25-A) is as high as 32 percent non-wool. The blanket (Com. Ex. 31-A) tested 98 percent wool and counsel supporting the complaint has waived any claim of misbranding with respect to it. Although the reports of the tests state that the various samples reflect "wool fiber damage" which is considered indicative of the presence of reused or reprocessed wool, they concede that there is no method known for the quantitative determination of such reused or reprocessed fiber. According to respondent Marcus and the expert witness Musgrave, the presence of damaged fiber may be the result of the rather harsh picking and garnetting process to which the thread and card waste is subjected in reducing them to fiber form, and not to the presence of reused or reprocessed wool. On the present state of the record no finding can be made as to the presence of reused or reprocessed wool in the samples received in evidence. This leaves as the primary issue for disposition the question of whether respondents are responsible for misbranding wool products containing substantial quantities of non-wool fiber.

Respondents concede that the three pieces of fabric obtained from their place of business were manufactured by Stanrich but, for the reasons which will hereafter appear, contend that no claim of misbranding may be based thereon. They likewise admit that the blanket (Com. Ex. 31-A) and one of the seven pieces of interlining fabric (Com. Ex. 27-A), which were obtained from Stanrich's customers, were manufactured and sold by Stanrich. While admitting that they sold the remaining six pieces of interlining fabric to various customers, respondents deny having manufactured these pieces and deny responsibility for their misbranding. A considerable portion of the evidence in this proceeding was devoted to the question as to whether these six pieces of fabric were manufactured by Stanrich. Since in the opinion of the undersigned a resolution of this issue is important to the outcome of this proceeding, it will be disposed of first.

1. The Six Pieces of Interlining Fabric Obtained From Stanrich's Customers

Respondents' explanation of how six pieces of fabric which they had not manufactured came into the hands of their customers is substantially as follows:

During the early part of 1951, Stanrich sold several hundred pieces of interlining fabric to one of its customers in New York City, Henry Gewirtz Textile Corp. (hereinafter referred to as Gewirtz). According to respondents, the market in textiles at the time of these sales was rising sharply due to the Korean War, but that after a slump in the market later in the year, Gewirtz, in August 1951, insisted on returning most of the fabric, using as a pretext the claim that he had found it was not all-wool. Respondents accepted the return of the merchandise, agreeing to refund the purchase price and pay Gewirtz \$350.00 in damages. According to respondents, they later concluded, after investigation, that Gewirtz had not returned merchandise which they had sold him, but had substituted for it other part-wool fabric which had been manufactured by other concerns and had substituted respondents' identification tags for those of the other manufacturers. Respondents, accordingly, refused to pay Gewirtz the \$350.00 in damages. In the meantime, however, respondents had resold the merchandise to other customers, being under the impression that it was actually the all-wool fabric which they had sold to Gewirtz.

In support of their defense, respondents showed first that during the early part of 1951 Gewirtz had purchased several hundred pieces of part-wool interlining fabric from Thayer Woolen Mills and that during the spring and summer of that year Gewirtz had also had made up for him on a commission basis, substantial quantities of interlining fabric by one Paul Bousquet from wool stocks which Gewirtz had purchased. Although the wool stocks used by Bousquet were supposed to be all-wool, Gewirtz later ascertained that the cloth contained substantial quantities of non-wool fiber. It further appears that when Gewirtz returned several hundred pieces of interlining fabric to Stanrich in August 1951 he had on hand a substantial quantity of the part-wool interlining fabric which had been manufactured for him by Thayer and Bousquet. The record also discloses that when the fabric, alleged to have been respondents, was returned to a public warehouse in New York by Gewirtz, for the account of Stanrich, the wrappings on a number of pieces were torn and had to be replaced, and some of the identification tags had to be replaced. It further appears that it was Gewirtz' practice to remove the manufacturer's identification tag from fabric before selling it to his customers and there is reason to believe that Gewirtz had on hand at the time of the return a number of Stanrich's identification tags.

This evidence tends to establish the existence of circumstances under which an interchange or confusion of merchandise, such as that claimed by respondents, could have occurred. It is true that the mere existence of an opportunity for the substitution of merchandise is a

fact of limited persuasive value when considered by itself. However, respondents offered additional evidence to show that some of the fabric claimed to be theirs contains identifying features different from the type of fabric manufactured by them and, further, that some of the features of the fabric alleged to be theirs were similar to that of cloth manufactured by Bousquet or Thayer.

Among the identifying features claimed by respondents to distinguish some of the disputed cloth from their own was the fact that several pieces contain a "selvage" or bound edge on only one side of the cloth, whereas their own fabric has a selvage on both sides. Ordinarily when cloth is woven both sides have a bound edge as it comes off the loom. However, sometimes it is woven in double width with a space and connecting threads in the center, which are later cut, and the cloth is rolled into two separate rolls of narrower width, each having a selvage on only one side. In this connection, respondents established that the cloth woven by Bousquet for Gewirtz was of this latter type. It was woven on a 92-inch loom and was split down the middle into two pieces, each approximately 42-inches wide, with a selvage on only one side of each piece. The record also discloses that respondents' cloth was woven on a 72-inch loom, which was the only loom they had at the time, and that their cloth was woven in 60- or 42-inch widths with a selvage on both sides. Ordinarily, it would not be possible to weave two bolts of 42-inch cloth simultaneously on a 72-inch loom. While counsel supporting the complaint attempted to show that this could be done by a freak process, the method is not commercially feasible and no reason was suggested why respondents would have used it. Moreover, the resulting fabric would not have a selvage on both sides.

Another feature which respondents claim distinguishes some of the disputed fabric from their own is the fact that the yarn of which it is composed has been spun with a left twist to it, whereas their own fabric, at the time in question, was made from yarn with a right twist. While counsel supporting the complaint sought to show through an expert witness that the direction of the twist is only one of many features used in identifying cloth, it is undoubtedly a relevant negative factor in eliminating a particular manufacturer as having woven a particular piece of cloth. Counsel supporting the complaint also endeavored to show that the direction of the twist of the yarn could be changed by changing all of the bands on the spinning mule. However, this is a time-consuming and commercially wasteful process, and no reason is suggested why respondents would have undertaken it during the period at issue.¹

¹ During 1952, after respondents had bought out the Thayer mill, which had several mules with a left twist, respondents changed their own single mule from right to left twist to make it conform with the others. This, however, occurred after the events at issue had transpired and merely demonstrates a commercially feasible circumstance when a manufacturer might want to change the direction of the twist in his fabric.

Finally, respondents contend that the samples of the disposed cloth are all different from their own cloth in that the samples all have a rather coarse texture due to the fact that they have not been put through a "fulling" or "felting" process in their finishing, unlike respondents' own cloth which they claim was always put through such a process. A comparison of the samples which respondents concede are theirs (Com. Exs. 22, 23, 24, and 27-A) with those which respondents deny manufacturing, discloses that the former have a soft, felted type of finish which appears to be different from the finish of the latter samples. The testimony of respondent Marcus that his cloth was always put through a fulling process in the finishing was corroborated, in part, by the witness Musgrave, who testified that during 1950-1951 while he was employed by a company which finished respondents' cloth it was always put through the fulling process. While it is possible that other firms which did finishing for respondents during this period did not put it through a fulling process, no evidence to this effect was offered by counsel supporting the complaint and the undersigned feels obliged to accept the apparently credible testimony of Marcus, supported as it was by the witness Musgrave.²

The evidence offered by respondents was thus sufficient to establish the following significant facts with respect to respondents' cloth during the period at issue: (1) that respondents' cloth contained a selvage on both ends; (2) that it is highly improbable that they could have woven two pieces of 42-inch cloth having a single selvage, simultaneously on their 72-inch loom; (3) that their cloth was made from yarn having a right twist; and (4) that their cloth was put through a fulling or felting process.

An examination of the six disputed samples in the light of the above facts reveals the following:

1. Commission's Exhibits 26-A, 28-A, and 30-A all appear to be 42 inches wide. They were identified by the witness Bousquet as being 42-inch cloth woven double on a wide loom and as having a selvage on only one side. While Bousquet conceded that it was possible that the samples in evidence were originally of a wider width and had been cut down to 42 inches, the witness Musgrave confirmed that it was 42-inch cloth. Although the Commission's investigator, Scott, testified in rebuttal that it was his belief that the samples he had received were all cut from 60-inch fabric, this possibility would appear to be precluded by the relatively low price of the fabric.³ Moreover, the evenness of the cut at the unbound edge, as compared with some

² Musgrave was conceded to be an unbiased witness by counsel supporting the complain-

³ The fabric was sold at from 44¢ to 55¢ per yard, as compared to 70¢ and upward from the 60-inch fabric.

of the samples which were obviously cut from a large piece, militates against the possibility of these samples having been cut from a wider piece.

2. According to the credible testimony of the witness Musgrave, Commission's Exhibits 25-A, 28-A, and 29-A are comprised of yarn having a left twist, thus distinguishing them from respondent's fabric spun from yarn with a right twist. In this connection it may be noted that the sample conceded by respondents to be theirs (Com. Ex. 27-A) has a right twist in the yarn.

3. None of the six samples in question appear to have the soft felted finish which is characteristic of those samples admitted to be respondents. In this connection it may be noted that Commission's Exhibit 22, which was given to the Commission's investigator as a sample of fabric manufactured by respondent under Style Numbers 570, 601, and 801, and Commission's Exhibit 27-A, which was obtained by another investigator from one of respondents' customers and bears Style Number 801, both appear to have the soft felted finish which was described by the respondent Marcus and by the witness Musgrave as resulting from the fulling process to which respondents' fabric was subjected during the finishing operation. It may also be noted that the disputed samples bear the Style Numbers 570, 601, or 801, and, accordingly, it would be assumed that they would be similar in texture and finish to the two samples bearing those numbers which respondents concede are theirs.

4. Commission's Exhibit 32-A is approximately 80 percent wool and 20 percent rayon, which coincidentally were the specifications of the fabric purchased by Gewirtz from Thayer.

5. While four of the contested pieces of cloth bear identification tags with Stanrich's name as the manufacturer, the tags on two of them (Com. Exs. 25-A and 32-A) do not contain the name of any manufacturer and respondents deny that they are their tags. Although the piece number on one of the tags (Com. Ex. 32-B) coincides with that on Stanrich's invoice purporting to cover the sale, and style number on the tag (570-16) differs from the style number on the invoice (801-12).

SUMMARY

The question of whether Stanrich manufactured the six disputed pieces is one which is not easy of decision. It must be conceded that the evidence offered in the first instance by counsel supporting the complaint is persuasive of a finding in the affirmative on that issue. The almost precise correlation between the information appearing on the identification tags attached to the merchandise and Stanrich's

covering invoices is strong evidence that the fabrics were manufactured by Stanrich. The undersigned is frank to admit that respondents' explanation of how these fabrics came into their customers' hands at first impressed him as somewhat strained. However, the evidence which they developed gives to respondents' theory a reasonable degree of plausibility. Thus, the evidence offered by them establishes a background in which a confusion of fabrics and identification tags could have taken place. It further establishes that each of the fabrics in issue contains one or more identifying features dissimilar from the type of fabric manufactured by Stanrich and, that in several instances, the contested fabrics are similar to fabrics manufactured by the two concerns from which Gewirtz purchased interlining fabric.

Although the matter is not entirely free from doubt, the undersigned cannot conscientiously find, on the present state of the record, that the fabric in question was manufactured by Stanrich. While it may be that on the basis of the showing made by respondents no affirmative finding could be made as to what actually occurred with respect to alleged interchange of fabrics, the undersigned is not required to make any such finding in order to dispose of this issue. Counsel supporting the complaint, as the proponent of the issue that respondents manufactured these fabrics, has the burden of establishing his position by a fair preponderance of the evidence. This, in the opinion of the undersigned, he has not done since the evidence offered by respondents is sufficient to at least balance the showing made by him.

In his proposed findings, counsel supporting the complaint has suggested an alternative theory on which respondents can be held accountable for the misbranding of these six pieces of fabric. Counsel argues that even assuming, *arguendo*, Stanrich did not manufacture the fabric, that by admittedly accepting the return of the merchandise from Gewirtz and then reselling it, respondents thereby sold and distributed "in commerce" a misbranded wool product in violation of Section 3 of the Wool Products Labeling Act. While this conclusion would be valid if the resale or distribution to respondents' customers had taken place "in commerce", unfortunately, from the viewpoint of counsel supporting the complaint, the resale and distribution of the merchandise all took place within New York City. The merchandise which Gewirtz returned had been stored partly in his own place of business and partly in a public warehouse, both located in New York. The merchandise in Gewirtz' place of business was returned to the warehouse for Stanrich's account and that in the warehouse was retitled to Stanrich. Thereafter, so far as appears from the record, it

was all reshipped or resold to other concerns in New York City. The samples of the six disputed pieces were all obtained from customers located in New York. Unless, therefore, the merchandise was originally manufactured by respondents and shipped by them from Massachusetts, no finding can be made that the resale and shipment which took place in New York City occurred "in commerce".

2. The Three Samples Obtained From Respondents

As previously mentioned, three samples of fabric, admitted by respondents to be theirs, were obtained by a Commission investigator from respondents' place of business. All of these samples were found, on test by the National Bureau of Standards, to be approximately 93 percent wool. Respondents contend that no violation occurred with respect to these three samples since no orders were ever taken for these fabrics and none of them were sold.

The samples in question were obtained by the investigator during February 1952. According to the testimony of respondent Marcus his company had practically ceased making interlining fabric by the end of 1951, and thereafter was engaged in making blankets almost exclusively. This fact was confirmed by the testimony of the Commission's investigator, Ott, to the effect that he was advised by Marcus at the time of the investigation that Stanrich was only making blankets at the time, although it did have on hand a small quantity of interlining fabric. According to Ott, Marcus told him that two of the samples which he gave Ott (Com. Exs. 23 and 24) were samples of fabric "which he intended to manufacture in the near future depending upon the demand." There is no evidence in the record that such fabric was ever actually manufactured or sold to customers in commerce; nor is there any evidence that samples of this fabric were ever used to promote or effect sales in commerce (cf. Rule 22, Rules and Regulations promulgated under the Wool Products Labeling Act). It seems clear, therefore, that with respect to Commission's Exhibits 23 and 24 the record fails to establish any violation of the Act.

With respect to the third sample received from Marcus (Com. Ex. 22), Ott testified that Marcus told him that this was the type of material "he had been manufacturing which was sold under different and various style numbers." The style numbers appearing on this sample are 570, 601, and 801. The only evidence in the record of any actual sales of misbranded merchandise manufactured by respondent and bearing any of these style numbers is Commission's Exhibit 27-A (bearing Style Number 801) to which reference has already been made.

CONCLUSION

Out of eleven pieces of fabric offered by counsel supporting the complaint to establish his case, only two (Com. Exs. 27-A and 31-A) were shown to have been manufactured by respondents and to have been sold in commerce. Commission's Exhibit 31-A, the blanket, is 98 percent wool and counsel supporting the complaint has waived any claim of misbranding based thereon. Commission's Exhibit 27-A thus remains as the only piece of evidence of actual misbranding which took place in commerce, with the possible exception of Commission's Exhibit 22, which was merely a sample of merchandise theretofore sold.

The question arises whether this is sufficient evidence to require the issuance of a cease and desist order in the public interest. While it is true that numerous violations need not be shown in order to establish public interest, the insubstantiality of the evidence of actual violation is a factor to be considered. In such a setting the matter of the likelihood of similar violations occurring in the future has an important bearing on the disposition to be made of the proceeding. With regard to the latter consideration, the evidence shows that since the events at issue transpired, respondents have ceased making interlining cloth, that they are now making blankets exclusively, that the evidence with respect to their making of blankets discloses no substantial violations, and that they are no longer occupying the relatively small plant where due to the inefficiency of their operations violations might have previously occurred, but are now occupying a larger plant where they are apparently endeavoring to be more careful in the testing of the wool content of the fabrics made by them.

Under all circumstances, it is the opinion of the undersigned that the public interest does not require the issuance of a cease and desist order, with its possible adverse effect upon respondents in their new operation. In the opinion of the undersigned the bringing of the present proceeding will probably constitute sufficient corrective action for any possible violation which may have occurred. It will therefore be ordered that the present proceeding be dismissed, without prejudice however, to its reopening in the event respondents' future conduct discloses the need for corrective action.

The undersigned being of the opinion, for the reasons above given, that the public interest does not require the taking of any corrective action in this proceeding.

It is ordered, That the complaint in this proceeding be, and the same hereby is, dismissed, without prejudice.

STIPULATIONS

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

8241.¹ **Plumber's Products—Effectiveness, Nature, Safety, etc.**—Stipulation No. 8241 has been amended so that it now reads:

Hercules Chemical Co., Inc., is a New York corporation, with its principal place of business in New York, N. Y., engaged in offering for sale and selling in commerce, products designated "Hercules Fuel Oil Sludge Solvent," "Hercules Soot Destroyer," "Hercules Boiler Solder," and "Hercules Plastic Lead."

Samuel A. Wander, is an individual doing business as The Economy Plumber Co., with his principal place of business located in New York, N. Y., engaged in offering for sale and selling in commerce, products designated "Economy Fuel Oil Sludge Solvent," "Economy Soot Destroyer," and "Economy Plumber Boiler Solder."

Hercules Chemical Co., Inc., entered into an agreement in connection with the offering for sale, sale, and distribution of their products or any other products of substantially the same compositions or possessing substantially the same properties to cease and desist from representing directly or by implication:

Hercules Fuel Oil Sludge Solvent

- (1) By the use of the designation "sludge solvent" in the brand name, or by any other means, that the product removes sludge or waste from fuel oil tanks;
- (2) That the product prevents or removes the formation of carbon deposits on burner tips or keeps strainers or nozzles clean;
- (3) That the product prevents rusting or pitting of fuel oil tanks;

Hercules Soot Destroyer

- (4) That the product can be used without danger to the heating system or user or that it is harmless to heating systems;

Hercules Boiler Solder

- (5) That the product is a metallic compound;
- (6) That the product is a "solder" unless it is clearly disclosed that it contains less than 5% of any metallic substance;
- (7) That the product makes a permanent repair;

¹ Amendment. See 48 F. T. C. 1651.

Hercules Plastic Lead

(8) By the use of the word "lead" in the brand name, or by any other means, that the product contains lead;

Samuel A. Wander entered into an agreement in connection with the offering for sale, sale, and distribution of his products or any other products of substantially the same compositions or possessing substantially the same properties, he will cease and desist from representing directly or by implication with respect thereto:

Economy Fuel Oil Sludge Solvent

(9) By the use of the designation "sludge solvent" in the brand name, or by any other means, that the product removes sludge or waste from fuel oil tanks;

(10) That the product prevents or removes the formation of carbon deposits on burner tips;

Economy Soot Destroyer

(11) That the product can be used without danger to the heating system or user or that it is harmless to heating systems;

Economy Plumber Boiler Solder

(12) That the product is a metallic compound;

(13) That the product is a "solder" unless it is clearly disclosed that it contains less than 5% of any metallic substance;

(14) That the product makes a permanent repair.

Hercules Chemical Co., Inc., and Samuel A. Wander, and each of them, further agreed that as thus amended, all the terms and provisions of Stipulation No. 8241 shall remain in full force and effect. (1-23409, May 6, 1954.)

02369. ¹ **Cosmetics—Qualities, Properties or Results and Testimonials.**—Stipulation No. 02369 has been amended so that it now reads:

Plough, Inc., a corporation, Plough Building, Memphis, Tenn., vendor-advertiser, was engaged in selling cosmetics designated Black and White Skin Soap, Black and White Ointment, Black and White Bleaching Cream, Black and White Lemon Bleach Cream, Black and White Skin Whitener, Black and White Cleansing Cream, Black and White Cold (Tissue) Cream, Black and White Glossine, Black and White Quinine Pomade, and Black and White Hair Dressing.

In a stipulation filed and approved by the Federal Trade Commission the vendor-advertiser agreed, in connection with the dissemina-

¹ Amendment. See 28 F. T. C. 1870.

tion of future advertising, to cease and desist from representing directly or by implication:

(a) That Black and White Ointment and Black and White Skin Soap together or separately will drive out itch or give quick relief from itch or skin irritations, pimples, bumps, rashes, or blemishes, or be beneficial for said conditions except to afford palliative relief, or will give one a smooth or healthy skin;

(b) That Black and White Ointment and Black and White Skin Soap together or separately will cause one's skin to change immediately or will clear up blotches, bumps, or other discolorations, or will give one skin health or blessed relief from skin troubles;

(c) That Black and White Ointment and Black and White Skin Soap together or separately will free one's pores of dust and dirt or have a magical way of producing desired results;

(d) That Black and White Ointment and Black and White Skin Soap together or separately are a sure treatment or the "old reliable treatment";

(e) That by the use of Black and White Ointment and Black and White Skin Soap, separately or in combination, one may easily or quickly banish the mask of pimples or other skin troubles or that people depend upon this combination treatment to keep their skin bright and free of pimples and blemishes, or that either of said products will dry up or relieve pimples, rashes, or other skin blemishes;

(f) That Black and White Ointment will clear up athlete's foot or relieve stubborn ringworm infection;

(g) That Black and White Bleaching Cream is a tonic bleach cream or skin purifier, or will remove pimples or blackheads, tone the skin texture or cause one's skin to become fairer the first night or will cause one's skin to look like new;

(h) That Black and White Bleaching Cream fades out dark spots quickly, or better than other creams, or clears up pimples, bumps, blackheads or erases muddiness, sallowness and moth patches;

(i) That Black and White Bleaching Cream lightens dark, ugly skin to almost unbelievable fairness, or that by its use one's skin may hold any desired shade;

(j) That Black and White Bleaching Cream is the world's most effective skin lightener or magic cream or that a person who wants a clear, light, bright skin should use Black and White Bleaching Cream;

(k) That sallow, muddy and dark complexions, redness and other skin blemishes are only a mask which may be easily removed with Black and White Bleaching Cream or that Black and White Bleaching Cream penetrates to the skin's fourth layer where coloring is regulated, or that by its use dark skin will be flaked off, or that the same lightens complexions in half the time of ordinary bleaches;

(l) That by the use of Black and White Bleaching Cream one may be rid of large pores or free from blackheads, pimples, and blemishes, or that the same aids in giving one a skin that is fair, smooth, soft, finely textured or like new;

(m) That Black and White Lemon Bleach Cream is made from a secret formula or that the same keeps one's skin radiantly clear or will reduce enlarged pores;

(n) That Black and White Skin Whitener will clear one's skin;

(o) That Black and White Cleansing Cream penetrates down to the bottom of the pores or absorbs all impurities and allows the pores to shrink back to normal, or that the same accomplishes deeper pore cleansing than any other cream;

(p) That Black and White Cleansing Cream will give one's skin a new clearness, or a clear, vivid and healthy skin, or a freshness and fine texture with every particle of dust, dirt, and make-up removed from the pores;

(q) That Black and White Cleansing Cream removes, or aids in removing, imbedded impurities or hardened secretions, prevents blackheads, pimples, and other skin troubles, or will give one a clear, radiant, flawless skin;

(r) That Black and White Cold (Tissue) Cream is a tonic or food for the skin or is rich and nourishing, or will replace the oils in the skin, erase wrinkles or lines from the face, strengthen sagging muscles, correct dropping chin lines, plump out hollows in the neck or cheeks, keep one's skin firm or youthful, or will be absorbed by the skin;

(s) That Black and White Glossine stops itching scalp;

(t) That Black and White Quinine Pomade ends dandruff, stops itching scalp, restores the circulation to the scalp or causes more nourishment to be brought to the roots of the hair;

(u) That Black and White Quinine Pomade will cause each strand of hair to become soft and smooth and stay exactly in the position combed, or will promote hair growth and the health of both hair and scalp;

(v) That all movie and stage stars use Black and White Hair Dressing or that the same will release the twist and curl of every strand of hair;

(w) That Black and White Peroxide Vanishing Cream will protect the skin against darkening or coarsening or will keep one's skin healthy, fair and light, or will provide a film which will lock in skin beauty and seal out the damaging effects of wind and weather;

(x) That Black and White Mogro will promote a full, luxuriant growth of hair or will grow hair;

(y) That Black and White Mogro goes into the scalp or will nourish the scalp or glands or that the same contains double acting oils;

(z) That Black and White Mogro will give one an even growth of hair or is the secret for growing long hair or is a rapid grower, or in any other way represent that the same will aid in growing hair.

The said Plough, Inc., further agreed not to publish, or cause to be published, any testimonial containing any representations contrary to the foregoing agreement.

It is further stipulated and agreed, That, as thus amended, all of the terms and provisions of said Stipulation No. 02369 shall remain in full force and effect. (5420010, June 15, 1954.)

8480. Sewing Machines and Heads—Foreign as Domestic.—Balin Export Co., Inc., and Elite Sewing Machine Corp., New York corporations, with their offices and principal place of business located in New York, N. Y., and Julius Margulies and Leo Balin, officers thereof, engaged in the sale in commerce, of sewing machine heads imported by them from Japan, entered into an agreement that in connection with the offering for sale, sale and distribution of sewing machine heads, they will cease and desist from :

Offering for sale, selling or distributing foreign-made sewing machine heads or sewing machines of which foreign-made heads are a part, without clearly and conspicuously disclosing on the heads the country of origin thereof, in such a manner that it cannot readily be hidden or obliterated. (1-24419, July 8, 1953.)

8481. Check-Writing Machines—Rebuilt as New and Free Goods.—Paymaster Corp., an Illinois corporation, with its principal place of business located in Chicago, Ill., and T. B. Hirschberg, Jr., V. J. Walters, W. M. Williams and R. A. Welch, officers thereof, engaged in the business of offering for sale and selling in commerce, new and rebuilt check-writing machines designated "Paymaster," entered into an agreement that in connection with the offering for sale, sale and distribution of rebuilt check-writing machines now known as "Paymaster," whether sold under that name or any other name, they, and each of them, will cease and desist from :

1. Representing directly or by implication that such rebuilt machines are new ;

2. Selling or offering for sale rebuilt, remanufactured, reconditioned, overhauled, repaired, or refinished check-writing machines without clearly marking same in such a manner as to affirmatively disclose to the purchasing public that such machines are rebuilt, remanufactured, reconditioned, overhauled, repaired, or refinished, as the case may be, or that they are not new ;

3. Using the word "free" or any other word or words of similar import or meaning to designate, describe or refer to merchandise which is not in truth and in fact a gift or gratuity or is not given to the recipient thereof without requiring the purchase of check-writing

machines or of any other merchandise or requiring the performance of some service inuring directly or indirectly to the benefit of the Paymaster Corporation, T. B. Hirschberg, Jr., V. J. Walters, W. M. Williams or R. A. Welch. (1-24603, July 8, 1953.)

8482. Rugs—"Colorfast," "Wash-Fast" and Safety.—Morrill Manufacturing Co., an Illinois corporation, with its principal place of business located in Chicago, Ill., engaged in the business of offering for sale and selling in commerce, latex-backed cotton tufted rugs, entered into an agreement that in connection with the offering for sale, sale and distribution of its rug products it will cease and desist from:

(1) The use of the term "colorfast", or any other term or terms of similar import or meaning, unless the color in the rugs will not show any substantial change, fading or deterioration throughout the useful life of the rugs under ordinary conditions of use;

(2) The use of the term "wash-fast", or any other term or terms of similar import or meaning, unless the color in the rugs will show no substantial change, fading or deterioration of color throughout the useful life of the rug from such washing as it is likely to be subjected to during its useful life;

(3) Representing that the non-skid feature of the rugs eliminates slipping or accidents incident thereto. (1-23492, July 8, 1953.)

8483. Drug Preparation—Qualities, Properties or Results, Comparative Merits and Free Goods.—Consolidated Royal Chemical Corp. and Hypercin, Inc., corporations organized and existing under the laws of the States of Delaware and Illinois, with their principal place of business in Chicago, Ill., engaged in the offering for sale, sale and distribution in commerce, of a drug preparation designated "Hypercin," entered into an agreement that in the dissemination of advertising that preparation, or any other preparation of substantially the same properties, they and each of them will cease and desist from representing directly or by implication:

(1) That such preparation is a cure or remedy for stomach ulcers;

(2) That such preparation is effective in the relief of stomach pains and stomach distress, without regard to the cause;

(3) That such preparation will do more than neutralize excess acid in the stomach and temporarily relieve symptoms of pain and distress caused by an excess acid condition;

(4) That such relief as the preparation will afford is accomplished in seconds, or that nothing else is as effective;

(5) That such preparation protectively coats the stomach lining;

(6) That such product speeds up the emptying time of the stomach; and from:

(7) Using the word "free" or any other word or words of similar import to designate or describe any article which is not in fact a gift or gratuity, or any article for which payment is required even though provision is made for refund after a trial period. (1-23540, July 8, 1953.)

8484. **Stamps and Stamp Albums—Source or Origin, Quantity and Size of Product.**—Stamp and Album Co. of America, Inc., a New York corporation, with its office and principal place of business located in New York, N. Y., engaged in the business of offering for sale and selling in commerce, assortments of postage stamps, including an assortment designated "Pacific Mixture," stamp albums and various other articles used by stamp collectors, entered into an agreement that in connection with the distribution of assortments of postage stamps and stamp albums it will cease and desist from:

(1) Offering for sale, selling or delivering to others for sale to the public assortments of stamps predominantly of United States of America origin in connection with representations such as "Pacific Mixture," pictures of Oriental or Far Eastern scenes, or in connection with any representation, pictorial or otherwise, which represents, or from which a reasonable inference can be drawn, that a substantial, and not an inconsequential, number of stamps contained in such assortments are of origins which are foreign to the United States of America;

(2) Offering for sale, selling or delivering to others for sale to the public stamp assortments in connection with any representation to the effect that such assortments consist of more stamps than is actually the fact, or in connection with any representation which, either directly or otherwise, implies, or from which a reasonable inference can be drawn, that such stamps are predominantly of foreign, rather than of United States of America, origin;

(3) Offering for sale, selling or delivering to others for sale to the public stamp albums in connection with any representation that such albums contain more spaces for stamps than is actually the fact. (1-24702, July 8, 1953.)

8485. **Drug Product—Qualities, Properties, or Results.**—Miller's Medicine Co., a Tennessee corporation, with its principal office and place of business located at Nashville, Tenn., Rogers Caldwell, C. Lee Raines, and Ira C. Parker, Jr., officers thereof, engaged in the business of offering for sale and selling in commerce, a drug product designated "Miller's Herb Extract," entered into an agreement that they and each of them will cease and desist from disseminating or causing to be disseminated, any advertisement for that product or any other product of substantially the same composition or possessing substantially the same properties, which represents directly or by implication:

(a) That the product (1) prevents constipation, (2) eliminates constipation, (3) affords permanently regular habits to users, or (4) has any beneficial effect in cases of constipation except to afford relief from occasional constipation;

(b) That the product (1) cleanses the system, (2) eliminates poison from the system, (3) assures good health, (4) confers vitality, (5) conditions the vital organs, or (6) prevents or cures colds;

(c) That the product (1) is effective in regulating the liver or (2) is effective in relieving or preventing neuritis, neuralgia, or yellow jaundice;

(d) That the product has a beneficial effect in cases of headaches, biliousness, lack of energy, nervousness, dizzy spells, sluggishness, bad breath, lassitude, or loss of appetite except to relieve those conditions when they are due to constipation;

(e) That the product is a tonic. (1-24766, July 8, 1953.)

8486. **Trade Magazine—Volume of Circulation.**—West Coast Publications, Inc., a California corporation, with its office and principal place of business located in Los Angeles, Calif., engaged in the business of publishing a trade magazine designated *Western Printer and Lithographer*, and in the sale and distribution of said magazine in commerce, entered into an agreement that in connection with the offering for sale and sale or advertising space in its trade magazine designated *Western Printer and Lithographer*, whether sold under that name or any other name, it will cease and desist from representing in any manner that the volume of total circulation of said trade magazine is other than that volume of total circulation which is in accordance with the facts. (1-24177, July 8, 1953.)

8487. **Hearing Aid Devices—Effectiveness, Size, and Guarantee.**—Rochester Acoustical Laboratories, Inc., a Minnesota corporation, with its principal place of business located in Rochester, Minn., engaged in the business of offering for sale and selling in commerce, hearing aid devices, entered into an agreement it will cease and desist from disseminating or causing to be disseminated, any advertisement for hearing aid devices which represents directly or by implication:

(1) By pictorial representation, the use of the statement "One tiny unit is all you wear," or otherwise, that its hearing aid devices require less equipment than all parts essential to the functioning thereof;

(2) By the use of depictions, or otherwise, that the case, containing the microphone, transmitter, and batteries, constitutes the entire apparatus of its hearing aid devices;

(3) Through the use of such phrases as "no button in the ear," or otherwise, that any of its hearing aid devices which employ an ear mold or a tube include nothing worn in or leading to the ear;

(4) Through the use of such words, terms, and phrases as "invisible," "even friends and relatives needn't know you're wearing a hearing aid," or otherwise, that any device which is not completely concealed when worn by any user is invisible or cannot be seen;

(5) That its hearing aid devices are fully guaranteed for one year, unless the terms and limitations of the guarantee are clearly disclosed in direct connection therewith. (1-24506, July 8, 1953.)

8488. **"Silv-R-Cote"**—Qualities, Properties or Results and Comparative Merits.—J. N. T. Mfg. Co., Inc., a New York corporation, with its place of business in New York, N. Y., engaged in the business of offering for sale and selling in commerce, a preparation designated "Silv-R-Cote," entered into an agreement that in connection with the offering for sale, sale and distribution of that preparation or any other preparation of the same or substantially the same composition, it will cease and desist:

1. From representing that the said product reinforces silverplate or plates Sheffield, or otherwise representing directly or by implication that it deposits silver on silver, and from representing directly or by implication that it coats other than the worn areas of silverware and Sheffield where the base metal is exposed;

2. From representing directly or by implication that repeated application of the product will provide a coating any thicker than the original application;

3. From representing directly or by implication that the product renews silverware.

4. From making comparisons between the cost of coating articles with the said product and the cost of having them silver plated, in such manner as to represent, directly or by implication that the coating which may be applied by the said product is comparable to that put on by commercial plating. (1-24526, July 8, 1953.)

8489. **Deodorant**—Qualities, Properties or Results.—Bridgeport Brass Co., a Connecticut corporation, with its principal place of business located in Bridgeport, Conn., engaged in offering for sale and selling in commerce, a deodorant designated "Good-aire," entered into an agreement that in connection with the offering for sale, sale and distribution of that product, or any other product of substantially the same composition or possessing substantially the same properties, it will cease and desist from representing directly or by implication:

By the use of such words as "banish," or by any other means, that the product physically destroys odor particles. (1-23941, July 15, 1953.)

8490. **Carbon Paper Product**—Composition, Domestic Business as Foreign, Distress Merchandise, etc.—Paper and Ribbon Coating Works,

Inc., a New York corporation, with its principal place of business located in Brooklyn, N. Y., engaged in the business of offering for sale and selling in commerce, a carbon paper product designated "Parico's Plastic" Carbon Paper, entered into an agreement that in connection with the offering for sale, sale and distribution of that product it will cease and desist, by or through its agents, officers or any corporate device, from representing directly or by implication:

(1) by use of the word "Plastic" as part of the said product's brand name, or in any other manner, that the said product is of a plastic composition;

(2) Through the use by its officers or agents of business cards which bear incomplete or inaccurate names with foreign addresses, or in any other manner, that the aforesaid product is of foreign origin or that such corporate officers or agents represent bona fide foreign enterprises having offices and places of business located abroad;

(3) That any quantity of said product, by reason of cancellation of local or foreign orders therefor or by reason of any circumstances, is distress merchandise or that any quantity of said product is offered for sale at any price lower than its customary or usual selling price when such is not the fact; or

(4) By use of copies of purchase orders which have been altered to show purchases in excess of those actually made, or in any other manner, that the sales popularity of or the demand for the said product is greater than that which has been established as a matter of fact. (1-24074, July 22, 1953.)

8491. **Fire Extinguishers and Plastic Spray—Qualities, Properties or Results.**—Bostwick Laboratories, Inc., a Connecticut corporation, with its principal place of business located in Bridgeport, Conn., engaged in the business of offering for sale and selling in commerce, "Hero" fire extinguishers and Bostwick Plastic Spray, entered into an agreement that in connection with the offering for sale, sale and distribution of those products it will cease and desist from representing:

(1) That the "Hero" fire extinguisher extinguishes all kinds of fires;

(2) That Bostwick Plastic Spray:

(a) stops indefinitely the formation of tarnish and rust;

(b) waterproofs leather and other porous surfaces without disclosing that several applications may be necessary, depending on the porosity of the article being sprayed. (1-23071, July 29, 1953.)

8492. **Insecticides—Government Approval and Qualities, Properties or Results.**—California Spray-Chemical Corp., a Delaware corporation, with its principal place of business in Richmond, Calif., engaged in the business of offering for sale and selling in commerce,

an insecticide to be used in spraying dairies, called "ISOTOX Dairy Spray," and an insecticide to be used in connection with the growing of vegetables, fruits, berries, flowers, and shrubs, called "BOTANO *de luxe*," entered into an agreement that in connection with the offering for sale, sale and distribution of said insecticides it will cease and desist from disseminating any advertisement in regard thereto which represents directly or by implication:

(1) That ISOTOX Dairy Spray—

(a) has been approved by the United States Department of Agriculture;

(b) will destroy flies or any other insects for an entire season or for any period of time which is not in accordance with the facts;

(c) will, under all conditions of use, afford residual control of flies or other insects for 12 weeks or for any other period of time which is not in accordance with the facts;

(2) That BOTANO *de luxe* is appropriate for use as an insecticide in connection with the planting and subsequent growth of radishes, carrots, turnips, or other root vegetables, unless such advertisement clearly and adequately discloses the fact that any use thereof in that connection may impair the flavor of such edible root crops. (1-24486, Aug. 12, 1953.)

8493. **Mothproofing Preparation—Qualities, Properties or Results.**—Perma-Aseptic Corp., a New York corporation, with its office and principal place of business located in Mamaroneck, N. Y., and Leo J. Rampel, individually and as an officer thereof, engaged in the business of offering for sale and selling in commerce, preparations designated "Moth-Aseptic" and "Perm-Aseptic," entered into an agreement that in connection with the offering for sale, sale and distribution of said preparations, they and each of them, will cease and desist from representing directly or by implication:

(1) That Moth-Aseptic, when used alone, mildewproofs or germproofs materials or makes them odor resistant;

(2) That Perm-Aseptic, when used alone, mothproofs fabrics or materials or makes them moth resistant;

(3) That a fabric treated with Perm-Aseptic is bactericidal or fungicidal;

(4) That a fabric treated with Perm-Aseptic is effective in protecting the wearer against disease-producing bacteria or fungi. (1-19024, Aug. 19, 1953.)

8494. **Metallic Ore Detector—Qualities, Properties or Results and Use.**—John K. Rondow and J. Larry Cassingham, copartners doing business under the name The Detectron Co., with their principal office in North Hollywood, Calif., engaged in the business of offering for sale and selling in commerce, devices for detecting metal-bearing

ores and metallic objects beneath the surface of the earth, said devices now being designated "Model 711" and "Model 27," entered into an agreement that in connection with the offering for sale, sale and distribution of said devices or any similarly constructed devices, they will cease and desist from representing directly or by implication:

(a) That said devices have any specified detection range unless in connection therewith the dependent factors and conditions are clearly set forth;

(b) That said devices are the most widely used. (1-24712, Aug. 19, 1953.)

8495. **Binoculars—Quality and Comparative Merits.**—W. Bruce Pirnie, an individual trading as The Concord Syndicate, with his principal office and place of business located at Concord, Mass., engaged in the business of offering for sale, and selling in commerce, binoculars made in Japan, entered into an agreement that in connection with the offering for sale, sale and distribution of the binoculars, he will cease and desist from:

(a) Representing that all of the lenses of the binoculars are coated;

(b) Representing that the binoculars are the equal of or superior to the best American made binoculars. (1-24709, Aug. 19, 1953.)

8496. **Books—Content and Identity of Product and Old or Used Product Being New.**—Popular Library, Inc., a New York corporation, with its principal place of business in New York, N. Y., engaged in the business of publishing, offering for sale, and selling in commerce, reprints and abridged editions of books known as "Popular Library" books, entered into an agreement that in connection with the offering for sale, sale and distribution of reprints and abridged editions of books known as "Popular Library" books, it will cease and desist from:

1. Offering for sale or selling any abridged copy of a book unless one of the following words, namely: "abridged," "abridgment," "condensed" or "condensation," or any other word or phrase stating with equal clarity that said book is abridged, appears upon the front cover and upon the title page thereof in immediate connection with the title, and in clear, conspicuous type;

2. Disseminating advertising pertaining to any abridged copy of a book unless in such advertising there is disclosed in clear, conspicuous type in immediate connection with the title the fact that the book is abridged;

3. Using or substituting a new title for, or in place of, the original title of a reprinted book, unless, upon the front cover and upon the title page thereof, such substitute title is immediately accompanied, in clear, conspicuous type, by the title under which such book was originally published. (1-23916, Aug. 19, 1953.)

8497. **Books—Content and Identity of Product and Old or Used Product Being New.**—Dell Publishing Co., Inc., a New York corporation, with its principal place of business located in New York, N. Y., engaged in the business of publishing, offering for sale and selling in commerce, reprints and abridged editions of books known as “Dell Books,” entered into an agreement that in connection with the offering for sale, sale and distribution of reprints and abridged editions of books known as “Dell Books” it will cease and desist from:

1. Offering for sale or selling any abridged copy of a book unless one of the following words, namely: “abridged”, “abridgment”, “condensed” or “condensation”, or any other word or phrase stating with equal clarity that said book is abridged, appears upon the front cover and upon the title page thereof in immediate connection with the title, and in clear, conspicuous type;

2. Disseminating advertising pertaining to any abridged copy of a book unless in such advertising there is disclosed in clear, conspicuous type in immediate connection with the title the fact that the book is abridged;

3. Using or substituting a new title for, or in place of, the original title of a reprinted book unless upon the front cover and upon the title page thereof such substitute title is immediately accompanied, in clear, conspicuous type by the title under which such books was originally published. (1-23851, Aug. 19, 1953.)

8498. **Rugs—“Colorfast” and “Non-Skid.”**—Goldblatt Bros., Inc., an Illinois corporation, with its principal place of business located in Chicago, Ill., engaged in the business of offering for sale and selling in commerce, latex-backed cotton tufted rugs, entered into an agreement that in connection with the offering for sale, sale and distribution of its rug products, it will cease and desist from:

(1) The use of the term “colorfast”, or any other term or terms of similar import or meaning, unless the color in the rugs will not show any substantial change, fading or deterioration throughout the useful life of the rugs under ordinary conditions of use;

(2) Representing that the non-skid feature of the rugs eliminates slipping or accidents incident thereto. (1-23492, Sept. 2, 1953.)

8499. **Ice Creepers and Blankets—Old as New and “Army.”**—Richard Miller, an individual trading as Johnson’s Fair, with his place of business located in Philadelphia, Pa., engaged in the business of offering for sale and selling in commerce, merchandise including ice creepers and blankets, entered into an agreement that in connection with the offering for sale, sale and distribution of those products he will cease and desist from directly or indirectly:

(1) Representing as new, ice creepers which have been used or are otherwise not in a new condition;

(2) Using the word "Army" to describe blankets not procured directly or indirectly from the Department of the Army unless the blankets so described were produced for the United States Army. (1-24770, Sept. 2, 1953.)

8500. **Cosmetic Preparation—History and Qualities, Properties or Results.**—David Tynberg and Mildred Tynberg, copartners trading as Galen Laboratories, with their principal place of business located in Pittsburgh, Pa., engaged in the business of offering for sale and selling in commerce, a cosmetic preparation designated "Jot Blemish Cream," entered into an agreement that they, and each of them, will cease and desist from disseminating or causing to be disseminated, any advertisement for that preparation or any other preparation of substantially the same composition or possessing substantially the same properties, which represents directly or by implication:

(1) That the product is a new type preparation;

(2) By the use of statements such as, "It's now available without a doctor's prescription" and "* * * you can buy it in leading drug stores without a specialist's prescription," or by any other means, that the product is a newly developed preparation which has not been generally available to the public;

(3) That the product has a direct effect on defective or abnormal skin glands;

(4) That the product eliminates acne pimples or blackheads or is a remedy or cure for such conditions or symptoms or has any value in the treatment thereof other than affording temporary relief of existing acne pimples, helping to retard the formation of further acne pimples, and softening the external portions of blackheads to facilitate the removal thereof;

(5) That the product eliminates or corrects blemishes or blemished complexions or has any value in the treatment thereof other than affording relief of the blemishes known as acne during the time the product is used. (1-24471, Sept. 10, 1953.)

8501. **Hair or Scalp Preparation—Qualities, Properties or Results and Scientific or Relevant Facts.**—Hudnut Sales Co., Inc., a New York corporation, with its principal office and place of business located in New York, N. Y., engaged in the business of offering for sale and selling in commerce, products designated "Formula A-10 For Men" and "Formula A-10 For Women," entered into an agreement that it will cease and desist from disseminating or causing to be disseminated, any advertisement for those products which represents directly or by implication:

(a) That either product prevents baldness;

(b) That adult baldness is caused by common fungi diseases of the scalp;

(c) That either product cures or prevents dandruff, scaliness of the scalp or the cause of scalp itch;

(d) That either product corrects or prevents split hair or hair breakage or that either product has any effect on hair breakage in excess of aiding in reducing such condition when due to dryness or a lack of oil in the hair;

(e) That either product keeps the hair or scalp healthy. (1-24179, Sept. 10, 1953.)

8502. **Candy Bars—Scientific or Relevant Facts and Composition.**—Curtiss Candy Co., an Illinois corporation, with its principal place of business located in Chicago, Ill., engaged in the business of offering for sale, and selling in commerce, products designated “Butterfinger Candy,” and “Baby Ruth Candy,” entered into an agreement that it will cease and desist from disseminating or causing to be disseminated, any advertisement for those products which:

(a) Represents that dextrose is the only fuel or energy sugar;

(b) Represents dextrose as being contained in greater quantity in the products than sucrose or that the dextrose therein contained furnishes more energy than the sucrose therein contained. (1-14089, Sept. 15, 1953.)

8503. **Shoe Dressing—“Rub-Proof.”**—Harri Hoffmann, an individual trading as Harri Hoffmann Co., with his office and principal place of business located in Milwaukee, Wis., engaged in the business of offering for sale and selling in commerce, shoe dressings of various colors designated “Hoffco Improved Rub-Proof Shoe Dressing,” entered into an agreement that in connection with the offering for sale, sale, and distribution of that product, or of any product of substantially the same composition or possessing substantially the same properties, he will cease and desist from representing directly or by implication:

That such products are “Rub-Proof” or will not rub off; provided, however, that nothing contained herein shall be construed as preventing any representation to the effect that said products will resist rubbing off. (1-24848, Sept. 24, 1953.)

8504. **Blankets, Interlining Materials, and Coating Fabrics—Composition and Maker or Seller.**—Carwan Woolen Corp. and Alrake Woolens Corp. are New York corporations, with their offices and principal places of business located in New York, N. Y. Paul Raich and Frank Keane, are or have been, president and vice president, respectively, of each corporation. The said corporations have for more than one year last past manufactured or caused to be manufactured for introduction into commerce, introduced or caused to be introduced into commerce, sold, offered for sale, transported, distribu-

ted or delivered for shipment in commerce, blankets, interlining materials, and coating fabrics.

Said blankets, interlining materials, and coating fabrics are wool products, as the term "wool product" is defined in the Wool Products Labeling Act of 1939, and are subject to the provisions of said Act and the Rules and Regulations promulgated thereunder.

In connection with and in the course of the sale, transportation, and distribution of the aforesaid blankets, and interlining materials, and of certain of said coating fabrics, the said corporations labeled or tagged such products as being made respectively of "All Pure Imported Cashmere," "All Cashmere Interlining," and "100% Cashmere." Through the use of the labels and tags aforesaid, the said corporations and individuals have represented that their wool products were made entirely of the hair or fleece of the Cashmere goat. The raw materials from which the said blanket, interlining materials, and coating fabrics were produced has been represented, delivered, and invoiced to Carwan Woolen Corp. and Alrake Woolens Corp., by the suppliers thereof, as consisting of 100% Cashmere. In truth and in fact said wool products were not composed entirely of the hair or fleece of the Cashmere goat but were composed in large or substantial part of fibers other than the hair or fleece of the Cashmere goat.

Carwan Woolen Corp. and Alrake Woolens Corp. and Paul Raich and Frank Keane, individually and as officers of said corporations, entered into an agreement that directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, delivery for shipment or distribution in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, of blankets, interlining materials, and coating fabrics, or any other wool product within the meaning of and subject to said Act, that they will cease and desist from misbranding such products by:

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

2. Failure to securely affix to or place on each such product a stamp, tag, label or other means of identification showing in a clear and conspicuous manner:

- (a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding five per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five per centum or more, and (5) the aggregate of all other fibers;

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

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

3. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as containing hair or fleece of the Cashmere goat when such is not the fact;

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 agreement shall be construed as limiting any applicable provisions of said Act or the Rules and Regulations promulgated thereunder. (1-24805, Sept. 24, 1953.)

8505. "Tums"—Comparative Merits and Qualities, Properties or Results.—Lewis-Howe Co., a Delaware corporation, with its principal place of business located in St. Louis, Mo., engaged in the business of offering for sale and selling a preparation designated "Tums," entered into an agreement that it will cease and desist from disseminating, or causing to be disseminated, any advertisement for that preparation, or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under that name or any other name, which represents, directly or by implication:

(1) That baking soda is an irritant which should not be taken into the stomach, or otherwise misrepresents the characteristics of baking soda or the circumstances under which its use might be harmful;

(2) That baking soda over-alkalizes or causes "acid rebound" except that such conditions may result when it is used excessively or in excessive amounts;

(3) That use of Tums does away with or eliminates the need for discretion or restraint in connection with regular or habitual over-eating, excessive smoking or over-indulgence causing excessive gastric acidity. (1-14651, Oct. 6, 1953.)

8506. Woolen Fabrics—Composition and Maker or Seller.—Emerald Textiles, Inc., a New Hampshire corporation, with its office and principal place of business located in the city of Keene, N. H., and C. W. Smith and R. C. Swan, officers thereof, are engaged in the offering for sale, sale and distribution in commerce of woolen fabrics.

Said woolen fabrics are wool products, as the term "wool product" is defined in the Wool Products Labeling Act of 1939 being composed in whole or in part of wool, reprocessed wool or reused wool, as those terms are defined in the said Wool Products Labeling Act of 1939, and are subject to the provisions of said Act and the rules and regulations promulgated thereunder.

Emerald Textiles, Inc., C. W. Smith and R. C. Swan entered into an agreement that in connection with the offering for sale, sale, transportation, delivery for transportation or distribution in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, of woolen fabrics, or any other wool products within the meaning of said Act, they and each of them will cease and desist from misbranding such products by:

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

(2) Failing to securely affix to or place on each such product a stamp, tag, label or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such wool product, 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 is five percentum or more, and (5) the aggregate of all other fibers;

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

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution, or delivering for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939. (1-24841, Oct. 1, 1953.)

8507. **Bronzed Baby Shoes—Manufacture, Durability, Guarantee, Special Price and Limited Offer.**—Karl V. Denny, an individual formerly trading as Real Bronze Company and now trading as Mrs. Denny's Products, with his principal place of business located in the city of Los Angeles, Calif., engaged in the business of offering for sale and selling in commerce, baby shoes to which he has applied a bronze colored finish, such shoes being unmounted or mounted on ashtrays, bookends or picture frames, entered into an agreement that in connection with the offering for sale, sale, and distribution of bronze colored baby shoes, whether mounted or unmounted, or of any other products processed as aforesaid, he will cease and desist from:

(1) Using the term "bronze" or "bronzed" or any simulation thereof as part of his trade name, or otherwise representing in any manner, directly or by implication, that baby shoes or other articles processed by him are coated or covered with a substantial thickness of bronze or other metal; provided that the term "bronze colored" may be used to describe articles which are colored or treated to simulate the appearance of bronze;

(2) Using the term "gold" to describe lettering which is not coated with a substantial thickness of gold; provided that the term "gold colored" may be used to describe lettering which is colored or treated to simulate the appearance of gold;

(3) Representing, directly or by implication, that baby shoes or other articles processed by him will last for 100 years or forever; or otherwise representing that the products possess greater durability than is the fact;

(4) Representing that the baby shoes or other articles processed by him are "guaranteed," unless the guarantee is unlimited or unless the terms, conditions, and limitations of the guarantee are fully disclosed in immediate conjunction with the term "guarantee";

(5) Representing, through use of purported "money saving" certificates, or otherwise, that a price is a special or reduced price, or for a limited time only, when such price is in fact the regular and customary price; or that the regular or customary price is in excess of the price at which the article is usually and normally sold. (1-24785, Oct. 1, 1953.)

8508. Arch Supports and Shoes—Medical Endorsement and Qualities, Properties or Results.—The Scholl Manufacturing Co., Inc., a New York corporation, with its principal office and place of business located in Chicago, Ill., engaged in the business of offering for sale and selling, in commerce, arch supports and shoes, and Donahue and Coe, Inc., a New York corporation, with its principal office and place of business in New York, N. Y., operating an advertising agency, entered into an agreement that each of them, in connection with the offering for sale, sale, and distribution of the arch supports and shoes will cease and desist from representing:

(a) That the arch supports assure relief;

(b) That the arch supports are universally endorsed by the medical profession;

(c) That the arch supports help restore foot balance or body posture or are useful in cases of varicose veins;

(d) That the wearing of the shoes assures avoidance of suffering from corns, callouses, bunions, or weak arches;

(e) That the shoes (1) are foot-health promoting, (2) promote proper body posture, (3) are anatomically correct, or (4) "assure" proper fit. (1-13516, Oct. 22, 1953.)

8509. Sun Lamps—Qualities, Properties or Results.—Sperti Faraday, Inc., an Ohio corporation, with its principal place of business located in Cincinnati, Ohio, engaged in the business of offering for sale and selling in commerce, sun lamps, entered into an agreement that it will cease and desist from disseminating or causing to be disseminated, any advertising for sun lamps which represents directly or by implication:

That use of its sun lamps helps build resistance to colds or other winter ills or is of value in building resistance to colds or other winter ills. (1-24768, Oct. 29, 1953.)

8510. Chair—Qualities, Properties or Results and Comparative Merits.—Barcalo Manufacturing Co., a New York corporation, with its principal office and place of business located in Buffalo, N. Y., engaged in the business of offering for sale and selling in commerce, a chair designated "Barca Lounger," entered into an agreement that in connection with the offering for sale, sale and distribution of the chair, it will cease and desist from representing:

(a) That the product (1) is a heartsaver chair or (2) is of value in the treatment of cardiac conditions except to afford, in cases where desirable, a means of resting with the head elevated and the feet lowered;

(b) That the product is of value in the treatment of nervous tension or muscular tension;

(c) That the product is of value in the treatment of poor blood circulation or varicose veins or during pregnancy except to afford a means of aiding in accomplishing a reduction of swelling in the legs while they are elevated;

(d) That the product is of any value in stimulating the appetite or in effecting a return of the appetite to normal;

(e) That the product is more refreshing generally than a bed or that results obtained from its use are superior generally to results obtained from using an ordinary bed;

(f) That the product is a posture chair or that it has any beneficial effect on posture;

(g) That the product has any effect in inducing sleep except to afford a means of relaxation;

(h) That the product provides all of the fundamental positions of a Gatch bed;

(i) That the product assures comfort or provides complete comfort or complete relaxation;

(j) That the product affords results superior to those obtained from sleep;

(k) That the product is of any value in the treatment of phlebitis except to afford a means of aiding in accomplishing a reduction of swelling in the legs while they are elevated;

(1) That the product is of any value in the treatment of arthritis or rheumatism except to afford a means of aiding in accomplishing a reduction of swelling in the knees and feet while they are elevated.

It is understood and agreed, That if at any time Barcalo Manufacturing Co. should believe that this stipulation should be modified it may petition the Federal Trade Commission for a modification fully setting forth along therewith the reasons why it so believes. (1-24476, Nov. 10, 1953.)

8511. **Chair—Qualities, Properties or Results.**—The Kenmar Manufacturing Co., an Ohio corporation, with its principal office and place of business located in East Palestine, Ohio, engaged in the business of offering for sale and selling in commerce, a chair designated “Kenmar Contoured Lounging Chair,” entered into an agreement that in connection with the offering for sale, sale and distribution of the chair, it will cease and desist from representing:

(a) That the product aids digestion;

(b) That the product is of value in the treatment of poor blood circulation except to afford a means of aiding in accomplishing a reduction of swelling in the legs while they are elevated;

(c) That the product is of value in cases of cardiac conditions except to afford, in cases where desirable, a means of resting with the head elevated and the feet lowered;

(d) That the product is of value in the treatment of asthma, except to afford a means for resting;

(e) That the product is of value in the treatment of arthritis except to afford a means of aiding in accomplishing a reduction of swelling in the knees or feet while they are elevated;

(f) That the product is a prescription to health or is affirmatively conducive to health in all cases;

(g) That the product affords anatomically correct support in all cases. (1-24520, Dec. 3, 1953.)

8512. **Hearing Aid Devices—Confidential and Scientific Data.**—Audi-vox, Inc., a Delaware corporation, with its principal place of business located in Boston, Mass., engaged in the business of offering for sale and selling in commerce, hearing aid devices, entered into an agreement that it will cease and desist from disseminating or causing to be disseminated, any advertisement for hearing aid devices which represents directly or by implication:

(1) That any of its sales literature or other data available to the general public is “confidential”;

(2) That any advertising material is impartial scientific information on hearing aids;

(3) That any advertising material is distributed as a public service. (1-24507, Dec. 3, 1953.)

8513. Oleomargarine—Nature and Preparation of Product.—J. H. Filbert, Inc., a Maryland corporation, with its principal office and place of business located in Baltimore, Md., engaged in the business of offering for sale and selling in commerce, a food product designated “Mrs. Filbert’s Oleomargarine,” entered into an agreement that it will cease and desist from disseminating or causing to be disseminated, any advertisement for that product which represents directly or by implication:

(a) That the product is a dairy product;

(b) That personal care is given to *every pound* of the product by anyone when such is not a fact;

(c) That the product is prepared (1) homestyle (2) *in small batches* or (3) other than by factory methods. (1-23881, Dec. 3, 1953.)

8514. Contact Lenses—Economy, Comparative Merits, Safety, Quality, etc.—Dr. Albert E. Winner, an optometrist, doing business under the name Invisible Lens Service, Chicago, Ill., engaged in offering for sale, fitting and selling in commerce, contact lenses of the so-called waterless type, designated “Ultra Vue Contact Lenses,” entered into an agreement that in the dissemination of advertising contact lenses of the so-called waterless type, designated Ultra Vue Contact Lenses, or any other lenses of similar construction, he will cease and desist from representing, directly or by implication:

(1) That anyone who requires glasses can be fitted with such contact lenses, or that they are economical or cost no more than ordinary eyeglasses;

(2) That such contact lenses can be worn continuously throughout the waking hours of the day or that they are more comfortable than conventional eyeglasses;

(3) That such lenses are safer than ordinary eyeglasses or that there is no record of injury to the eye caused by wearing contact lenses;

(4) That such lenses are perfected contact lenses;

(5) That this type of lense was originated in his, the said Dr. Albert E. Winner’s, laboratory. (1-24509, Dec. 16, 1953.)

8515. Silver Table Flatware—Domestic as Foreign.—Ellmore Silver Co. is a Connecticut corporation, with its principal place of business in the City of Meriden, Conn., engaged in the business of manufacturing, offering for sale, selling and distributing in commerce, sterling silver table flatware including a pattern called “Princess Ingrid.” This pattern is offered for sale and sold by the said corporation under its division and trade name Frank M. Whiting & Co.

Ellmore Silver Co. entered into an agreement that in connection with the offering for sale, sale and distribution of table flatware not

made in Denmark, it will cease and desist from using the pattern or trade name "Princess Ingrid" in advertising and labeling and in branding said product unless there shall appear in close proximity to such name, wherever used, a clear disclosure that the product is made in the United States. (1-21377, Dec. 16, 1953.)

8516. **Disinfectant—Qualities, Properties or Results, Comparative Merits and Safety.**—Spandy, Inc., now known as Dosalac Chemical Co., Inc., a New Jersey corporation, with its principal place of business located in West Orange, N. J., and Leo Roon, Joseph H. Louchheim and G. N. Coughlan, officers thereof, engaged in the sale and distribution in commerce, of a disinfectant designated "Spandy," entered into an agreement that they, and each of them, will cease and desist from disseminating or causing to be disseminated any advertisement for "Spandy" or any other preparation of substantially the same composition or possessing substantially the same properties which represents directly or by implication:

- (1) That the product kills harmful germs other products let live;
- (2) That the product kills all germs;

(3) That any laboratory tests prove Spandy has germ-killing properties which are superior to the killing properties of competing products when such tests have been conducted in a manner which cannot reflect the true relative germ-killing properties of the products tested;

(4) That the product is safe or harmless unless it is stated in immediate connection therewith "when used as directed," or words of similar import. (1-24122, Dec. 3, 1953.)

8517. **Table Salt—"Red Cross."**—International Salt Co., a New Jersey corporation, with its principal place of business located in the City of Scranton, Pa., engaged in the business of offering for sale and selling in commerce, a food product designated "Red Cross Table Salt," and "Red Cross Salt," entered into an agreement that in the dissemination of advertising, it will cease and desist from using, subject to the permissible limits prescribed by the Act of Congress of January 5, 1905, as amended by Section 4 of the Act of June 23, 1910, both relating to the American National Red Cross, the words "Red Cross" or any abbreviation or simulation thereof, or any mark, emblem, sign or insignia depicting or simulating a Greek red cross:

(a) Unless the said corporation in each of its written advertisements containing said word or such mark uses with equal clearness and conspicuousness the legend, "This product has no connection whatsoever with American National Red Cross"; provided that if an advertisement covers more than one page, said legend shall be used on each and every page on which said words or such mark appears; and

(b) Unless said corporation in each of its radio advertisements

containing said words, makes the statement contained in said legend with equal clearness and conspicuousness. (1-24756, Dec. 16, 1953.)

8518. **Fountain Pens and Mechanical Pencils—Composition and Guarantee.**—Everlast Pen Corp., a New York corporation, formerly incorporated under the name Associated Pen Corp., with its principal place of business in New York, N. Y., engaged in the business of manufacturing or assembling, offering for sale, selling and distributing in commerce, fountain pens and mechanical pencils, entered into an agreement that in connection with the offering for sale, sale and distribution of those products it will cease and desist from:

(1) Using the word “Iridium” or the words “Iridium Tipped” or any simulation thereof, either alone or in conjunction with other words, to designate, describe, or refer to fountain pen points which are not tipped with the element iridium;

(2) Using the words “gold plated,” or the word “gold” alone, to describe fountain pens and mechanical pencils and parts thereof having a coating of gold applied by electrolytic process; provided that nothing herein shall be construed as preventing the use of the term “gold electroplate” or “gold electroplated” to describe an article which has been coated electrolytically with gold to a minimum thickness equivalent to seven-millionths (7/1,000,000ths) of an inch of fine gold; and provided further that if the coating is not of the indicated minimum thickness so as properly to be designated as “gold electroplate” or “gold electroplated,” such article may be described as “gold flashed,” “gold washed,” or “gold colored”;

(3) Using the phrase “unconditionally guaranteed for one year” or the term “fully guaranteed” in connection with fountain pens and mechanical pencils which are not unconditionally guaranteed, and from using the word “guarantee” or any word of similar import as descriptive of a limited or conditional guarantee, unless in direct connection therewith a clear disclosure is made of the limitations and conditions. (1-17844, Dec. 17, 1953.)

8519. **Hair and Scalp Preparation—Qualities, Properties, or Results.**—Alton Products Co., Inc., a New York corporation, with its principal place of business located in Yonkers, N. Y., and S. J. Olshin, Wm. Rosen, Jesse Rosen, and R. G. Olshin officers thereof, engaged in offering for sale and selling in commerce, a preparation designated “Alton’s Formula” also designated “Alton’s Formula for Hair and Scalp,” entered into an agreement that they and each of them will cease and desist from disseminating or causing to be disseminated, any advertisement for that preparation or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under those names or any other name, which represents directly or by implication:

- (1) That the product prevents baldness or stops falling hair;
- (2) That the product cures dandruff or seborrhea;
- (3) That the product contains special proteins which are effective in the treatment of falling hair, dandruff, or itching scalp;
- (4) That the product makes hair look thicker. (1-24755, Dec. 8, 1953.)

8520. **Silver Table Flatware—Domestic as Foreign.**—Manchester Silver Co., a Rhode Island corporation, with its principal place of business in the City of Providence, R. I., engaged in the business of manufacturing, offering for sale, selling, and distributing in commerce, sterling silver table flatware, including a pattern called “Copenhagen,” entered into an agreement that in connection with the offering for sale, sale and distribution of table flatware not made in Denmark, it will cease and desist from using the pattern or trade name “Copenhagen” in advertising and labeling and in branding said product unless there shall appear in close proximity to such name, wherever used, a clear disclosure that the product is made in the United States. (1-24845, Dec. 16, 1953.)

8521. **Silver Table Flatware—Domestic as Foreign.**—R. Wallace & Sons Manufacturing Co., a Connecticut corporation, with its principal place of business in the City of Wallingford, Conn., engaged in the business of manufacturing, offering for sale, selling and distributing in commerce, sterling silver table flatware, including a pattern called “King Christian,” entered into an agreement that in connection with the offering for sale, sale and distribution of table flatware not made in Denmark, it will cease and desist from using the pattern or trade name “King Christian” in advertising and labeling and in branding said product unless there shall appear in close proximity to such name, wherever used, a clear disclosure that the product is made in the United States. (1-24851, Dec. 16, 1953.)

8522. **Men’s Suits—Domestic as Foreign.**—S. Makransky & Sons, Inc., a Pennsylvania corporation, with its principal place of business located in Philadelphia, Pa., engaged in the business of manufacturing and selling in commerce, men’s suits, through retailers only, entered into an agreement that in connection with the offering for sale, sale and distribution of men’s suits, it will cease and desist from using the brand name “Devonshire,” unless clear disclosure is made in labeling and advertising in such manner as to adequately inform the consuming public that the suits are of domestic manufacture. (1-24434, Jan. 14, 1954.)

8523. **Woolen Fabrics—Composition and Maker or Seller.**—North Star Woolen Mill Co. is a Minnesota corporation, with its principal place of business located in Lima, Ohio. Fred Sykes is an

individual who was employed as a consultant to develop methods for, and supervise the production of specialty fabrics. During the period of his employment from March 1952 until April 1953, when his employment was terminated, he possessed full authority and responsibility for production of specialty fabrics manufactured by the company. The said corporation is engaged in the offering for sale, sale and distribution in commerce, of woolen fabrics.

Said woolen fabrics are wool products, as the term "wool product" is defined in the Wool Products Labeling Act of 1939 and are subject to the provisions of said Act and the rules and regulations promulgated thereunder.

In connection with and in the course of the sale, distribution and transportation of the aforesaid woolen fabrics, said corporation and individual in the period of January through March 1953 attached or caused to be attached to a quantity of coating fabric designated Style 1010 which was composed of approximately 50% wool and 50% Cashmere, labels representing such material to be "100% Cashmere." Another style of fabric designated Style 1012 labeled as "100% Cashmere" contained approximately 85% Cashmere and 15% wool. All of such fabrics were sold to a single customer who was engaged in the manufacture of women's coats. This manufacturer sold a substantial number of coats produced from Style 1010 to the retail trade for sale to the public. Style 1012 was not placed into production except for a few sample coats.

According to information presented, the inaccurate labeling of Style 1010 and Style 1012 occurred without the knowledge of the president of North Star Woolen Mill Co. On January 28, 1953, when he learned that the fabric was not in fact 100% Cashmere as represented he immediately ordered that further production of the said fabric be discontinued and that no further shipments of the mislabeled material be made. In spite of this direction, mislabeled fabric in Style 1010 was delivered to the company's sole customer for this Style as recently as April 7, 1953. However, on or about April 24, 1953, the company's customer was informed of the actual content of these fabrics and requested by North Star Woolen Mill Co. to return all of the mislabeled material not yet manufactured into coats and sold to the retail trade, and to recall all of the coats still in retailers' hands. Restitution was thereafter voluntarily made, at substantial expense, by North Star Woolen Mill Co. for such returned fabric and coats made therefrom.

North Star Woolen Mill Co. and Fred Sykes entered into an agreement that in connection with the offering for sale, sale, transportation, delivery for transportation or distribution in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, of woolen

fabrics, or any other wool products within the meaning of said Act, they and each of them will cease and desist from :

(1) Misbranding such products in the stamping, tagging, labeling or other identification thereof, as to the character or amount of the constituent fibers therein ;

(2) Misbranding such products by failing to securely affix to or place on each such product a stamp, tag, label or other means of identification showing in a clear and conspicuous manner :

(a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding 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 fiber weight of such wool product of any non-fibrous loading, filling or adulterating matter ;

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

(3) Stamping, tagging, labeling or otherwise identifying such products as containing the hair or fleece of the Cashmere goat without setting out in a clear and conspicuous manner on each such stamp, tag, label or other identification the percentage of such Cashmere therein. (1-24916, Jan. 14, 1954.)

8524. **Bronzed Baby Shoes—Manufacture, Durability, Guarantee, Special Prices, Limited Offers, Earnings and Size of Business.**—Louis G. Rippner, Allan J. Rippner and Robert E. Rippner were copartners formerly trading as California Bronzecraft Division, Euclid Metalizing Co.; and Allan J. Rippner and Robert E. Rippner copartners formerly trading as Treasure Bronze Co., all having their office and principal place of business located in Culver City, Calif., are engaged in the business of processing baby shoes. By means of door-to-door solicitations or direct mail solicitations, interested parties are induced to transport such shoes by means of the United States mails from their respective places of abode to the aforesaid parties' place of business. Upon receipt thereof the shoes are subjected to a process which stiffens the upper shoe leather and, thereafter, to a process which covers or coats such shoes with a bronze colored finishing material. Some of such shoes, having been processed, as aforesaid, are mounted on ashtrays, bookends, picture frames or other objects to

which there is applied a similar coat or cover of bronze colored finishing material.

Louis G. Rippner, Allan J. Rippner and Robert E. Rippner, entered into an agreement that in connection with the offering for sale, sale and distribution, in commerce, of mounted or unmounted baby shoes, processed as herein described, they and each of them, will cease and desist from:

(1) Using the term "bronze," "bronzed" or "metal" or any simulation thereof as a part of their trade name, or otherwise representing in any manner, directly or by implication, that baby shoes or other articles processed by the aforesaid individuals are normally coated or covered with a substantial thickness of bronze or other metal; provided that the term "bronze colored" may be used to describe articles which are colored or treated to simulate the appearance of bronze;

(2) Representing, directly or by implication, that baby shoes processed by the aforesaid individuals will not chip, crack or peel, or that such shoes will last for a lifetime or forever;

(3) Representing that the baby shoes or other articles processed by the aforesaid individuals are "guaranteed" unless the terms, conditions and limitations of the guarantee are fully disclosed in immediate conjunction with the term "guarantee";

(4) Representing, through use of purported credit certificates or otherwise, that articles are being offered at a special or reduced price or for a limited time only, when the price stated is in fact the usual or customary price and when there is in fact no time limitation on the offer;

(5) Representing that the earnings or profits of distributors or other sales representatives of the aforesaid individuals are greater than the average earnings or profits of such persons in the ordinary course of business under normal conditions and circumstances; or,

(6) Representing that California Bronzecraft is a division of a larger company, or otherwise representing that the size of the aforesaid individuals' business is larger than is the fact. (1-24695, Jan. 26, 1954.)

8525. Lighters—Guarantee.—Hilton Lite Corp., a California corporation, with its principal office and place of business located at San Francisco, Calif., and George G. Wagner, an officer thereof, engaged in the business of offering for sale and selling in commerce, lighters designated "Hilton Lighters," entered into an agreement that in connection with the offering for sale, sale and distribution of the lighters they will cease and desist from representing through use of "Unconditional Guarantee" or "fully guaranteed," or otherwise, that the lighters are unconditionally guaranteed when such is not a fact; provided, however, that this shall not be construed as an agree-

ment not to use the word "guarantee," or any other word of similar import, to describe a limited or conditional guarantee if in direct connection with the word "guarantee" the period and all other limitations and conditions of the said guarantee are clearly disclosed. (1-24867, Jan. 26, 1954.)

8526. Ladies' Swim Suits—Place of Manufacture.—Milton Fox and Murray Geller are copartners operating under the trade name Gelfo Manufacturing Co., with their place of business in the city of New York, N. Y., engaged in the business of manufacturing and selling in commerce, ladies' swim suits.

Sea Fashions of California, Inc. is a New York corporation, with its principal place of business in New York, N. Y., licensed to do business in the State of California where, in the city of Los Angeles, it maintains an office and showroom. It is engaged in the business of selling in commerce, ladies' swim suits which it purchases from the aforesaid Milton Fox and Murray Geller.

Sea Fashions of California, Inc., and Milton Fox and Murray Geller, individually and as officers of said corporation, entered into an agreement that in connection with the offering for sale, sale and distribution in commerce, of ladies' swim suits not designed and manufactured in California, they and each of them, will cease and desist from using the trade name "Sea Fashions of California" or the corporate name "Sea Fashions of California, Inc." or representing in any manner that such swim suits are designed and manufactured in California; provided, however, that this agreement shall not be construed as precluding the use of said trade or corporate name when accompanied, wherever used, by a clear disclosure of the actual place of design and manufacture, for example, "Designed and manufactured in New York." (1-24968, Feb. 2, 1954.)

8527. Liquid Fertilizer—History, Tests, Government Approval, Safety and Comparative Merits.—Stern's Nurseries, Inc., a New York corporation, with its principal place of business in the city of Geneva, N. Y. and Otto Stern, president thereof, engaged in the business of offering for sale and selling in commerce a preparation in powdered or crystal form, designated "Miracle-Gro," designed to be converted into solution and used as a liquid fertilizer, entered into an agreement that in connection with the offering for sale, sale and distribution of that preparation, or any other preparation of substantially the same composition, they and each of them will cease and desist from representing directly or by implication:

1. That such product is a new discovery or a new development in plant nutrition, or that it is exclusive or the only product of its kind on the market;

2. That said product has been the subject of extensive tests in leading experimental greenhouses, botanical gardens or Agricultural Experiment Stations;

3. That said product is or has been approved by Agricultural authorities;

4. That said product cannot harm plants regardless of quantities used or the strength of solution;

5. That said product is 100% plant food;

6. That one pound of Miracle-Gro makes 300 pounds of any given weight of liquid fertilizer, and from otherwise making or suggesting unfair comparisons between the said product and conventional dry fertilizers. (5220003, Feb. 2, 1954.)

8528. **Baby Oil—Qualities, Properties or Results.**—Frank A. Whetzel, an individual trading as Lan-Lay Co., with his principal place of business located in San Francisco, Calif., engaged in the business of offering for sale and selling in commerce, a cosmetic preparation designated “Lan-Lay,” also designated “Lan-Lay Baby Oil,” entered into an agreement that he will cease and desist from disseminating or causing to be disseminated, any advertisement for that preparation or any other preparation of substantially the same composition or possessing substantially the same properties, which represents directly or by implication:

(1) That the product is “nature’s finest oil,” “nature’s finest cosmetic” or “nature’s finest oil cosmetic”; or is a natural product;

(2) That the product is a cure or remedy for skin diseases, skin rash or skin itch, or that it has any therapeutic value in the treatment thereof in excess of affording relief from the symptom of itching;

(3) That the product is of value as a deodorant;

(4) That the product is a medicinal preparation or that it eliminates the need for many medicinal preparations. (1-24921, Feb. 4, 1954.)

8529. **Soot Removing Preparation and Fuel Oil Conditioner—Qualities, Properties or Results and Safety.**—Frederick J. Geisinger and Herbert Geisinger, copartners trading as Nutmeg Chemical Co., with their office and principal place of business located in New Haven, Conn., engaged in the business of offering for sale and selling in commerce, a soot removing preparation designated “No-Karb” and a fuel oil “conditioner” designated “NCC,” entered into an agreement that in connection with the offering for sale, sale and distribution of the products, that they, and each of them, will cease and desist from representing directly or by implication:

(1) That use of the product designated “NCC” assures freedom from sludge, dirty tanks, clogged feed lines, clogged nozzles, dirty strainers, carbonized pre-heater coils or dirty burner tips; or

(2) That use of the product designated "No-Karb" cannot harm metal. (1-24719, Feb. 16, 1954.)

8530. **Drug Product—Qualities, Properties or Results, Safety, Nature, etc.**—The Norito Co., an Illinois corporation, with its principal office and place of business located at Chicago, Ill., engaged in the business of offering for sale and selling in commerce, a drug product designated "Norito," entered into an agreement that it will cease and desist from disseminating or causing to be disseminated, any advertisement for that preparation, or any other preparation of substantially the same composition or possessing substantially the same properties, which represents directly or by implication:

(a) That the product constitutes an adequate, effective or reliable treatment for any kind of arthritis or rheumatism, including neuritis;

(b) That the product arrests the progress of, corrects the underlying causes of, cures or prevents the recurrence of any kind of rheumatism or arthritis, including neuritis, or has any effect upon any of the symptoms, manifestations or discomforts of any of those conditions in excess of affording temporary relief of minor aches, pains, or fever;

(c) That the product is safe for all persons or under all conditions of use;

(d) That any sum has been expended in the development of the product other than the actual sum so expended;

(e) That the product is (1) a prescription (2) a miracle formula (3) a miracle medicine (4) a wonder formula or (5) one of the wonder drugs. (1-20285, Feb. 18, 1954.)

8531. **Mattresses and Bed Springs—Prices and "Orthopedic."**—Autrey Bros., Inc., a California corporation, with its principal place of business located in Santa Monica, Calif., engaged in the business of offering for sale and selling in commerce, mattresses and bed springs, entered into an agreement that in connection with the offering for sale, sale and distribution of those products, it will cease and desist from:

1. Representing that the established or regular retail prices at which its mattresses are sold or offered for sale are wholesale or factory prices, or that purchasers will save 50%, or any other amount not in accordance with the facts, from retail prices by buying from Sleep E-Z Mattress Company;

2. Using the word "orthopedic," or any other term or expression of like import, as a designation for or as descriptive of its stock bed springs or mattresses. (1-24868, Mar. 4, 1954.)

8532. **Poultry Feeds—Comparative Merits, Composition and Qualities, Properties or Results.**—Nutrena Mills, Inc., a Kansas corporation, with its office and principal place of business located in

Minneapolis, Minn., engaged in the business of offering for sale and selling in commerce, poultry feeds either designated "Nutrena Chick Starter Crumblized," "Nutrena Grower Crumblized" and "Nutrena Egg Mash Crumblized," or of substantially the same properties as above designated feeds, entered into an agreement that it will cease and desist from disseminating or causing to be disseminated any advertisement for those products or any other products of substantially the same properties, whether sold under those names or any other names, which represents directly or by implication:

(1) That the use of Nutrena feeds will produce a 10% increase in egg production over all competing products or any other increase in egg production which is not in accordance with the facts and which does not clearly disclose the type of feed used as a basis for comparison;

(2) By use of the phrase "Only Nutrena Chick Starter is stepped up with new miracle Livium," "Nutrena Egg Feed, the *only* feed stepped up with special Livium for layers," or otherwise, that Nutrena products contain ingredients not present in any competing product;

(3) That the use of Nutrena chicken feeds, containing Livium or special Livium:

(a) Influences the flavor or cooking quality of eggs;

(b) Overcomes conditions causing sluggishness, dull eyes and lack of vigor in chickens, except when due to a deficiency of Vitamin A, or any other nutritional deficiency which would be overcome by the use of the products;

(c) Beneficially influences digestive processes, except when poor digestion is caused by a deficiency of Vitamin A and Riboflavin;

(d) Keeps the lungs of chickens healthy, except to the extent that it may prevent conditions due to a deficiency of Vitamins A and D.

(1-21478, Mar. 4, 1954.)

8533. **Buttons—Composition.**—Harry Simon, Helen Simon, Arthur Simon, and Edward Simon, copartners trading as Eagle Button Co., with their principal place of business located in New York, N. Y., engaged in the business of offering for sale and selling in commerce, buttons, entered into an agreement that in connection with the offering for sale, sale and distribution of said buttons, they, and each of them, will cease and desist from:

Representing, by use of the words "Real Horn," or otherwise, that their buttons are composed entirely of horn, unless such is the fact.

(1-24930, Mar. 25, 1954.)

8534. **Vitamin Preparations—Qualities, Properties or Results, Comparative Merits, etc.**—American Dietaids Co., Inc., a New York corporation, with its principal place of business located in Yonkers, N. Y., engaged in the business of offering for sale and selling in com-

merce, preparations designated "Triple Strength Hi-Plex", "Ultra-A Capsules" and "Ultra-Vitamins", entered into an agreement that it will cease and desist from disseminating, or causing to be disseminated, any advertisement for those preparations or any other preparations of substantially the same compositions or possessing substantially the same properties, whether sold under those names or any other names, which represents, directly or by implication:

TRIPLE STRENGTH HI-PLEX:

(1) That Triple Strength Hi-Plex is of a higher potency than is the fact;

(2) That Triple Strength Hi-Plex has any therapeutic value in the treatment of tired out, run down, nervous or depressed conditions or any other symptoms or conditions, unless clearly limited to cases resulting from a deficiency of Vitamin B₁ or Vitamin B₂;

ULTRA-A CAPSULES:

(3) The Vitamin A content of Ultra-A capsules, in comparison with fresh carrots or any other natural source of Vitamin A, when such comparison is not in accordance with the facts;

ULTRA-VITAMINO:

(4) That Ultra-Vitamins has value in maintaining or restoring strength, energy, or vitality, except where the strength, energy, or vitality has been reduced by an insufficient intake of food and then only to the extent that the product supplies protein, amino acids, vitamins, and minerals;

(5) That the protein, amino acids, vitamins, and minerals in Ultra-Vitamins are more needed by, and beneficial to, persons over 40 than those under that age;

(6) That older persons need Ultra-Vitamins as an aid to metabolism or that Ultra-Vitamins retards body changes or the aging processes;

(7) That Ultra-Vitamins supplies a greater percentage of the average adult requirement of protein (or amino acids) than is the fact. (1-24633, Apr. 27, 1954.)

8535. Novelty Jewelry—Source or Origin and Composition.—Murray Eibshutz and Meyer Eibshutz, copartners trading as Empco Metal Products Co., with their principal place of business located in New York, N. Y., engaged in the business of offering for sale and selling in commerce, novelty jewelry, entered into an agreement that in connection with the offering for sale, sale and distribution of said products they, and each of them, will cease and desist from:

(1) The use of the words "Siam" or "Siamese" as descriptive of jewelry not imported from Siam;

(2) The use of the words "gold" or "silver" to describe jewelry or any part thereof not made throughout of gold or silver;

(3) Representing that any article of jewelry or part thereof is mother-of-pearl when such is not the fact. (1-25025, Apr. 29, 1954.)

8536. **Watches—Government Indorsement, Qualities and Comparative Merits.**—The Gruen Watch Co., an Ohio corporation, with its principal place of business in Cincinnati, Ohio, engaged in the business of manufacturing, offering for sale, selling and distributing in commerce, Gruen watches, entered into an agreement that in connection with the offering for sale, sale and distribution of watches it will cease and desist from:

(1) Representing on the basis of any trademark right which it has in the word “Precision” that the United States Patent Office has found that Gruen watches have qualities of precision not found in other watches;

(2) Using the word “Precision” in referring to Gruen watches in such manner as to represent directly or by implication that only Gruen watches are made or operate with precision. (1-24892, May 4, 1954.)

8537. **Men’s Hose—Composition and Maker or Seller.**—Lykens Hosiery Mills, Inc., a Pennsylvania corporation, with its principal place of business located in Lykens, Pa., and Ira Lipton and William Keller, officers thereof, are engaged in the offering for sale, sale and distribution in commerce of men’s hose.

Said men’s hose are wool products, as the term “wool product” is defined in the Wool Products Labeling Act of 1939, and are subject to the provisions of said Act and the rules and regulations promulgated thereunder.

Lykens Hosiery Mills, Inc., Ira Lipton and William Keller, individually and as officers of said corporation, entered into an agreement that in connection with the offering for sale, sale, transportation, delivery for transportation or distribution in commerce, as “commerce” is defined in the Wool Products Labeling Act of 1939, of men’s hose, or any other wool products within the meaning of said Act, they and each of them will cease and desist from misbranding such products by:

(1) Falsely or deceptively stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fiber therein;

(2) Failing to securely affix to or place on each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding five per centum of said total fiber weight of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five per centum or more, and (5) the aggregate of all other fibers;

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

(c) The name or registered identification number of the manufacturer of such wool product or one or more persons engaged in introducing such wool product into commerce, or in offering for sale, sale, transportation, distribution or delivering for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939. (5320006, May 4, 1954.)

8538. Rutile Jewelry Insets—Nature, Relevant Facts, History, Producer, etc.—Jarra Gem Corp., a New York corporation, with its principal place of business located in New York, N. Y., and Alvin J. Kayton and Frances Kayton, officers thereof, engaged in the business of offering for sale and selling in commerce, rutile jewelry insets designated "Jarra Gems" and jewelry containing such insets, entered into an agreement that in connection with the offering for sale, sale, and distribution of cut and polished synthetic rutile jewelry settings, or of products containing such settings, they will cease and desist from:

(1) Using the word "gem" as descriptive of jewelry insets of synthetic rutile, unless it is clearly disclosed that such insets are not natural stones or natural gems;

(2) Representing that only an expert can tell the difference between such products and diamonds;

(3) Representing that the particular synthetic rutile insets sold by them were the subject of published articles, when such is not the fact;

(4) Representing that their products are a standard for the industry;

(5) Representing by use of the word "pioneer," or words of similar import, that the corporation was first in the market, or the discoverer of the process for making synthetic rutile jewelry insets;

(6) Representing that they are a producer of the material from which synthetic rutile jewelry insets are made. (1-24818, May 4, 1954.)

8539. Insecticidal Floor Wax—Safety, Qualities, Properties or Results and Comparative Merits.—Freewax Corp., a Florida corporation, with its principal office and place of business located at Tallahassee, Fla., engaged in the business of offering for sale and selling in commerce, an insecticidal floor wax designated "Freewax," entered into an agreement that in connection with the offering for sale, sale and distribution of that product it will cease and desist from disseminating any advertisement in regard thereto which represents directly or by implication:

(a) That the product is safe or harmless except when used as directed;

(b) That the product (1) banishes bugs (2) rids premises of bugs or (3) affords freedom from insects;

(c) That the product kills fleas;

(d) That with the advent of the product other types of insecticides are no longer necessary. (5420104, June 15, 1954.)

8540. **Carbonated Soft Drink—Therapeutic Value.**—Mark Williams Chemical Co., an Illinois corporation, with its principal place of business located in Chicago, Ill., and William M. Swartz, an officer thereof, engaged in offering for sale and selling in commerce, a carbonated soft drink containing vitamins and minerals designated “Dr. Enuf,” entered into an agreement that they and each of them, will cease and desist from disseminating, or causing to be disseminated, any advertisement for that preparation or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under that name or any other name, which represents directly or by implication :

(1) That the product is of value in the prevention or treatment of colds or rheumatism ;

(2) That the product is of value in the prevention or treatment of aches or pains, headaches, stomach distress, constipation, or run-down conditions, or any other symptoms or conditions, unless clearly limited to cases resulting from a deficiency of Vitamin B₁, Vitamin B₂, or Niacin. (5420170, June 15, 1954.)

8541. **Drug Products—Therapeutic Value, Laboratory, Safety, etc.**—Julio David Liberman, Jose Liberman, and Luis Jorge Betz, copartners trading as D’Franssia Laboratories, with their principal office and place of business located at Los Angeles, Calif., engaged in the business of offering for sale and selling in commerce, products designated “Estoma Yerbin,” “Bromogenol,” “Kinamole,” “Trisal,” and “Kortamina,” entered into an agreement that they will cease and desist from disseminating or causing to be disseminated, any advertisement for those preparations or any preparations of substantially the same compositions or possessing substantially the same properties, whether sold under those names or any other names, which :

(a) Represents that Estoma Yerbin (1) is effective in relieving backaches (2) is effective in relieving headaches except those due to constipation or (3) is effective in the treatment of irregularities of the intestinal functions ;

(b) Represents that Kinamole nourishes the hair ;

(c) Represents that Kortamina derives its analgesic effect from only one ingredient ;

(d) Represents that Trisal has any effect upon any of the symptoms, manifestations or discomforts of rheumatism or arthritis in excess of affording temporary relief of minor aches, pains, or fever ;

(e) Represents that they own or operate a laboratory, unless and until such is a fact ;

(f) Fails to clearly and conspicuously reveal that the taker of the product designated “Bromogenol” shall “follow the label” and “avoid excessive use.” (5420326, June 15, 1954.)