

Decision

IN THE MATTER OF

S. S. SAWYER, INC.

DECISION IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (C) OF THE
CLAYTON ACT, AS AMENDED*Docket 6103. Complaint, June 17, 1953—Decision, Oct. 1, 1953*

Where a corporation engaged in the sale of potatoes, among other vegetables, to three principal kinds of buyers, namely, (1) agents to whom, as compensation for services rendered it paid a brokerage fee ranging from about 5¢ to about 10¢ per cwt. or equivalent amounts; (2) "buying agents", who also purchased for their own account for resale; and (3) other buyers, including some chain store organizations and food processors—

- (a) Paid to buying agents in connection with the sale of potatoes to them for their own account, a fee as brokerage, in the same manner as it paid a brokerage fee to them and to other agents for sales to buyers effected through them and in the same or substantially the same amounts;
- (b) Charged direct buyers, including some chain store organizations and food processors, prices which were lower than those charged other buyers purchasing at or about the same time, by amounts which were the same or substantially the same as the brokerage fees that it paid to its agents for effecting sales to buyers purchasing through them:

Held, That in paying such brokerage fees and in charging lower prices as above set forth to such buying agents and direct buyers, it violated subsec. (c) of Sec. 2 of the Clayton Act as amended.

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

Mr. Peter J. Dias and *Mr. Richard E. Ely* for the Commission.
Coxe & Stephens, of St. Augustine, Fla., for respondent.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated October 1, 1953, the initial decision in the instant matter of hearing examiner James A. Purcell, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., Sec. 13), the Federal Trade Commission on June

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17, 1953, issued and subsequently served its complaint in this proceeding upon S. S. Sawyer, Inc., a corporation, charging it with violation of subsection (c) of Section 2 of said Act as amended. Subsequent to the service of ample notice to all parties in conformity with law, a hearing for the taking of testimony and the reception of evidence was held in Washington, D. C., on the 18th day of August 1953. The respondent having failed to file its answer to the complaint (pursuant to the provisions of Rule VIII of the Commission's Rules of Practice), and having failed to make appearance at the aforesaid hearing of August 18, 1953, or in anywise to convey notice of its desire or intention to contest the allegations of the complaint, the provisions of Rule V (b) of the Commission's Rules prescribing procedure in event of default, became operative.

Thereafter, the proceeding regularly came on for final consideration by the above-named hearing examiner, theretofore duly designated by the Commission, upon said complaint and default, and the said hearing examiner having duly considered the entire record herein, makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent S. S. Sawyer, Inc., hereafter sometimes referred to as Sawyer, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida with its principal office and place of business located at Hastings, Florida.

Par. 2. Sawyer is now, and continuously for the seven or eight years last past has been, engaged in the business of selling potatoes and other vegetables. With respect to potatoes, Sawyer sells to three principal kinds of buyers.

Sawyer employs agents through whom it sells potatoes to some buyers. As compensation for services rendered in effecting such sales to such buyers, Sawyer pays such agents a brokerage fee. Such brokerage fees vary, ranging from about five cents to about ten cents per hundredweight, or amounts equivalent thereto.

In addition to selling potatoes to such buyers as agents of Sawyer, some of such agents (hereinafter sometimes referred to as "buying agents") also purchase potatoes from Sawyer for their own account for resale.

Sawyer also sells potatoes directly to other buyers, including some chain store organizations and food processors (hereinafter sometimes referred to as direct buyers).

Par. 3. In the course and conduct of such business, Sawyer causes such potatoes, so sold, to be transported from its place of business or

elsewhere in Florida to the places of business of such buyers, some of which are located in Florida and some of which are located elsewhere in the United States. All sales of potatoes by Sawyer, hereinafter referred to, involved such transportation from Florida to such buyers with places of business located elsewhere and occurred during approximately the two or three years last past.

PAR. 4. (A) Sawyer pays a fee as brokerage to buying agents in connection with the sale of potatoes to them for their own account in the same manner as it pays a brokerage fee to them and other agents for sales to buyers effected through them, and in the same or substantially the same amounts.

Illustrative of such sales were some of the transactions which took place during April and May of 1951 between Sawyer and one of its agents located in Baltimore, Maryland. In these transactions Sawyer invoiced such agent and such agent paid for potatoes at prices which were the same or substantially the same as those charged other buyers purchasing at or about the same time; but in connection with such sales of potatoes to such agent for his own account, Sawyer paid him brokerage in the same manner and in the same amounts as it paid him brokerage in connection with sales of potatoes to buyers, effected through him as its agent.

(B) In connection with sales of potatoes to direct buyers in some instances, instead of Sawyer making the payments of fees as brokerage alleged in subparagraph (A) above, it charges them prices which are lower than those charged other buyers purchasing at or about the same time. The prices are lower by amounts which are the same or substantially the same as the brokerage fees that Sawyer pays to its agents for effecting sales to buyers purchasing through them.

Illustrative of such sales were transactions which took place during April and May of 1951 between Sawyer and several direct buyers, including chain store organizations and food processors. In these transactions Sawyer invoiced such buyers at, and such buyers paid, prices which varied from time to time; but such prices were lower by amounts ranging from about five to ten cents per hundredweight than those at which other buyers purchasing at or about the same times were invoiced and paid.

PAR. 5. In making payments of fees as brokerage, as alleged in Paragraph 4 (A), and in charging lower prices, as alleged in Paragraph 4 (B), Sawyer paid or granted, in the course and conduct of its business in commerce, something of value as a commission, brokerage, or other compensation, and allowances and discounts in lieu thereof, in connection with the sale of potatoes to the other parties to such transactions, or to their agents, representatives or other intermediaries

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therein who were acting in fact for or in behalf, or subject to the direct or indirect control, of such other parties.

CONCLUSION

The acts and practices of the respondent, as herein found, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U. S. C., Title 15, Section 13).

ORDER

It is ordered, That the respondent, S. S. Sawyer, Inc., a corporation, and its officers, directors, representatives, agents or employees, directly or through any corporate or other device, in connection with the sale of potatoes or any other vegetable in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

1. Making payments to agents on purchases for their own accounts in amounts which are the same as the amounts of fees paid as brokerage to agents effecting sales to other purchasers, or in any other amounts which are also paid as brokerage.

2. Granting a discount or allowance to any purchaser which makes the price to such purchaser lower than the prices at which sales are made to other purchasers, by any amount which is the same as the amount of brokerage fees paid to agents effecting sales to other purchasers, or in any other amounts which also are in lieu of brokerage.

3. Paying or granting anything of value as a commission, brokerage, or other compensation or allowance or discount in lieu thereof to the other parties to such transactions, or to their agents, representatives, or other intermediaries therein who in fact act for or in behalf, or are subject to the direct or indirect control, of such other parties.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist [as required by said declaratory decision and order of October 1, 1953].

Consent Settlement

IN THE MATTER OF

ANNSHIRE GARMENT CO., INC., ET AL.

DECISION IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT AND OF THE WOOL PRODUCTS LABELING ACT*Docket 6110. Complaint, July 21, 1953—Decision, Oct. 1, 1953*

Where a corporation and its two officers engaged in the manufacture and interstate sale and distribution of certain wool products as defined in the Wool Products Labeling Act—

- (a) Misbranded certain ladies' coats in that they were not stamped, tagged, or labeled as required by said Act and the Rules and Regulations promulgated thereunder;
- (b) Misbranded said coats in that tagged or labeled "100% Wool," they contained substantial quantities of fiber other than wool; and
- (c) Misbranded certain of said coats in that the fiber content of interlinings contained therein were not separately set forth on attached labels or tags as required:

Held, That such acts and practices were in violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder and constituted unfair and deceptive acts and practices in commerce.

Mr. George E. Steinmetz for the Commission.

Keller & Wilbert, of Pittsburgh, Pa., 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 July 21, 1953, issued and subsequently served its 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 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 conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of answer to said complaint, hereby:

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 October 1, 1953, 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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1. Admits all the jurisdictional allegations set forth in the complaint.

2. Consents 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 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. Agrees 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.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Annshire Garment Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Kansas; and respondents Isidore Liebling and Jack Liebling are the president-treasurer, and secretary, respectively, thereof. Said individuals formulate, direct and control the acts, policies and practices of said corporate respondent. The offices and principal place of business of all respondents are located at 101 East Kansas Avenue, Pittsburg, Kansas.

PAR. 2. Subsequent to the effective date of said Wool Products Labeling Act of 1939, and more especially since 1947, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in the Wool Products Labeling Act, wool products, as "wool products" are defined therein.

PAR. 3 Certain of said wool products described as ladies' coats were misbranded in that they were not stamped, tagged or labeled as required by the Wool Products Labeling Act of 1939, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 4. Certain of said wool products were misbranded within the meaning and intent of Section 4 (a) (1) of said Wool Products Labeling Act of 1939 and of the Rules and Regulations promulgated there-

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under in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein. Among such misbranded wool products were ladies' coats tagged or labeled "100% Wool"; whereas in truth and in fact said wool products were not 100% wool, but contained substantial quantities of fibers other than wool.

PAR. 5. Certain of said wool products described as ladies' coats were misbranded in that the fiber content of interlinings contained therein were not separately set forth on labels or tags attached thereto as required under the provisions of Section 4 (a) (2) of the Wool Products Labeling Act of 1939, and Rule 24 of the Rules and Regulations promulgated thereunder.

CONCLUSION

The acts and practices of the respondents, as herein found, were and are in violation of the Wool Products Labeling Act of 1939, and of the Rules and Regulations promulgated thereunder; and as such, 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 respondent Annshire Garment Co., Inc., a corporation, and its officers, and respondents Isidore Liebling and Jack Liebling, individually, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of ladies' coats 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:

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

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

- (a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding five percentum of said total

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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 percentages 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 delivering for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

3. Failing to separately set forth on the required stamp, tag, label or other means of identification the character and amount of the constituent fibers appearing in the interlinings of such wool products as provided by Rule 24 of the Rules and Regulations promulgated under said Act.

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.

Annshire Garment Co., Inc.,
a corporation.

By $\frac{1}{s}$ / Isidore Liebling

(Name)

President

(Title)

(Corporate Seal)

$\frac{1}{s}$ / Isidore Liebling

Isidore Liebling, individually and as an officer of Annshire Garment Co., Inc., a corporation.

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/s/ Jack Liebling

Jack Liebling, individually and as an officer of Annshire G a r m e n t Co., Inc., a corporation.

Date: September 18, 1953.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this 1st day of October, 1953.

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IN THE MATTER OF

ARTHUR DOCTOR ET AL. TRADING AS
ARTHUR DOCTOR & CO.

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

Docket 6120. Complaint, Aug. 25, 1953—Decision, Oct. 1, 1953

Where three partners engaged in the manufacture and interstate sale and distribution of certain wool products as defined in the Wool Products Labeling Act—

- (a) Misbranded certain ladies' or misses' coats in that they were not stamped tagged, or labeled as required by said Act and the Rules and Regulations promulgated thereunder;
- (b) Misbranded certain coats in that they were tagged as containing "100% Cashmere" and "100% Imported Cashmere," whereas they did not contain any of the hair of the cashmere goat but were made from fabrics composed of a mixture of sheep's wool, silk fibers and rabbit hair;
- (c) Misbranded certain of such coats in that they were labeled or tagged as containing "100% Cashmere" when they were manufactured from fabrics composed of a blend of cashmere combined with the wool of the sheep;
- (d) Misbranded certain of such coats in that they were labeled or tagged as containing "100% Virgin Wool," and, separately, as "Imported Cashmere," whereas they were manufactured from fabrics composed of a blend of wool of the sheep, silk fibers and rabbit hair; and
- (e) Misbranded certain of said products in that the percentages or amounts of the constituent fibers, cashmere and sheep wool, were not separately set forth on stamps, tags, etc., as required by the Rules and Regulations promulgated pursuant to said Act:

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

Mr. George E. Steinmetz for the Commission.

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 August 25, 1953, issued and subsequently served its complaint upon the respondents named in the caption hereof, charging

¹The 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 October 1, 1953, 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.

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 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 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 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 Arthur Doctor, Theodore Doctor, and Celestine Doctor are individuals and copartners trading and doing business under the name and style of Arthur Doctor & Co. with their offices and principal place of business located at 250 West 39th Street, New York, New York.

PAR. 2. Subsequent to the effective date of said Wool Products Labeling Act of 1939, and more especially since 1951, respondents have manufactured for introduction, introduced, sold, distributed, delivered for shipment, and offered for sale, in commerce, as "commerce" is defined in the Wool Products Labeling Act, wool products, as "wool products" are defined therein.

PAR. 3. 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.

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PAR. 4. 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 of the Rules and Regulations promulgated thereunder in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein. Among such misbranded wool products were ladies' or misses' coats labeled or tagged by respondents as containing "100% Cashmere" and "100% Imported Cashmere"; whereas in truth and in fact, said wool products did not contain any of the hair or fiber of the Cashmere goat but were manufactured from fabrics composed of a blend or mixture of wool of the genus sheep, together with silk fibers and rabbit hair.

Further, among such misbranded wool products were ladies' or misses' coats labeled or tagged by respondents as containing "100% Cashmere"; whereas in truth and in fact, said wool products did not consist of 100% Cashmere, the hair or fiber of the Cashmere goat, but were manufactured from fabrics composed of a blend of said cashmere combined with the wool of the genus sheep.

PAR. 5. 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 of the Rules and Regulations promulgated thereunder in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein. Among such misbranded wool products were ladies' or misses' coats labeled or tagged by respondents as containing "100% Virgin Wool," together with a separate and additional label or tag setting forth the contents thereof as "Imported Cashmere"; whereas in truth and in fact, said wool products were not composed of 100% virgin wool nor imported cashmere but were manufactured from fabrics composed of a blend of wool of the genus sheep, combined with silk fibers and rabbit hair.

PAR. 6. Certain of said wool products were further misbranded in that the percentages or amounts of the constituent fibers of cashmere and sheep's wool were not separately set forth on stamps, tags, or labels or other means of identification, in the manner, form, and extent required by Rule 19 of the Rules and Regulations promulgated pursuant to said Wool Products Labeling Act.

CONCLUSION

The acts and practices of respondents as herein found were and are in violation of the said Wool Products Labeling Act of 1939 and of the Rules and 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, Arthur Doctor, Theodore Doctor, and Celestine Doctor, individually and trading and doing business under the firm name of Arthur Doctor & Co., or under any other name or names, and their respective representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of ladies' or misses' coats 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:

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 nonfibrous loading, filling, or adulterating matter;

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

3. Falsely or deceptively stamping, tagging, labeling, or otherwise identifying such products as containing hair or fleece of the Cashmere goat;

4. Stamping, tagging, labeling, or otherwise identifying such products as containing 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;

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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.

/s/ Arthur Doctor
/s/ Theodore Doctor
/s/ Celestine Doctor,
each individually,
and as copartners
trading as Arthur
Doctor & Co.

Date: Sept. 18, 1953.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this 1st day of October, A. D., 1953.

Dismissal

IN THE MATTER OF

PURITY BAKERIES CORP., AMERICAN BAKERIES CO.,
INC., LEWIS A. CUSHMAN AND GEORGE L. BURR*Docket 6025. Complaint, Aug. 7, 1952—Order, Oct. 6, 1953*

Charge: Interlocking directorates in violation of Section 8 of the Clayton Act; in connection with the manufacture and sale of bakery products.

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

Mr. Paul R. Dixon for the Commission.

Davies, Hardy, Schenck & Soons, of New York City, for Purity Bakeries Corp., Lewis A. Cushman and George L. Burr.

Spalding, Sibley, Troutman & Kelley, of Atlanta, Ga., for American Bakeries Co., Inc.

ORDER DISMISSING COMPLAINT

This matter is before the Commission upon respondents' appeal from the initial decision of the hearing examiner, briefs and oral argument of counsel in support of and in opposition to said appeal, and upon memorandum of counsel supporting the complaint filed subsequent to the presentation of arguments on the appeal.

The complaint charges a violation of Section 8 of the Clayton Act. It alleges, among other things, that the individual respondents have served simultaneously, and that the corporate respondents have permitted the individual respondents to be elected and to serve simultaneously, as directors in both of the corporate respondents. The material facts were stipulated. The hearing examiner filed his initial decision in which he found that the acts and practices of the respondents have been, and are now, in violation of Section 8 of the Clayton Act, and ordered the practices discontinued. Within the time permitted by the Commission's Rules of Practice, respondents filed an appeal from said initial decision. Oral argument on the appeal was heard by the Commission on June 4, 1953.

Counsel supporting the complaint, by memorandum filed on August 12, 1953, advised that, as of June 15, 1953, respondent American Bakeries Company, Inc., was merged with Purity Bakeries Corporation and that the name of the surviving corporation was changed to American Bakeries Company. The Commission is of the opinion that, as a result of the merger of the two corporate respondents, no further proceedings in this matter are warranted and that the complaint should be dismissed. Such disposition of this case renders it

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unnecessary to rule upon each of the points raised by the said appeal.

The Commission having duly considered the matter and being now fully advised in the premises:

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

Commissioner Gwynne not participating for the reason that oral argument on respondents' appeal from the initial decision of the hearing examiner was heard prior to his appointment to the Commission.

FLORIDA PLANTERS, INC.

Decision

IN THE MATTER OF
FLORIDA PLANTERS, INC.

DECISION IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (C) OF
THE CLAYTON ACT AS AMENDED

Docket 6104. Complaint, June 17, 1953—Decision, Oct. 6, 1953

Where a cooperative corporation, engaged in the sale of potatoes and other vegetables produced by its grower members through four methods, namely, (1) by utilizing intermediaries or brokers to whom, as compensation for services rendered in effecting sales to buyers, including numerous customers who purchase in smaller volume, it paid brokerage fees ranging from 5¢ to 10¢ per cwt.; (2) by making sales to a broker for his own account for resale, on which sales it paid or allowed substantially the same commission or brokerage fee as that first above described; (3) by making sales to certain favored buyers, who usually purchase in larger volume, for resale, in connection with which said buyers deducted from the amount invoiced to them at the regular market price a brokerage commission, remitting the difference, accepted as full payment; and (4) by selling to certain other buyers, including chain store organizations, or direct buyers, who usually purchase in larger volumes for their own account for resale, and to whom it allowed a lower price in lieu of brokerage or commissions which were substantially the same as that allowed in other transactions above described: *Held*, That in the making of such payments or commission or brokerage fees and in the charging of lower prices in lieu thereof, as above set forth, to such buying agents and direct buyers, it violated Sec. 2 (c) of the Clayton Act as amended.

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

Mr. C. G. Miles and *Mr. Peter J. Dias* for the Commission.

Mr. Julian C. Calhoun, of Palatka, Fla., for respondent.

DECISION OF THE COMMISSION

Pursuant to "Decision of the Commission and Order to File Report of Compliance," dated October 6, 1953, which, following the Commission's review of the initial decision in the instant matter and its consideration of the entire record, set forth its opinion that said decision was "adequate and appropriate to dispose of the proceeding," said initial decision of hearing examiner James A. Purcell, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

Pursuant to the provisions of the Act of Congress entitled "an Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914

(the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C. Sec. 13), the Federal Trade Commission on June 17, 1953, issued and subsequently served its complaint in this proceeding upon Florida Planters, Inc., a corporation, charging it with violation of subsection (c) of Section 2 of said Act as amended. On July 14, 1953, respondent filed its answer, in which answer it admitted all of the material allegations of facts set forth in said complaint and elected not to contest the same. Thereafter, the proceeding regularly came on for final consideration by the above-named Hearing Examiner theretofore duly designated by the Commission upon said complaint and the admission answer thereto, proposed findings and conclusions not having been submitted by counsel, and oral argument not having been requested. The Hearing Examiner, having duly considered the record herein, makes the following findings as to the facts, conclusions drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Florida Planters, Inc., hereinafter sometimes referred to as the respondent, is a cooperative corporation organized, existing and doing business under and by virtue of the laws of the State of Florida with its principal office and place of business located at Hastings, Florida.

PAR. 2. The respondent is now and continuously for seven or eight years last past has been engaged in the business of selling potatoes and other vegetables, hereinafter sometimes referred to as food products, produced in the State of Florida by its grower-members. It sells and distributes these food products by four separate and distinct methods described as follows:

(a) The first and principal method is by utilizing intermediaries or brokers who act as respondent's agents in negotiating the sale of respondent's food products, at respondent's prices and on respondent's terms. Such intermediaries or brokers usually transmit purchase orders for such food products to the respondent, who thereafter invoices and ships the food products to the customers. The respondent pays such intermediaries or brokers for their services in negotiating and making such sales for respondent's account a commission or brokerage fee. A large number of the customers sold through this method are sometimes referred to as small buyers who purchase in smaller volume. This method of respondent's business was not challenged by the complaint and is here adverted to solely for illustrative purposes as hereinafter appears.

(b) A second method is where respondent makes certain sales to a broker for his, the broker's, own account for resale (hereinafter sometimes referred to as a buying broker), on which sales the respondent pays or allows the same, or substantially the same, commission or brokerage fee that it allows a broker for effecting sales as described under method (a) above.

Illustrative of such are cited certain sales of potatoes which took place during April and May of 1951, between respondent and one of its intermediaries or brokers, located in Philadelphia, Pa. In these transactions the respondent invoiced such intermediary or broker, and such intermediary or broker paid for the potatoes, at prices which were the same, or substantially the same, as those charged other buyers purchasing at or about the same time; but in connection with such sales to such intermediary or broker for his own account, respondent paid him brokerage in the same manner, and in the same amounts, as it paid him brokerage in connection with sales of potatoes to buyers effected through him as its, the respondent's, intermediary or broker.

(c) A third method employed by respondent is sales to certain favored buyers for resale who usually buy in larger volume. The respondent invoices these favored buyers at the regular market price, but in making payment therefor these buyers deduct a brokerage commission from the face of the invoiced amount and remit the difference, which different amount is accepted by respondent as full payment. Upon receipt thereof a pencil notation is made on the invoice designating the difference as brokerage.

Illustrative of such sales are those which took place during April and May, 1951, between respondent and two of its favored buyers, one located in Newark, New Jersey, and the other located in Detroit, Michigan. In these transactions the respondent invoiced such favored buyers for the potatoes at prices which were the same or substantially the same as those charged other buyers purchasing at or about the same time; but in making payment therefor the respondent allowed these favored buyers to deduct brokerage in the same or substantially the same amount as it paid or allowed its broker for effecting sales for it, as described in paragraph 2 (a) above, and to remit the difference, which difference was accepted as full payment for the invoiced amount.

(d) A fourth method employed by respondent is sales to other buyers, including chain store organizations, hereinafter sometimes referred to as direct buyers, who usually purchase in larger volumes for their own account for resale. To these direct buyers the respondent allows a lower price in lieu of brokerage or commission which is substantially the same as the brokerage allowed in other transactions described herein.

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Illustrative of such sales are those which took place during April, May, and June, 1951, between respondent and several direct buyers, including chain store organizations and food processors. In these transactions respondent invoiced such buyers at, and such buyers paid, prices which varied from time to time; but in all, or substantially all, instances such prices were lower by amounts ranging from approximately five to ten cents per hundredweight than those at which other buyers purchasing at or about the same time were invoiced and paid.

The brokerage fees, commissions or compensation, or allowances in lieu thereof, paid by respondent in all four methods described above range from 5¢ to 10¢ per hundredweight.

PAR. 3. In the course and conduct of its business, the respondent herein sold and transported, or caused such food products to be transported, from its place of business or from elsewhere in the State of Florida, to the places of business of such buyers, some of whom were located in Florida, but most of whom were located elsewhere in the United States other than the State of Florida. Such sales and transportation to these buyers occurred during the three or four years last past.

PAR. 4. In making payments of commissions or brokerage fees as found in Paragraphs Two (b) and (c), and in charging lower prices in lieu of brokerage as found in Paragraph Two (d), the respondent, in the course and conduct of its business in commerce, as "commerce" is defined in the aforesaid Clayton Act, paid, granted or allowed something of value as a commission, brokerage or other compensation, or allowance or discount in lieu thereof, in connection with the sale of its food products to other parties to such transactions or to their agents, representatives or other intermediaries therein who were, in fact, acting for or in behalf of, or subject to the direct or indirect control of such other parties.

CONCLUSION

The acts and practices of the respondent as above found violate subsection (c) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act (U. S. C. Title 15, Section 13).

ORDER

It is ordered, That the respondent, Florida Planters, Inc., a corporation, and its officers, directors, agents, or employees, directly or through any corporate or other device, in connection with the sale of potatoes, or any other vegetable, in interstate commerce, do forthwith cease and desist from :

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1. Making payments to brokers on purchases for their own accounts in amounts which are the same as the amounts of brokerage fees paid to brokers effecting sales, as agents, to other purchasers, or in any other amounts which are also paid as brokerage, whether such payments are made upon being billed therefor or otherwise;

2. Selling to any purchaser at prices which are lower than the prices at which sales are made to other purchasers in amounts which are the same or substantially the same as the amounts of brokerage fees paid to brokers effecting sales, as agents, to such other purchasers or in any other amounts which also are in lieu of brokerages whether such lower prices are charged by invoicing at a lower price or by permitting the purchaser to make a deduction from the regular invoice price in remitting payment or by any other device.

3. Paying or granting anything of value as a commission, brokerage or other compensation or allowance or discount in lieu thereof to the other parties to such transactions, or to their agents, representatives or other intermediaries therein who in fact act for or in behalf, or are subject to the direct or indirect control, of such other parties.

ORDER TO FILE REPORT OF COMPLIANCE

It is further ordered, That the respondent, Florida Planters, Inc., 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 [as required by said decision and order of October 6, 1953].

IN THE MATTER OF
CHARLES SAMUEL BERNSTEIN D. B. A. AMERICAN
LABOR DIGEST

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

Docket 6105. Complaint, June 30, 1953—Decision, Oct. 6, 1953

Where an individual with principal office and place of business in Baltimore and with mailing address in Washington, D. C., engaged in the publication and dissemination of a magazine entitled "American Labor Digest" and in the sale of advertising space therein to numerous individuals and concerns in various States; through statements in said magazines and through oral statements of solicitors employed by him to solicit the purchase of advertising space, directly and by implication—

(a) Represented that said American Labor Digest was published and distributed regularly every month to members of the reading public, and was supported by subscriptions and advertising therein, that single copies were available for 50¢, and that annual subscriptions were available for \$5.00; and that it was widely circulated and distributed throughout the United States;

The facts being that it was not a magazine in the sense in which said designation is generally understood; while it carried the volume and number designation, it was not published monthly nor regularly, and said designations did not indicate the actual volumes or numbers published, which were in fact substantially less than indicated; and it was not available on newsstands nor at any place or store where magazines are offered for sale to the general purchasing public; had no subscriptions, and was mailed only to advertisers therein; and, while mailed to such persons and concerns located throughout the United States, was not distributed or available to members of the general reading public; and

(b) Falsely represented or stated that it represented and was published in the interest and support of labor and harmonious labor management and that it maintained an office in Washington, D. C.;

When in fact it did not represent labor generally, was not supported by it or any labor organization, and maintained no Washington office, but was merely a subscriber to a mailing address service located in said city; and

(c) Represented through certain form letters mailed to individuals and concerns throughout the United States that the respondents had authorized or approved the insertion of an advertisement in a prior edition of American Labor Digest and that a renewal of said advertisement was being solicited; and on many occasions mailed statements of account to persons and concerns located in many states, which purported to be charges for advertisements authorized by the recipients;

When in fact many of such recipients had never authorized such insertion and the sending of said form letters constituted a part of a scheme calculated to cause the recipients to contract for the publication of advertisements in the mistaken belief that in doing so they were renewing advertisements for which payment had been previously made; many of the

recipients of said statements of account had never authorized the insertion of advertisements in respondents' publication nor agreed to pay therefor and had in fact no knowledge that such insertion had been made; and those who did authorize such insertion and agreed to pay therefor would not have done so had they been informed of the true facts with respect to the nature and purpose of said American Labor Digest:

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

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

Mr. William L. Pencke for the Commission.

DECISION OF THE COMMISSION

Pursuant to "Decision of the Commission and Order to File Report of Compliance," dated October 6, 1953, which, following the Commission's review of the initial decision in the instant matter and its consideration of the entire record, set forth its opinion that said decision was "adequate and appropriate to dispose of the proceeding," said initial decision of hearing examiner James A. Purcell, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 30, 1953, issued and subsequently served its complaint in this proceeding upon the respondent, Charles Samuel Bernstein, an individual, doing business as American Labor Digest, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. On August 5, 1953, respondent filed his answer to the complaint, wherein he admitted all of the material allegations of fact set forth in said complaint and specifically waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final consideration by the above-named Hearing Examiner, theretofore duly designated by the Commission, upon said complaint and the answer thereto, and said Hearing Examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusions drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Charles Samuel Bernstein is an individual, trading and doing business under the firm name and style of American Labor Digest. His principal office and place of business

is located at 508 Snow Building, Baltimore, Maryland. Respondent also maintains a mailing address at Room 422, Washington Building, Washington, D. C.

PAR. 2. For more than one year last past, respondent has been and is now engaged in the publication and dissemination of a magazine entitled American Labor Digest and, in connection therewith, in the sale of advertising space in said magazine to numerous individuals, business firms, and corporations located in various States of the United States.

PAR. 3. In the course and conduct of said business, respondent causes said magazine to be transported from his place of business in the State of Maryland to purchasers of said advertising space located in other States.

PAR. 4. Said magazine, American Labor Digest, contains, among others, the following statements:

A Non-Partisan Labor Magazine of Modern America

This magazine * * * is supported by subscription and advertising revenue; * * *

and:

The American Labor Digest, published monthly; * * * Address all communications to 422 Washington Building, Washington 5, D. C. Single copy—50 cents, Annual Subscription, by mail \$5.00. S. B. Charles, Editor.

Don Carlos, Editor.

PAR. 5. In the course and conduct of said business, as aforesaid, respondent employs solicitors who call upon prospects for the purpose of soliciting the purchase of advertising space and in connection therewith represent to such prospective purchasers that said American Labor Digest is a regularly published monthly magazine; that it represents or is supported or recognized by American labor or labor organizations; and that it has a wide distribution and circulation throughout the United States.

PAR. 6. Respondent also makes use of form letters which are mailed to individuals, firms, and corporations throughout the United States, of which the following is representative:

AMERICAN LABOR AND MANAGEMENT TEAMWORK

AMERICAN LABOR DIGEST

A Non-Partisan Free Enterprise Labor Magazine of Modern America

422 Washington Building,

Washington 5, D. C.

GENTLEMEN:

We are writing to you relative to advertising in the annual Easter Edition of the American Labor Digest.

May we count on the same support of a \$ — representation that we have had from you in the past? We can assure you that it will be greatly appreciated.

Thanking you for your kind consideration and pledging mutual cooperation in Labor Management Teamwork, we are,

Cordially yours,

DON CARLOS,
Business Manager.

Dedicated to the American Way of Life and Harmonious
Labor-Management Relationship.

On many occasions, respondent also mails statements of account to individuals, firms, and corporations located in many States of the United States which purport to be charges for advertisements authorized by the recipients thereof.

PAR. 7. By means of the statements appearing in said magazine and others of similar import, not specifically set out herein, and the oral statements of his solicitors, respondent has represented, directly and by implication, that said American Labor Digest is published and distributed regularly every month to members of the reading public; that it is supported by subscriptions and advertising revenue; that single copies are available for 50¢ and that annual subscriptions are available for \$5.00; that it represents and is published in the interest and support of labor and harmonious labor management; that respondent maintains an office in Washington, D. C., and that said magazine is widely circulated and distributed throughout the United States. By means of said form letters respondent had represented that the recipients thereof had authorized or approved the insertion of an advertisement in a prior edition of American Labor Digest and a renewal of said advertisement was being solicited; and by means of said statements of account respondent represented that the recipients thereof had authorized or approved the insertion of advertisements in said magazine and that said statements represented the cost of such advertisements; that said magazine was supported, approved or recognized by labor organizations and had its principal office in Washington, D. C.

PAR. 8. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact said American Labor Digest is not a magazine in the sense in which said designation is generally understood. While it carries a volume and number designation, it is not published monthly nor regularly, and said designations do not indicate the actual volumes or numbers published, and which are in fact substantially less than indicated. Said Digest is not available on news stands nor at any other place or store where magazines are offered for sale to the general purchasing public, nor has it a circulation among subscribers. There are in fact no subscriptions, the magazine being mailed only to those individuals, firms, and corporations whose advertisements appear therein; and while said individuals,

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firms, and corporations are located throughout the United States, said Digest is not distributed or available to members of the general reading public.

Said magazine does not represent labor generally nor is it supported by labor or any labor organization. Respondent does not maintain an office in the city of Washington, D. C., but is merely a subscriber to a mail address service located in said city.

Many of the recipients of said form letters requesting payment had never authorized the insertion of advertisements; and the sending of said form letters constitutes a part of a scheme calculated to cause the recipients thereof to contract for the publication of advertisements in the mistaken belief that in doing so they were renewing advertisements for which payment had been previously made; and many of the recipients of said statements of account had never authorized the insertion of advertisements in respondent's publication nor agreed to pay therefor and had, in fact, no knowledge that such insertion had been made. Moreover, the individuals, firms, and corporations who did authorize the insertion of advertisements in said Digest and agreed to pay therefor would not have done so, had they been informed of the true facts with respect to the nature and purpose of said American Labor Digest.

PAR. 9. The use by respondent of the aforesaid false, misleading, and deceptive statements had the tendency and capacity to lead a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to pay substantial amounts of money for advertising in respondent's said American Labor Digest.

CONCLUSION

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

ORDER

It is ordered, That the respondent, Charles Samuel Bernstein, an individual, his agents, representatives and employees, in connection with the publication of the American Labor Digest, or any other similar publication, and in connection with the offering for sale and sale of advertising space in said American Labor Digest and the dis-

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tribution thereof 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 the American Labor Digest is a regular monthly publication or that single copies thereof may be purchased;

(b) That the American Labor Digest has subscribers, is supported by subscriptions, is distributed to subscribers, or to the general reading public;

(c) That the American Labor Digest is a publication representing labor or is supported or recognized by labor or any labor organization or labor union;

(d) That respondent maintains an office in Washington, D. C., or any other city when such is not the fact;

(e) That any advertisement for which respondent is requesting payment through statements of account or otherwise has been inserted with the authorization of the advertiser contrary to the fact;

(f) That any advertisement appearing in a prior edition of respondent's publication has been inserted with the authorization of the advertiser or paid for by him contrary to the fact;

2. Requiring or demanding payment for advertisements which have not been authorized or approved.

ORDER TO FILE REPORT OF COMPLIANCE

It is further ordered, That the respondent, Charles Samuel Bernstein, shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist [as required by said decision and order of October 6, 1953].

IN THE MATTER OF
BENNETT COAT CO., INC. ET AL.

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

Docket 6108. Complaint, July 9, 1953—Decision, Oct. 6, 1953

Where a corporation and two officers thereof, engaged in the manufacture and interstate sale and distribution of certain wool products as defined in the Wool Products Labeling Act;

- (a) Misbranded certain ladies' coats in that they were not stamped, tagged, or labeled as required by said Act and the Rules and Regulations promulgated thereunder;
- (b) Misbranded said coats in that, labeled or tagged as containing "100% Wool," they were composed of blended fabrics containing both wool and rayon fibers; and
- (c) Misbranded said coats in that the percentage or amount of the constituent fibers of interlinings thereof were not separately set forth on stamps, tags, etc. as required by Rule 24 of said Rules and Regulations:

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

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

Mr. George E. Steinmetz for the Commission.

DECISION OF THE COMMISSION

Pursuant to "Decision of the Commission and Order to File Report of Compliance," dated October 6, 1953, which, following the Commission's review of the initial decision in the instant matter and its consideration of the entire record, set forth its opinion that said decision was "adequate and appropriate to dispose of the proceeding," said initial decision of hearing examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, the Federal Trade Commission, on July 9, 1953, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those Acts. On August 12, 1953, respondents filed their answer, in which they admitted all of

the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to such facts. Thereafter the proceeding regularly came on for final consideration by the above-named hearing examiner, theretofore duly designated by the Commission, upon the complaint and answer, and the hearing examiner, having duly considered the matter, finds that this proceeding is in the interest of the public, and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Bennett Coat Co., Inc. is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 222 West 37th Street, New York, New York. Respondents George Tlumak and Louis I. Krieger are, respectively, president and secretary and treasurer of the corporation, and formulate, direct, and control its policies, acts, and practices.

PAR. 2. Subsequent to the effective date of said Wool Products Labeling Act, and more especially since January 1951, respondents have manufactured for introduction, introduced, sold, distributed, delivered for shipment and offered for sale, in commerce, as "commerce" is defined in said Act, wool products, as "wool products" are defined therein.

PAR. 3. 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 said Wool Products Labeling Act of 1939, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 4. Certain of said wool products were misbranded within the intent and meaning of Section 4 (a) (1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein. Among such misbranded wool products were ladies' coats labeled or tagged by respondent corporation as containing "100% Wool" whereas in truth and in fact said products were not 100% wool but were composed of blended fabrics containing both wool and rayon fibers.

PAR. 5. Certain of said wool products were further misbranded in that the percentage or amount of the constituent fibers of interlinings of certain of said ladies' coats were not separately set forth on stamps, tags, labels, or other means of identification in the manner, form, and extent required by Rule 24 of the Rules and Regulations promulgated by the Commission pursuant to said Wool Products Labeling Act.

CONCLUSION

The acts and practices of respondents, as herein found, are in violation of the Wool Products Labeling Act of 1939 and of the Rules and Regulations promulgated thereunder, and are to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent Bennett Coat Co., Inc., a corporation, and its officers, and respondents George Tlumak and Louis I. Krieger, individually, and respondents' respective representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of ladies' coats 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:

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 affix securely 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 nonfibrous loading, filling, or adulterating matter;

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

3. Failing to set forth separately on the required stamp, tag, label, or other means of identification the character and amount of the constituent fibers contained in the interlinings of such wool products as provided in Rule 24 of the Rules and Regulations promulgated under said 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.

ORDER TO FILE REPORT OF COMPLIANCE

It is further ordered, That the respondents, Bennett Coat Co., Inc., a corporation, and George Tlumak and Louis I. Krieger, shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said decision and order of October 6, 1953].

IN THE MATTER OF
THE BLOTTING PAPER MANUFACTURERS
ASSOCIATION ET AL.

CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6107. Complaint, June 30, 1953—Decision, Oct. 8, 1953

Where six corporations which were all the manufacturers in the United States on a regular sustained basis of commercial blotting papers and disseminated printed price lists and quotations—in accordance with which they made substantially all their sales to their respective customers for some years—which, with one or two exceptions, were uniform as to prices, terms, and conditions of sale for comparable products; aided by their association and the officers thereof—

Entered into understandings and a planned common course of action with respect to terms and conditions of sales, sale and distribution of blotting paper, to thwart, lessen, and suppress competition among themselves and others in the manufacture, sale, and distribution thereof; and, as a part of their cooperative activities, and to effectuate their common purpose—

- (a) Cooperatively formulated and adopted, and from time to time amended, a set of trade practices which included, among other things, (1) specific cutting and banding charges for different sizes and quantities; (2) stated standard size and weights, including specific price differentials for special weights and sizes; (3) packaging specifications, including specific price differentials for special packaging; and (4) regulations and charges with reference to colors and finishes;
- (b) Fixed, established, and maintained uniform and identical price differentials applicable to the different variations in colors, size, weight, trim, type, quantity, and packing;
- (c) Held meetings at which terms and conditions of sales and trade practices and policies were discussed, agreed to and acted upon; and
- (d) Fixed, established, and maintained uniform price differentials applicable to each of five zones into which, acting collectively for pricing purposes, they divided the United States, and followed the practice, regardless of the location of the selling manufacturer or location in a particular zone of the purchaser or the cost of transportation, of using Zone A prices as base prices and adding thereto $\frac{1}{2}\text{¢}$ per pound for sales made in Zone B and similar additional amounts, in the case of each, for the three remaining zones, namely, Zones C, D, and E:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public; hindered, lessened, and prevented price competition among them in the sale of said products and had a dangerous tendency so to do; and constituted unfair methods of competition in commerce and unfair acts and practices therein.

Before *Mr. Everett F. Haycraft*, hearing examiner.
Mr. Floyd O. Collins for the Commission.

Wise, Corlett & Canfield, of New York City, for respondents generally.

Smith, Schnacke & Compton, of Dayton, Ohio, also represented Mead Corp.

Dykema, Jones & Wheat, of Detroit, Mich., also represented Paul Travis and Rochester Paper Co.

Mr. Lewis F. Powell, Jr., Mr. Joseph C. Carter, Jr., and Hunton, Williams, Anderson, Gay & Moore, of Richmond, Va., for Albemarle Paper Manufacturing Co.

CONSENT SETTLEMENT¹

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 30th day of June 1953, 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 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 as provided in Rule V of the Commission's Rules of Practice, solely for the purpose 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, 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 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 statements of the acts and practices which the Commission had reasons to believe were unlawful,

¹The 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 October 8, 1953, 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.

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. (a) The respondent The Blotting Paper Manufacturers Association, hereinafter referred to as respondent "Association," is an unincorporated membership organization. Its members are corporations engaged in the business of manufacturing and selling blotting paper. The constitution and bylaws of respondent Association asserts its purpose to be to establish and maintain such trade standards and practices as may be necessary for the general welfare of the industry in compliance with the requirements of the National Industrial Recovery Act. The home address of said respondent is 122 East 42d Street, New York, New York.

(b) Respondent Paul Travis is an individual and is president of respondent Association. Respondent's address is Rochester, Michigan.

(c) Respondent Graham A. Carlton is an individual and is vice president of respondent Association. Respondent's address is First and Hull Streets, Richmond, Virginia.

(d) Eric G. Lagerloef is an individual and is secretary and treasurer of respondent Association. Respondent's address is 122 East 42d Street, New York, New York.

PAR. 2. (a) Respondent Joseph Parker & Son Co. is a corporation organized and existing under and by virtue of the laws of the State of Connecticut with its home office and principal place of business located at 1155 Whaley Avenue, New Haven, Connecticut. Respondent is a member of respondent Association.

(b) Respondent The Wrenn Paper Company is a corporation organized and existing under and by virtue of the laws of the State of Ohio with its home office and principal place of business located at West First Avenue, Middletown, Ohio. The respondent is a member of respondent Association.

(c) Respondent The Rochester Paper Company is a corporation organized and existing under and by virtue of the laws of the State of Michigan with its home office and principal place of business located at Rochester, Michigan. Respondent is a member of respondent Association.

(d) Respondent Albemarle Paper Manufacturing Company is a corporation organized and existing under and by virtue of the laws of the State of Virginia with its home office and principal place of busi-

ness located at Tredegar Street, Richmond, Virginia. Respondent is a member of respondent Association.

(e) Respondent Standard Paper Manufacturing Company is a corporation organized and existing under and by virtue of the laws of the State of Virginia with its home office and principal place of business located at First and Hull Streets, Richmond, Virginia. Respondent is a member of respondent Association.

(f) Respondent Mead Corporation is a corporation organized and existing under and by virtue of the laws of the State of Ohio with its home office and principal place of business located at 118 West First Street, Dayton, Ohio. Respondent is a member of respondent Association.

PAR. 3. The respondent manufacturers are all engaged in manufacturing and selling commercial blotting papers of all types and are all the manufacturers located in the continental United States who are engaged in manufacturing blotting paper on a regular sustained basis. Said respondents manufacture approximately 90% of all the said blotting paper manufactured in the United States and because of said fact they are in a position to control the prices at which said products are sold to paper merchants and to control the terms and conditions of said sales.

PAR. 4. The respondent Association is not engaged in manufacturing and selling blotting paper; neither are the individual respondents so engaged in their individual capacity, but they have aided and abetted the respondent manufacturers in the practices herein found.

PAR. 5. In the course and conduct of their business, respondent manufacturers manufacture blotting paper and sell said product when manufactured to paper merchants and other purchasers and ship and/or cause said product to be shipped and transported from their respective factories to the purchasers thereof, many of whom are located in States of the United States other than the State of origin of said shipments. Respondents have for some years last past carried on a constant course of trade in said products in said commerce, as herein found.

PAR. 6. Respondent manufacturers were and are in competition with one another and with others in the manufacture, sale, and distribution of blotting paper in commerce among and between the various States of the United States and in the District of Columbia except insofar as actual and potential competition has been hindered, lessened, restricted, restrained and forestalled by the unfair methods of competition and unfair acts and practices in commerce, as is herein found.

PAR. 7. For some years last past the respondent manufacturers, with the aid and assistance of respondent Association and the individual respondents named herein, have been engaged in unfair methods of competition and unfair acts and practices in the commerce herein described, contrary to the provisions of the Federal Trade Commission Act in that they have acted to thwart, hinder, lessen, restrict and suppress competition among and between themselves and others in the manufacture, sale and distribution of blotting paper by cooperating, combining, conspiring, agreeing, and entering into understandings and a planned common course of action with respect to terms and conditions of sales, sales and distribution of blotting paper.

As a part of their cooperative activities and to effectuate their common purpose, respondents have committed acts and promulgated, adopted, and used unlawful policies, methods, and practices, among which are the following:

(a) Cooperatively formulated and adopted, and from time to time amended, a set of trade practices which include, among other things, (1) specific cutting and banding charges for different sizes and quantities; (2) stated standard size and weights, including specific price differentials for special weights and sizes; (3) packaging specifications, including specific price differentials for special packaging; and (4) regulations and charges with reference to colors and finishes.

(b) Fixed, established, and maintained uniform and identical price differentials applicable to the different variations in colors, size, weight, trim, type, quantity, and packing.

(c) Have held meetings at which terms and conditions of sales and trade practices and policies were discussed, agreed to and acted upon.

(d) Have for pricing purposes collectively formulated, adopted, and maintained a zoning system whereby the United States is divided into five price zones, to-wit: Zone A, zone B, zone C, zone D, and zone E, and have fixed, established, and maintained uniform identical price differentials applicable to each of said zones. In practice respondents use zone A prices as base prices and when sales are made in zone B, $\frac{1}{2}\text{¢}$ per pounds is added; in zone C another $\frac{1}{2}\text{¢}$ per pound is added; in zone D another $\frac{1}{2}\text{¢}$ per pound is added; and in zone E another $\frac{1}{2}\text{¢}$ per pound is added. This practice is followed regardless of the location of the selling manufacturer or location in a particular zone of the purchaser, or the cost of transportation.

PAR. 8. Each of the respondent manufacturers has published and disseminated to its customers printed price lists and printed price quotations, terms, and conditions of sale incorporating statements of trade practices, methods, policies, terms, conditions of sale such as

those outlined and specified in the preceding paragraph 7. For some years last past, all of said respondent manufacturers' printed price lists and printed quotations, terms, and conditions of sale thus issued and disseminated, except as to one or two instances, have been uniform as to prices, terms, and conditions of sale for comparable products and said respondent manufacturers made substantially all of their sales in accordance therewith.

CONCLUSION

The acts and practices of respondents, as herein found, are all to the prejudice of the public, have a dangerous tendency to and have actually hindered, lessened, restrained, and prevented price competition among and between said respondents in the sale of said products in commerce within the intent and meaning of the Federal Trade Commission Act; and constitute unfair methods of competition and unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

It is ordered, That the respondents The Blotting Paper Manufacturers Association, and its officers; Paul Travis, individually and as President of respondent Association; Graham A. Carlton, individually and as Vice President of respondent Association; Eric G. Lagerloef, individually and as Secretary and Treasurer of respondent Association; Joseph Parker & Son Co., a corporation; The Wrenn Paper Company, a corporation; The Rochester Paper Company, a corporation; Albemarle Paper Manufacturing Company, a corporation; Standard Paper Manufacturing Company, a corporation; and Mead Corporation, a corporation, and the corporate respondents' officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the sale and distribution of blotting paper, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out, any planned, common course of action, understanding, agreement, combination, or conspiracy between and among any two or more of said respondents, or between any one or more of said respondents and persons so engaged in any line of commerce as to ordinarily compete with any of said respondents to do or perform any of the following acts:

1. Fixing, establishing, or maintaining by any manner whatever uniform prices, discounts, terms, or conditions of sale of blotting paper.

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2. Using in the quoting of prices on or in the sale of blotting paper, the differentials in price for variance in color, weight, size, trim, packaging, type, or quantity of blotting paper heretofore fixed or established; or,

3. Fixing, establishing, or maintaining any differentials in price for any variance in color, weight, size, finish, trim, packaging, type, or quantity of blotting paper.

4. Using in quoting prices on, or in the sale of blotting paper, the geographical zones or the price differentials between such zones heretofore fixed, or fixing, establishing, or maintaining any geographical areas or zones for pricing purposes or any differentials in price between any such areas or zones for use in quoting prices on or in the sale of blotting paper.

5. Using or maintaining the trade practices heretofore formulated and agreed upon, or agreeing upon of formulating and using any trade practices which specify prices or differentials in prices to be used in quoting prices on, or in the sale of blotting paper, or any similar set of rules or formula which results in uniform identical prices or fixed variances in prices.

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

THE BLOTTING PAPER MANUFACTURERS
ASSOCIATION.

By [s] PAUL H. TRAVIS, *President.*

By [s] A. R. FORTUNE, *Vice-President.*

ROCHESTER PAPER COMPANY.

By [s] GRAHAM A. CARLTON.

By [s] ERIC G. LAGERLOEF.

JOSEPH PARKER & SON Co.

By [s] H. LEONARD MICHAELSON, Jr.,

Secretary.

THE WRENN PAPER COMPANY.

By [s] J. J. HALLOWELL, *President.*

THE ROCHESTER PAPER COMPANY.

By [s] A. R. FORTUNE, *Vice-President.*

ALBEMARLE PAPER MANUFACTURING
COMPANY.

By [s] F. D. GOTTFWALD, *President.*

STANDARD PAPER MANUFACTURING
COMPANY.

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By [s] G. A. CARLTON, *Vice-President*.
MEAD CORPORATION.

By [s] H. E. WHITAKER, *President*.

Dated:

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this 8th day of October 1953.

IN THE MATTER OF
NATIONAL BLIND INDUSTRIES, INC. ET AL.

DECISION IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION

Docket 6036. Complaint, Aug. 29, 1952—Decision, Oct. 20, 1953

Where a non-profit institution serving as a coordinating agency, broker, and clearing house for numerous workshops for the blind, located at various points throughout the United States, included as one of its principal functions the assisting of the Government in locating and procuring desired articles made by the blind and in assisting the various workshops in marketing their products to the Government as well as to private business concerns, charitable institutions, etc., and, as National Industries for the Blind, was a long established and well recognized organization; and thereafter a corporation and an individual, its officer and owner, engaged in the interstate sale and distribution of luminous house numbers and woven articles such as table and place mats, in competition with other corporations and individuals and with eleemosynary and charitable institutions similarly engaged—

- (a) Made use of a corporate name which, as National Blind Industries, Inc., so closely resembled that of National Industries for the Blind as to be confusing to the public and to have the tendency and capacity to cause it to mistake said private business enterprise for the other and thereby cause, or tend to cause, trade and contributions to be diverted unfairly to said private enterprise from the affiliates of National Industries for the Blind; and
- (b) Represented that they had facilities for training blind persons in handicraft and that contributions solicited from the public in connection with the sale of their merchandise would be used to train blind persons and for other rehabilitation work among the blind;

The facts being they had not trained any blind persons and were without facilities so to do; the only blind person in their employ received his training elsewhere, as did others engaged in making various articles sold by said corporation and its owner; and contributions were not otherwise used in rehabilitation work among the blind, but were made use of, as respects the major portion, for other purposes such as commissions of solicitors, salaries of collectors and other employees, rent on their place of business and payments to said owner as income and also on an indebtedness due him by said corporation:

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

Before *Mr. William L. Pack*, hearing examiner.
Mr. J. W. Brookfield, Jr., for the Commission.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated October 20, 1953, the initial decision in the instant matter of hearing examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 29, 1952, issued and subsequently served its complaint in this proceeding upon 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 commerce in violation of the provisions of that Act. After the filing by respondents of their answers to the complaint, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before the above-named hearing examiner, theretofore duly designated by the Commission, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final consideration by the hearing examiner on the complaint, answers, testimony and other evidence, and proposed findings as to the facts and conclusions submitted by counsel supporting the complaint and by certain of the respondents (oral argument not having been requested); and the hearing examiner, having duly considered the matter, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent National Blind Industries, Inc., is a corporation organized and doing business under and by virtue of the laws of the District of Columbia, with its place of business located at 1211 "I" Street, N. W., in the city of Washington, District of Columbia. Respondent David A. Ulrey formulates the policies of the corporation and directs and controls all of its practices and activities. While his official title in the corporation is that of Secretary and Treasurer, such title is of no significance as respondent Ulrey is in fact the owner of the business and has complete control over it.

In the formation of the corporation respondents Walter O. Ulrey and Frances D. Lehman appeared as incorporators along with David A. Ulrey. It also appears that in the organization of the corporation Walter O. Ulrey was elected President and Frances D. Lehman Vice-President. These titles, however, were only nominal, as neither of the two has ever had any part in formulating the policies of the business or directing its activities. Walter O. Ulrey appears to have visited the corporation's place of business only once or twice and he resigned his office in July 1952, having had no connection with the business since that time. Miss Lehman was in the employ of the corporation from approximately the date of its organization in July 1951 to March 1952, her duties being principally of a clerical nature. She has never had any financial investment in the business but received a weekly salary in her capacity as an employee. Her employment was terminated in March 1952, since which time she has been employed in work of an entirely different nature.

In view of these facts it is concluded that no sound basis exists for retaining these two individuals as respondents in the proceeding and the complaint is being dismissed as to them. The word respondents as used hereinafter will therefore include only the corporate respondent and respondent David A. Ulrey unless the contrary is indicated.

PAR. 2. Respondents are and have been engaged in the sale and distribution of luminous house numbers, and woven articles such as table and place mats. Respondents cause and have caused their products, when sold, to be transported from their place of business in the District of Columbia to purchasers located at other points within the District of Columbia and also in the States of Maryland and Virginia.

In the sale and distribution of their products respondents are and have been in substantial competition with other corporations and individuals, and with eleemosynary and charitable institutions, engaged in the sale and distribution of similar products in commerce in the District of Columbia and between and among the various States of the United States.

PAR. 3. In promoting the sale of their products respondents have represented to prospective customers that the articles are made by blind persons, and the first issue raised by the complaint is whether this representation is true. The principal item sold by respondents has been luminous house numbers. The two pieces of wood used in making the numbers are purchased by respondents in pre-cut sizes, one of the two being a small post or stake and the other a small rectangular board. The two pieces of wood are fastened together by a blind worker by means of screws inserted in pre-cut holes, the board being placed crosswise the stake and near the top. To the

board the blind worker affixes metal numerals theretofore purchased by respondents. The entire sign is then painted by the blind worker. The signs are designed to be placed in the front yard of a residence and are made luminous in order that they may be visible at night.

As his compensation the single blind worker who has been engaged in this work receives \$1.00 per sign. The price received by respondents for the finished signs was originally \$2.50 each but later was raised to \$3.50. Sales are solicited over the telephone by persons employed by respondents for that purpose. The signs are delivered and the purchase price collected by still other employees. All of these employees are sighted rather than blind persons.

It is urged in support of the complaint that the work done on the signs by the blind worker constitutes a mere assembling process, and that respondents' representation that the signs are made by the blind is unwarranted and misleading. The examiner rejects this contention. The work done by the blind person constitutes the major portion of the process of making the sign and respondents are warranted in representing the signs as having been made by the blind.

The only other work of a substantial nature done at respondents' place of business is the caning of chairs. It is not disputed that all of this work is done by blind persons, some seven or eight of such persons having at various times been engaged in such work.

In addition to the sale of house numbers and the caning of chairs, respondents have at times sold a few household articles such as woven table and place mats. All of these articles were made by blind persons, although not at respondents' place of business nor by persons in respondents' employ. The articles were made by blind persons in their homes or in institutions for the blind in the District of Columbia.

PAR. 4. In connection with the sale of their merchandise respondents have solicited contributions from the public, representing that they have facilities for training blind persons in handicraft and that such contributions will be used to train blind persons and for other rehabilitation work among the blind. These contributions have been solicited principally over the telephone, calls being made to prospects in the Washington metropolitan area by women employed by respondents for that purpose. The solicitor frequently states to the prospect that she is a member of a "Ladies Committee" engaged in soliciting funds to help the blind. The solicitors usually work on a commission basis, receiving 35% of all funds obtained through their efforts. The actual collecting of the amounts subscribed is done by other employees who usually are employed on a salary basis.

Respondents' representations were unwarranted and misleading. Respondents have not in fact trained any blind persons and are with-

out facilities for such work. As indicated above, only one blind person has been employed in making the house numbers sold by respondents, and this person received his training elsewhere and before he became associated with respondents. In fact, it appears that this person approached respondents on his own initiative and suggested the house number enterprise. None of the few persons engaged in caning chairs received his training in such work from respondents, all having been previously trained elsewhere. Nor were such contributions otherwise used in rehabilitation work among the blind, the major portion being used for other purposes such as commissions of solicitors, salaries of collectors and other employees, rent on respondents' place of business, and payments to respondent David A. Ulrey as income and also on an indebtedness due him by the corporation.

PAR. 5. The complaint also charges that the name of the respondent corporation, "National Blind Industries, Inc.," is in and of itself false and misleading, one of the reasons assigned for this charge being that the name so closely resembles that of another organization that its use by respondents has the tendency and capacity to confuse and mislead the public. The other organization in question is the "National Industries for the Blind" which has its headquarters in New York City. This organization, which is a non-profit institution, serves as a coordinating agency, broker and clearing house and numerous workshops for the blind which are affiliated with it and which are located at various points throughout the United States. The United States Government is frequently in the market for numerous articles made by the blind, and one of the principal functions of National Industries for the Blind is to assist the Government in locating and procuring the articles desired, and to assist the various workshops in marketing their products to the Government as well as to private business concerns, charitable institutions, etc. National Industries for the Blind is a long established and well recognized organization, its origin having antedated that of respondent corporation by many years.

The examiner finds that this charge in the complaint is well founded. The name of the corporate respondent, National Blind Industries, Inc., so closely resembles that of National Industries for the Blind as to be confusing to the public and to have the tendency and capacity to cause the public to mistake respondent corporation for National Industries for the Blind, thereby causing, or having the tendency and capacity to cause, trade and contributions to be diverted unfairly to respondents from the affiliates of National Industries for the Blind. Unlike National Industries for the Blind

and its affiliates, respondent corporation is not a non-profit institution but is a private business enterprise.

PAR. 6. The complaint appears to charge also that, irrespective of the similarity between the name of respondent corporation and that of National Industries for the Blind, the corporate name is misleading. The allegations of the complaint in this respect are that "Through the use of the corporate name 'National Blind Industries, Inc.' respondents represent that said corporation is a charitable or eleemosynary institution devoted exclusively to the interests of the blind and operating at the national or nation wide level; that all the articles sold and offered for sale by them are made by blind persons and that the business is conducted for the benefit of the blind." There appears to be no evidence in the record, certainly no substantial evidence, indicating that the corporate name represents or connotes all of these things to the public, and the examiner is of the view that the name cannot reasonably be so construed. The name does represent or imply that the articles offered for sale by respondents are made by blind persons but, as heretofore pointed out, this representation is true.

PAR. 7. The acts and practices of the respondents as set forth in Paragraphs Four and Five have the tendency and capacity to confuse, mislead and deceive a substantial portion of the public as to respondents' business and its facilities, and the tendency and capacity to cause such members of the public, as a result of such confusion and misunderstanding, to make purchases from and contributions to respondents which they would not otherwise make. In consequence, substantial trade has been diverted unfairly to respondents from their competitors.

CONCLUSION

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

ORDER

It is ordered, That respondent National Blind Industries, Inc., a corporation, and its officers, and respondent David A. Ulrey, individually and as an officer of said corporation, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribu-

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tion of house numbers, woven goods or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from :

1. Representing, directly or by implication, that respondents have facilities for training, or that they do train, blind persons.

2. Representing, directly or by implication, that contributions received from the public will be used to train or rehabilitate the blind or otherwise used for the benefit of the blind.

3. Using as a part of respondents' corporate or trade name the words "National Blind Industries," or any other word or combination of words substantially similar to the name "National Industries for the Blind."

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondents Walter O. Ulrey and Frances D. Lehman.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents, National Blind Industries, Inc., a corporation, and David A. Ulrey, individually and as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of October 20, 1953].

Syllabus

IN THE MATTER OF
HOLTITE MANUFACTURING COMPANY AND CAT'S PAW
RUBBER COMPANY, INC. ET AL.

DECISION IN REGARD TO THE ALLEGED VIOLATION OF SEC. (A) OF THE
CLAYTON ACT, AS AMENDED

Docket 5828. Complaint, Nov. 7, 1950—Decision, Oct. 22, 1953

Where the largest manufacturer of rubber heels and soles in the United States, engaged in the competitive interstate sale and distribution, nationally, of a line of its said products under its nationally advertised brand name "Cat's Paw" and various other brand names, including customers' private brands, to wholesalers of shoe repair materials, or shoe finders, and to operators of chain shoe repair shops in department stores throughout the United States, to retailers of shoe repair and maintenance materials, and to independent shoe repair shops—

- (a) Discriminated in price between different purchasers of rubber heels and soles and findings, of like grade and quality, by selling said products to some of its customers at substantially higher prices than it sold such products of like grade and quality to other of its customers, through granting discounts, volume or otherwise, rebates, and allowances on sales to favored customers, including shoe finders and large operators of chain shoe repair shops, competitively engaged either with other shoe finders or with other shoe repair shops, retail shoe stores, and retailers of shoe repair and maintenance materials who purchased rubber heels and soles and findings either from said manufacturer or from shoe finder-customers of it, or from whomsoever purchased, within the various trading areas in which said favored customers were engaged in business, and who did not receive the benefit of such discriminatory discounts, etc., and the substantially lower prices and discriminations thereby brought about, ranging from one per cent to as high as about twenty per cent; and

Where (1) an individual businessman; and (2) a corporation, and various individuals, its officers and stockholders, partners in an associated and common enterprise; which were engaged in the interstate sale and distribution at wholesale of leather and rubber shoe repair materials and other products classified as findings, such as shoe polish, saddle soap, nails, laces, heel plates, shoe machinery, and other products and materials used in the repair, rebuilding, alteration, servicing, cleaning, or preservation of shoes, slippers, sandals, boots, and similar footwear products, were among the largest shoe finders in the Chicago, Illinois, area and sold to independent and chain operators, shoe repair shops, retail shoe stores, and to retailers of shoe repair and maintenance materials, in competition with other shoe finders who purchased leather and rubber shoe repair materials and findings from manufacturers or suppliers thereof for resale within the various trading areas in which said respondents offered and sold said products; and said manufacturer—

- (b) Jointly and severally discriminated in price between different purchasers of rubber heels and soles and findings, of like grade and quality, made by said manufacturer, by selling said products to some of their customers at

substantially higher prices than they sold such products of like grade and quality to others of their customers through granting discounts, volume or otherwise, rebates, and allowances, to favored customers, particularly large operators of chain shoe repair shops, competitively engaged with other shoe repair shops, retail shoe stores, and retailers of shoe repair and maintenance materials who purchased rubber heels and soles and findings from said respondents or from whomsoever purchased, within the various trading areas in which said favored customers were engaged and who did not receive the benefit of such discriminatory discounts, etc., and the substantially lower prices and discriminations thereby brought about, ranging from one per cent to as high as about fifty per cent; and

Where aforesaid individual shoe finder, engaged as above set forth—

- (c) Discriminated in price between different purchasers of leather and rubber heels and soles and findings, of like grade and quality, by selling said products to some of its customers at substantially higher prices than it sold such products of like grade and quality to others of its customers, through granting discounts, rebates, or allowances to favored customers, particularly large operators of chain shoe repair shops, which were competitively engaged with other shoe repair shops, retail shoe stores, and retailers of shoe repair and maintenance materials who purchased leather and rubber heels and soles and findings from said individual shoe finder or from whomsoever purchased, within the various trading areas in which said favored customers were engaged in business, and who did not receive the benefit of such discriminatory discounts, etc., and the substantially lower prices thereby brought about, ranging from one per cent to as high as about twenty per cent; and

Where said second shoe finder group, i. e., said corporation and its officer and stockholder partners, associated as above set forth—

- (d) Discriminated in price between different purchasers of leather and rubber heels and soles and findings, of like grade and quality, by selling said products to some of its customers at substantially higher prices than it sold such products of like grade and quality to others of its customers through granting discounts, rebates, or allowances to favored customers, particularly large operators of chain shoe repair shops, competitively engaged with other shoe repair shops, retail shoe stores, and retailers of shoe repair and maintenance materials who purchased leather and rubber heels and soles and findings from said group enterprise or from whomsoever purchased within the various trading areas in which said favored customers were engaged in business and who did not receive the benefit of such discriminatory discounts, etc., and the substantially lower prices and discriminations thereby brought about, ranging from one percent to as high as about twenty percent; Effect of which discrimination in price, as above set forth, might be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondents and their purchasers were respectively engaged, or to injure, destroy, or prevent competition with said respondents or with customers of theirs who received the benefits of such discriminations:

Held, That such alleged acts and practices of said respondents, as above set forth, constituted violations of Subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Before *Mr. Frank Hier*, hearing examiner.

Mr. James I. Rooney and Mr. James S. Kelaher for the Commission.
Gordon & Feinblatt, of Baltimore, Md., for Holtite Manufacturing Co., Cat's Paw Rubber Co., Inc., Morris Eisen, Larry L. Esterson and Albert A. Esterson.

Mr. I. Leonard Kovitz, of Chicago, Ill., for Jack Klinger.
Lederer, Livingston, Kahn & Adsit, of Chicago, Ill., for K. Kaplan Sons & Co., Rudolph E. Kaplan, Eli E. Kaplan, I. Gilbert Kaplan, Sidney Kaplan, Rubin Chupack and Edwin Kardon.

ORDERS AND DECISION OF THE COMMISSION

Order denying respondents' appeal from initial decision of hearing examiner and decision of the Commission and order to file report of compliance, Docket 5828, October 22, 1953, follows:

This matter came on to be heard by the Federal Trade Commission upon an appeal by all of the respondents herein with the exception of Jack Klinger from the initial decision of the hearing examiner, briefs in support of and in opposition to said appeal and oral argument thereon, an order granting leave to respondents to show cause why the form of order contained in the initial decision should not be entered as the order to cease and desist of the Commission, respondents' objections stated in answer to said order to show cause, and answer of counsel supporting complaint in opposition to said objections.

The record herein consists of a complaint and respondents' answers admitting all of the material allegations of fact. These answers were filed by respondents after an agreement had been reached between them and counsel supporting the complaint as to the form of proposed order which would be urged by all counsel. It was clearly understood, however, that the Commission was not bound to issue its order to cease and desist in the form proposed. The hearing examiner in his initial decision varied from the form of the proposed order by omitting from its provisos which, in effect, state that the defenses of cost justification and of meeting the equally low price of a competitor are available to respondents under the order. Respondents appealed from this initial decision on the ground that the exclusion of these provisos took from them substantial rights to which they are entitled. Further objection was made to the entry of any order to cease and desist herein prior to disposition by the Commission of the cases in Docket Nos. 6042, 6043, 6044, and 6045, involving competitors' pricing practices.

Respondents' contention that the omission of the provisos from the order is erroneous is of no merit. The Supreme Court of the United States in *Federal Trade Commission v. The Ruberoid Co.*, 343 U. S.

470 (1952) stated that such provisos are necessarily implicit in every such order of the Commission. However, as stated by that court, the implicit availability of these defenses does not allow respondents to relitigate issues already decided by the proceeding before the Commission which resulted in the order to cease and desist. Thus, the only difference between the proposed order and the order adopted by the hearing examiner is that the proposed order would allow respondents to relitigate on the questions of meeting competition and cost justification in a proceeding for violation of the order on the same facts as considered herein. The Commission is of the opinion that the order contained in the initial decision provides the more adequate relief from the complained of practices and is proper in all respects.

As to respondents' contention that no order should be issued herein until its disposition of the cases in Docket Nos. 6042, 6043, 6044, and 6045 involving competitors' pricing practices, the Commission, on August 5, 1953, issued its decision accepting a consent settlement containing an order to cease and desist in each of these cases. The basis for this objection, therefore, has been eliminated.

The Commission, therefore, being of the opinion that respondents' grounds for appeal are of no merit and that the initial decision of the hearing examiner is appropriate in all respects to dispose of this proceeding:

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

It is further ordered, That the initial decision of the hearing examiner shall, on the 22d day of October 1953, become the decision of the Commission.

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 contained in said initial decision, a copy of which is attached hereto.

Commissioners Howrey and Carretta not participating for the reason that oral argument on respondents' appeal from the initial decision was heard prior to their appointment to the Commission.

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

INITIAL DECISION BY FRANK HIER, TRIAL EXAMINER

Pursuant to the provisions of the Clayton Act as amended by the Robinson-Patman Act (15 U. S. C. Sec. 13), the Federal Trade Commission on November 7, 1950, issued and subsequently served its com-

plaint in this proceeding upon Holtite Manufacturing Company, a corporation, Cat's Paw Rubber Company, Inc., a corporation, Morris Eisen, Larry L. Esterson, and Albert A. Esterson, individually and as officers of said two corporations; upon Jack Klinger, an individual doing business as A. Leveton Company; and upon K. Kaplan Sons and Company, a corporation, Rudolph E. Kaplan and Eli E. Kaplan, individually and as officers thereof, Rudolph E. Kaplan, Eli E. Kaplan, I. Gilbert Kaplan, Sidney Kaplan, Rubin Chupack and Edwin Kardon, individually and as copartners doing business as Reick, Langendorf and Company, a partnership, charging them with violation of subsection (a) of section 2 of said Act as amended. Time within which to file answer, as fixed in the complaint, was, by the trial examiner, enlarged for respondents Holtite Manufacturing Company and Cat's Paw Rubber Company, Inc., and the individuals named as their officers, but all the remaining respondents filed answers on December 4, 1950. Thereafter, on January 4, 1951, respondents Holtite Manufacturing Company, Cat's Paw Rubber Company, Inc., Morris Eisen, Larry L. and Albert A. Esterson filed answer through counsel admitting all the material allegations of the complaint and waiving all intervening procedure and further hearing as to the facts. On January 12, 1951, the remainder of the named respondents, with the exception of Jack Klinger, through counsel filed motion to withdraw their answer filed December 4, 1950, and to substitute therefor an amended answer admitting all the material allegations of the complaint and waiving all intervening procedure and further hearing as to the facts, which motion was granted by the trial examiner and said amended answer filed. On January 24, 1951, respondent Jack Klinger through counsel filed motion to withdraw answer dated December 4, 1950, and to substitute amended answer admitting all the material allegations of the complaint and waiving all intervening procedure and further hearing as to the facts, which motion was granted by the trial examiner, the amended answer filed and the record closed.

Thereafter, the proceeding regularly came on for final consideration by said trial examiner on the complaint, answer, and amended answers thereto and said trial examiner, having duly considered the record herein, makes the following findings as to the facts, conclusion drawn therefrom, and order :

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Holtite Manufacturing Company is a Maryland corporation with its office and principal place of business located at Warner and Ostend Streets, Baltimore, Maryland.

Findings

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Respondent Cat's Paw Rubber Company, Inc., is a Maryland corporation with its office and principal place of business located at Warner and Ostend Streets, Baltimore, Maryland, and is a wholly owned subsidiary of respondent Holtite Manufacturing Company.

Respondents Morris Eisen, Larry L. Esterson, and Albert A. Ester-son are individuals and are President, Vice President, and Secretary-Treasurer, respectively, of respondent Holtite Manufacturing Company and are Secretary-Treasurer, Vice President, and President, respectively, of corporate respondent Cat's Paw Rubber Company, Inc. Said individual respondents formulate, control, and direct the policies, practices, and methods of said corporate respondents. All of the respondents named in this paragraph are hereinafter referred to jointly and severally as respondent Cat's Paw.

PAR. 2. Respondent Jack Klinger is an individual doing business under the trade name and style of A. Leveton Company, hereinafter referred to as respondent A. Leveton Company, with his office and principal place of business located at 711 West Roosevelt Road, Chicago, Illinois.

PAR. 3. Respondent K. Kaplan Sons and Company is an Illinois corporation with its office and principal place of business located at 711 North Milwaukee Avenue, Chicago, Illinois.

Respondents Rudolph E. Kaplan and Eli E. Kaplan are individuals and are President and Secretary-Treasurer, respectively, of respondent K. Kaplan Sons and Company, and as such formulate, control, and direct the policies, practices, and methods of said respondent corporation.

The aforesaid individual respondents Rudolph E. Kaplan and Eli E. Kaplan, together with individual respondents I. Gilbert Kaplan, Sidney Kaplan, Rubin Chupack, and Edwin Kardon, own all of the capital stock of K. Kaplan Sons and Company, and are copartners doing business under the firm name and style of Reick, Langendorf and Company with its office and principal place of business located at 31 South Wells Street, Chicago, Illinois. All of the respondents named in this paragraph are hereinafter referred to jointly and severally as respondent K. Kaplan.

PAR. 4. Respondent Cat's Paw is now and has been since June 19, 1936, engaged in the manufacture, sale, and distribution of a line of rubber heels and soles and allied products used in the shoe repair industry. Respondent Cat's Paw is the largest manufacturer of rubber heels and soles in the United States.

Said respondent sells and distributes its products principally under the nationally advertised brand name "Cat's Paw," and also under various other brand names, including customers' private brands.

Said products are sold nationally to wholesalers of shoe repair materials, known generally as shoe finders; and to operators of chain shoe repair shops located in department stores throughout the United States, retail shoe stores, retailers of shoe repair and maintenance materials, and independent shoe repair shops.

Respondent Cat's Paw causes said products, when sold, to be transported from the place of manufacture at Baltimore, Maryland, to the purchasers thereof located in the various States of the United States and in the District of Columbia. There is and has been at all times herein mentioned a continuous current of trade and commerce in said products across State lines between respondent's manufacturing plant and purchasers of such products. Said products are sold and distributed for use, consumption, and resale within the various States of the United States and in the District of Columbia.

PAR. 5. Respondents A. Leveton Company and K. Kaplan, since June 19, 1936, have been and are now engaged in the sale and distribution at wholesale of leather and rubber shoe repair materials, and other products classified as findings, such as shoe polish, saddle soap, nails, laces, heel plates, shoe machinery, and other products and materials, all for use in the repair, rebuilding, alteration, servicing, cleaning, or preservation of shoes, slippers, sandals, boots, and similar footwear products. Said respondents, generally known as shoe finders, are among the largest shoe finders in the Chicago, Illinois, area and sell to independent and chain operated shoe repair shops, retail shoe stores and to retailers of shoe repair and maintenance materials.

Said respondents cause said products, when sold, to be transported from the points of origin of shipments to the purchasers thereof located in the various States of the United States and in the District of Columbia. There is and has been at all times herein mentioned a continuous current of trade and commerce in said products across State lines between the points of origin of shipment and the purchasers of such products. Said products are sold and distributed for use, consumption, and resale within the various States of the United States and in the District of Columbia.

PAR. 6. In the course and conduct of its business, as aforesaid, respondent Cat's Paw is now and during the times herein mentioned has been in substantial competition with other corporations and firms engaged in the business of manufacturing, selling, and distributing materials and findings used in the shoe repair industry, and with shoe finders engaged in the business of selling and distributing said products in interstate commerce. Respondents A. Leveton Company and K. Kaplan, in the course and conduct of their business, as aforesaid, are now and during the times herein mentioned have been in

substantial competition with other shoe finders who purchase leather and rubber shoe repair materials and findings from manufacturers or suppliers thereof for resale within the various trading areas in which respondents offer for sale and sell said products.

PAR. 7. Respondent Cat's Paw, in the course and conduct of its business, as hereinbefore set forth, has been since June 19, 1936, and now is discriminating in price between different purchasers of rubber heels and soles and findings, of like grade and quality, by selling said products to some of its customers at substantially higher prices than it sells such products of like grade and quality to others of its customers.

The aforesaid discriminations in price are effected by granting discounts, volume or otherwise, rebates and allowances on sales to favored customers, including shoe finders and large operators of chain shoe repair shops, which have the net effect, either directly or indirectly, of reducing said customers' prices to a substantially lower amount than respondent charges others of its customers on products of like grade and quality. Said discriminations in price vary in amount and range from one percent to as high as approximately twenty percent.

The favored customers receiving the aforesaid discriminations in price are competitively engaged either with other shoe finders or with other shoe repair shops, retail shoe stores, and retailers of shoe repair and maintenance materials who purchase rubber heels and soles and findings either from respondent Cat's Paw or from shoe finder-customers of respondent Cat's Paw, or from whomsoever purchased, within the various trading areas in which said favored customers are engaged in business.

PAR. 8. Respondent Cat's Paw and respondents A. Leveton Company and K. Kaplan, jointly and severally, in the course and conduct of their business, as hereinbefore set forth, are now and during the times herein mentioned have been discriminating in price between different purchasers of rubber heels and soles and findings, of like grade and quality, manufactured by respondent Cat's Paw, by selling said products to some of their customers at substantially higher prices than they sell such products of like grade and quality to others of their customers.

The aforesaid discriminations in price are effected by granting discounts, volume or otherwise, rebates and allowances to favored customers, particularly large operators of chain shoe repair shops, which have the net effect, either directly or indirectly, of reducing said customers' prices to a substantially lower amount than said respondents, jointly and severally, charge others of their customers for products of like grade and quality. Said discriminations in price

vary widely and range from one percent to as high as approximately fifty percent.

The favored customers receiving the aforesaid discriminations in price are competitively engaged with other shoe repair shops, retail shoe stores, and retailers of shoe repair and maintenance materials who purchase rubber heels and soles and findings from respondents named herein, or from whomsoever purchased, within the various trading areas in which said favored customers are engaged in business.

PAR. 9. Respondent A. Leveton Company in the course and conduct of its business, as hereinbefore set forth, has been during the times herein mentioned and now is discriminating in price between different purchasers of leather and rubber heels and soles and findings, of like grade and quality, by selling said products to some of its customers at substantially higher prices than it sells such products of like grade and quality to others of its customers.

The aforesaid discriminations in price are effected by granting discounts, rebates or allowances to favored customers, particularly large operators of chain shoe repair shops, which have the net effect, either directly or indirectly, of reducing said customers' prices to a substantially lower amount than respondent charges others of its customers for products of like grade and quality. Said discriminations in price vary widely in amount and range from one percent to as high as approximately twenty percent.

The favored customers receiving the aforesaid discriminations in price are competitively engaged with other shoe repair shops, retail shoe stores, and retailers of shoe repair and maintenance materials who purchase leather and rubber heels and soles and findings from respondent A. Leveton Company, or from whomsoever purchased, within the various trading areas in which said favored customers are engaged in business.

PAR. 10. Respondent K. Kaplan, in the course and conduct of its business, as hereinbefore set forth, has been during the times herein mentioned and now is discriminating in price between different purchasers of leather and rubber heels and soles and findings, of like grade and quality, by selling said products to some of its customers at substantially higher prices than it sells such products of like grade and quality to others of its customers.

The aforesaid discriminations in price are effected by granting discounts, rebates or allowances to favored customers, particularly large operators of chain shoe repair shops, which have the net effect, either directly or indirectly, of reducing said customers' prices to a substantially lower amount than respondent charges others of its customers for products of like grade and quality. Said discriminations

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in price vary widely in amount and range from one percent to as high as approximately twenty percent.

The favored customers receiving the aforesaid discriminations in price are competitively engaged with other shoe repair shops, retail shoe stores, and retailers of shoe repair and maintenance materials who purchase leather and rubber heels and soles and findings from respondent K. Kaplan, or from whomsoever purchased, within the various trading areas in which said favored customers are engaged in business.

PAR. 11. The effect of such discriminations in price as set forth in Paragraph 7, Paragraph 8, Paragraph 9 and Paragraph 10 hereof may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondents named herein and their purchasers are respectively engaged; or to injure, destroy or prevent competition with respondents named herein or with customers of aforesaid respondents who receive the benefits of such discriminations.

CONCLUSION

The foregoing alleged acts and practices of said respondents, as herein found, constitute violations of subsection (a) of section 2 of the Clayton Act (U. S. C. Title 15, Sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936.

ORDER

It is ordered, That respondents Holtite Manufacturing Company, a corporation, Cat's Paw Rubber Company, Inc., a corporation, K. Kaplan Sons and Company, a corporation, their officers, agents, representatives and employees, respondents Morris Eisen, Larry L. Esterson, Albert A. Esterson, Rudolph E. Kaplan and Eli E. Kaplan, individually and as officers of the named corporations, their representatives, employees and agents, respondent Jack Klinger, doing business as A. Leveton Company, or under any other name, his agents, employees and representatives, and respondents Rudolph E. Kaplan, Eli E. Kaplan, I. Gilbert Kaplan, Sidney Kaplan, Rubin Chupack and Edwin Kardon, individually and as partners doing business under the name of Reick, Langendorf and Company, a partnership, or under any other partnership or firm name, their representatives, agents and employees, directly or through any corporate or other device, in connection with the sale of leather and rubber heels and soles, leather and rubber shoe repair materials and other products known commercially as findings, such as shoe polish, saddle soap, nails, laces, heel plates and shoe machinery, in commerce,

as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist, severally, jointly or with any other individual, firm or corporation, directly or indirectly, from discriminating in price between different purchasers of said products by selling products of like grade and quality to any purchaser at prices lower than those granted other purchasers who in fact compete, or whose customers compete, with the favored purchaser or purchasers, in the resale or distribution of such products.

For the purpose of comparison, the term "price" as used in this order takes into account discounts, volume or otherwise, rebates, allowances and other terms and conditions of sale.

ORDER TO FILE REPORT OF COMPLIANCE

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 * * * [as required by aforesaid order and decision of the Commission.]

IN THE MATTER OF
SAXONY WOOL CORPORATION OF NEW YORK ET AL.

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

Docket 6114. Complaint, Aug. 7, 1953—Decision, Oct. 29, 1953

Where a corporation and its president, engaged in the interstate sale and distribution of wool products as defined in the Wool Products Labeling Act,

(a) Misbranded certain knitted clips—in that, labeled as (1) "Wool Cashmere" and (2) "96% Wool Cashmere, 4% Cotton and Rayon," they were in fact composed substantially of fibers other than the fleece of the Cashmere goat;

(b) Misbranded said products in that they were not stamped, tagged, or labeled as required by said Act and more particularly, in that the labels did not give the percentage of the alleged cashmere fiber:

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

Before *Mr. Webster Ballinger*, hearing examiner.

Mr. Henry D. Stringer for the Commission.

Weisman, Allen, Spett & Sheinberg, 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 August 7, 1953, issued and subsequently served its 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 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 conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of answer to said complaint hereby:

¹The 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 October 29, 1953, 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.

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. Respondent, Saxony Wool Corporation of New York, is a corporation duly incorporated under the laws of the State of New York. Respondents, Ralph Rubinger and Ann Rivlin, are president and secretary, respectively, of such corporation. Ralph Rubinger formulates, directs, and controls the acts, policies, and practices of such corporate respondent. The offices and principal place of business of such corporate respondent, and Ralph Rubinger and Ann Rivlin are located at 7 Vestry Street, New York, New York.

PAR. 2. Respondent, Ann Rivlin, has filed an affidavit herein, setting forth that she has never at any time during her tenure as secretary of respondent corporation, participated in the management, direction, or control thereof, and has never formulated, directed, nor controlled the acts, policies, and practices complained about.

By reason of the matters set out in said affidavit the Commission finds that the said complaint, insofar as it relates to the respondent, Ann Rivlin as an individual, should be dismissed.

PAR. 3. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since 1951, said respondents, other than Ann Rivlin, have manufactured or caused to be manufactured for introduction into commerce, introduced or caused to be introduced into commerce, sold, offered for sale, 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. 4. 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 and deceptively stamped, tagged, labeled, or otherwise identified as to the character and amount of the constituent fibers contained therein.

More particularly the misbranded wool products aforementioned were woolen stocks, that is, fibrous materials made from knitted clips, labeled or caused to be labeled by the respondents as (1) "Wool cashmere," and (2) "96% Wool cashmere, 4% cotton and rayon" and the use by the respondents of the labels aforesaid had a substantial tendency to cause purchasers thereof to believe that, in the first instance, such woolen stocks were composed entirely of the hair or fleece of the Cashmere goat, and, in the second instance, of 96% hair or fleece of the Cashmere goat; whereas, in fact, such woolen stocks were composed substantially of fibers other than the hair or fleece of the Cashmere goat.

PAR. 5. 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 under said Act.

More particularly the said wool products were misbranded within the intent and meaning of the Wool Products Labeling Act of 1939 and Rule 19 of the Regulations thereunder in this, that the labels referred to in Paragraph Four did not give the percentage of the alleged cashmere fiber present therein.

PAR. 6. The respondents assert that the acts and practices complained of herein were discontinued by them on or before May 1, 1953, and have not been engaged in by respondents since that time.

CONCLUSION

The acts and practices of respondents, Saxony Wool Corporation of New York, a corporation, and Ralph Rubinger, individually, as hereinbefore found, were and are in violation of the Wool Products Labeling Act of 1939, and the Rules and 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, Saxony Wool Corporation of New York, a corporation, and its officers, and Ralph Rubinger in-

dividually, and respondents' respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution, in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of fibrous stocks, 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:

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 nonfibrous loading, filling, or adulterating matter;

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

3. 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;

4. 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.

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

Order

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construed as limiting any applicable provisions of said Act or the Rules and Regulations promulgated thereunder.

It is further ordered, That the complaint herein insofar as it relates to Ann Rivlin, individually, be, and the same is hereby dismissed, it being understood, however, that this action shall not be construed to prevent the application of this order to the said Ann Rivlin as an officer of the Saxony Wool Corporation of New York.

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.

Saxony Wool Corporation of New York,
a corporation.

(Sgd) By Ralph Rubinger, Pres.

(Sgd) Ralph Rubinger

Ralph Rubinger, individually.

(Sgd) Ann Rivlin

Ann Rivlin, individually.

Date: October 7, 1953.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and entered of record on this 29th day of October, 1953.

Decision

IN THE MATTER OF
PAGE DAIRY COMPANYDECISION IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (a) OF THE
CLAYTON ACT, AS AMENDED

Docket 5974. Complaint, Mar. 27, 1952—Decision, Oct 30, 1953

Where an Ohio corporation engaged in the manufacture, processing, and distribution of fluid milk and dairy products and in the transportation and sale at wholesale of homogenized milk from its Ohio processing plant to various cities, towns, and trading areas in Indiana and in Michigan, in competition with other dairies, mostly locally owned, in each of said trading areas—

- (a) Discriminated in price between its Ohio purchasers and its Indiana and Michigan purchasers by charging the former higher prices for milk of like grade and quality than it charged its latter purchasers; and
- (b) Discriminated in price in the interstate sale of its homogenized milk among its purchasers located in Indiana and Michigan by charging some of such purchasers higher prices than it charged other purchasers located in said States for milk of like grade and quality, through charging one cent more for its quart cartons of its homogenized Vitamin D milk which was so labeled than it charged for such milk sold in quart cartons not so labeled:

Held, That such acts and practices, under the circumstances set forth, were in violation of subsec. (a) of Sec. 2 of the Clayton Act as amended by the Robinson-Patman Act.

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

Mr. William H. Smith, Mr. James I. Rooney, and Mr. James S. Kelaher for the Commission.

Shumaker, Loop & Kendrick and *Mr. Roland H. Rogers*, of Toledo, Ohio, for respondent.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated October 30, 1953, the initial decision in the instant matter of hearing examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Pursuant to the provisions of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19,

1936 (15 U. S. C., Sec. 13), the Federal Trade Commission on March 27, 1952, issued and subsequently served its complaint in this proceeding upon the respondent, Page Dairy Company, a corporation, charging it with violation of subsection (a) of Section 2 of that Act as amended. After the filing by respondent of its answer to the complaint, hearings were held at which testimony and other evidence in support of the allegations of the complaint were introduced before the above-named hearing examiner, theretofore duly designated by the Commission, the case in support of the complaint being rested at the conclusion of such hearings. Such testimony and other evidence were duly recorded and filed in the office of the Commission. Subsequently, respondent elected to introduce no testimony or other evidence in opposition to the allegations of the complaint. Thereafter the proceeding regularly came on for final consideration by the hearing examiner on the complaint, answer, testimony, and other evidence, and proposed findings as to the facts, conclusion, and order submitted jointly by counsel supporting the complaint and counsel for respondent (oral argument not having been requested); and the hearing examiner, having duly considered the matter, makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Page Dairy Company, is a corporation organized existing, and doing business under any by virtue of the laws of the State of Ohio, with its principal office and place of business located at Wade and Knapp Street, Toledo, Ohio.

PAR. 2. Since the date of its incorporation in 1913, respondent has been engaged in the manufacture, processing, and distribution of fluid milk and dairy products. Respondent processes and sells regular and homogenized fluid milk. Its dollar volume of sales for the year 1950 was approximately \$9,000,000.00.

PAR. 3. During February of 1950, respondent began the transportation of homogenized milk from its processing plant in Toledo, Ohio, to various cities, towns, and trading areas located in the States of Indiana and Michigan, principally in Northeastern Indiana and Southeastern Michigan, which milk respondent sold and now sells at wholesale to grocery and other retail stores located in said cities, towns, and trading areas.

PAR. 4. In the course and conduct of its business respondent engaged in commerce, as "commerce" is defined in the Clayton Act, having shipped and transported homogenized milk from its plant located in the State of Ohio, to purchasers, to whom it sold at whole-

sale, located in the States of Indiana and Michigan, and more particularly to purchasers located in the cities, towns, and trading areas of Harlan, Georgetown, Orland, St. Joe, Angola, and Auburn in the State of Indiana, and in the cities, towns, and trading areas of Bronson, Coldwater, Hillsdale, North Adams, and Adrian, in the State of Michigan.

PAR. 5. For a considerable period of time prior to February of 1950, when respondent began the sale of homogenized milk in commerce in the cities, towns, and trading areas located in the States of Indiana and Michigan, as described in Paragraph Four, there were other dairies, mostly locally owned, selling regular and homogenized milk at wholesale in each of said cities, towns, and trading areas, and who, since February 1950, have been in competition in the sale of milk with respondent.

PAR. 6. In making sales of homogenized milk to its purchasers at wholesale in the State of Ohio, and in transporting and selling the same in commerce to purchasers located in the States of Indiana and Michigan, respondent has been and is discriminating in price between its purchasers located in the State of Ohio and those located in the States of Indiana and Michigan by charging its purchasers located in the State of Ohio higher prices for milk of like grade and quality than respondent charges its purchasers located in the States of Indiana and Michigan. Respondent is also discriminating in price in the interstate sale of homogenized milk among its purchasers located in the States of Indiana and Michigan by charging some of its purchasers located in said States higher prices than it charges other purchasers located in the said States, for milk of like grade and quality.

PAR. 7. During the period February 1950, to June 1, 1952, all homogenized fluid milk processed and sold by respondent contained Vitamin D. In some cases with respect to quart cartons, this fluid milk was packaged in cartons labeled "Vitamin D" and in other cases this milk was packaged in cartons from which such labeling was omitted. In those cartons labeled "Vitamin D" the milk was sold at a charge of 1¢ additional per quart over the price of the milk in the cartons which did not bear the label "Vitamin D." This was done despite the fact that the fluid milk in both types of cartons was identical. All fluid milk packaged in 2 qt. cartons was labeled "Vitamin D."

Some examples of respondent's wholesale prices for homogenized milk to its purchasers, and competitors' wholesale prices for regular and homogenized milk to such purchasers during the same period of time, are as follows:

Findings

50 F. T. C.

Place of sale	Respondent's prices			Competitor's prices					
	Homogenized vitamin D			Homogenized vitamin D			Creamline		
	Quart cartons	One half gallon cartons		Quart cartons	One half gallon cartons		Quart cartons	One half gallon cartons	
	Cents per qt.	Cents per ½ gal.	Cents per qt.	Cents per qt.	Cents per ½ gal.	Cents per qt.	Cents per qt.	Cents per ½ gal.	Cents per qt.
<i>Indiana</i>									
Harlan.....	15½	30	15	17½			16½		
Georgetown.....	15½	30	15	17½			16½		
Orland.....	17½	34	17	18½			17½		
St. Joe.....	17½	34	17	17½			16½		
Angola.....	17½	35	17½		37	18½	17½		
Auburn.....	16½	32	16	17½	35	17½	16½		
<i>Michigan</i>									
Bronson.....	17½	34	17	18			18		
Coldwater.....	17½	34	17	18½	34	17	17½		
Hillsdale.....	17½	34	17	18½	34	17	17½		
North Adams.....		34	17	18½	34	17	17½	34	17
Adrian.....	17½	34	17				17½		

Thus respondent was selling homogenized Vitamin D milk in quart cartons not labeled "Vitamin D" at prices which were as much as 2¢ per quart less than competitors' prices for milk of like grade and quality; and was selling its homogenized Vitamin D milk in two quart containers at prices which were as much as 2½¢ per quart less than competitors' prices for homogenized Vitamin D milk, and as much as 1½¢ per quart less than competitors' prices for their regular creamline milk. In many of the areas where these differences in price prevailed, respondent's competitors did not distribute their milk in two quart containers.

In the sale of milk to the consuming public the gross margin of profit is very narrow. Therefore, any appreciable difference in price has the tendency to divert business from one seller to another. As the result of the pricing practices of respondent on the sale of homogenized milk some purchasers have either discontinued or curtailed their purchases of milk from respondent's competitors.

PAR. 8. Since June 1, 1952, respondent processes and sells both regular homogenized milk and homogenized milk containing Vitamin D, and charges 1¢ additional per quart for homogenized milk containing Vitamin D over the price for regular homogenized milk.

PAR. 9. The effect of such discrimination in price as stated herein may be to substantially lessen competition or tend to create a monopoly in the line of commerce in which respondent is engaged, or to injure, destroy, or prevent competition with respondent.

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CONCLUSION

The acts and practices of respondent as set forth herein are in violation of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Sec. 13).

ORDER

It is ordered, That the respondent, Page Dairy Company, a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale of fluid milk in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from discriminating in price by selling said fluid milk of like grade and quality to any purchaser at prices lower than those granted other purchasers where respondent, in the sale of such product, is in competition with any other seller.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist [as required by said declaratory decision and order of October 30, 1953].

IN THE MATTER OF
VISIONADE VISOR COMPANY, INC., ET AL.

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

Docket 6046. Complaint, Sept. 22, 1952—Decision, Nov. 3, 1953

Where a corporation engaged in the manufacture and interstate sale and distribution of plastic sun visors for attachment and use on the inside of automobile windshields; through advertisements in periodicals of general circulation, circulars, and other advertising matter—

(a) Represented, among other things, that its said visors would “fit your car,” were tailor made to fit individual model cars, and gave the eyes the same protection as fine sunglasses;

The facts being that while its “Safe-T-Zone” visors were precut to fit the contour of the upper edge of windshields of many automobiles, they required some trimming and cutting for exact fittings; another type, with which they furnished a pattern and cutting instructions, was not tailor made or precut to fit any windshield; and they did not shield the eyes like fine sunglasses; and

Where two individuals, officers of said company, and similarly engaged; in similarly advertising their “Filterzone” visors—

(b) Falsely represented that their said products were optically correct and afforded clear, true visibility, and that they filtered out all infra-red rays;

When in fact they did not have the characteristics of fine sunglasses, were not optically correct, and, while they permitted true color visibility, and filtered out approximately 75%, they permitted the transmission of about 25% of the infra-red heat rays:

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

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

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

Golden & Golden, of New York City, for respondents.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission’s Rules of Practice, and as set forth in the Commission’s “Decision of the Commission and Order to File Report of Compliance”, dated November 3, 1953, the initial decision in the instant matter of hearing examiner J. Earl Cox, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 22, 1952, issued and subsequently served its complaint in this proceeding upon the respondents Visionade Visor Company, Inc., a corporation, and Henry I. Sobel and Albert Rothgart, copartners trading as Filterzone Auto Vision Company, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondents' answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the above-named Hearing Examiner, theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said Hearing Examiner on the complaint, the answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by counsel in support of the complaint, (no proposed findings as to the facts and conclusions having been presented by respondents and oral argument not having been requested), and said Hearing Examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Visionade Visor Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 641 Lexington Avenue, Brooklyn 21, New York. Respondents, Henry I. Sobel and Albert Rothgart, are copartners trading as Filterzone Auto Vision Company with their office and principal place of business also located at 641 Lexington Avenue, Brooklyn 21, New York. Said respondents, Henry I. Sobel and Albert Rothgart, are officers of Visionade Visor Company, Inc.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the manufacture, sale, and distribution of plastic sun visors for attachment and use on the inside of automobile windshields. Respondents cause their said products, when sold, to be transported from their place of business in the State of New York to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said products in commerce between and among the various States of the United States and in the District of Columbia. The corporate respondent, Visionade Visor Company, Inc., sells and distributes most of its sun visors under the name "Safe-T-Zone", although it uses and has used other trade names. The partnership, Filterzone Auto Vision Company, sells and distributes its sun visors only under the trade name "Filterzone".

PAR. 3. In connection with the sale and distribution of their said sun visors in commerce and as an inducement for the purchase thereof by members of the purchasing public, the respective respondents through use of advertisements printed in periodicals having a general circulation and of circulars and other advertising matter distributed through the United States mails and otherwise, have made the following statements:

(a) Statements made by Visionade Visor Company, Inc.—

Tailor made to fit your car.

Shields your eyes like fine sun glasses, yet permits clear vision at all times.

Approved by motor vehicle bureaus of all states requiring approval.

(b) Statements made by Filterzone Auto Vision Company—

Filterzone is made in several custom models to fit most cars.

Custom cut to fit your windshield.

Only Filterzone is made of Plyotron.

Filters out infra red (heat) rays.

Scientifically formulated and optically correct.

Optically correct.

Clear, true visibility.

Approved by motor vehicle bureaus of all states requiring approval.

PAR. 4. Through the use of the above statements, the respondent, Visionade Visor Company, Inc., has represented and represents that its sun visors fit most automobiles, shield the eyes like fine sunglasses yet permit clear vision at all times, and that said visors have been approved by the motor vehicle bureaus of all states requiring approval.

Through the use of the above-quoted statements the respondents, Henry I. Sobel and Albert Rothgart, copartners trading as Filterzone Auto Vision Company, have represented that their visors are custom cut to fit most automobiles, that the material from which their said visors are made is Plyotron, that this is a unique material not used by makers of other plastic visors, that their visors filter out the infra red or heat rays, that their visors are optically correct and afford clear, true visibility, and that they have been approved by the motor vehicle bureaus of all states requiring approval.

PAR. 5. The corporate respondent's various visors have been, and are, made of vinyl plastic of 20 gauge thickness or less. Its "Safe-T-

Zone" visors are precut to fit the contour of the upper edge of the windshields of many automobiles, but do require some trimming and cutting for exact fittings. Another type of visor which it has sold and distributed consists of straight plastic strips which must be cut by the purchaser to fit the contour of the windshield of the automobile, and with this type visor the respondent furnishes a pattern and cutting instructions. These visors are not tailor made or precut to fit any automobile windshield. This respondent's visors are not optically correct, but contain imperfections, and do not shield the eyes like fine sunglasses. They do permit true color distinction and have the optical characteristics of low-grade sunglasses. They have been approved by the motor vehicle bureaus of the States of Pennsylvania, Washington, New Hampshire, Virginia and Minnesota, which are the only states, according to the record, having statutory or other requirements that inside plastic visors be approved before being offered for sale.

"Filterzone" visors are made of 30-gauge Bakelite vinyl plastic which the respondents, Henry I. Sobel and Albert Rothgart, trading as Filterzone Auto Vision Company, purchase in opaque calendar sheets and thereafter process so that it becomes transparent and proper for use as an inside windshield visor. This processed plastic material is designated by said respondent as Plyotron, a name adopted by them and registered with the United States Patent Office as applicable to this specific product. The record shows that 30-gauge Bakelite vinyl plastic is not sold by the manufacturer to any other producer of automobile sun visors and that the material designated Plyotron is unique with said respondents.

"Filterzone" visors are made in 11 different models to conform to the contours of the windshields of various models of automobiles listed in a "Car Guide" printed on the back of the package in which the visors are sold. Each package indicates by letter and number the model of the visor which it contains and the purchaser by examining the package prior to purchase may select the visor model particularly designed for his type automobile. These visors, when applied to the designated automobiles, do not require trimming, although on occasion there may be some overlapping in the middle of the windshield, in which event the customer may find it aesthetically desirable to trim at that point.

"Filterzone" visors have been approved by the five states mentioned above which require approval. They do not have the characteristics of fine sun glasses, are not optically correct, but do permit true color visibility. They filter out approximately 75 percent and permit the transmission of approximately 25 percent of the infra red heat rays.

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Except as to the statement that its sun visors have been approved by motor vehicle bureaus of all states requiring approval, the representations made by the corporate respondent, Visionade Visor Company, Inc., are false, misleading and deceptive.

Except as to the statements that their sun visors are made in several custom models to fit most cars, are the only sun visors made of Plyotron, and are approved by the motor vehicle bureaus of all states requiring approval, the representations made by Henry I. Sobel and Albert Rothgart, copartners trading as Filterzone Auto Vision Company, are false, misleading and deceptive.

PAR. 6. The use by the respondents of the representations hereinbefore found to be false, misleading and deceptive has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations are true and to induce a substantial portion of the purchasing public because of such erroneous and mistaken belief to purchase respondents' visors in commerce.

CONCLUSION

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

ORDER

It is ordered, That the respondent Visionade Visor Company, Inc., its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of its plastic automobile visors or any other visors made of materials having the same or similar properties in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That its visors will fit more makes or models of automobiles than is the fact, or are tailor made to fit individual model cars.
2. That its visors give the eyes the same protection as fine sun glasses.

It is further ordered, That the respondents, Henry I. Sobel and Albert Rothgart, individually or as copartners trading as Filterzone Auto Vision Company, or trading under any other name, jointly or severally, their representatives, agents and employees, directly or

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through any corporate or other device, in connection with the offering for sale, sale or distribution of the plastic automobile visors, or any other visors made of materials having the same or similar properties, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That their visors are optically correct and afford clear, true visibility.

2. That their visors filter out all infra red rays or any greater proportion of infra red rays than is actually the fact.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decisions and order of November 3, 1953].

IN THE MATTER OF
NATIONAL ELECTRONIC DISTRIBUTORS ASSOCIATION,
INC. ET AL.

CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6090. Complaint, Apr. 1, 1953—Decision, Nov. 5, 1953

Where some 350 corporations, individuals, and partnerships, engaged in the interstate sale and distribution at wholesale of electronic equipment and supplies, purchased from the manufacturers, in competition with other electronic distributors similarly engaged except insofar as such competition had been lessened, restrained, and forestalled by the acts and practices below set forth; and members, subject to certain requirements as to minimum investment and gross annual dollar volume of business, of an association organized for the stated purpose, among others, of promoting cooperation among members and acquiring and disseminating among them information regarding conditions in the field of manufacture and wholesale distribution of such equipment and supplies; acting through and by means of their association, and its officers and directors, and in some instances between and among themselves—

- (a) Conspired and combined together and with others, and pursued a common and concerted planned course of action to adopt, carry out, and maintain certain policies and trade practices, executed and carried out as below set forth, which tended to and did restrict membership in said association to such distributors as said members were willing to compete with, and to prevent the acquisition of membership by other wholesalers, and

Where said association, officers, directors, and members, pursuant to said policies and practices—

- (b) Caused manufacturers of such equipment and supplies to sell the same only through said members or through established legitimate wholesale distributors recognized by said respondents;
- (c) Urged upon such manufacturers the policy and practice of protecting distributors against a price decline on unsold inventory of such merchandise purchased within 60 days prior thereto; and
- (d) Urged upon such manufacturers the adoption and granting to wholesale distributors of uniform cash discount terms of 2% 10th prox.; and the fixing and maintaining of suggested resale prices for such merchandise reflecting a uniform markup from distributors' costs; and

Where said association members, and, as the case might be, said association, its officers and directors, pursuant to and in furtherance of, and with result of effectuating the aforesaid objectives, policies, and trade practices, and pursuant to the aforesaid combinations, etc.; acting through and by means of said association—

- (e) Agreed to, and to a substantial extent did, formulate, adopt, follow, carry out, and make effective the policies and practices above set out; and agreed to, and did, hold meetings at which aforesaid policies and practices were adopted and agreed to; and

Where the directors of said association—

- (f) Agreed to and did hold regular and special meetings at which aforesaid policies and practices were adopted and agreed to; and

Where the said association members—

- (g) Agreed to and did appoint, through and by means of said association, its officers and directors as standing and special committees to carry out and make effective such policies and practices by various means and methods;
- (h) In a number of instances entered into agreements between and among themselves and with certain manufacturers as to the quantity discounts to be published by such manufacturers and maintained by said members;
- (i) Similarly entered into such agreements to maintain such resale prices and rates of trade discounts in the resale of electronic equipment and supplies as established by manufacturers;
- (j) Similarly entered into such agreements to publish and distribute, and did publish and distribute, substantially identical price lists for radio tubes in the same trade areas;
- (k) By threats of boycott, persuasion, and other means, induced and caused manufacturers and their representatives to agree to refrain from selling their respective lines of electronic equipment and supplies to wholesale distributors who were not members of their association or were not recognized by them as established legitimate wholesale distributors;
- (l) Gave sales and other preferences to the types of electronic equipment and supplies sold by manufacturers who agreed to refrain from selling such merchandise to wholesale distributors who were not members of their said association or who were not recognized by them as established legitimate wholesale distributors; and
- (m) Gave sales and other preferences to the types of electronic equipment and supplies sold by manufacturers who agreed to and did grant uniform cash discount terms and maintained suggested resale prices reflecting uniform markups from distributors' costs;

Held, That such acts and practices, under the circumstances set forth, were restrictive, compulsive, and coercive; were all to the prejudice of competitors of association members and of the public; had a dangerous tendency unduly to hinder competition and to create a monopoly of various types of electronic equipment and supplies in commerce; and constituted unfair methods of competition therein.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Paul R. Dixon for the Commission.

Mr. Edward L. Smith, of Washington, D. C., represented all respondents, other than the firm of Bruno-New York, Inc., which was represented by *Mr. William W. Prager*, of the firm of Spiro, Felstiner & Prager, of New York City.

Respondents were also represented as follows:

Mr. Glenn Catlin, of Chicago, Ill., for National Electronic Distributors Ass'n, Inc., and various members of said association.

Hoffman & Davis, of Chicago, Ill., for Allied Radio Corp.

Seyfarth & Atwood, of Chicago, Ill., for Walker-Jimieson, Inc.

Masters & Masters, of Portland, Oreg., for Tracey & Co., Inc.

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Mr. William D. Snow, of Toledo, Ohio, for Frank S. Hawley and Helen C. Hawley.

Winer, Einhorn & Somerson, of Philadelphia, Pa., for R. H. Wile.

Mr. Edward F. Rosiny, of New York City, for Hudson Radio & TV Corp. and Terminal Radio Corp.

Marsh, Spaeder, Baur & Spaeder, of Erie, Pa., for Jordon Electronic Co.

Mr. Charles C. Erasmus, of Milwaukee, Wis., for Marsh Radio Supply Co.

Mr. Samuel Fiandach, of Rochester, N. Y., for Rochester Radio Supply Co.

Athearn, Chandler & Hoffman, of San Francisco, Calif., for Millers Radio & Television.

Mr. Dodd M. McRae, of San Francisco, Calif., for Pacific Wholesale Co.

Severson, McCallum & Davis, of San Francisco, Calif., for Sacramento Electronic Supply.

Nilles, Oehlert & Nilles, of Fargo, N. Dak., for Dakota Electric Supply.

Mr. Herbert N. Skidell, of Jamaica, N. Y., for Chanrose Radio Distributors, Inc.

Mr. Irving C. Maltz, of New York City, for National Radio Parts Dist. Co.

Mr. Irving M. Rosen, of New York City, for O. & W. Radio Co.

Mr. Samuel M. Sprafkin, of New York City, for Arrow Electronics, Inc.

Austin & Hinderaker, of Watertown, S. Dak., for Bughardt Radio Supply.

Mr. Morris Siegel, of New York City, for H. L. Dalis, Inc.

Mr. Isaac Putterman, of New York City, for Milo Radio & Electronics Corp.

CONSENT SETTLEMENT¹

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 1, 1953, issued and subsequently served its complaint on the respondents named and referred

¹The 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 November 5, 1953, 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.

to in the caption hereof, charging them with the use of unfair methods of competition and unfair 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 purpose 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 answers to said complaint heretofore filed and which, upon acceptance by the Commission of this settlement, are to be withdrawn from the record, hereby :

1. Admit all the jurisdictional allegations set forth in the complaint. The address and principal office of respondent Association, as stated in Paragraph 1 of the complaint, is 221 North La Salle Street, Chicago, Illinois, due to a recent move is and should be 228 North La Salle Street, Chicago, Illinois; and the office of Executive Secretary of respondent Association as stated in Paragraph 2 of the complaint has been abolished and a new office of Executive Vice President created; and the individually named respondent, Western Electronic Supply Corporation, has been changed to R. V. Weatherford Co., a corporation.

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 respondents, and each of them, 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. Respondent National Electronics Distributors Association, Inc., hereinafter referred to as respondent Association or NEDA, is a membership corporation, organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 228 North LaSalle Street,

Chicago, Illinois. The membership of said respondent Association, for the purpose of convenience, is divided into twenty-five district chapters, established by its Board of Directors within geographic trading areas fixed by the Board, each of which is composed of members of the respondent Association operating within the designated area of such district chapter. Each district chapter operates under its own rules and regulations for its government, including the election of district officers, a director and an alternate director to serve on the Board of Directors of respondent Association, provided that such rules and regulations do not contravene any of the provisions of the charter, constitution, and by-laws of the Association. Any district chapter may be disbanded by the Board of Directors of said Association when the Board, in its discretion, determines that the existence of such district chapter is not necessary or advantageous for the said NEDA.

The said respondent Association was organized for the stated purpose of advancing the interest of and promoting cooperation among its members, and to acquire and disseminate among its members information regarding conditions in the field of manufacture and wholesale distribution of electronic equipment and supplies.

Membership in said respondent Association is limited to wholesale distributors of electronic equipment and replacement supplies who, generally speaking, maintain a minimum investment in electronic equipment and supplies in their principal warehouse, not on consignment, of \$25,000, and have a gross annual dollar volume of business of at least \$75,000 a year.

PAR. 2. The control direction and management of respondent Association's affairs, policies, practices and actions are vested in respondent Association officers, respondent Association directors, and respondent Association members.

The officers of respondent Association consist of a President, an Executive Vice President, a First Vice President, a Second Vice President, a Secretary, a Treasurer, and a Chairman of the Board, who are, with the exception of the Executive Vice President, members of the respondent Association, and are elected annually by the respondent Association's Board of Directors.

The Board of Directors of respondent Association consists of twenty-five of respondent Association members, who are elected annually by respondent Association members. Respondent Association members in each of the twenty-five district chapters elect one director annually, the aggregate making up the total directorate.

The entire membership of respondent Association for the year 1951-1952 consisted of the list appearing in Appendix (A) attached hereto

and made a part hereof.² The membership of said Association consists of approximately 350 corporations, individuals, and partnerships with the number varying from year to year so that it is impracticable to name as respondents and bring before the Commission each and all of the members of respondent Association without manifest delay and inconvenience. Included among those members listed in Appendix (A) are those members of respondent Association which were named and included by the Commission in the complaint as respondents both individually and as representatives of the entire membership of the respondent Association, and all of the members of respondent Association are made respondents hereto and brought before the Commission in this proceeding by representation; and it is here so found.

PAR. 3. The term "electronic equipment and supplies," as used herein, shall be deemed to mean the various electronic and radio parts, supplies, accessories, attachments, component units and appurtenances, and equipment which are used to construct, resell, replace and improve electronic and radio sets and equipment owned and operated by private persons, radio broadcast stations, laboratories, amateur radio operators and experimenters, commercial and industrial plants, and State and governmental agencies and institutions.

As used herein the term also includes radio communications receivers and transmitters, wire and tape recorders, record changers, amplifiers, loud speakers and other items of public address and sound equipment.

The term "wholesale distributors" or "distributors," as used herein, shall be deemed to mean those persons, firms, partnerships and corporations engaged in the business of purchasing electronic equipment and supplies from manufacturers thereof and reselling said equipment and supplies to retail dealers, governmental agencies, institutions, and others.

The term "manufacturer," as used herein, shall be deemed to mean those persons, firms, partnerships and corporations engaged in the business of manufacturing and selling electronic equipment and supplies.

The term "manufacturers' representatives," as used herein, shall be deemed to mean those persons, firms, partnerships and corporations engaged in the business of acting as selling agents for two or more manufacturers of electronic equipment and supplies, and engaged in the business of selling said equipment and supplies of said manufacturers on a commission basis to wholesale distributors.

PAR. 4. In the course and conduct of their respective businesses, respondent Association members purchase electronic equipment and

² Not published.

supplies for the purpose of resale, from various manufacturers thereof, and cause such equipment and supplies to be transported to said respondent Association members from the States of origin into the various other States of the United States and in the District of Columbia.

Some of said respondent Association members, likewise in the course and conduct of their respective businesses, resell and distribute such electronic equipment and supplies to purchasers, and as part of said sales transport, or cause to be transported, such equipment and supplies from their respective place of business to said purchasers, some of whom are located in States of the United States other than the State of origin of such equipment, and in the District of Columbia.

PAR. 5. Respondent NEDA, respondent NEDA officers and directors, all aided, abetted, furthered and cooperated with other respondents in establishing and carrying out the understandings, agreements, combinations and conspiracies, hereinafter set forth, and actively participated in furtherance thereof, in the manner and to the extent hereinafter set forth.

PAR. 6. Respondent Association members are in competition with each other and with other electronic distributors, some of whom sell and seek to sell in commerce between and among the several States of the United States and in the District of Columbia, to purchasers, various electronic equipment and supplies which is manufactured and sold to said respondent Association members by manufacturers of such equipment and supplies, except insofar as actual and potential competition has been hindered, lessened, restricted and restrained, and forestalled by the unfair methods and practices hereinafter set forth.

Those wholesale distributors who are in competition with respondent Association members in selling and seeking to sell such electronic equipment and supplies in the manner hereinbefore described, likewise purchase, or seek to purchase, such equipment and supplies from the manufacturers thereof, and as part of such purchases, the said manufacturers transport, or cause to be transported, such equipment and supplies to the various places of business of said competitors which are located in States of the United States, other than the States of origin of such shipment, and in the District of Columbia.

PAR. 7. Respondent Association members, acting through and by means of respondent Association, respondent Association officers, respondent Association directors, and in some instances, acting between and among themselves, since 1947, have, by means of agreements, understandings, combinations and conspiracies between and among themselves, conspired and combined together and with others, and have united in and pursued a common and concerted planned course of action to adopt, carry out and maintain in commerce between and

among the several States of the United States and in the District of Columbia, certain policies and trade practices hereinafter described, which they have executed and carried out by the means and methods hereinafter set forth.

PAR. 8. Among the said policies and trade practices, referred to in the preceding paragraphs, which were so formulated, adopted and put into effect by the respondents, are the following:

(1) A policy and practice which tends to, and does, restrict and confine membership in respondent Association by means of other arbitrary rules or standards, to such wholesale distributors of electronic equipment and supplies as respondent members of said Association membership are willing to compete with in the sale and distribution of said electronic equipment and supplies, and to prevent the acquisition of membership in said respondent Association by other wholesale distributors with whom the said respondent members do not desire such competition;

(2) A policy and practice by respondent Association, respondent Association officers and directors, and respondent Association members, to cause manufacturers of electronic equipment and supplies to sell such equipment and supplies only through respondent Association members or through established legitimate wholesale distributors recognized by respondents;

(3) A policy and practice by respondent Association, respondent Association officers and directors, and respondent Association members, of urging upon manufacturers of electronic equipment and supplies a policy and practice of protecting distributors against a price decline on unsold inventory of such merchandise purchased within sixty days prior to a price decline;

(4) A policy and practice by respondent Association, respondent Association officers and directors, and respondent Association members, of urging upon manufacturers of electronic equipment and supplies the adoption and granting to wholesale distributors uniform cash discount terms of 2% 10th proximate;

(5) A policy and practice by respondent Association, respondent Association officers, and directors, and respondent Association members, of urging upon manufacturers of electronic equipment and supplies to fix and maintain suggested resale prices for such merchandise which reflects a uniform mark-up from distributors' costs.

PAR. 9. Pursuant to, and in furtherance of, and with the result of effectuating the aforesaid objectives, policies, trade practices and purposes of the hereinbefore-mentioned combinations, conspiracies, agreements and common courses of action, respondent Association, respondent Association officers and directors, and respondent Association

members, and each of them, have done and performed, among other acts and things, as follows:

(1) Respondent Association members, acting through and by means of respondent Association, agreed to formulate, adopt, follow, carry out, and make effective, and have to a substantial extent formulated, adopted, followed, carried out, and made effective the policies and practices described in Paragraph 8 hereof;

(2) Respondent Association members agreed to hold, and have held, meetings, at which the aforesaid policies and practices were adopted and agreed to;

(3) Respondent Association directors agreed to hold, and have held, regular and special meetings, at which the aforesaid policies and practices were adopted and agreed to;

(4) Respondent Association members have agreed to appoint, and have appointed, through and by means of respondent Association, respondent Association officers and directors, standing and special committees to carry out and make effective the aforesaid policies and practices by various means and methods;

(5) Respondent Association members, in a number of instances, have entered into agreements between and among themselves and with certain manufacturers as to the quantity discounts to be published by such manufacturers and maintained by said members;

(6) Respondent Association members, in a number of instances, have entered into agreements between and among themselves, to maintain such resale prices and rates of trade discounts in the resale of electronic equipment and supplies, as established by manufacturers;

(7) Respondent Association members, in a number of instances, have entered into agreements between and among themselves, to publish and distribute, and did publish and distribute, substantially identical price lists for radio tubes in the same trade areas;

(8) Respondent Association members, by threats of boycott, persuasion and other means, did induce and cause manufacturers and manufacturers' representatives to agree to refrain from selling their respective lines of electronic equipment and supplies to wholesale distributors not members of respondent Association or not recognized by respondents as established legitimate wholesale distributors;

(9) Respondent Association members give sales and other preferences to the types of electronic equipment and supplies sold by manufacturers who agree to refrain from selling said merchandise to wholesale distributors who are not members of respondent Association or who are not recognized by respondents as established legitimate wholesale distributors;

(10) Respondent Association members give sales and other preferences to the types of electronic equipment and supplies sold by manufacturers who agree to grant, and who do grant, uniform cash discount terms, and who do maintain suggested resale prices reflecting uniform mark-ups from distributors' costs.

CONCLUSION

The acts and practices of the respondents, as hereinabove set out, are restrictive, compulsive and coercive, are all to the prejudice of competitors of respondent Association members and to the public, and have a dangerous tendency unduly to hinder competition and to create a monopoly of various types of electronic equipment and supplies in commerce within the intent and meaning of the Federal Trade Commission Act, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent National Electronic Distributors Association, Inc., sometimes hereinafter referred to as respondent Association, a membership corporation, its representatives, its respondent officers, directors and members, directly or indirectly, jointly or severally, or through any corporate or other means or device, in connection with the purchase, offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of electronic equipment and supplies, do forthwith cease and desist from entering into, cooperating in or carrying out any planned common course of action, agreement, understanding, combination or conspiracy, whether express or implied, between any two or more of said respondents or between any one or more of said respondents and any other respondents named or referred to in this order, or with two or more persons not parties hereto, to do or perform any of the following acts, policies or practices:

(1) Restricting membership in respondent National Electronic Distributors Association, Inc., by denying membership therein to wholesale distributors in electronic equipment and supplies for competitive reasons, or for any other reason which departs from respondent National Electronic Distributors Association, Inc.'s then published or generally accepted standards governing admission of new members;

(2) Compelling, or attempting to compel, by any means or method, manufacturers of electronic equipment and supplies, to sell such products solely through members of the respondent National Electronic Distributors Association, Inc., or through established legiti-

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mate wholesale distributors, not members of respondent Association, but recognized by respondents;

(3) Preventing, or attempting to prevent, manufacturers of electronic equipment and supplies from selling such products to any wholesale distributors in same because such wholesale distributors are not members of respondent Association, or because they are not recognized by respondents as legitimate wholesale distributors;

(4) Compelling, or attempting to compel, by any means or methods, manufacturers of electronic equipment and supplies to protect distributors against price decline on unsold inventory, or to grant uniform discounts or terms and conditions of sale;

(5) Adopting, enforcing or utilizing any means or method which has as its purpose or effect the compelling, or attempting to compel, any manufacturer of electronic equipment and supplies to fix or maintain resale prices suggested by respondents;

(6) Originating, compiling, publishing and distributing, or attempting to originate, compile, publish and distribute, by any means or methods, substantially identical price lists for electronic equipment or supplies;

(7) Adopting, enforcing or utilizing any means or methods (including, without limitation, the means and methods referred to in paragraph (6) foregoing) to fix or maintain, or attempt to fix or maintain the prices, terms or conditions of sale at which wholesalers of electronic equipment and supplies offer for sale or sell any such products;

(8) Giving sales or any other promotional preferences to the types of electronic equipment and supplies sold by manufacturers who agree to refrain from selling merchandise to wholesale distributors who are not members of respondent Association or who are not recognized by respondents as legitimate wholesale distributors;

(9) Giving sales, or any other promotional preferences, to the types of electronic equipment and supplies sold by manufacturers who agree to grant and who do grant uniform cash discounts, terms, conditions of sale, or who agree to maintain resale prices, terms or conditions of sale suggested by respondents.

Provided that nothing contained in the foregoing provisions of this order shall be construed to prohibit any of the respondents from acting independently, and not in combination with others, in doing any of the acts prohibited by this order.

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 said order.

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(Sgd) By EDWARD L. SMITH,
Counsel for all Respond-
ents, and each of them,
other than Respondent,
Bruno-New York, Inc.
Spiro Felstiner & Prager

(Sgd) By WILLIAM W. PRAGER,
Counsel for Respondent,
Bruno-New York, Inc.

Date: October 2, 1953.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this the 5th day of November, 1953.

IN THE MATTER OF
SUNSET APPLIANCE STORES, INC. ET AL.

CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6116. Complaint, Aug. 7, 1953—Decision, Nov. 10, 1953

Where a corporation and its two officers, engaged in the competitive interstate sale and distribution of room air conditioners and television sets; in advertising their said products through radio continuities—

- (a) Represented and implied that they were offering for sale and would demonstrate air conditioners of a nationally known manufacturer in the homes of prospective purchasers free of charge and without obligation to purchase; that said air conditioners were thoroughly reconditioned and rebuilt and delivered in reconditioned and repolished cabinets; and that they were available for immediate sale; and
- (b) Represented and implied that they were offering for sale and would give free demonstration of television sets of well-known national manufacturers at the homes of prospective purchasers without obligation to purchase; that said sets were completely rebuilt and reconditioned, with beautiful repolished cabinets; were available at greatly reduced prices and would be delivered to the homes of prospects either within an hour of or on the day following receipt of telephonic inquiries or requests for demonstrations; and urged prospects to call for such demonstration immediately upon hearing the broadcast, for the reason that the supply was limited;

The facts being that said offers to demonstrate were not made in good faith but to obtain, for their salesmen, names and addresses of interested persons; said salesmen did not bring with them appliances described—of which respondents had no supply whatsoever—but represented such products as inferior and undesirable and urged prospects to purchase others at substantially higher prices; and respondents failed to answer a substantial number of requests for demonstration; to deliver specific orders for the air conditioner advertised or to deliver promptly or within a reasonable time television sets, sold by their salesmen, which were brands not generally known, offered and sold at substantially higher prices than those advertised, and which, neither completely nor thoroughly reconditioned and rebuilt, and either functioning imperfectly or not at all, they failed or refused to put in proper working order:

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.

Mr. Michael J. Vitale for the Commission.

Mr. Harry Kwestel, of New York City, for respondents.

CONSENT SETTLEMENT¹

Pursuant to the provisions of the Federal Trade Commission Act the Federal Trade Commission on August 7, 1953, issued and subsequently served its complaint upon respondents Sunset Appliance Stores, Inc., a corporation, and Joseph Rudnick and Morris Sobel (erroneously named in the complaint as Lawrence Sobol) individually and as officers of said corporation, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission 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 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. Respondent Morris Sobel was erroneously named in the complaint as Lawrence Sobol. Respondents agree that the name Morris Sobel may be substituted for the name Lawrence Sobol, with the same effect as if the said Morris Sobel had been named 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 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 the 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:

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 November 10, 1953, 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.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Sunset Appliance Stores, Inc., is a corporation chartered and doing business under the laws of the State of New York, with its principal place of business located at 92-24 Queens Boulevard, Rego Park, Long Island, New York. Respondents Joseph Rudnick and Morris Sobel (erroneously named in the complaint as Lawrence Sobol) are respectively President and Secretary and Vice President and Treasurer of said corporation. These individuals formulate, direct and control the activities, and policies of said corporate respondent. Their office and principal place of business is the same as that of said corporate respondent.

PAR. 2. Respondents are now, and for more than one year last past have been engaged in the sale and distribution of appliances including, among others, room air conditioners and television sets. In the course and conduct of their business, respondents cause and have caused their said products, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said products in commerce among and between the various States of the United States, and such course of trade has been and is substantial.

PAR. 3. Respondents are now, and at all times mentioned herein have been, in substantial competition with other corporations and with individuals, partnerships and firms engaged in the sale and distribution of appliances and other products intended for the same use and purpose as the products sold and distributed by respondents.

PAR. 4. In the course and conduct of their business as aforesaid, respondents, for the purpose of inducing the purchase of their said merchandise have made certain representations and statements concerning said merchandise. Said statements and representations have been and are disseminated by respondents to prospective purchasers by means of radio continuities transmitted over radio stations having sufficient power to carry them across State lines. Among and typical of such statements and representations, but not all inclusive, are the following:

* * * Friends, why suffer with the heat * * * when for just \$99, you can actually own a powerful, modern MITCHELL Air Conditioner! A full-size MITCHELL Room Air Conditioner, thoroughly reconditioned and rebuilt * * * delivered to your home, in a beautiful reconditioned and repolished cabinet! Phone for your FREE Home Demonstration, no cost or obligation * * *.

* * * here's thrilling news from Sunset Appliance Stores * * * As a "World Series Special" and for a short time only Sunset has slashed the price of big

name television to just \$59 for Admiral, Westinghouse, Philco, Motorola, and Dumont Television * * * Each set is completely reconditioned in a beautifully repolished cabinet * * * only \$59 for big name television that will thrill you with sharp clear pictures * * * Sunset says try before you buy. Within an hour. In time for the World Series you can have free demonstration in your home * * * without obligation. If you don't think the big name set for \$59 is the greatest bargain in TV, Sunset will thank you for the privilege of demonstration * * * Supplies are limited * * * so call now for your free home demonstration * * *

* * * How would you like to own a big name television set for \$68? Yes, Sunset offers you wonderful reconditioned Big Name television sets for \$68.—This is your chance to get in on the biggest TV buy of all time. All you have to do is call Hickory 6-400 or visit one of the five Sunset stores in the metropolitan area. Call right now—you can have a big name television set you'll be proud to own for only \$68. A rebuilt, reconditioned receiver in a beautifully repolished cabinet * * * sharp, clear pictures, excellent performance.—Call Sunset right now—your set will be delivered tomorrow.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto but not specifically set out herein, respondents represent and imply and have represented and implied to the purchasing public that they are offering for sale and will demonstrate air conditioners of a nationally known manufacturer in the homes of prospective purchasers free of charge and without obligation to purchase; that said air conditioners are thoroughly reconditioned and rebuilt and delivered in reconditioned and repolished cabinets. That they are available for immediate sale.

Respondents further represent and imply and have represented and implied as aforesaid, that they are offering for sale and will give free demonstrations of television sets of well-known national manufacturers at the homes of prospective purchasers without obligation to purchase; that said television sets are completely rebuilt and reconditioned with beautifully repolished cabinets, are available at greatly reduced prices and will be delivered to the homes of said prospects either within an hour of, or on the day following, the receipt of telephonic inquiries or requests for demonstrations; that prospects are urged to call for said demonstrations immediately upon hearing said radio broadcasts for the reason that the supply of said television sets is limited.

PAR. 6. The statements and representations as set forth in Paragraph Four hereof were and are false, misleading and deceptive. In truth and in fact, respondents said offers to demonstrate air conditioners of well-known make and television sets of nationally known manufacture are not made in good faith but for the purpose of obtaining the names and addresses of persons who, in responding to said radio advertisements, indicate an interest in said electric appli-

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ances and thereby become prospective purchasers who are visited by respondents' salesmen. Moreover, said salesmen, when calling upon prospects do not bring with them any air conditioners or television sets described in said broadcasts for demonstration purposes, but on the contrary, represent that the appliances specifically named in said broadcasts are inferior and undesirable and that said prospects should purchase other air conditioners and television sets substantially higher in price.

Furthermore, a substantial number of inquiries of requests for demonstrations made in response to said radio advertising are not answered by respondents. When respondents receive specific orders for said Mitchell air conditioner, they fail to sell and deliver said appliance to the persons ordering the same. When television sets are sold by respondents' salesmen, deliveries thereof are not made promptly or within a reasonable time but only after delays and repeated inquiries by the purchasers thereof.

The nationally known brands of television sets specifically named in said radio broadcasts are not offered for sale by respondents' salesmen and the sets offered and sold at substantially higher prices than those stated in said broadcasts are brands not generally known to the purchasing public.

Respondents do not have a limited supply of said appliances but on the contrary, have no supply whatever of the brands specifically named by them. Moreover, the television sets sold by them are not completely or thoroughly reconditioned and rebuilt and either function imperfectly or not at all and respondents fail or refuse to put in proper working order said television sets so sold and installed by them.

PAR. 7. The use by respondents of the aforesaid false, deceptive and misleading statements and representations has had, and now has, the capacity and tendency to mislead and deceive a substantial number of prospective purchasers of respondents' products into the erroneous and mistaken belief that such statements and representations were and are true and into the purchase of substantial quantities of respondents' products because of such erroneous and mistaken belief. As a result, substantial trade in commerce has been unfairly diverted to respondents from their said competitors, and as a consequence thereof, substantial injury has been and is being done to competition in commerce.

CONCLUSION

The aforesaid acts and practices of the 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

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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 the respondents, Sunset Appliance Stores, Inc., a corporation, and its officers, and Joseph Rudnick and Morris Sobel, individually, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of television sets or other merchandise, do forthwith cease and desist from representing, directly or by implication:

1. That any product is offered for sale when such offer is not a bona fide offer to sell the product so offered.

2. Offering for sale or demonstration any television set or other appliance unless such set or appliance is in stock or otherwise available to customers under the conditions stated in such offer and at such price as may be designated therein.

3. That air conditioners, television sets or other electric appliances will be demonstrated in the homes of prospective purchasers or will be demonstrated without charge or obligation, contrary to the fact.

4. That air conditioners, television sets or other electric appliances are completely or thoroughly reconditioned or rebuilt or are in perfect working order when such is not the fact.

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

Sunset Appliance Stores, Inc.

(Sgd) By Morris Sobel, Pres.

(Sgd) Joseph Rudnick

Joseph Rudnick, individually and as Officer of Sunset Appliance Stores, Inc., a corporation.

(Sgd) Morris Sobel

Morris Sobel, individually and as Officer of Sunset Appliance Stores, Inc., a corporation.

Date: Oct. 19, 1953.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this 10th day of November, 1953.

IN THE MATTER OF
GARDEN RESEARCH LABORATORIES ET AL.

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

Docket 6093. Complaint, Apr. 17, 1953—Decision, Nov. 13, 1953

Where a corporation and its president, engaged in the competitive interstate sale and distribution of a chemical fertilizer, designated "RX-15", designed for use as a liquid fertilizer by the addition of water; its advertising agency; and the secretary-treasurer of the corporate manufacturer of its said "RX-15" and the owner or controller of 50% of its stock; through advertisements in newspapers of national circulation and radio broadcasts—

- (a) Falsely represented that "RX-15" was the scientific designation of a plant food and that the product was the result of atomic research and a new discovery or new product; and
- (b) Represented that scientists at a Michigan college and at Rutgers University discovered said product in their laboratory and conducted tests and published records with respect thereto and that scientists at said University made photographs showing the results of said tests;

The facts being that liquid fertilizers have been known and experimented with for years; said product was not discovered by scientists at any educational institution; and while such fertilizers have recently been made in sufficiently large quantities as to be available to the retail trade, and persons identified with colleges, universities, and agricultural experimental stations have conducted tests and made reports on the effectiveness thereof and photographs were made in connection with tests conducted at Rutgers, the liquid fertilizer used therefor was not said product;

- (c) Represented that photographs used by them in their advertising were taken by the U. S. Atomic Energy Commission, were reproduced by them in their advertisements with the special permission of said Commission, and that a photograph designated as "Atomic Photograph" and "Test No. 1" was taken 15 minutes after plant food was applied to the roots of the plant;

When in fact the photographs used were not taken by said commission; they did not authorize them to use any photographs in their advertisement; and the photograph last referred to above was taken one hour after plant food was applied to the roots and not, as claimed, after 15 minutes;

- (d) Falsely represented that their product contained radioactive materials; the facts being that while radioactive isotopes were used in the tests referred to, to trace the pattern of a plant nutrient so as to determine the rate of accumulation of liquid fertilizer, they are not intended to benefit plants in any way; while isotopes used as tracers by scientists at Rutgers were made available to them by said commission, it was in no way connected with the tests; and photographs made in connection therewith were taken to show through radioactivity results obtained with liquid fertilizer;
- (e) Represented that through the use of said product anyone could produce an abundance of flowers and vegetables on a small patch of ground with little or no work, merely by sprinkling plants with water containing said product,

and that the ingredients acted immediately upon application to the leaves and when applied to the roots reached the leaves of plants in 15 minutes ;

The facts being that while liquid fertilizers of the type concerned are effective, used according to directions, many other factors must be present to insure successful harvest ; sprinkling leaves alone with liquid fertilizers is not an effective method of general fertilizing ; while some of the ingredients of said product begin to be absorbed by the leaves of many plants at the time of application by sprinkling and when applied to the roots begin to be absorbed at once, the time of absorption varies among plants ; and in any event it has not been established that all of the ingredients are absorbed by the leaves of all plants in 15 minutes or any specified time ;

(f) Represented that dry fertilizers do not produce results for months after application and that said "RX-15" was more powerful than all other fertilizers and supplied 360% more plant food, was 1,000 times faster than dry fertilizers, and was substantially cheaper than other fertilizers ;

The facts being that while some dry fertilizers are more readily absorbed than other such fertilizers, dry fertilizers, nevertheless, begin to be absorbed on contact with or application of moisture and produce results within a short time thereafter and not after months ; and product is not more effective than a number of other fertilizers, and, while in concentrated form, is not more powerful than a number of others under conditions of use, namely, after dilution with water as directed ; there is no scientific basis or statistical proof that it supplied more plant food faster than other fertilizers as above set forth, or as to any comparison with other fertilizers with respect to the amount of food supplied or the time within which it becomes effective ; and its cost is not substantially cheaper than many other fertilizers based upon effectiveness as such products ;

(g) Represented that the vitamins and hormones contained in said product aided in plant growth, and that one product was so highly concentrated that one pound made nearly $\frac{1}{4}$ of a ton of liquid plant food at a price of less than $\frac{1}{2}$ ¢ per pound ;

The facts being that it contained no vitamins or hormones ; said substances are not known to be of any significant aid in fertilizing plants ; and its claim as to cost per pound of $\frac{1}{2}$ ¢ was based upon the weight after dilution with water, which is not itself a plant food ; amount of such food available was actually only the amount of the product before dilution ; and cost thereof per pound was cost of the product itself per pound ; and

(h) Represented that other fertilizers would likely ruin plants while its product would not burn the tenderest plant or the roots thereof ;

The facts being that while fertilizers, including its said product, used correctly will not injure plants, many dry and liquid fertilizers, including said RX-15, have the capacity so to do if used in excess of the varying toleration of different plants :

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

Before *Mr. John Lewis*, hearing examiner.

Mr. William L. Pencke for the Commission.

Mr. James R. Withrow, Jr., Mr. Thomas J. McFadden and Donovan, Leisure, Newton & Irving, of New York City, for respondents.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated November 13, 1953, the initial decision in the instant matter of hearing examiner John Lewis, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 17, 1953, issued and subsequently served its complaint in this proceeding upon 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 commerce in violation of the provisions of said Act. No answer to said complaint was filed by said respondents, the time for filing said answer having been extended by the undersigned hearing examiner until the date of hearing, based on the representation that the parties were endeavoring to negotiate a stipulation covering the facts in this proceeding. At a hearing held before the undersigned hearing examiner, theretofore duly designated by the Commission, a stipulation as to the facts was entered into by counsel supporting the complaint and counsel for respondents, in lieu of oral testimony in support of or in opposition to the allegations of the complaint, and certain documentary evidence was introduced into evidence by agreement of counsel, said stipulation and documentary evidence being only recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said hearing examiner upon the complaint and the aforesaid stipulation as to the facts and documentary evidence, counsel having elected not to file proposed findings and conclusions for consideration by the hearing examiner, and oral argument not having been requested; and said hearing examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Garden Research Laboratories is a corporation, organized and existing under the laws of the State of New Jersey. The post office address of said respondent is Madison, New Jersey. Respondent Cecil C. Hoge is president of said corporate

respondent and formulates the policies and directs and controls the practices and activities of said corporation.

Respondents Cecil C. Hoge, Hamilton Hoge, John Hoge, Sidney C. Hoge and Barbara Obolensky, prior to October 1, 1952, were copartners trading and doing business as an advertising agency under the firm name and style of Huber Hoge and Sons. The office and principal place of business of said corporate and individual respondents is located at 699 Madison Avenue, New York, New York. This partnership was the advertising agency for respondent, Garden Research Laboratories, and prepared and caused the dissemination of advertising matter for respondent Garden Research Laboratories, including the advertising hereinafter referred to. On or about October 1, 1952, the business carried on by Huber Hoge and Sons was incorporated under the laws of the State of New York under the name of Huber Hoge & Sons, Inc.

Doggett-Pfeil Co. is a New Jersey corporation engaged in the manufacture and sale of chemical fertilizers, including the product sold by Garden Research Laboratories. The Secretary-Treasurer of said corporation is respondent Alfred S. Pfeil who owns or controls fifty percent of the stock of respondent, Garden Research Laboratories. Said respondent participates and collaborates with the copartners trading as Huber Hoge and Sons in the preparation of advertising copy and material for respondent Garden Research Laboratories. His office and principal place of business is located at Springfield, New Jersey.

PAR. 2. For more than one year last past, respondent Garden Research Laboratories has been and is now engaged in the sale and distribution of a chemical fertilizer, designated RX-15, which contains 15% Nitrogen, 30% Phosphoric Acid, 15% Potash and is designed to be used as a liquid fertilizer by the addition of water. RX-15 is manufactured and packaged for said respondents by Doggett-Pfeil Co.

Orders for said product are directed to respondent Garden Research Laboratories at its mailing address in Madison, New Jersey, and are there received by Doggett-Pfeil Co. Said Doggett-Pfeil Co. fills said orders by shipping said product from its place of business at Millburn or Summit, New Jersey, to purchasers thereof located in various other States of the United States. Said respondent maintains, and at all times mentioned herein has maintained a course of trade in commerce in said product and such course of trade has been and is substantial.

PAR. 3. In the course and conduct of their said businesses and for the purpose of inducing the purchase of the product RX-15, respond-

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ents have made many statements and representations concerning said product by means of advertisements inserted in newspapers having a national circulation and by radio broadcasts. Typical, but not all inclusive of such representations made in 1952, are the following:

* * * Today, any child can grow hundreds of beautiful flowers by merely sprinkling them with water, thanks to a new garden discovery at leading Michigan and New Jersey college testing laboratories.

That's right Bart—and all because of new discoveries in food, care, nutrition and the association of atomic radiation with plant life. Food? Nutrition? Atomic radiation? I always thought good old fertilizers were the best known helpers for flowers.

That was last year, Bart. We are now entering a new age * * * an age where gardening will become nothing more than throwing a few seeds into the ground * * * using some special plant foods * * * and cutting the full-grown flowers just several days later * * * Why, do you know that the ordinary fertilizers you may have been using on your garden can very easily ruin your plants instead of helping them.

Atomic Photograph No. 1

Taken exactly fifteen minutes after plant food was applied to roots by Rutgers University scientists at New Brunswick, New Jersey.

Atomic Research Reveals How to Make Flowers, Trees, Shrubs, Bloom Like Magic in Any Soil * * *

* * * you will see, on this page, a "radioactive" photograph made possible by special permission of the United States Atomic Energy Commission

This photograph will prove to you that with just one simple secret—YOU who may know next-to-nothing about gardening, can turn your garden into the show-place of the community with thousands of colorful flaming blossoms—not five years from now—not next year—but this summer * * * actually pick hundreds of pounds of luscious tomatoes, lettuce, cucumbers from a vegetable patch no bigger than a one-car garage. And that YOU—with just ten minutes work—can amaze the "experts" in your neighborhood with a rich thick carpet of lawn—and at a cost so low, it's almost too ridiculous to mention! And you won't even have to dirty your hands!

* * * read about the amazing 15 minute miracle that can make all kinds of flowers bloom for you by the thousands in tiny space, in any soil, even in ordinary sand!

Plant scientists * * * discovered that when this super-powerful plant food of a type called RX-15 is dissolved in water and sprinkled on leaves of plants, the leaves absorb it instantly!

HERE'S PROOF! RUTGERS UNIVERSITY ATOMIC TEST NO. 1

* * * concentrated plant foods that could be dissolved in plain ordinary sink water and when sprinkled on lawns or plants could go to work in minutes!

* * * Rutgers scientists added traces of radio-active atoms to this liquid plant food. This radio-active plant food was then fed to the roots of ordinary plants * * * Exactly fifteen minutes later the leaves were cut off and pressed against radio-sensitive film. Now look at the picture at the right!

(Picture of a skeleton of a leaf)

* * * There's no other work to it.

Compare with all other fertilizers: As an expert, you know that plants do well if they absorb only 25% of the nitrogen, phosphorous and potash slowly released by dry fertilizers over a period of months * * * RX-15 THEREFORE SUPPLIES 360% MORE PLANT FOOD—SUPPLIES IT UP TO 1,000 TIMES FASTER—PRODUCES SPECTACULAR GROWTH RESULTS IN 7 DAYS OR LESS—INSTEAD OF HAVING TO WAIT MONTHS!

RX-15 is at least 3 times more powerful than general types of fertilizer available up to now * * * RX-15 gives you a scientifically balanced 15-30-15 formula that's 3 times more powerful, yet completely safe for use. And to make flowers hold their bloom longer, promote resistance to disease, winter-kill etc. RX-15 also provides a balanced diet of oft-neglected manganese, copper, boron, zinc, vitamins and hormones plus essential trace elements and minerals.

Unlike most fertilizers, RX-15 contains no filler—is so highly concentrated, even the smallest can of RX-15 makes nearly ¼ ton of super-powerful plant food at a cost of less than ½¢ a pound.

RX-15 will not burn, eat or damage even tenderest plants, roots, shoots * * *

PAR. 4. Through the use of the statements hereinabove set forth and others similar thereto but not specifically set out herein, respondents have represented, directly and by implication:

(a) That RX-15 is the scientific designation of a plant food;

(b) That said product is the result of atomic research and is a new discovery or new product;

(c) That scientists at a college in Michigan and at Rutgers University discovered said product in their laboratories, conducted tests with said product and published records with respect thereto, and that scientists at Rutgers University made photographs showing the results of said tests;

(d) That the photographs used by respondents in their advertising were taken by the United States Atomic Energy Commission and were reproduced by respondents in their advertisements with the special permission of the Atomic Energy Commission;

(e) That the photograph designated as Atomic Photograph and Test No. 1 was taken 15 minutes after plant food was applied to the roots of the plant;

(f) That respondents' product contains radio-active materials;

(g) That by using said product anyone can produce an abundance of flowers and vegetables on a small patch of ground with little or no work, merely by sprinkling plants with water containing RX-15;

(h) That the ingredients act immediately upon application to the leaves and, when applied to the roots, reach the leaves of a plant in 15 minutes;

(i) That dry fertilizers do not produce results for months after application;

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- (j) That RX-15 is more powerful than all other fertilizers and supplies 360% more plant food, 1,000 times faster than dry fertilizers;
- (k) That it is substantially cheaper than other fertilizers;
- (l) That the vitamins and hormones contained in said product aid in plant growth;
- (m) That said product is so highly concentrated that one pound makes nearly one-fourth of a ton of liquid plant food at a price of less than one-half cent per pound; and
- (n) That other fertilizers will likely ruin plants, while respondents' product will not burn the tenderest plants or the roots thereof.

PAR. 5. The foregoing representations are false, misleading and deceptive for the following reasons:

(a) There is no plant food known by the scientific designation of RX-15, said designation being merely a trade name adopted by respondents Garden Research Laboratories.

(b) RX-15 did not result from atomic research and is not a new discovery or product.

(c) RX-15 was not discovered by scientists at a college in Michigan, or at Rutgers University, or at any other educational institution. Liquid fertilizers have been known and have been experimented with for years. However, recently they have been manufactured in sufficiently large quantities as to make them available to the retail trade, and persons identified with colleges, universities, and agricultural experimental stations have conducted tests and made reports on the effectiveness of liquid fertilizers similar to RX-15. While photographs were made in connection with tests conducted at Rutgers University, the liquid fertilizer used for the photographs was not RX-15.

(d) The photographs used in respondents' advertising were not taken by the United States Atomic Energy Commission; nor did said Commission authorize respondents to use any photographs in their advertisements.

(e) The photograph designated as "Atomic Photograph No. 1" was taken one hour after plant food was applied to the plant roots and not 15 minutes later, as claimed by respondents.

(f) RX-15 does not contain any radioactive material. While radioactive isotopes were used in the tests above referred to, to trace the pattern of a plant nutrient so as to determine the rate of accumulation of liquid fertilizers, they are not intended to benefit plants in any way. The radioactive isotopes, which were used as tracers by scientists at Rutgers University, were made available to them by the United States Atomic Energy Commission but said Commission was in no way connected with the tests. The photographs made in con-

nection with the tests were taken to show, by means of the radioactivity, the results obtained with liquid fertilizers.

(g) While liquid fertilizers of the RX-15 type are effective fertilizers, when used according to directions, there are many other factors which must be present to insure successful harvest. Sprinkling on the leaves alone with liquid fertilizers is not an effective method of general fertilizing.

(h) While some of the ingredients of RX-15 begin to be absorbed by the leaves of many plants at the time of application by sprinkling and, when applied to the roots, begin to be absorbed at once, such time of absorption varies among plants. In any event, however, it has not been established that all of the ingredients are absorbed by the leaves of all plants in 15 minutes or any specified time.

(i) Among dry fertilizers there are some which are more readily absorbed than others. Nevertheless, dry fertilizers begin to be absorbed on contact with or application of moisture and produce results within a short time thereafter and not after months.

(j) RX-15 is not more effective than a number of other fertilizers. Although it is in concentrated form, RX-15 is not more powerful than a number of other fertilizers under conditions of use, namely, after dilution with water as directed. There is no scientific basis or statistical proof that RX-15 supplies 360% more plant food up to 1,000 times faster than other fertilizers or as to any comparisons with other fertilizers with respect to the amount of food supplied or the time within which it becomes effective.

(k) The cost of RX-15 is not substantially cheaper than many other fertilizers based upon effectiveness as fertilizers.

(l) Vitamins and hormones are not contained in RX-15 and are not known to be of any significant aid in fertilizing plants.

(m) The claim that nearly one-fourth ton of liquid plant food is made available at less than one-half cent a pound is based upon the weight after dilution with water. However, water is not a plant food so that the amount of plant food available would actually be only the amount of the product before dilution. Consequently, the cost of the available plant food per pound would actually be the cost of the product itself, per pound.

(n) When used correctly, fertilizers, including RX-15, will not injure plants. However, many dry and liquid fertilizers, including RX-15, have the capacity to injure plants if used in excess of a plant's toleration, such toleration varying with different plants.

PAR. 6. Respondents, Garden Research Laboratories and Cecil C. Hoge, in the conduct of said business, have been and are in substantial competition in commerce with other corporations and with in-

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dividuals, partnerships and others engaged in the sale of fertilizers.

PAR. 7. The use by respondents of the foregoing false, misleading and deceptive statements and representations has had the tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that such representations were true and into the purchase of substantial quantities of respondents' product because of such erroneous and mistaken belief. As a result thereof, trade has been unfairly diverted to respondents from their competitors in commerce 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 constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondent Garden Research Laboratories, a corporation and its officers, and the respondent Cecil C. Hoge, individually and as an officer of said corporation, and the respondents Cecil C. Hoge, Hamilton Hoge, John Hoge, Sidney C. Hoge and Barbara Obolensky, individually and as copartners doing business as Huber Hoge and Sons, or under any other name, and the respondent Alfred S. Pfeil, individually, and said respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of the chemical fertilizer designated RX-15, or any other product containing substantially the same ingredients or possessing substantially the same properties, do forthwith cease and desist from representing, directly or by implication:

1. That RX-15 is the scientific designation of a plant food.
2. That said product is a new plant food or new discovery, or that it was developed as a result of atomic research.
3. That persons identified with any college, university or other institution of learning discovered said product, conducted tests or made reports with respect thereto, unless such be the fact.
4. That personnel identified with Rutgers University or any other educational institution made photographs showing the results obtained by the use of respondents' product or that the United States Atomic Energy Commission had taken photographs pertaining to

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respondents' product or authorized the use by respondents of any such photographs.

5. That photographs of plants taken one hour after being fertilized by liquid fertilizer were taken only fifteen minutes thereafter, or representing that photographs were taken at any specified time contrary to the fact.

6. That respondents' product contains radioactive materials.

7. That the use of said product, by sprinkling and without other factors, will assure an abundance of flowers or vegetables on a small patch of ground.

8. That the ingredients of said products are absorbed by the leaves within fifteen minutes, or within any other period of time which is contrary to fact.

9. That dry fertilizers do not produce results for months or other extended periods of time after application, or misrepresenting in any other manner the time within which dry fertilizers are absorbed or produce results.

10. That said product is more powerful than all other fertilizers; or that it supplies 360% more plant food at the rate of 1,000 times faster than other fertilizers or at any other given quantity or rate inconsistent with the facts, or misrepresenting in any other manner the amount of plant food supplied by said product or the period of time within which such plant food takes effect in comparison with other fertilizers.

11. That said product is substantially cheaper in price under conditions of effective use than all other fertilizers.

12. That there are vitamins and hormones contained in said product which aid plant growth.

13. That the amount of plant food supplied by said product, when in a water solution, is any amount in excess of the quantity of respondents' product actually present in such solution; or that, under such conditions of use, the cost of said plant food is less than it is in fact.

14. That other fertilizers, even though used according to directions, may injure plants.

15. That respondents' product, unlike other fertilizers, will not burn or injure foliage, even though not used according to directions.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of November 13, 1953].