

IN THE MATTER OF  
ADVANCE SPECTACLE COMPANY, INC., ET AL.

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

*Docket 6285. Complaint, Jan. 10, 1955—Decision, May 22, 1955*

Consent order requiring a Chicago firm to cease representing falsely in advertising that eyeglasses made according to prescriptions furnished by customers using its "14 LENS SAMPLE CARD" and other devices would correct defects in vision of all persons.

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

*Mr. Frederick J. McManus* for the Commission.

*Froelich, Grossman, Teton & Tabin*, of Chicago, Ill., for respondents.

COMPLAINT

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

PARAGRAPH 1. Advance Spectacle Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its place of business located at 537 South Dearborn Street, Chicago, Illinois. Individual respondent Michael M. Egel is president and treasurer of corporate respondent and formulates the policy of said corporation and directs, controls and puts into effect all of its acts and practices including those hereinafter referred to. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now and for more than one year last past have been engaged in the business of selling eye glasses and as an inducement or instrumentality in the sale of said glasses make use of a certain device designated "14 LENS SAMPLE CARD" and other devices. Eye glasses are a device as "device" is defined in the Federal Trade Commission Act.

Respondents cause said devices, together with printed instructions for the use thereof, and an order blank upon which spaces are provided for the insertion of various measurements or figures obtained by the use of said devices, to be transported from their place of business in the State of Illinois to prospective purchasers and eye glasses to the 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 said eye glasses in connection with the said "14 LENS SAMPLE CARD" and other devices and instructions for use thereof in commerce, between and among the various States of the United States.

PAR. 3. In the course and conduct of their business, respondents have disseminated and caused the dissemination of advertisements concerning said eye glasses and of the devices referred to above; by United States mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in newspapers and periodicals, and by means of circulars and form letters, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of their said eye glasses; respondents have also disseminated and caused the dissemination of advertisements concerning their said eye glasses and the devices referred to above, including, but not limited to the advertisement media referred to above, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of their said eye glasses in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations contained in the said advertisements are the following:

**EYE GLASSES BY MAIL**

As Low as \$1.95

**WRITE FOR FREE CATALOG  
WITH 14 LENS SAMPLE CARD**

Thousands of Customers

Est. 1939

Quality reading Magnifying  
or bifocal glasses for  
far and near.

Advance Spectacle Company, Inc.  
537 South Dearborn Street,  
Department SP-1  
Chicago 5, Illinois

**EYE GLASSES BY MAIL**

Now buy attractive creations in  
modern reading-magnifying or bifocal

(Pictorial representa-  
tion of Pair of Glasses)

Complaint

51 F. T. C.

glasses for far or near from the oldest established U. S. firm offering this service! Thousands of customers coast to coast! We furnish 14-lens sample card with many combinations!

as low as \$1.95  
SEND NO MONEY!  
30 DAYS TRIAL!

(Picture of  
glasses)

SEND FOR ATTRACTIVE  
FREE catalog STYLES

-----  
NAME-----  
STREET-----  
CITY-----STATE-----DEPT. E-6  
ADVANCE SPECTACLE CO., INC.  
537 S. Dearborn St.,  
Chicago 5, Ill.

DEAR FRIEND:

We're going to show you a way to make some good profits easily, simply and WITHOUT INVESTING ANY MONEY. We have had considerable experience in selling glasses direct to the wearer. This field has been profitable and you can cash in on it as so many others have. While we do not employ agents or canvassers to sell the glasses, we do have a number of attractive offers for you as a dealer.

Look in our catalog illustrating latest style of attractive quality spectacles. Note the reasonable prices quoted. We are willing to allow you, as a dealer, 25% discount from these prices.

\* \* \* \* \*

Advance Spectacle Company

PAR. 4. Respondents' "Eye Glasses by mail" advertising disseminated by them as aforesaid is being and has been answered by persons in various States of the United States. Said purchasers, in answering such advertising, have requested that respondents' catalog and the various devices above referred to, for use in testing of the eyes, be sent them. Said catalog and device have been ordered alike by individuals desiring to purchase eye glasses for themselves and by other individuals desiring to sell glasses by acting as dealers of respondents. Individuals receiving respondents' "14 LENS SAMPLE CARD" have attempted to use the device to determine the eye glasses necessary to correct defects in their vision, have written out their own prescriptions for respondents' eye glasses upon the forms provided by respondent, have mailed the prescriptions to respondents and respondents have shipped to them the eye glasses ordered pursuant to said prescriptions.

Dealers of respondents, located in various States of the United States receiving respondents' said "14 LENS SAMPLE CARD" have attempted to use the device to determine the eye glasses necessary to correct the defects in the vision of others and have written prescriptions or assisted in the writing of prescriptions for respondents' eye

glasses upon the forms provided by respondents, have mailed the prescriptions to respondents and respondents have shipped said glasses ordered pursuant to said prescriptions to various customers.

PAR. 5. Through the use of advertisements containing the statements hereinabove set forth and explanatory literature and directions which accompany the eye testing device designated "14 LENS SAMPLE CARD" sent by respondents to those requesting it, respondents represented, directly and by implication, that the eye glasses sold by them, made pursuant to the results of the tests of the eyes, using respondents' device, will correct the defects in vision of all persons.

PAR. 6. Said advertisements were and are misleading in material respects and constitute "false advertisements" as this term is defined in the Federal Trade Commission Act. In truth and in fact the eye glasses sold by respondents, made pursuant to the results of tests of the eyes, using respondents' device will not correct defects in vision of all persons. On the contrary, such glasses are capable of correcting defects in vision of only those persons approximately 40 years of age and over who do not have astigmatism or diseases of the eye and who require only simple magnifying lens.

PAR. 7. The use by the respondents of the foregoing advertisements containing the false, misleading and deceptive statements and representations above referred to have had and now have the capacity and tendency to mislead and deceive substantial numbers of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true and into the use of respondents' devices and the purchase of substantial quantities of respondents' eye-glasses, because of such erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

#### DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decisions of the Commission and Order to File Report of Compliance," dated May 22, 1955, the initial decision in the instant matter of hearing examiner Earl J. Kolb, as set out as follows, became on that date the decision of the Commission:

#### INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding charges the respondents Advance Spectacle Company, Inc., a corporation, and Michael M. Egel, individ-

ually and as an officer of Advance Spectacle Company, Inc., with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act, in connection with the sale and distribution of eyeglasses through and by means of a self-testing device designated as "14 Lens Sample Card."

After the issuance of said complaint and the filing of their answer thereto, the respondents entered into a stipulation for a consent order with counsel for the complaint, disposing of all the issues in this proceeding, which stipulation was duly approved by the Director and Assistant Director of the Bureau of Litigation.

Respondents, pursuant to the aforesaid stipulation, admitted all of the jurisdictional allegations of the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations. Said stipulation further provides that the answer heretofore filed by respondents is to be withdrawn and that the parties expressly waive a hearing before the Hearing Examiner or the Commission, the filing of exceptions or oral argument before the Commission, and all other procedure before the Hearing Examiner and the Commission to which the respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission.

In said stipulation, respondents further agreed that the order to cease and desist issued in accordance with said stipulation shall have the same force and effect as if made after a full hearing, presentation of evidence and findings and conclusions thereon, and specifically waived all right, power and privilege to challenge or contest the validity of such order.

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

The Hearing Examiner has considered such stipulation and the order therein contained, and it appearing that said stipulation and order provides for an appropriate disposition of this proceeding the same is hereby accepted and made a part of the record, and the following jurisdictional findings made, and the following order issued:

1. Respondent Advance Spectacle Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its place of business located at 537 South Dearborn Street, Chicago, Illinois. Individual respondent,

1216

## Order

Michael M. Egel, is president and treasurer of corporate respondent and formulates the policy of said corporation and directs, controls and puts into effect all of its acts and practices.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, and this proceeding is in the interest of the public.

## ORDER

*It is ordered,* That respondents Advance Spectacle Company, Inc., a corporation, and its officers, and respondent Micheal M. Egel, individually, and respondents' agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of eyeglasses, do forthwith cease and desist from:

1. Disseminating, or causing to be disseminated, any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication, that the eyeglasses sold by respondents, made pursuant to the results of tests of the eyes using respondents' devices, will correct, or are capable of correcting, defects in vision of persons unless expressly limited to those persons approximately forty years of age and older who do not have astigmatism or diseases of the eye and who require only simple magnifying lenses.

2. Disseminating, or causing to be disseminated, any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of their eyeglasses in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains the representation prohibited in paragraph 1 hereof.

## 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 May 22, 1955].

IN THE MATTER OF  
JOSEPH TRINER CORPORATION

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

*Docket 5227. Modified Order, May 26, 1955*

Order modifying findings and order issued on June 27, 1945, 40 F. T. C. 668, in which the Commission found that respondent corporation had made false representations in advertisements and failed to reveal material facts, in connection with the sale of a medicinal preparation sold by it designated as "Triner's Bitter Wine", etc.

*Mr. Joseph Callaway and Mr. Daniel J. Murphy* for the Commission.

*Kerner, Jaros & Tittle and Mr. Henry Junge*, of Chicago, Ill., for respondent.

ORDER REOPENING PROCEEDING AND GRANTING IN PART AND DENYING  
IN PART PETITION FOR MODIFICATION OF FINDINGS AND ORDER

This matter coming on to be heard upon petition of respondent Joseph Triner Corporation, filed February 25, 1955, to reopen the proceeding and to modify the findings as to the facts and order to cease and desist, and upon answer thereto filed by the Legal Adviser on Deceptive Practices, Bureau of Litigation, opposing in part, and interposing no objection in part thereto; and

The Commission having duly considered the matter and having concluded that respondent's petition for modification should be granted in part and denied in part, as hereinafter indicated, and that the proceeding accordingly should be reopened for that purpose:

*It is ordered*, That said petition to reopen be, and it hereby is, granted.

*It is further ordered*, That Paragraphs Four and Five of the Findings as to the Facts herein be modified by deleting from each of said paragraphs the phrase "poor appetite", that Paragraph Six in said Findings be deleted, and that Paragraph Seven thereof be renumbered as Paragraph Six.

*It is further ordered*, That the Order to Cease and Desist herein be modified by deleting from Paragraph 1 (a) thereof the phrase "poor appetite", by deleting Paragraph 2 in its entirety, and by renumbering Paragraph 3 as Paragraph 2 and deleting from said paragraph the

concluding clause "or which fails to comply with the requirements set forth in paragraph 2 hereof."

*It is further ordered*, That in all other respects respondent's petition for modification be, and it hereby is, denied.

*Note.*—Paragraphs "4," "5," "6," and "7" of the findings above referred to are modified by this order to read as follows:

"PAR. 4. Through the use of the foregoing statements and representations, and others of similar import and meaning not specifically set out herein, respondent has represented, and is now representing, that said preparation is a cure or remedy for stomach disorders, faulty digestion, headache, nervousness, fatigue, and insomnia; that it cleanses the stomach and intestines and keeps the intestines clean; and that it raises the general vitality of the body and increases the resistance of the body to germs, thereby preventing colds.

"PAR. 5. The foregoing statements and representations are false, deceptive, and misleading. Respondent's preparation is not a cure or remedy for stomach disorders, faulty digestion, headache, nervousness, fatigue, or insomnia, and has no therapeutic value in the treatment of such conditions in excess of providing temporary relief from headache when due to constipation. It does not cleanse the stomach. While it has the temporary effect of a laxative, it does not cleanse the intestines or keep them clean. It does not raise the general vitality of the body or increase the resistance of the body to germs. It has no beneficial effect in the prevention of colds.

"PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations, disseminated and caused to be disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and that said preparation may be used at all times without ill effects, and into the purchase of substantial quantities of said preparation because of such erroneous and mistaken belief."

The order to cease and desist, as modified, is as follows:

"This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent, in which answer respondent admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearings as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act:

Order

51 F. T. C.

*"It is ordered,* That respondent, Joseph Triner Corporation, a corporation, its officers, directors, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of its medicinal preparation variously designated as 'Triner's Bitter Wine,' 'Triner's Bitter Wine with Vitamin B<sub>1</sub>,' and 'Triner's American Elixer of Bitter Wine,' or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same names or any other name, do forthwith cease and desist from:

"1. Disseminating or causing to be disseminated, by means of the United States mails or by any means in commerce, as 'commerce' is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication:

"(a) That said preparation is a cure or remedy for stomach disorders, faulty digestion, headache, nervousness, fatigue, or insomnia, or that it has any therapeutic value in the treatment of such conditions in excess of providing temporary relief from headaches when due to constipation.

"(b) That said preparation cleanses the stomach or intestines or keeps the intestines clean.

"(c) That the use of said preparation will raise the general vitality of the body, increase the resistance of the body to germs, or prevent or aid in the prevention of colds.

"2. Disseminating or causing to be disseminated, by any means, any advertisement for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as 'commerce' is defined in the Federal Trade Commission Act, of said preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof, and the respective subdivisions thereof.

*"It is further ordered,* That the respondent shall, within 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 this order."

Complaint

In the MATTER OF

SAMUEL GAILBAND, INC., ET AL.

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

*Docket 6302. Complaint, Feb. 25, 1955—Decision, May 27, 1955*

Consent order requiring a furrier in New York City with a branch in Los Angeles to cease violating the Fur Products Labeling Act and the Federal Trade Commission Act, by falsely invoicing furs as to the country of origin.

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

*Mr. John J. McNally* for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Samuel Gailband, Inc., a corporation, Irving Levine, individually and as president of said corporation, and Melvin Gladstone, individually and as vice president of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Samuel Gailband, Inc., is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at 372 Seventh Avenue, New York, New York, and with a branch store located at 635 South Hill Street, Los Angeles, California. Individual respondents Irving Levine and Melvin Gladstone are president and vice president, respectively, of said corporate respondent and in such capacities formulate, direct and control the acts, practices and policies of said corporate respondent. Individual respondent Irving Levine has the same office and principal place of business as corporate respondent and individual respondent Melvin Gladstone has the same office and principal place of business as the aforesaid branch store of corporate respondent.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have introduced fur into commerce, sold and offered for sale fur in commerce, and have transported and distributed fur in commerce, as "commerce" and "fur" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur was falsely and deceptively invoiced, in that it was not invoiced as required under the provisions of Section 5 (b) (1) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 4. Certain of said fur was falsely and deceptively invoiced in that respondents, on such invoices, misrepresented the name of the country of origin of such fur in violation of Section 5 (b) (2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

PAR. 5. The aforesaid acts and practices of respondents, as herein alleged, were in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constituted unfair and deceptive acts and practices under the Federal Trade Commission Act.

#### DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated May 27, 1955, 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

The charges contained in the complaint in this proceeding are that Samuel Gailband, Inc., a New York corporation with places of business at 372 Seventh Avenue, New York, New York, and 635 South Hill Street, Los Angeles, California, and Irving Levine and Melvin Gladstone, individually and as president and vice president respectively of said corporation, have violated the Fur Products Labeling Act and the Federal Trade Commission Act by falsely and deceptively invoicing furs which have been offered for sale and sold by them in commerce.

Following issuance and service of the complaint and prior to the filing of an answer, the respondents entered into a Stipulation For Consent Order with counsel supporting the complaint, which was approved by the Director and Assistant Director of the Bureau of Litigation and transmitted to the Hearing Examiner.

This stipulation provides, among other things, that respondents admit all the jurisdictional allegations set forth in the complaint and that the record herein may be taken as if findings of jurisdictional facts had been made in accordance with such allegations; that the stipulation, together with the complaint, shall constitute the entire record herein; that the complaint may be used in construing the order agreed upon, which may be altered, modified or set aside in the manner provided by the statute for orders of the Commission; that the signing of the stipulation is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the order provided for in the stipulation and hereinafter included in this decision shall have the same force and effect as if made after a full hearing, presentation of evidence and findings and conclusions thereon.

All parties waive the filing of answer, hearings before a Hearing Examiner or the Commission, the making of findings of fact or conclusions of law by the Hearing Examiner or the Commission, the filing of exceptions and oral argument before the Commission, and all further and other procedure before the Hearing Examiner and the Commission to which respondents may be entitled under the Federal Trade Commission Act or the rules of the Commission, including any and all right, power or privilege to challenge or contest the validity of the order entered in accordance with the stipulation.

The order agreed upon conforms to the order contained in the notice accompanying the complaint, and disposes of all the issues raised in the complaint. The Stipulation For Consent Order is therefore accepted, this proceeding is found to be in the public interest, and the following order is issued:

*It is ordered,* That respondents Samuel Gailband, Inc., a corporation, and its officers, and Irving Levine and Melvin Gladstone, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale or offering for sale in commerce, or the transportation or distribution in commerce, of any fur, as "commerce" and "fur" are defined in the Fur Products Labeling Act, do forthwith cease and desist from falsely or deceptively invoicing fur by:

1. Failing to furnish invoices which show:
  - (a) The name or names of the animal or animals producing the fur as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations;
  - (b) The name and address of the person issuing such invoices;

Order

51 F. T. C.

- (c) The name of the country of origin of any imported furs;
2. Using on invoices the name of any country other than the actual country of origin of furs, or furnishing invoices which contain any form of misrepresentation or deception, directly or by implication, with respect to such fur.

## ORDER TO FILE REPORT OF COMPLIANCE

*It is ordered,* That respondents Samuel Gailband, Inc., a corporation, Irving Levine, individually and as president of said corporation, and Melvin Gladstone, individually and as vice president 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 May 27, 1955].

## Complaint

IN THE MATTER OF

## JONATHAN LOGAN, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (d)  
OF THE CLAYTON ACT AS AMENDED*Docket 6215. Complaint, June 22, 1954—Decision, May 29, 1955*

Consent order requiring a dress manufacturer, with main office in Jersey City, N. J., and sales and show room in New York City, to cease making payments for promotional services to some customers—specifically to Best & Company for “reciprocal advertising” as charged—without making similar payments available to all their competitors, in violation of sec. 2(d) of the Clayton Act as amended.

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

*Mr. Peter J. Dias* and *Mr. Richard E. Ely* for the Commission.

*Phillips, Nizer, Benjamin & Krim*, of New York City, for respondents.

## COMPLAINT

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

PARAGRAPH 1. Respondent Jonathan Logan, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its main office and principal place of business located at 83 Newark Avenue, Jersey City, New Jersey and a sales and showroom at 1407 Broadway, New York City, New York.

Respondent is now and for some years past has been engaged in the manufacture, sale and distribution of dresses. Said products are sold for resale at retail to many customers, with places of business located in many cities and towns throughout the United States, such as department stores, women's specialty shops and dress shops. All of said products are sold under the trade name “JONATHAN LOGAN” and gross sales are substantial having exceeded \$9,000,000 in each of the years 1949 and 1950. “JONATHAN LOGAN” dresses have been widely advertised and otherwise publicized to create a consumer demand therefor, and they are well known to purchasers of dresses buying for resale at retail.

## Complaint

51 F. T. C.

At some of the times mentioned herein "JONATHAN LOGAN" dresses were manufactured and sold by partnerships and corporations other than Jonathan Logan, Inc., including David Schwartz & Co., a partnership, and David Schwartz Dress Co., Inc., a corporation.

PAR. 2. Respondent David Schwartz is an individual with his principal office and place of business located at 83 Newark Avenue, Jersey City, New Jersey. Said respondent is now and has been president of Jonathan Logan, Inc., and he controls, directs and is responsible for the acts and practices of said corporate respondent. He also controlled, directed and was responsible for the acts and practices of the partnerships and corporations referred to in Paragraph One.

PAR. 3. In the course and conduct of their business, respondents engaged in commerce as commerce is defined in the Clayton Act, as amended, having shipped their products or caused them to be transported from their main place of business in the State of New Jersey to customers located in the same and in other States of the United States and the District of Columbia.

PAR. 4. In the course and conduct of their business in commerce, respondents paid or contracted for the payment of something of value to or for the benefit of some of their customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by said respondents, and such payments were not available on proportionally equal terms to all other customers competing in the distribution of their products.

PAR. 5. Included among the payments alleged in Paragraph 4, were credits or sums of money, by way of discounts, allowances, rebates or deductions and advertising services, as compensation or in consideration for promotional services or facilities furnished by customers in connection with offering for sale or sale of "JONATHAN LOGAN" products, including advertising in various forms, sometimes herein-after referred to as promotional allowances.

The respondents did not make such allowances available on proportionally equal terms to all customers competing in the distribution of Jonathan Logan products, in that said respondents made, or offered to make, such allowances to some of such competing customers but did not make, or offer to make or otherwise make available, such allowances in any amount on any terms to all other of such competing customers.

PAR. 6. The payment of advertising services, as alleged in Paragraph 5, was made in consideration for promotional services or facilities furnished by Best & Company of New York City pursuant to an agreement dated February 20, 1948 which provided that:

1229

## Complaint

Commencing May 1st, 1948, in consideration of Best & Co., Inc. agreeing to advertise once each month in a Sunday newspaper, mentioning Jonathan Logan's name in the ad, Jonathan Logan agrees to give Best & Co., credit in its national magazine advertising in publications such as Charm, Seventeen, Mademoiselle and Glamour.

Jonathan Logan further agrees that they will not allow any other store in metropolitan New York to advertise Jonathan Logan dresses. Our New York accounts will be informed of this change in policy. It is understood, however, that if there should be an ad by one of the stores in the metropolitan district in which the Jonathan Logan name is used, it will be something beyond our control as we do not have complete supervision over the merchandising policies of the stores.

This agreement is to continue for one year from May 1st, 1948 and either party may have the privilege of cancelling same on three months notice in writing.

This arrangement will be considered in effect upon receipt of your letter of acknowledgment.

(signed) DAVID SCHWARTZ,  
JONATHAN LOGAN, INC.

Respondents and Best & Company have expended large sums of money in publishing advertisements pursuant to said agreement, which has continued in effect since May 1, 1948, and as a result both have realized great sales volume. For example, during the period from July 1949 to December 1950, Best & Company spent approximately \$15,000 and respondents spent approximately \$137,000 in reciprocal advertising. Sales, during the same period, of Jonathan Logan dresses to Best & Company amounted to approximately \$360,000.

PAR. 7. Best & Company does a large mail order business and all advertisements whether placed by Best & Company or by the respondents bear a legend inviting the public to order Jonathan Logan dresses by mail from Best & Company, 5th Avenue, New York City, New York.

In addition to its main store located on 5th Avenue, New York City, Best & Company maintains fifteen branches variously located in suburban New York City and Long Island as well as in ten cities located in seven other States and the District of Columbia. In each of said cities and the District of Columbia, Best & Company competes with numerous other customers of respondents in the sale or offering for sale of Jonathan Logan dresses and respondents failed to make or offer or otherwise make available any promotional allowances in any amount on any terms to many of such other customers.

PAR. 8. The acts and practices of respondents as alleged above violate subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act. (U. S. C. Title 15, sec. 13.)

## 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 May 29, 1955, 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

The charges contained in the complaint in this proceeding are that Jonathan Logan, Inc., a New York corporation with places of business at 150 Bay Street (formerly 83 Newark Avenue), Jersey City, New Jersey, and at 1407 Broadway, New York City, New York, and David Schwartz, individually and as president of said corporation, have violated subsection (d) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, by making or contracting to make payments to some customers for services or facilities, particularly advertising services, furnished by or through such customers in connection with the handling or reselling of respondents' products, without offering such payments or contracts to all competing customers on a proportionally equal basis.

Following issuance and service of the complaint, respondents on October 18, 1954, filed with the Commission their answer to such complaint. Thereafter, on April 5, 1955, respondents entered into a Stipulation For Consent Order with counsel supporting the complaint, which was approved by the Director and Assistant Director of the Bureau of Litigation and transmitted to the Hearing Examiner.

This stipulation provides, among other things, that respondents admit all the jurisdictional allegations set forth in the complaint and that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations; that the stipulation, together with the complaint, shall constitute the entire record herein; that the complaint may be used in construing the order agreed upon, which may be altered, modified or set aside in the manner provided by the statute for orders of the Commission; that the signing of the stipulation is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the order provided for in the stipulation and hereinafter included in this decision shall have the same force and effect as if made after a full hearing, presentation of evidence and findings and conclusions thereon.

All parties request that the answer hereinbefore filed be withdrawn, and expressly waive the filing of answer, hearing before a hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission, the filing of exceptions, oral argument before the Commission, and all further and other procedure before the hearing examiner and the Commission to which respondents may be entitled under the Clayton Act as amended or the Rules of Practice of the Commission, including any and all right, power or privilege to challenge or contest the validity of the order entered in accordance with the stipulation.

The order agreed upon disposes of all the issues raised in the complaint, without differing materially from the order contained in the notice accompanying the complaint. The Stipulation For Consent Order is therefore accepted; the request of all parties for the withdrawal of respondents' answer previously filed herein is granted; this proceeding is found to be in the public interest, and the following order is issued:

*It is ordered*, That Respondents, Jonathan Logan, Inc., a corporation, its officers, employees, agents and representatives, and David Schwartz, individually and as President of Jonathan Logan, Inc., directly or through any corporate or other device, in or in connection with the sale of dresses in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from making or contracting to make, to or for the benefit of any customer, any payment of anything of value as compensation or in consideration for any services or facilities furnished by or through such customer in connection with his processing, handling, sale or offering for sale of products sold to him by Respondents, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products.

*It is further ordered*, That Respondents' answer to the complaint herein, filed with the Commission on October 18, 1954, be, and the same hereby is, withdrawn from the record of this proceeding.

ORDER TO FILE REPORT OF COMPLIANCE

*It is ordered*, That respondents Jonathan Logan, Inc., a corporation, and David Schwartz, individually and as President 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 May 29, 1955].

The Commission on January 21, 1955 denied respondents' motion to dismiss complaint because of abandonment of illegal practices, certified to the Commission by the hearing examiner, and remanded the matter for further proceedings.

This matter having come on to be heard upon the motion to dismiss filed on October 26, 1954, by counsel for respondents, which motion, together with the answer in opposition thereto filed by counsel supporting the complaint and the record, was certified to the Commission for its consideration under the hearing examiner's ruling of November 10, 1954; and

The Commission, for reasons stated in its accompanying opinion, having determined that the respondents' motion should be denied:

*It is ordered*, That the respondents' motion to dismiss the complaint be, and it hereby is, denied.

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

#### OPINION OF THE COMMISSION

By GWRNNE, Commissioner:

The motion by respondents to dismiss the complaint, together with other papers, has been certified to the Commission by the hearing examiner.

The complaint, which was served on June 28, 1954, charges a violation of Section 2 (d) of the Clayton Act in that respondents furnished services or facilities to certain customers which were not available on proportionally equal terms to all other competing customers. In particular, the complaint charged furnishing of such service to Best & Company, New York City, in accordance with the following:

"Commencing May 1st, 1948, in consideration of Best & Co., Inc., agreeing to advertise once each month in a Sunday newspaper, mentioning Jonathan Logan's name in the ad, Jonathan Logan agrees to give Best & Co., credit in its national magazine advertising in publications such as Charm, Seventeen, Mademoiselle and Glamour.

"Jonathan Logan further agrees that they will not allow any other store in metropolitan New York to advertise Jonathan Logan dresses. Our New York accounts will be informed of this change in policy. It is understood, however, that if there should be an ad by one of the stores in the metropolitan district in which the Jonathan Logan name is used, it will be something beyond our control as we do not have complete supervision over the merchandising policies of the stores.

"This agreement is to continue for one year from May 1st, 1948 and

1229

## Opinion

either party may have the privilege of cancelling same on three months' notice in writing.

"This arrangement will be considered in effect upon receipt of your letter of acknowledgment.

"(signed) DAVID SCHWARTZ,

"JONATHAN LOGAN, INC."

The answer filed October 18, 1954 denies most of the material allegations of the complaint but admits the signing and delivery of the letter above referred to. The answer also alleges that the arrangements set forth in the letter had been terminated on or before May 1, 1954.

On October 26, 1954, respondents filed with the hearing examiner a motion to dismiss supported by the affidavit of David Schwartz, President of Jonathan Logan, Inc. The affidavit sets out that the arrangement with Best & Company had been terminated for business reasons prior to any claim of illegality being made by the Federal Trade Commission and that "the respondents will not engage in any of the acts and practices complained of in the complaint, so long as such acts and practices constitute a violation of law."

Counsel supporting the complaint filed objection with the hearing examiner to dismissal and, on December 3, 1954, filed a supplemental answer in opposition in which is set out a letter from respondents to Best & Co., dated April 26, 1954, a material part of which is:

"MR. PHILIP LeBOUTILLIER,

"*Best & Company*

"*Fifth Avenue, New York, New York.*

"DEAR MR. LeBOUTILLIER:

\* \* \* \* \*

We have been subjected to great pressure from other primary department stores handling our merchandise who have sought to publicize our name in their advertising. These pressures have mounted over the years, and in recent months have been especially pronounced. At the same time your organization has been running ads in conjunction with other dress and sportswear manufacturers so that it is not uncommon to find several Best advertisements containing prominent reference to manufacturing resources in almost any edition of the New York Sunday Times. We have brought this situation to the attention of your representatives on several occasions and most recently in my letter of April 2, 1954 to your Mr. Gordon McCausland. *We find it necessary, therefore, in limited instances to permit the use of our trade name in advertising copy.*

Opinion

51 F. T. C.

*"We look forward to a continuation of our business relationship, and in so doing we will try to appropriate as much money as we have in the past for joint exploitation of your name and ours. We will continue to serve you to the best of our ability as we always have.*

*"Mindful of your absence from the City at this time, we have refused to permit the use of our name in any advertisements in New York City until after May 1, 1954.*

"Sincerely,

"JONATHAN LOGAN, INC.

"(S) DAVID SCHWARTZ."

[Emphasis added.]

Counsel also claims that Jonathan Logan ads appeared in the magazine section of the New York Sunday Times after May 1st and as late as October 17, 1954, and in the June, September, and October issues of the magazine "Seventeen." Each of these ads contains promotional features in behalf of Best & Company. He also claims that ads of Best & Company as late as July contain promotional features in behalf of respondents.

In Argus Cameras, Inc., Docket No. 6199, it is pointed out that the dismissal of a complaint because of discontinuance of the practices complained of is not the usual procedure. All the elements necessary for a dismissal were found to exist in that case. There was no dispute about the facts.

In the present case, there is a substantial dispute between counsel supporting the complaint and counsel for the respondents as to the abandonment of the illegal practices and as to the likelihood of their being resumed in the future. From the facts disclosed, we cannot determine whether allowances presently being made by respondents are available to all competing customers on proportionally equal terms.

Respondents' motion to dismiss the complaint is therefore denied and the case is remanded to the hearing examiner for further proceedings in accordance therewith.

Complaint

IN THE MATTER OF

ISAAC REISS DOING BUSINESS AS GRAND  
MANUFACTURING COMPANY

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

*Docket 6293. Complaint, Feb. 18, 1955—Decision, June 2, 1955*

Consent order requiring a seller to wholesalers and dealers from his place of business in New York City, to cease representing falsely by attached tags and insignia that his Armed Forces-type jackets and outer coats were manufactured according to specifications for the U. S. Armed Forces, and to cease representing falsely by use of his trade name and otherwise that he was a manufacturer.

Before *Mr. John Lewis*, hearing examiner.  
*Mr. Terral A. Jordan* for the Commission.

COMPLAINT

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

PARAGRAPH 1. Respondent Isaac Reiss is an individual trading and doing business as a sole proprietorship under the name of Grand Manufacturing Company with his office and principal place of business located at 330 Grand Street, New York 2, New York.

PAR. 2. Respondent is now and for more than two years last past has been engaged in the sale and distribution of jackets and outer coats to wholesalers and dealers, in commerce, among and between the various States of the United States and the District of Columbia. Respondent maintains and at all times mentioned herein has maintained, a substantial course of trade in said garments, in commerce among and between the various States of the United States.

PAR. 3. The garments sold and distributed by respondent in the course and conduct of his business as aforesaid closely resemble the jackets and outer coats issued and furnished to members of the United States Armed Forces in color, pattern and style. Respondent also

Complaint

51 F. T. C.

causes to be affixed to said garments certain markings, insignia, labels and tags which purport to designate the branch of service, model, contract number, specification number, stock number and directions as to the manner of use in substantially the same form, kind and manner as the markings, insignia, labels and tags prescribed and used by the United States Armed Forces on similar and like garments. Typical of the aforesaid markings, insignia, labels and tags are:

JACKET, TYPE N-1  
SPEC, 4-J-112-N.Y.C.  
Q.M.-O.D.-1951  
STOCK NO. 02-J-624-7807

THIS JACKET INCREASES GREATLY THE WARMTH OF  
CLOTHING WORN UNDER IT IN COLD AND  
TEMPERATE CLIMATES BECAUSE IT IS WINDPROOF.

In addition to the foregoing label the letters "U. S. N." in large size appear on the upper, left, front portion of said jackets.

ARMY AIR FORCE STYLE  
B-15 BOMBER  
CONTRACT MFG2502  
MARCH 18, 1949 M 7542  
SPEC. M 1989 GRMFG 330  
SIZE -----

In addition to the foregoing label said jackets on the shoulder thereof bears a simulated Army Air Force shoulder insignia made up in part of Air Force Wings and below such wings "U. S. Air Force."

PAR. 4. Through the use of said colors, patterns and styles and the markings, insignia, labels and tags, as described in Paragraph Three hereof, respondent has represented and implied and does represent and imply that said jackets and outer coats, sold and distributed by him in commerce were manufactured for the United States Armed Forces and in accordance with specifications of said Armed Forces.

PAR. 5. Said representations and implications are false, misleading and deceptive. In truth and in fact, respondent's said garments were neither manufactured for the United States Armed Forces nor in accordance with specifications of said Armed Forces.

PAR. 6. By selling and distributing to wholesalers and dealers said products manufactured as aforesaid and having affixed to them the markings, insignia, tags and labels hereinabove described, respondent furnishes to such wholesalers and dealers the means and instrumentalities through and by which they may mislead and deceive the purchasing public as to the origin, kind, type, and style of their said jackets and outer coats.

PAR. 7. Through the use of the words "manufacturing" and "manufacturers of" in his trade name and on his stationery, invoices and price lists, respondent has represented and is now representing that he owns, operates or controls a factory or factories where his said merchandise is manufactured and that he is the manufacturer of such merchandise. In truth and in fact, said respondent does not own, operate or control a factory wherein is manufactured the merchandise sold and distributed by him.

PAR. 8. There is a preference on the part of wholesalers and dealers for dealing directly with manufacturers of products rather than with outlets, distributors, jobbers or other intermediaries, such preference being due in part to a belief that by dealing directly with the manufacturer lower prices and other advantages may be obtained.

PAR. 9. In the course and conduct of his business respondent is in direct and substantial competition with other corporations and firms and individuals engaged in the sale in commerce of jackets and outer coats.

PAR. 10. The sale and distribution in commerce of said garments in the color, pattern and style, and with markings, insignia, labels and tags, as hereinabove alleged, had and now have the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that said garments were manufactured for the United States Armed Forces and in accordance with specifications of said Armed Forces, and the use of the words "manufacturing" and "manufacturers of" in his trade name and on his stationery, invoices and price lists, as herein alleged, has the tendency and capacity to mislead the wholesalers and dealers who purchase the merchandise of the respondent into the erroneous and mistaken belief that respondent is the manufacturer of his merchandise and owns, operates or controls the plant or plants where such merchandise is manufactured, and into the purchase of substantial quantities of respondent's merchandise in commerce because of such erroneous and mistaken beliefs. As a result thereof, substantial trade in commerce has been unfairly diverted to respondent from his competitors and substantial injury has been done to competition in commerce.

PAR. 11. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

## 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 June 2, 1955, 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

The Federal Trade Commission issued its complaint against the above-named respondent on February 18, 1955, charging him with the use of unfair methods of competition and unfair acts and practices in commerce, in violation of the provisions of the Federal Trade Commission Act. After being duly served with said complaint, the respondent entered into a stipulation with counsel supporting the complaint, dated April 13, 1955, providing for the entry of a consent order disposing of all the issues in this proceeding. Said stipulation has been submitted to the above-named hearing examiner, heretofore duly designated by the Commission, for his consideration in accordance with Rule V of the Commission's Rules of Practice.

Respondent, pursuant to the aforesaid stipulation, has admitted all the jurisdictional allegations of the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations. Said stipulation further provides that all parties expressly waive a hearing before the hearing examiner or the Commission, and all further and other procedure to which the respondent may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission. Respondent has also agreed that the order to cease and desist issued in accordance with said stipulation shall have the same force and effect as if made after a full hearing, and specifically waives any and all right, power, or privilege to challenge or contest the validity of said order. It has been further stipulated and agreed that the complaint herein may be used in construing the terms of the order provided for in said stipulation, and that the signing of said stipulation is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid stipulation for consent order, and it appearing that said stipulation provides for an appropriate disposition of this proceeding, the same is hereby ac-

1237

## Order

cepted and ordered filed as part of the record herein by the hearing examiner, who makes the following findings, for jurisdictional purposes, and order:

1. Respondent Isaac Reiss is now, and has been at all times mentioned herein, an individual trading and doing business as a sole proprietorship under the name of Grand Manufacturing Company with his office and principal place of business located at 330 Grand Street, New York 2, New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

## ORDER

*It is ordered*, That respondent Isaac Reiss, an individual trading as Grand Manufacturing Company, or under any other trade name, and respondent's agents, representatives and employees, directly or through any corporate or other device, in the offering for sale, sale or distribution of wearing apparel, or of any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, by marking, branding, labeling, tagging, or in any other manner, that such merchandise was manufactured for the Armed Forces of the United States or in accordance with specifications of said Armed Forces.

2. Using the words "manufacturing" and "manufacturers of" or any other word or words of similar import or meaning as a part of a trade name, or representing through the use of the words "manufacturing" or "manufacturers of" or any other word or words of similar import or meaning on stationery, invoices, price lists or in any other manner that he manufactures the merchandise sold by him.

## ORDER TO FILE REPORT OF COMPLIANCE

*It is ordered*, That the respondent herein shall within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist [as required by said declaratory decision and order of June 2, 1955].

IN THE MATTER OF  
ROCKFORD FURNITURE FACTORIES, INC.

*Docket 4503. Modifying order, June 14, 1955*

*Mr. Daniel J. Murphy* for the Commission.  
*Mr. Samuel F. Ferster* and *Mr. Horace S. Bellfatto*, of Newark,  
N. J., for respondent.

ORDER REOPENING PROCEEDING AND MODIFYING ORDER TO  
CEASE AND DESIST

This matter having come on to be heard by the Commission upon the application, filed on December 15, 1954, by Rockford Furniture Co., Inc., successor to the business of the respondent, Rockford Furniture Factories, Inc., for modification of the order to cease and desist issued herein on August 12, 1941,<sup>1</sup> answer thereto filed by counsel supporting the complaint, and reply to said answer; and

The Commission having duly considered said application, answer and reply, and the record herein, and it appearing that the facts which existed at the time the order to cease and desist was issued have so changed that modification of the order to cease and desist is warranted:

*It is ordered*, That this proceeding be, and it hereby is, reopened for the purpose of modifying the order to cease and desist issued herein on August 12, 1941.

*It is further ordered*, That said order to cease and desist be, and it hereby is, modified by adding to the paragraph numbered (1) thereof the following provision:

*“Provided, however*, That this shall not be construed as prohibiting Rockford Furniture Co., Inc., a New Jersey corporation, successor to the business of the respondent, Rockford Furniture Factories, Inc., from using the word ‘Rockford’ in its corporate name.”

<sup>1</sup> In the order to cease and desist, 33 F. T. C. 971, 976, Rockford Furniture Factories, Inc., its officers, etc., were ordered to cease and desist from:

“1. Using the word ‘Rockford,’ or any simulation thereof, in its corporate name, or in any way to designate or refer to its business or its display rooms, when the furniture offered for sale and sold by respondent is not in substantial proportion manufactured in the city of Rockford, Ill.

“2. Using the word ‘Rockford,’ or any simulation thereof, on its letterheads, posters, advertising materials, or in any manner to represent, import, or imply that furniture not manufactured in the city of Rockford, Ill., was manufactured in that city.

“3. Using the word ‘Factories,’ or any other word or terms of similar import or meaning, in its corporate name, or to designate or refer to its business or in any manner represent, import, or imply that respondent is the manufacturer of furniture offered for sale or sold by it.”

## Complaint

IN THE MATTER OF  
JEANNE D'OR MODES, INC., ET AL.

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

*Docket 6313. Complaint, Mar. 16, 1955—Decision, June 14, 1955*

Consent order requiring a manufacturer in New York City to cease violating the Wool Products Labeling Act by labeling as "100% cashmere" ladies' coats which were composed of wool with only a trace of the fleece of the Cashmere goat, and by failing to set forth on labels the fiber content of interlinings.

Before *Mr. Loren H. Laughlin*, hearing examiner.  
*Mr. George E. Steinmetz* for the Commission.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Jeanne D'Or Modes, Inc., a corporation, and Sol Gelfond and Larry Goldwater, each individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Jeanne D'Or Modes, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York. Sol Gelfond is president and Larry Goldwater is secretary and treasurer of said respondent corporation, and these individuals formulate, direct, and control the acts, policies, and practices of said corporate respondent. The offices and principal place of business of said respondents are located at 214 West 39th Street, New York, New York.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since January 1, 1954, respondents have manufactured for introduction into commerce, introduced, sold, transported, distributed, delivered for shipment, and offered for sale in commerce, as "commerce" is defined in the said Wool Products Labeling Act, wool products, as "Wool products" are defined therein.

Decision

51 F. T. C.

PAR. 3. Certain of said wool products were misbranded within the meaning and intent of Section 4 (a) (1) of said Wool Products Labeling Act 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' coats labeled or tagged by respondents as consisting of "100% cashmere", and "100% imported cashmere", whereas in truth and in fact, said products were composed of the wool of the genus sheep with only a trace of the fiber designated as Cashmere, being the hair or fleece of the Cashmere goat.

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

PAR. 5. The acts and practices of the respondents as herein alleged were and are in violation of the 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.

#### DECISION OF THE COMMISSION

Pursuant to Sec. 3.21 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 June 14, 1955, the initial decision in the instant matter of hearing examiner Loren H. Laughlin, as set out as follows, became on that date the decision of the Commission.

#### INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (hereinafter referred to as the Commission) on March 16, 1955, issued its complaint herein under the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, against the above-named corporate respondent and also against the respondents Sol Gelfond and Larry Goldwater, both individually and as officers of said corporation, charging them and each of them in having manufactured for introduction into commerce and having introduced, sold, transported, distributed, delivered for shipment, and offered for sale in commerce certain wool products, some of which wool products were misbranded in various particulars by being falsely and deceptively labeled or tagged with respect to the

character and amount of the constituent fibers contained therein, contrary to Section 4 (a) (1) of the said Wool Products Labeling Act and of the Rules and Regulations promulgated by the Commission thereunder; that among such misbranded products were ladies' coats labeled or tagged by respondents as consisting of "100% cashmere" and "100% imported cashmere" which were actually composed of wool of the genus sheep with only a trace of "Cashmere" which is the hair or fleece of the Cashmere goat; and further that among such misbranded products certain wool coats lacked labels or tags attached thereto separately setting forth the fibre content of their interlinings as required by Section 4 (a) (2) of said Wool Products Labeling Act and Rule 24 of the Commission's Rules and Regulations promulgated thereunder.

Said complaint was duly served upon each of said respondents, who, within the time fixed for answer, and on April 4, 1955, stipulated in writing with counsel supporting the complaint, therein waiving the filing of an answer and agreeing that a consent order against the respondents be entered herein in terms identical with those contained in the notice issued and served on respondents as a part of the complaint herein. Such written stipulation was approved in writing by the Director and Assistant Director of the Commission's Bureau of Litigation.

By said stipulation, among other things, respondents have admitted all the jurisdictional allegations of the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations; that the parties have expressly waived a hearing before the Hearing Examiner or the Commission and all further and other procedure to which the respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission; and have agreed that the order to cease and desist issued in accordance with said stipulation shall have the same force and effect as if made after a full hearing, the parties having waived specifically therein any and all right, power or privilege to challenge or contest the validity of said order. It was also stipulated and agreed therein that the complaint herein may be used in construing the terms of the order provided for in said stipulation, and, further, that the signing of said stipulation is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The aforesaid stipulation for consent order as so approved was submitted on April 12, 1955, to the above-named hearing examiner for his consideration in accordance with Rules V and XXII of the Com-

Order

51 F. T. C.

mission's Rules of Practice. And upon due consideration of the complaint and the stipulation for consent order, which is hereby accepted and ordered filed as part of the record herein, it having been stipulated they shall be the entire record herein on which such order may be entered, the hearing examiner finds that the Commission has jurisdiction of the subject matter of this proceeding and of each and all of the parties respondent herein, the individual respondents being subject to such jurisdiction both individually and as officers of said corporate respondent; that the complaint states a legal cause for complaint against the respondents and each of them under the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated by the Commission under the latter Act, both as an entirety and in each of the particular violations alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said stipulation is appropriate for the disposition of this proceeding, the same to become final when it becomes the order of the Commission; and that said order therefore should be, and hereby is, entered as follows:

## ORDER

*It is ordered,* That the respondent Jeanne D'Or Modes, Inc., a corporation, and its officers and Sol Gelfond and Larry Goldwater, individually and as officers of said corporation, 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 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

1243

Order

fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five per centum or more, and (5) the aggregate of all other fibers;

(b) The maximum percentage of the total weight of such wool product of any 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 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 in Rule 24 of the Rules and Regulations promulgated under the 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.

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 June 14, 1955].

IN THE MATTER OF  
BENJAMIN AND EDWARD J. GROSS COMPANY,  
INC., ET AL.

*Docket 6068. Complaint, Dec. 1, 1952—Order, June 24, 1955*

Order dismissing, for failure to sustain the allegations, complaint charging a seller in New York City of diamond rings, under the trade name of "Rings O' Romance", with advertising as the usual and regular retail prices, prices which were in fact fictitious and greatly in excess of those at which the rings were usually sold at retail.

*Mr. Frederick J. McManus* for the Commission.

*Halperin, Natanson, Shivitz & Scholer*, of New York City, for Benjamin and Edward J. Gross Co., Inc., Benjamin Gross and Edward J. Gross.

*Brobeck, Phleger & Harrison*, of San Francisco, Calif., for Theodore H. Segall.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

This proceeding is before the undersigned Hearing Examiner for final consideration on the complaint, answer thereto, testimony and other evidence and proposed findings as to the facts and conclusions presented by counsel, and the Hearing Examiner having considered the matter and being now fully advised in the premises makes the following findings as to the facts and conclusions drawn therefrom:

1. Respondent Benjamin and Edward J. Gross Company, Inc., is a corporation organized under the laws of the State of New York with its principal office and place of business located at 64 West 48th Street, New York, New York. Respondents Benjamin Gross and Edward J. Gross were president and secretary, respectively of said corporation and as the officers thereof formulated, directed and controlled the policies, acts and practices of said corporate respondent. The respondent Benjamin Gross is now deceased, having died subsequent to the issuance of the order of the Hearing Examiner closing the taking of testimony in this proceeding.

2. Respondent Theodore H. Segall is an individual doing business under the name of Theodore H. Segall Advertising Agency with his office at 544 Market Street, San Francisco, California. Said respondent, for a period of time during 1951, was engaged as advertising agent for the corporate respondent, Benjamin and Edward J. Gross Company, Inc.

3. The respondent Benjamin and Edward J. Gross Company, Inc., is now, and for several years last past has been, engaged in the sale and distribution of diamond rings in interstate commerce and is engaged in direct and substantial competition with other concerns engaged in the sale and distribution of diamond rings in interstate commerce.

4. The respondent Benjamin and Edward J. Gross Company, Inc., sold its diamond rings direct to retail jewelers under the trade name of "Rings O' Romance" with special names being given to the individual rings comprising this line. Respondent's line of rings "Rings O' Romance" was from time to time nationally advertised, which advertisements carried the retail prices of the rings and such rings were pre-ticketed with the retail prices at the time of their delivery to respondent's customers. Such advertisements were not for the purpose of making sales direct, but as stated therein, the rings were for sale by authorized jewelers everywhere.

5. It is charged in the complaint that in 1951 the respondent caused to be placed in Life magazine an advertisement of its "Rings O' Romance" and that the prices set out in said advertisement for the various rings as the usual and regular retail prices were in fact fictitious prices and greatly in excess of the prices at which said rings were usually and regularly sold at retail. The complaint further charged that respondent Theodore H. Segall with the knowledge and consent of the corporate respondent caused advertisements to be placed on behalf of certain retail jewelers, which advertisements offered respondent's "Rings O' Romance" at one-half the price as advertised in Life magazine, thereby representing that the rings were being offered for sale by such retail customers at one-half the usual and regular retail price when in fact the retail price so offered was the regular retail price, or approximately the regular retail price for the various rings depicted in the advertisement. The complaint further charged that the placing of such advertisements both by the respondent Benjamin and Edward J. Gross Company, Inc., and by the respondent Theodore H. Segall constituted a joint scheme or plan by and through which retail dealers were enabled through the use of advertising matter prepared by respondent Theodore H. Segall to misrepresent the usual and regular prices of the diamond rings sold by respondent Benjamin and Edward J. Gross Company, Inc., and the savings afforded to the public who purchased such rings.

6. On or about August 17, 1950, the respondent, Theodore H. Segall, placed an advertisement on behalf of Milens Jewelers located at Oakland, California, in the Oakland Tribune advertising "Rings O' Ro-

mance" at one-half the price as advertised in the Saturday Evening Post, which advertisement contained the replica of a Saturday Evening Post advertisement placed by the corporate respondent several years prior thereto, depicting respondent's various rings sold under the trade name, "Rings O' Romance," along with the trade-marked names with price tags attached.

7. In 1951, respondent Theodore H. Segall in his capacity as advertising agent entered into an agreement with the corporate respondent to place an advertisement in Life magazine, which advertisement appeared in the July 30, 1951, issue of Life. This advertisement generally followed the format of the original advertisements placed in the Saturday Evening Post depicting the corporate respondent's "Rings O' Romance" with their trade names and price tags attached. The prices listed in the Life advertisement represented a 4-time mark-up which meant that the cost to the retail jeweler of a ring was 25 percent of the resale price, as for example, a ring costing the jeweler \$100.00 would have a resale price of \$400.00.

8. At or about the time the Life advertisement appeared, respondent Theodore H. Segall placed one or two advertisements for Milens Jewelers at the full price as advertised in Life magazine. Shortly thereafter, respondent Theodore H. Segall placed advertisements on behalf of Milens Jewelers reproducing the advertisement appearing in Life and advertising the rings at one-half the price as advertised in Life.

9. In September 1952, the corporate respondent placed another advertisement in Life magazine more or less similar in format to the previous ad, which advertisement was placed through a New York advertising agency and not by respondent Theodore H. Segall. At or about the time this latter advertisement appeared in Life magazine the respondent Theodore H. Segall prepared and placed an advertisement in the Oakland Tribune for Milens Jewelers containing reproduction of the Life advertisement and advertising "Rings O' Romance" at one-half the price as advertised in Life.

10. In addition, in 1951 the respondent Theodore H. Segall prepared advertising mats of the half-price sale and other promotional material, such as banners, price tickets, and other advertising material. In instances where jewelers would write in to Milens Jewelers requesting information concerning their advertisement, such request was referred to the respondent Theodore H. Segall who then advised such inquiring jewelers as to cost of obtaining advertising mats and other advertising material to be used in connection with a half-price

sale of corporate respondent's "Rings O' Romance." In some instances certain salesmen of the respondent advised jewelers of the half-price sale feature and referred them to the respondent Theodore H. Segall, and in other instances gave the names of various customers to Theodore H. Segall for the purpose of enabling him to write them in an effort to sell his promotional material.

11. In February 1951 a meeting was held at Phoenix, Arizona, at which respondent Edward J. Gross was present, together with a number of retail jewelers, including representatives of Grandville's jewelers of San Francisco, Wisefield of Seattle, Fromess of Denver and Milens Jewelers of Oakland, California. The respondent Theodore H. Segall was also present and had various discussions both with the retail jewelers and with respondent Edward J. Gross and at that time entered into negotiations with Edward J. Gross relative to acting as advertising agent in national advertising to be placed primarily in Life magazine. The witnesses testified that there was a general discussion of the half-price ad among the retail jewelers, but respondent Edward J. Gross denies that he ever took part in such discussions or had any knowledge of the proposed plan.

12. The gravamen of the charges of the complaint and the sole issue to be determined within the limits of the complaint as to whether the respondents were violating the provisions of the Federal Trade Commission Act was the extent to which the pre-ticketed or suggested resale price was fictitious and did not constitute the regular and usual price at which respondent's rings were sold to the general public. In presenting this issue, a number of retail jewelers and other witnesses were called by both parties to testify as to the customary mark-up used by retail jewelers in selling diamond rings. The consensus of this testimony was that there is in fact no established mark-up which is generally used or followed by the retail jewelers in the sale of diamond rings. The mark-up used depends to some extent upon the nature of the business being conducted, the location of the store and the nature of the competition. It is recognized that credit jewelers and those doing a large amount of advertising would ordinarily have a higher mark-up on diamond rings than that of the so-called cash jeweler. It appears from the testimony that the cash jeweler has a minimum mark-up of 100 percent of cost or as is known in the trade a 2-time mark-up. This obtains except in the case of the more expensive diamond rings in which the mark-up will be lower. Even as to jewelers who are classified or designated as cash jewelers, only a very small percentage would limit themselves to a 2-time mark-up

## Conclusion

51 F. T. C.

on diamond rings, but instead would have a mark-up in excess of this amount. The credit jeweler would maintain a mark-up of 3 to 4 times, and in some instances may go as high as 5 or 6 times cost.

13. Prior to 1944, the pre-ticketed or suggested resale price placed upon its "Rings O' Romance" by the respondent and as carried in its advertising represented a 3-time mark-up. Subsequent to 1944, after the advent of the luxury tax, the pre-ticketed or suggested resale price represented a 4-time mark-up. If, as contended by the respondent, the retail jeweler sells such rings tax included, the suggested resale price would be slightly in excess of a 3-time mark-up which is in line with the mark-up most generally used by retail jewelers. If, on the other hand, the jeweler sells the ring at the suggested resale price plus tax, the 4-time mark-up thus involved would not be out of line with the customary mark-up used by credit jewelers who in fact comprise the greater part of respondent's customers.

14. Aside from the mark-up, the controlling feature in determining fictitious price is whether or not respondent's rings were in fact offered for sale and sold by jewelers at the suggested or pre-ticketed price. It appears from the testimony in this record that retail jewelers did, in fact, offer for sale and sell the respondent's "Rings O' Romance" at the suggested resale price appearing in Life Magazine advertisements. This is true both as to those jewelers who used the half-price sale feature and jewelers who refused or did not use such feature sale. At the time the advertisements were placed in Life magazine the respondent distributed and made available to its customers advertising mats referring to the Life advertisement and offering the rings so advertised at the price appearing in the Life advertisement. Respondent introduced into evidence a number of advertisements issued by various retail jeweler customers showing that respondent's rings were being offered for sale to the public at the prices set out in the Life magazine advertisement. It is further stipulated by the attorney for the Commission that there were many more customers of respondent who so advertised respondent's rings at the retail prices appearing in the Life advertisement. In addition, none of the jewelers who testified and who used the half-price sales campaign used as low a mark-up as a 2-time mark-up on diamond rings, and, consequently, in advertising respondent's rings at one-half price they were in fact selling at less than the usual mark-up followed by them in pricing diamond rings.

## CONCLUSION

In view of the testimony hereinbefore described, it must be concluded that there has been a total failure in sustaining the charges of

1248

## Order

the complaint (a) that the resale prices appearing on respondent's diamond rings in their advertisements were false and fictitious, (b) that the prices, as advertised, were not the usual and customary prices at which respondent's rings were sold to the general public, and (c) that the half-price sale represented no saving to the purchasing public or that such sale price constituted the regular resale price at which respondent's rings were offered to the general public. Based upon the charges of the complaint and the testimony adduced in this record it must be further concluded that this proceeding should be dismissed as to all respondents.

## ORDER

*It is therefore ordered*, That the complaint herein be, and the same hereby is, dismissed.

## ORDER DENYING APPEAL FROM INITIAL DECISION

Counsel in support of the complaint having filed an appeal from the hearing examiner's initial decision dismissing the complaint herein, and the Commission having heard the appeal on briefs of counsel (oral argument not having been requested) ; and

The Commission being of the opinion that the initial decision is free from prejudicial error and that it constitutes an appropriate disposition of this proceeding :

*It is ordered*, That the appeal of counsel in support of the complaint be, and it hereby is, denied.

*It is further ordered*, That the hearing examiner's initial decision dismissing the complaint be, and it hereby is, affirmed.

## IN THE MATTER OF

MICHAEL A. LOMBARDI ET AL. DOING BUSINESS AS  
HOME SEWING MACHINE COMPANYCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT

*Docket 6146. Complaint, Dec. 3, 1953—Decision, June 25, 1955*

Consent order requiring a concern in Baltimore with retail store in Washington, D. C., to cease passing off their sewing machines as the product of well-known manufacturers, failing to disclose adequately the foreign origin of sewing machine heads imported from Japan, making offers in "bait" advertising, which were not bona fide but made to obtain leads to prospects, etc.

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

*Mr. William L. Taggart* and *Mr. Ames W. Williams* for the Commission.

*Mr. Morton H. Perry*, of Baltimore, Md., for respondents.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Michael A. Lombardi and Ada T. Lombardi, copartners doing business as Home Sewing Machine Company, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Michael A. Lombardi and Ada T. Lombardi are copartners doing business under the name of Home Sewing Machine Company, having their principal place of business at 1113 North Howard Street, Baltimore, Maryland, with a retail store at 1208 H Street, N. W., Washington, D. C., and 825 7th Street, N. W., Washington, D. C.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the retail sale of imported and domestic sewing machines. Among the imported sewing machines sold by them are those containing heads which are manufactured in Japan.

In the course and conduct of their business, respondents cause their said products, when sold, to be transported from their place of business in the State of Maryland and in the District of Columbia, to pur-

chasers located in various other States and in the District of Columbia, and, at all times mentioned herein, have maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia. Their volume of trade in said commerce has been and is substantial.

PAR. 3. When the sewing machine heads are received by respondents, the words "Made in Occupied Japan" or "Japan" appear on the back of the vertical arm. Before the heads are sold to the public as a part of a completed sewing machine, it is necessary to attach a motor to the head and after the motor is attached to the head, the aforesaid words are covered by the motor and thus obscured from view. In some instances said heads, when sold, are marked with a small medallion affixed to the front of the vertical arm which can be easily removed, and upon which the words "Made in Occupied Japan" or "Japan" appear. Such legend or words are, however, so small and indistinct that they do not constitute an adequate notice to the public that such heads are imported.

PAR. 4. When sewing machines or sewing machine heads are exhibited and offered for sale to the purchasing public and such products are not labeled or otherwise marked clearly showing they are of foreign origin, or if marked and the markings are covered or otherwise concealed, such purchasing public understands and believes such products to be wholly or substantially of domestic origin.

There is among the members of the purchasing public a substantial number who have a decided preference for sewing machines and sewing machine heads which are manufactured in the United States over such products originating in whole or in substantial part in foreign countries.

PAR. 5. Respondents, in their advertising matter, have made various statements concerning their sewing machines, of which the following is typical, but not all inclusive:

"Free-Westinghouse Console Electric Sewing Machine  
Save \$71.33 \* \* \* Reg. \$119.50 value \$47.77"

PAR. 6. By and through the use of the aforesaid statements and others of the same import not specifically set out herein, respondents represented that they were making a bona fide offer to sell the Free-Westinghouse Sewing Machine for \$47.77; that the regular price for said sewing machines was \$119.50 and that by purchasing said machine for \$47.77 a saving of \$71.33 would result.

PAR. 7. The said statements were false, misleading and deceptive. In truth and in fact, respondents' offer was not a genuine and bona

vide offer to sell the sewing machine offered in the advertisement but was made for the purpose of obtaining leads and information as to persons interested in purchasing sewing machines. When persons responded to said advertisement, respondents or their salesmen called upon such persons in their homes or waited upon them in respondents' place of business and refused to sell, made no effort to sell, ignored the machine advertised or disparaged said machine and attempted to sell a higher priced machine, usually a machine the head of which is manufactured in Japan.

The regular selling price of said machine was not \$119.50 but was substantially less than said amount and \$71.33, or any amount approaching this figure was not saved if the machine was purchased for \$47.77.

PAR. 8. Respondents, in their advertising, further represented that their sewing machines carried a "20 Year Guarantee" and a "Lifetime Guarantee".

The use by the respondents of said statements of guarantee, without disclosing the terms and conditions of the guarantee, the name of the guarantor and the manner in which the guarantor will perform, is confusing and misleading and constituted an unfair and deceptive act and practice.

PAR. 9. Respondents in their advertising further represented that their said sewing machines would perform certain functions with the use of attachments but did not disclose that the cost of the attachments was not included in the advertised price of the machine. Such practice was misleading and deceptive in that the public was misled into the belief that the price for the machine included the cost of the attachments.

Respondents further stated in their advertisements that a purchaser would receive 10 sewing or dressmaking lessons. In truth and in fact, respondents did not furnish any sewing or dressmaking "lessons" in the sense that the word "lessons" is generally understood, that is, personal instruction. On the contrary, any so-called lessons furnished were entirely written and no personal instruction was provided.

PAR. 10. Respondents have adopted and use the word "Home" as the trade name for their sewing machines. The word "Home" is embossed or printed on the front horizontal arm of the sewing machine head in large conspicuous letters. The word "Home" is the name, or part of the name, of a number of corporations transacting and doing business in the United States which are, and have been, well and favorably known to the purchasing public. Some of these corporations use the word "Home" as a trade-mark or brand name, or as a part of the

trade or brand name for their products, including sewing machines.

By using said trade name "Home" on their machines, respondents represented to the purchasing public that their Japanese manufactured sewing machines were manufactured by the well known firm or firms with which said name or names have long been associated, which is contrary to the fact, and the use of said name by respondents was confusing and misleading to the public and constituted unfair and deceptive acts and practices.

PAR. 11. Respondents, by engaging in the said acts and practices herein set forth, and causing their agents and employees to engage in said acts and practices, provided a means and instrumentality in the sale of their machines whereby the purchasing public may be misled and deceived as to the place of origin of said Japanese manufactured sewing machines and the manufacturer thereof.

PAR. 12. Respondents, in the course and conduct of their business, are in substantial competition in commerce with the makers and sellers of domestic machines, and also with sellers of imported machines, some of whom adequately inform the public as to the source and origin of their said products.

PAR. 13. The failure of respondents to adequately disclose on the sewing machine heads that they are made in Japan and also the use of the trade or brand name "Home" had the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that their sewing machines are of domestic manufacture and are manufactured by a domestic company or companies with which said name has long been associated and to induce the purchase of their sewing machines because of such erroneous and mistaken belief.

Further, the use by the respondents of the other false, misleading and deceptive statements and practices had the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that said statements were true and into the purchase of respondents' sewing machines because of such erroneous and mistaken belief.

As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

PAR. 14. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

## DECISION OF THE COMMISSION

Pursuant to Sec. 3.21 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 June 25, 1955, the initial decision in the instant matter of hearing examiner Abner E. Lipscomb, as set out as follows, became on that date the decision of the Commission.

## INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

On December 3, 1953, the Federal Trade Commission issued its complaint in this proceeding, charging the Respondents with unfair methods of competition and unfair and deceptive acts and practices in connection with the retail sale of imported and domestic sewing machines, in violation of the Federal Trade Commission Act.

Thereafter, on January 20, 1954, Respondents filed with the Commission their Answer to Complaint, and on April 15, 1955, entered into an agreement with counsel supporting the complaint, and, pursuant thereto, submitted to the Hearing Examiner a Stipulation For Consent Order disposing of all the issues involved in this proceeding.

Respondents are identified in the stipulation as copartners doing business under the name of the Home Sewing Machine Company, with their office and principal place of business located at 11 and 13 N. Howard Street, Baltimore 1, Maryland, and with retail stores located at 1208 H Street, N.W., and 825 Seventh Street, N.W., Washington, D. C.

Respondents admit all the jurisdictional allegations set forth in the complaint, and stipulate that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance therewith.

Respondents state in the Stipulation For Consent Order that they withdraw their answer, filed by them on January 20, 1954, and for all legal purposes said answer will hereafter be regarded as withdrawn. Respondents expressly waive a hearing before a Hearing Examiner or the Commission; the making of findings of fact or conclusions of law by the Hearing Examiner or the Commission; the filing of exceptions and oral argument before the Commission; and all further and other procedure before the Hearing Examiner or the Commission to which Respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission. Respondents agree that the order contained in the stipulation shall have the same force and effect as if made after a full hearing, pre-

1254

Order

sentation of evidence, and findings and conclusions thereon. Respondents specifically waive any and all right, power, or privilege to challenge or contest the validity of such order.

It is also agreed that said Stipulation For Consent Order, together with the complaint, shall constitute the entire record in this proceeding, upon which the initial decision shall be based. The stipulation sets forth that the complaint herein may be used in construing the terms of the aforesaid order, which may be altered, modified, or set aside in the manner provided by statute for orders of the Commission.

The stipulation further provides that the signing of the Stipulation For Consent Order is for settlement purposes only, and does not constitute an admission by Respondents of any violation of law alleged in the complaint.

In view of the facts outlined above, and the further fact that the order embodied in the aforesaid stipulation is identical with the order accompanying the complaint except for clarification of Paragraph 8 thereof by the addition of the word "imported" in describing the product, it appears that such order will safeguard the public interest to the same extent as could be accomplished by the issuance of an order after full hearing and all other adjudicative procedure waived in said stipulation. Accordingly, in consonance with the terms of the aforesaid stipulation, the Hearing Examiner accepts the Stipulation For Consent Order submitted herein; finds that this proceeding is in the public interest; and issues the following order:

*It is ordered*, That the Respondents Michael A. Lombardi and Ada T. Lombardi, individually and as copartners doing business as Home Sewing Machine Company, or under any other name, and Respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of sewing machines, sewing machine heads or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale, selling or distributing foreign-made sewing-machine heads, or sewing machines of which foreign-made heads are a part, without clearly and conspicuously disclosing on the heads, in such a manner that it will not be hidden or obliterated, the country of origin thereof;

2. Representing, directly or by implication, that a price for merchandise is the regular price when it is in excess of the price at which said merchandise is regularly and customarily sold in the normal course of business;

3. Representing, directly or by implication, that any savings are afforded on the sale of merchandise unless the represented savings are based upon the price at which the merchandise offered is regularly and customarily sold in the normal course of business;

4. Representing, directly or by implication, that certain merchandise is offered for sale when such offer is not a *bona fide* offer to sell the merchandise so offered;

5. Representing, directly or by implication, that their sewing-machine heads or sewing machines are guaranteed for 20 years or for any period of time, or that they are otherwise guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform are clearly and conspicuously disclosed;

6. Representing, directly or by implication, that the price of a sewing machine includes any attachments for which an additional charge is made;

7. Representing, directly or by implication, that sewing or dress-making lessons are furnished with the purchase of a sewing machine, unless personal instructions are actually provided for the purchasers of their sewing machines;

8. Using the word "Home," or any simulation thereof, as a trade or brand name to designate, describe, or refer to their imported sewing machines or sewing-machine heads; or representing, through the use of any other word or words, or in any other manner, that their sewing machines or sewing-machine heads are made by anyone other than the actual manufacturer.

ORDER TO FILE REPORT OF COMPLIANCE

*It is ordered*, That Respondents Michael A. Lombardi and Ada T. Lombardi, copartners doing business as Home Sewing Machine Company, 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 June 25, 1955].

## Complaint

IN THE MATTER OF  
MATTHEW HUTTNER ET AL. TRADING AS PYRAMID  
BOOKS

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

*Docket 6307. Complaint, Mar. 8, 1955—Decision, June 25, 1955*

Consent order requiring book sellers in New York City to cease selling their book reprints without adequately disclosing that they were abridgements and frequently sold under different titles from those under which the books were originally published.

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

*Mr. William L. Pencke* and *Mr. William M. King* for the Commission.

*Mr. Leroy E. Rodman*, of New York City, for respondents.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Matthew Huttner and Alfred R. Plaine, copartners trading under the firm name and style of Pyramid Books, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Matthew Huttner and Alfred R. Plaine are co-partners, trading and doing business under the firm name and style of Pyramid Books with their office and principal place of business located at 444 Madison Avenue, New York 22, New York.

PAR. 2. Respondents are now and for more than two years last past have been, engaged in the business of selling and distributing books through their agent or consignee, the Kable News Co., causing said books, when sold, to be transported from the place of business of said Kable News Co. in the State of New York to the purchasers thereof located in the various States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained a substantial course of trade in said books in commerce among and between the various States of the United States and the District of Columbia.

PAR. 3. Among the books sold by respondents as aforesaid, are reprints of books from which portions of the text have been deleted; and there are certain other reprints sold as aforesaid which bear different titles from those under which such books were originally published. Respondents disclose the fact of such abridgement by printing the word "Abridged" in small inconspicuous letters on the lower right corner of the front cover and on the lower left corner of the back cover of said books. Respondents do not give any notice of abridgement on the title page of the said books. In the case of the reprints bearing new titles, the new titles are printed in large white letters on dark backgrounds on the front cover and the original title is printed in small, inconspicuous type, in dark ink, under the new title. The original title is also printed, in parenthesis, under the new title on the title page of these books but in much smaller type and in a much less conspicuous manner than the new title, and without any reference to the fact such title is the title under which the book was originally published.

Through the use of the new titles in place of the original titles, in the manner aforesaid, respondents thereby represent or imply that said books are new books published under the titles set out thereon.

PAR. 4. The said disclosures on the front and back covers of respondents' said books that such books are abridged, and the manner in which the new titles are set out in relation to the original titles, do not constitute adequate notice of such abridgement or the fact that said books are reprints under a new name, in that, such disclosures are not noticeable to the average purchaser and are not displayed in such a manner or position as readily to attract the attention of prospective purchasers. Moreover, the appearance of the original title in parentheses and in small inconspicuous type, as aforesaid, has the tendency and capacity to lead some members of the purchasing public into the mistaken belief that said title is a subtitle and not the title under which the same book was published originally.

PAR. 5. In the course and conduct of said business respondents have been and are in substantial competition in commerce with other corporations and with individuals, partnerships and others engaged in the sale of books.

PAR. 6. The failure of respondents to make adequate disclosure that certain of their books are abridgements and that books to which they have given new titles are not different from the books of which they are reprints, has had, and now has, the tendency and capacity to lead a substantial portion of the purchasing public into the mistaken and erroneous belief that said books are complete and unabridged or are new and original publications, and to induce a substantial portion of said

public to purchase respondents' said books in commerce because of said erroneous and mistaken belief. As a result thereof trade has been and is unfairly diverted from their competitors in commerce and substantial injury has been and is being done to competition in commerce.

PAR. 7. The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

#### DECISION OF THE COMMISSION

Pursuant to Sec. 3.21 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 June 25, 1955, the initial decision in the instant matter of hearing examiner Earl J. Kolb, as set out as follows, became on that date the decision of the Commission.

#### INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding charges the respondents Matthew Huttner and Alfred R. Plaine, copartners trading under the firm name of Pyramid Books, located at 444 Madison Avenue, New York, New York, with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act, in connection with the sale and distribution of books without making adequate disclosures that certain of said books are abridgements or that they have been given new titles different from the books of which they are reprints.

In lieu of submitting answer to said complaint, respondents entered into a stipulation for a consent order with counsel in support of the complaint, which was duly approved by the Director and Assistant Director of the Bureau of Litigation. It was expressly provided in said stipulation that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said stipulation, the respondents admitted all the jurisdictional allegations of the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations. By said stipulation all parties expressly waived the filing of answer, a hearing before the hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission, the

Order

51 F. T. C.

filing of exceptions and oral argument before the Commission, and all further and other procedure before the hearing examiner and the Commission to which the respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission.

By said stipulation, respondents further agreed that the order to cease and desist, issued in accordance with said stipulation, shall have the same force and effect as if made after a full hearing, presentation of evidence, and findings and conclusions thereon, and specifically waived any and all right, power or privilege to challenge or contest the validity of such order.

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

The hearing examiner has considered such stipulation and the order therein contained, and, it appearing that said stipulation and order provides for appropriate disposition of this proceeding, the same is hereby accepted and made a part of the record and in consonance with the terms of said stipulation the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, and that this proceeding is in the interest of the public, and issues the following order:

## ORDER

*It is ordered,* That the respondents Matthew Huttner and Alfred R. Plaine, individually and as copartners trading under the firm name of Pyramid Books or any other trade name, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of books in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

1261

Order

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

## 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 June 25, 1955].

## IN THE MATTER OF

## HENRY R. FISHER ET AL. TRADING AS H. FISHER

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

*Docket 6316. Complaint, Mar. 22, 1955—Decision, June 25, 1955*

Consent order requiring manufacturers in Philadelphia, Pa., to cease violating the Wool Products Labeling Act by misstating the fiber content on tags or labels on girls' and misses' coats, failing to set forth separately the fiber content of interlinings, and otherwise failing to comply with the labeling requirements of the Act.

Before *Mr. John Lewis*, hearing examiner.

*Mr. Roslyn D. Young, Jr.* for the Commission.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Henry R. Fisher and Isadore Fisher, as individuals and copartners, trading as H. Fisher, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Henry R. Fisher and Isadore Fisher, as individuals and copartners, are trading as H. Fisher, with their principal office and place of business located at 147 North 10th Street, Philadelphia, Pennsylvania.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since January 1954, respondents have manufactured for introduction into commerce, introduced in commerce, sold, transported, 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 within the intent and meaning of Section 4 (a) (1) of said Wool Products Labeling Act 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 products were girls' and misses' coats labeled or tagged by respondents as containing "35% Wool" and "65% Reprocessed Wool"; whereas, in truth and in fact said products did not consist of 35% wool and 65% reprocessed wool as defined in said Act, but contained 20% wool, 20% reprocessed wool, 56% reused wool and 4% other fibers.

PAR. 4. Certain of said wool products described as girls' or misses' coats 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. 5. Certain of said wool products described as girls' or misses' coats were further misbranded by respondents within the intent and meaning of the Wool Products Labeling Act in that the fiber content of interlinings contained in said coats were not separately set forth on labels or tags attached thereto as required by Rule 24 of the Rules and Regulations promulgated under said Act.

PAR. 6. The acts and practices of the respondents as hereinabove alleged were in violation of the 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.

#### DECISION OF THE COMMISSION

Pursuant to Sec. 3.21 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 June 25, 1955, 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

The Federal Trade Commission issued its complaint against the above-named respondents on March 22, 1955, charging them with having violated the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act, through the misbranding of certain wool products. After being duly served with said complaint, the respondents appeared and filed their answer thereto. Thereafter they entered into a stipulation with counsel supporting the complaint, pro-

viding for the withdrawal of said answer and for the entry of a consent order disposing of all the issues in this proceeding. Said stipulation has been submitted to the above-named hearing examiner, heretofore duly designated by the Commission, for his consideration in accordance with Rule V of the Commission's Rules of Practice.

Respondents, pursuant to the aforesaid stipulation, have admitted all the jurisdictional allegations of the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations. Said stipulation further provides that all parties expressly waive a hearing before the hearing examiner or the Commission, and all further and other procedure to which the respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission. Respondents have also agreed that the order to cease and desist issued in accordance with said stipulation shall have the same force and effect as if made after a full hearing, and specifically waive any and all right, power, or privilege to challenge or contest the validity of said order. It has been further stipulated and agreed that the complaint herein may be used in construing the terms of the order provided for in said stipulation.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid stipulation for consent order, dated April 26, 1955, the answer previously filed by respondents being hereby deemed withdrawn, and it appearing that said stipulation provides for an appropriate disposition of this proceeding, the same is hereby accepted and ordered filed as part of the record herein by the hearing examiner, who makes the following findings, for jurisdictional purposes and order:

1. Respondents are now and have been at all times mentioned in the complaint herein, a partnership, with their office and principal place of business located at 147 North 10th Street, Philadelphia, Pennsylvania.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Wool Products Labeling Act of 1939 and the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

*It is ordered*, That the respondents, Henry R. Fisher and Isadore Fisher, individually and as copartners, trading as H. Fisher, or under any other name, and respondents' representatives, agents and em-

1266

## Order

ployees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or 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 girls' 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 products, exclusive of ornamentation not exceeding five percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) such fiber other than wool where said percentage by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers;

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

(c) The name or the registered identification number of the manufacturer of such wool 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 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.

## 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 June 25, 1955].

## Complaint

IN THE MATTER OF

## WINER MANUFACTURING CO., INC., ET AL.

CONSENT ORDER, IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL  
TRADE COMMISSION ACT AND THE WOOL PRODUCTS LABELING ACT*Docket 6317. Complaint, Mar. 23, 1955—Decision, June 28, 1955*

Consent order requiring a manufacturer in Hammond, Ind., to cease violating the Wool Products Labeling Act by labeling men's jackets consisting of 35% wool and 65% reused wool as "100% Wool", and failing to label others as required by the Act.

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

*Mr. George E. Steinmetz* for the Commission.

*Abbell & Abbell*, of Chicago, Ill., for respondents.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Winer Manufacturing Co., Inc., a corporation, and Louis Winer, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts; and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Winer Manufacturing Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Indiana. Louis Winer is president of said respondent corporation and this individual formulates, directs, and controls the acts, policies, and practices of said corporate respondent. The office and principal place of business of said respondents is located at 231 Condit Street, Hammond, Indiana.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since January 1954, 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 said Act, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded within the intent and meaning of Section 4 (a) (1) of said Wool Products Labeling Act 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 men's jackets labeled or tagged by respondents as consisting of "100% Wool," whereas in truth and in fact said products were composed of fabrics consisting of 35% wool and 65% reused wool, as the terms "Wool" and "Reused Wool" are defined in said Act.

PAR. 4. Certain of said wool products described as men's jackets 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 and in the manner and form provided by the Rules and Regulations promulgated thereunder.

PAR. 5. The acts and practices of respondents as herein alleged 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.

#### DECISION OF THE COMMISSION

Pursuant to Sec. 3.21 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 June 28, 1955, 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

The Federal Trade Commission on March 23, 1955, issued its complaint in this proceeding charging respondents with the violation of the provisions of the Federal Trade Commission Act and of the Wool Products Labeling Act of 1939, as will more particularly appear by reference to said complaint.

On April 29, 1955, respondents entered into an agreement with counsel supporting the complaint and pursuant thereto submitted to the hearing examiner a stipulation for consent order disposing of all of the issues in this proceeding.

In said stipulation the respondent, Winer Manufacturing Co., Inc., is identified as a corporation organized under and existing by virtue of the laws of the State of Indiana, with its office and principal place of business located at 231 Condit Street, Hammond, Indiana. Respondent, Louis Winer, is identified as an individual and as President of the foregoing respondent corporation.

1271

## Order

Respondents admit all of the jurisdictional allegations set forth in the complaint, and agree that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance therewith. All of the parties expressly waive the filing of answer, a hearing before the hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission, the filing of exceptions and oral argument before the Commission and all other and further procedure before the hearing examiner and the Commission to which the said respondents might otherwise be entitled under the provisions of the aforesaid Acts and the Rules of Practice of the Commission.

Said stipulation provided further that it was executed for settlement purposes only and does not constitute an admission by said respondents that they have violated the law as alleged in the complaint. It was further agreed by the respondents that the Order contained in the stipulation shall have the same force and effect as if made after full hearing, presentation of evidence, and findings and conclusions thereon, and they specifically waive any and all right, power or privilege to challenge or contest the validity of the Order entered in accordance with said stipulation. They also agree that said stipulation, together with the complaint, shall constitute the entire record in this proceeding and that the complaint herein may be used in construing the terms of the hereinafter passed Order, which may be altered, modified, or set aside in the manner provided by the statute for the orders of the Commission.

In view of the facts above recited and that the Order embodied in said stipulation is identical with the Order *nisi* accompanying the complaint and that the acceptance thereof will effectively safeguard the public interest and pursuant to the express terms and provisions of said stipulation, the hearing examiner finds that this proceeding is in the public interest, accepts the aforesaid stipulation for consent order and issues the following order:

## ORDER

*It is ordered*, That respondent Winer Manufacturing Co., Inc., a corporation, and its officers, and respondent Louis Winer, individually and as an officer of said corporation, 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,

Order

51 F. T. C.

of men's jackets or other "wool products," as such products are defined in and are subject to the said Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any manner are represented as containing "wool," "reprocessed wool" or "reused wool," as such terms are defined in said Act, do forthwith cease and desist from misbranding said 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 non-fibrous loading, filling or adulterating matter;

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

*Provided*, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by Paragraphs (a) and (b) of Section 3 of the Wool Products Labeling Act of 1939; and

*Provided further*, That nothing contained in this order shall be construed as limiting any applicable provisions of said Act or the Rules and Regulations promulgated thereunder.

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 June 28, 1955].

Decision

IN THE MATTER OF  
TRADE UNION COURIER PUBLISHING CORPORATION  
ET AL.

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

*Docket 5966. Complaint, Mar. 14, 1952—Decision, June 30, 1955*

Order requiring a publishing firm in New York City to cease representing falsely that its bi-weekly newspaper had been endorsed by the American Federation of Labor, and publishing and demanding payment for advertisements not authorized by the prospects solicited.

Before *Mr. John Lewis*, hearing examiner.

*Mr. Edward F. Downs* and *Mr. Joseph Asper* for the Commission.  
*Waldman & Waldman*, of New York City, for respondents.

DECISION OF HEARING EXAMINER ON REMAND OF PROCEEDING

STATEMENT OF THE CASE

The Federal Trade Commission issued its complaint against the above-named respondents on March 14, 1952, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce, in violation of Section 5 of the Federal Trade Commission Act. Copies of said complaint and notice of hearing were duly served upon respondents. Said complaint charges in substance that respondents made certain misrepresentations concerning their labor affiliations in connection with the publication of a newspaper by them and also sought to insert unauthorized advertisements in said paper. Respondents appeared by counsel and filed a joint answer in which they denied having engaged in any of the illegal practices charged.

Pursuant to notice, hearings were thereafter held on various dates between May 5, 1952, and June 18, 1952, at New York, New York and Washington, D. C., before the undersigned hearing examiner, theretofore duly designated by the Commission to hear this proceeding. At said hearings testimony and other evidence were offered in support of and in opposition to the allegations of the complaint, which testimony and other evidence were duly recorded and filed in the office of the Commission. At the close of said hearings proposed findings of facts and conclusions of law were filed by counsel supporting the

complaint and counsel for respondents. No request for oral argument was made.

After reviewing the record herein, the undersigned on August 26, 1952, filed his initial decision and order dismissing the complaint on the ground that the record was lacking in substantial evidence to sustain the allegations of said complaint and because the public interest did not appear to require any corrective action in this proceeding. An appeal from said initial decision and order was thereafter filed with the Commission by counsel supporting the complaint with respect to the dismissal of two of the charges in the complaint. On February 18, 1953, counsel supporting the complaint filed a motion with the Commission for leave to withdraw said appeal and to remand this proceeding to the hearing examiner for the reception of further evidence. By order issued June 12, 1953, the Commission granted said motion, vacated the order of dismissal as to the two charges appealed from, and remanded this proceeding to the hearing examiner for the purpose of receiving further testimony and evidence on said charges.

Thereafter, pursuant to notice duly given, further hearings before the undersigned hearing examiner were held on various dates between October 1, 1953 and June 10, 1954, in Memphis, Tennessee; Milwaukee, Wisconsin; Minneapolis, Minnesota; and New York, New York. Testimony and other evidence were offered in support of and in opposition to the charges in the complaint which were remanded to the hearing examiner, said testimony and other evidence being duly recorded and filed in the office of the Commission. The parties were represented by counsel at all hearings, participated therein and were afforded full opportunity to examine and cross-examine witnesses and to introduce evidence bearing on the issues. At the opening of the hearings on the remand of this proceeding counsel for respondents moved to dismiss the complaint for the reason that the Commission had acted beyond its authority in remanding this proceeding. Counsel also renewed a motion made at the earlier hearings to dismiss the allegation of the complaint based on alleged unauthorized dealings, for the reason that said allegation is legally insufficient. Said motions were denied by the undersigned. At the close of the evidence on the remand of this proceeding, briefs were submitted by counsel in support of their respective positions. No request for oral argument was made.

Upon the entire record in the case and from his observation of the witnesses the undersigned makes the following:

## FINDINGS OF FACT

## I. THE BUSINESS OF RESPONDENTS

Respondent Trade Union Courier Publishing Corporation 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 1150 Avenue of the Americas, New York, New York.<sup>1</sup> Respondents Maxwell C. Raddock, Charles Raddock and Bert Raddock are President, Secretary, and Treasurer, respectively, of the corporate respondent and in such capacities they formulate, direct and control its policies and practices. Their business address is the same as that of the corporate respondent.

Respondents have for several years last past been engaged in the publication of a tabloid size newspaper known as the Trade Union Courier. Said newspaper is published biweekly and is caused by respondents to be circulated from its point of publication to subscribers and purchasers located in various States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said publication in commerce among and between the various States of the United States, and the amount of said trade is substantial. Further, respondents in the course and conduct of their business engage in extensive transactions involving the transmission of letters, advertising proofs, checks and other business instruments, and the use of long distance telephone, all between and among various States of the United States.

## II. The Alleged Illegal Practices

A. *Background and Issues*

The American Federation of Labor, or A. F. of L., as it is sometimes referred to, is a federation of local, national and international unions, with the membership in excess of three million. As indicated in the original decision of the examiner herein, respondents' newspaper seeks to espouse the cause of the American Federation of Labor and has been endorsed by a substantial number of that organization's affiliated unions. The newspaper is circulated among members of American Federation of Labor unions and is subscribed to by certain affiliated unions.

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<sup>1</sup> The address of said respondent as alleged in the complaint and admitted in the answer was 3 West 17th Street, New York. However, during the pendency of this proceeding said respondent moved to the above address.

A large portion of respondents' income is derived from the sale of advertising space in their paper to industrial and other business firms. Respondents employ from 9 to 12 advertising salesmen or solicitors to solicit advertising orders. Outside of the New York City area, such solicitation is carried on mainly by long distance telephone calls.

As originally charged in the complaint, respondents were alleged to have falsely represented to prospective advertisers that they were officially endorsed by 2,000 A. F. of L. unions and were affiliated with certain labor press associations and news services. In their answer respondents admitted having made the representations attributed to them in this respect but claimed that such representatives were truthful. They established at the initial hearings herein that their publication was endorsed by a substantial number of A. F. of L. unions and that it was affiliated with certain labor press associations and news services. The charges of the complaint dealing with these issues were, accordingly, dismissed. No appeal therefrom was taken by counsel supporting the complaint.

The two remaining charges in the complaint involve the allegations (1) that respondents have falsely represented that they are endorsed by the American Federation of Labor, and (2) that they have engaged in the practice of placing advertisements of business firms in their paper without having received authorization and then seeking to exact payment therefor. In their answer respondents denied having engaged in either of such practices. These charges were likewise dismissed in the decision of the examiner originally issued herein. However, the proceeding was subsequently remanded to the examiner for further evidence on these issues after counsel supporting the complaint withdrew the appeal which had been filed to such dismissal. The sufficiency of the evidence in the record on these two issues is considered below, with particular reference to the evidence developed upon the remand of the proceeding.

#### *B. Endorsement by the American Federation of Labor*

At the most recent stage of the hearings, counsel supporting the complaint called a number of representatives of business firms in Memphis, Milwaukee and Minneapolis, who testified concerning long distance telephone conversations which they had with various advertising salesmen or solicitors of respondents during the period from 1950 to 1953. These witnesses testified that one of respondents' solicitors called them and sought to interest them in taking advertising space in respondents' publication. According to the witnesses, the solicitor usually referred to the fact that the paper was fighting for good

labor management relations or was fighting against communism in the labor movement, and asked the particular businessman being solicited to sponsor an advertisement espousing such sentiments. The prices quoted for the advertisements ranged from about \$600.00 to \$25.00, depending on the amount of space devoted to the advertisement of a particular firm.

During the course of the telephone conversations, according to these witnesses, respondents' solicitor referred to the fact that their newspaper had some connection with the American Federation of Labor. The basic question for decision on this issue is what the solicitors stated to be the nature of this connection, *viz.*, whether they limited themselves to stating the facts with respect to the paper's endorsement by certain unions of the A. F. of L. or whether they stated or sought to create the impression that the paper was endorsed by the American Federation of Labor itself. Below is set forth the versions given by some of the witnesses as to what the solicitor stated with regard to respondents' A. F. of L. connections:

1. That he wanted "an ad for the AFL paper" and that the paper was the "official organ of the AFL operating out of their national headquarters." (R. 500, 507)

2. That he "represented the American Federation of Labor" and that the paper was a "national publication of the AFL." (R. 517, 522)

3. That the paper "represented" or "was affiliated with the AFL." (R. 534, 548)

4. That the paper was "an official publication of the AFL." (R. 551, 552)

5. That the solicitor was "connected with the AFL unions or AFL." (R. 580)

6. That the solicitor was "representing the AFL against Communism" and was soliciting ads for the newspaper "through the sanction of the AFL." (R. 595, 602)

7. That the paper was "part of" or was "put out by the American Federation of Labor." (R. 645, 648)

8. That "they were bringing out an issue for the convention of the American Federation of Labor and that they were the official publication of the American Federation of Labor." (R. 700)

9. That the solicitor was "with the A. F. of L." and wanted an ad "in the A. F. L. paper." (R. 761, 762)

10. That the paper was the "national organ for the American Federation of Labor and that by our advertising in it we would be doing

a national public relations job with the American Federation of Labor." (R. 791)

If the testimony of these witnesses and others who testified to similar effect is to be believed, there is no question but that a case of misrepresentation with respect to respondents' connection with the American Federation of Labor has been established. However, counsel for respondents contends that the testimony of these witnesses cannot be taken at face value because in some instances they admitted they were not sure as to exactly what the solicitor said to them, and some of the witnesses conceded that the solicitor might have used the expression "A. F. of L. unions" instead of "A. F. of L." in referring to respondent's connection with that organization. Counsel for respondents suggests that many of the witnesses called in support of the complaint were confused because of their lack of appreciation of the difference between a claim of endorsement by the parent body, the American Federation of Labor, and a legitimate claim that the paper was endorsed by a number of constituent locals affiliated with the American Federation of Labor. In arguing for the unreliability of the testimony offered in support of the complaint, counsel calls attention to the fact that the telephone solicitors who were called as witnesses for respondents "denied categorically" that they ever represented their employer or paper as being connected with or endorsed by the American Federation of Labor.

The examiner has carefully analyzed the testimony of the witnesses and the contentions of counsel for respondents and is convinced that the greater weight of the evidence supports a finding that respondents' solicitors did represent their paper as being endorsed by, or having an even closer connection with, the American Federation of Labor. A number of the instances cited by counsel for respondents where witnesses stated on cross-examination that the solicitor used the expression "A. F. of L. unions" involve merely affirmative responses by the witnesses to leading questions addressed to them by respondents' counsel and the record indicates the witnesses did not appreciate the distinction which counsel was trying to make between the A. F. of L. and unions of the A. F. of L. Moreover, when the testimony of these witnesses is analyzed as a whole it is clear that in most instances it was their understanding that the solicitor was referring to the American Federation of Labor. Although some of the witnesses were not certain of the precise words used by the solicitor, they were clear that the solicitor stressed the paper's connection with the American Federation of Labor and not merely with some unions of that organization.

It is significant that while some of the conversations related took place several years prior to the witness' testimony, at a time when the witness' recollection might be less than clear, others testified about conversations which took place in recent months prior to the hearing. The record reflects a close parallel in the statements reported to have been made by respondents' solicitors in both the earlier and the more recent periods.

Corroboration of the oral testimony of the witnesses called in support of the complaint appears, in several instances, in written records made by them at a time when the conversations were clear in their mind. Thus one of the witnesses referred to by counsel for respondents, who gave an affirmative answer on cross-examination in response to the question whether the solicitor said respondents' paper was the paper of "A. F. of L. Unions nationally," indicated in a letter written to the paper within a week after the conversation what his actual understanding was of the representation made by the solicitor. In advising the paper that it was cancelling an order for an advertisement, the following was given as the reason:

"We have received information that your paper is not affiliated with the American Federation of Labor as represented by your [salesman]." (CX67)

In reply to this letter, respondents' advertising manager advised the writer, in part, as follows:

"The Trade Union Courier, leading independent labor newspaper in the country, was founded in January, 1936, and has been published regularly since that year, presenting the vital labor news affecting the nation and covering the A. F. L. union it represents from an anti-Communist standpoint and from the standpoint, too, of better labor-management relations." (CX63)

It is significant that in his reply the advertising manager did not make a clear-cut denial of any claim of representation of the American Federation of Labor but added to the confusion by an ambiguous reference to the paper's presentation of labor news "affecting the nation and covering the A. F. L. union it represents."

Another witness within a month after a telephone conversation with one of respondent's solicitors in which he agreed to take an advertisement, addressed a letter to respondents requesting return of his check for the following reason:

"Upon checking further, we find that you have misrepresented. When soliciting us by phone, you gave us a lengthy description of how the American Federation of Labor was making a 'drive' to better

relations between employer and employee, and that all the A. F. of L. locals were participating in this." (CX 98)

Still another witness, who had some prior dealings with respondents, asked his secretary to get on the phone as soon as he recognized the nature of the call and she recorded respondents' solicitor as having made the following statement:

"I am with the Trade Union Courier of the American Federation of Labor."<sup>2</sup> (CX 100)

Although as previously mentioned, the witnesses called by respondents generally denied the statements attributed to them, the examiner can give little weight to their denials.<sup>3</sup> While they were quite certain an answer to leading questions directed to them on their direct examination that they had made none of the statements attributed to them, their testimony on cross-examination as to whom they spoke with and when the conversations took place, indicated that they had very little actual recollection of the conversations about which they professed to have such vivid recollections on direct examination. Considering the fact that they usually make about 2,000 telephone solicitations a year, it is not surprising that they could not recall conversations which in some instances went back three or four years.

The same witnesses sought to bolster their evidently faulty recollections by reference to what they said was their usual practice in talking to prospective advertisers over the telephone. A large portion of this testimony impressed the examiner as unconvincing and lacking in inherent probability. Despite the fact that the paper is endorsed by a number of unions affiliated with the American Federation of Labor and this would be a natural talking point in seeking to sell advertising, several of the witnesses at first insisted that they made no reference to the American Federation of Labor in any way, shape or form in their conversations. When the absurdity of this situation became apparent to them, several of the witnesses conceded that they referred to the American Federation of Labor, but that this was only done in response to some query by the recipient of the call as to what connection they had with the labor movement. In such instances, ac-

<sup>2</sup> Counsel for respondents contend this transcription is not accurate because the secretary did not get on the telephone until after the solicitor had introduced himself and that the above statement was something which the witness had inserted and was not an actual part of the conversation. However, the examiner is satisfied that the above was an actual part of the conversation and was not edited in any way by the witness.

<sup>3</sup> In several instances the conversations with one of the respondents' salesmen were attributed to an employee who is no longer with respondents and who respondents claim could not be located to testify. In these instances the testimony of the conversations stands uncontradicted in the record, except for some general testimony of respondents' advertising manager which has little probative value.

ording to these witnesses, they would mention the endorsement of the paper by American Federation of Labor unions.

However, a careful examination of their testimony convinces the examiner that they did more than they had a right to do legitimately, and that they deliberately set about to create an impression of some connection between the paper and the national A. F. of L. Thus, one of the solicitors testified:

“\* \* \* when I told Mr. Cooney we were a labor paper, he asked me what sort of a labor paper we are, and I told him we are a *pro-A. F. of L.* paper, and during the conversation there he asked me what affiliation you might have had *with the A. F. of L.*, and I told him we were officially endorsed by *the A. F. of L. Unions* \* \* \*.” (R. 852) [Emphasis supplied]

Another solicitor testified that if a person asked him: “Are you people endorsed by CIO or A. F. of L.,” he would reply “[W]e are endorsed by A. F. of L. Unions.” (R. 922)

Still another witness testified that, “when people asked me what labor publication we are, I tell them we espouse and expound the principles of A. F. of L.” (R. 978)

Although the examiner has already found above that a member of the witnesses called in support of the complaint testified truthfully and accurately that the solicitor told them the paper was connected with or endorsed by the American Federation of Labor, it is immaterial in the opinion of the examiner whether the solicitor, under the circumstances here present, used the expression “A. F. of L. Unions” rather than A. F. of L. In the context in which these conversations took place, the use of the expression “A. F. of L. Unions” was calculated to give the listener the impression that a relationship to the national body of the organization or to the organization as a whole was involved. That the use of this expression has such a tendency to deceive was unwittingly admitted by respondents’ advertising manager who indicated that even his own salesmen had been misled by the paper’s claim of A. F. of L. association. Thus, the witness testified:

“\* \* \* they themselves [the salesmen] sometimes [were] confused—they asked me do you represent the *American Federation of Labor*, and I said *yes*, we represent the *American Federation of Labor Unions*.”<sup>4</sup> [Emphasis supplied.]

<sup>4</sup> It may be noted that while the same witness at one point in his testimony stated that he never gave the salesmen instructions on what not to tell prospective advertisers “because they know what not to say” (R. 1003, 1004), at another point he claimed that he specifically instructed them not to tell people the paper was endorsed by the American Federation of Labor (R. 1010). No credence is given by the examiner to the latter statement.

It may be noted that in reaching this conclusion the examiner does not do so as the basis of the argument made by counsel supporting the complaint, both at the earlier stage of this proceeding and again now, that a truthful statement by respondents as to their endorsement by certain unions of the A. F. of L. is per se a representation as to endorsement by the American Federation of Labor. The examiner's conclusion is, rather, based on the subtle, and sometimes not so subtle, insinuations which pervaded the sales talk of the solicitors and which tended to create the impression of an association with the A. F. of L. as a national organization. Under these circumstances whether the solicitors used the expression "A. F. of L." or "A. F. of L. Unions" is of little import. In fact, in a long distance telephone call the difference between the use of the singular or plural is sometimes blurred out and, under the circumstances here present, it is probable that this was done purposely.

Counsel for respondents suggests in his brief that any instances where a salesman might have overstated respondents' relationship to the American Federation of Labor must be regarded as isolated and as not being a part of the deliberate policy of the paper. The examiner cannot agree with counsel's contention in this regard. It is the opinion of the examiner that the record as it now stands shows a widespread and deliberate policy of misrepresentation which cannot be regarded as the isolated action of individual salesmen. In his earlier decision, the examiner indicated his awareness of the existence of suspicious circumstances in the case but, because of the confusion in the great bulk of the testimony, he could not make any affirmative finding of misrepresentation and gave respondents the benefit of the doubt by attributing two proven statements concerning respondents' connection with the A. F. of L. to the isolated, unintentional action of individual salesmen. However, the examiner is now satisfied that neither these instances, nor the other instances which have been established at the present hearings, were at all isolated. There is no question that the salesmen were acting within the scope of their apparent authority and respondents cannot escape responsibility for their conduct.<sup>5</sup>

In an effort to show respondents' good faith and to demonstrate that their official policy was to dispel any possible misunderstanding of their connection with the American Federation of Labor, counsel for respondents rely upon a change in the format of respondents' publication which, it is claimed, was voluntarily done after the time of the examiner's earlier dismissal of the complaint herein. As indi-

<sup>5</sup> *Standard Distributors, Inc. v. F. T. C.*, 211 F. 2d 7, 13 (C. A. 2, 1954).

cated in the examiner's prior decision, respondents previously stated at the top of the editorial page of the paper that it was: "Devoted to the interests of all Unions in the Eastern States Affiliated with the American Federation of Labor." This statement has been changed to read as follows:

"The Trade Union Courier was founded in 1936 in the interest of all trade unions affiliated with the American Federation of Labor \* \* \* The Trade Union Courier is officially endorsed by more than 2000 A. F. L. unions in the United States and Canada and supports the aims and aspirations of all anti-communist unions. This newspaper does not speak officially for the A. F. of L. national body in Washington and is *not* the official voice or organ of the Executive Council of the A. F. of L." (RX 34)

Counsel apparently regards this statement as clarifying respondents' relationship to the American Federation of Labor. In the opinion of the examiner, the revised statement hardly serves this purpose. Whereas the former statement refers to a limited community of interest with "Unions in the Eastern States," the new statement refers to a broad association with "all trade unions affiliated with the American Federation of Labor." While the statement also says that the paper "does not speak *officially* for the A. F. of L. national body *in Washington* and is not the *official* organ of the *Executive Council* of the A. F. of L." [Emphasis supplied], there is a suggestion in the language used of some unofficial relationship between the paper and the A. F. of L. as an organization. Nowhere is there a clear-cut statement that the paper is not endorsed by the American Federation of Labor.

It may also be noted that this alleged voluntary effort to clarify matters did not occur until shortly after the Commission had remanded this proceeding to the hearing examiner to take further evidence. Considering the time lag of one year between the issuance of the examiner's decision and the change in format, and the fact that the change occurred within two months after the Commission's order of remand, it may be doubted that respondents' action was purely voluntary.

In any event, there is evidence in the record that the type of practices charged in the complaint were continued by salesmen even after the alleged change of format. It is clear, therefore, that this issue is not moot and that there is a definite need for corrective action. On the record as a whole, the examiner concludes and finds that respondents have engaged in misrepresenting the facts as to their relationship with the American Federation of Labor and have sought to create, and have created, the impression among prospective advertisers that their

newspaper is endorsed by, affiliated with, or bears a close connection with the American Federation of Labor.

Counsel for respondents make the argument in their brief that it is of no real significance to a prospective advertiser whether the connections of a labor publication are with the A. F. of L. or with A. F. of L. unions. Counsel suggest that since respondents' paper is endorsed by a substantial number of unions and is circulated among union members, a prospective advertiser would have little concern with whether the paper had an official connection "with central headquarters in Washington." The examiner cannot agree with argument. While it may be that respondents have some following in the labor movement, it is one thing to represent that it is endorsed by a segment of a labor organization and another to claim endorsement by the entire body. The claim of endorsement by the American Federation of Labor is not merely a claim of recognition by some labor officials in Washington but by the entire body of unions comprising the federation and acting as an organized group. There can be no question but that the fact of an endorsement by, or relationship with, the A. F. of L. is a material fact which, it may reasonably be inferred, would influence the judgment of a prospective advertiser and as to which he is entitled to be correctly advised.

Counsel for respondents also make the argument that the distinction between the American Federation of Labor and unions of that organization has been largely obliterated in common parlance and that it has become a familiar practice to represent or identify organizations or publications as being "A. F. of L.," although not technically a part of the parent organization. The only evidence cited to support this assertion is the fact that some witnesses referred loosely to local labor organizations and publications as being "A. F. of L." However, the record discloses that the witnesses appreciated the distinction between a local organization affiliated with the American Federation of Labor and the national organization itself. In any event there has been no showing that the expression "American Federation of Labor" or "A. F. of L." has acquired any such secondary meaning as to justify a claim of A. F. of L. endorsement when only endorsement by certain unions of the A. F. of L. is involved.<sup>6</sup> The Federal Trade Commission Act is intended to protect the uninformed and the innocent and not merely the sophisticated. The fact that any significant portion of the public may be misled is sufficient to establish a violation of the Act.<sup>7</sup>

<sup>6</sup> *F. T. C. v. Winsted Hosiery Co.*, 258 U. S. 483, 493; *Hunt Pen Co. v. F. T. C.*, 197 F. 2d 273, 280, (C. A. 3, 1952).

<sup>7</sup> *Positive Products Co. v. F. T. C.*, 132 F. 2d 165 (C. A. 7, 1942); *Prima Products, Inc. v. F. T. C.*, 209 F. 2d 405, 409 (C. A. 2, 1954).

*C. Unauthorized Dealings*

Counsel supporting the complaint offered evidence that in a number of instances respondents sent bills to business firms and sought to collect for advertisements, despite the fact that a representative of the firm had refused to agree to take an advertisement when solicited by long distance telephone call.

In some instances there was an outright refusal but respondents nevertheless sought to insert an advertisement and to collect therefor. In other instances the firm's representative told the solicitor that he could not agree to an advertisement without the approval of a partner or of the company's board of directors, or requested that the solicitor send a written proposal because the company did not authorize advertisements by telephone. In the latter instances respondents nevertheless sent bills and sought to collect for an advertisement without awaiting the necessary approval action by the company. The record discloses that it was particularly in the latter type of situation, where there was any indication that the firm might possibly accept an advertisement, that the solicitor would "jump the gun" and have a bill sent to the firm.

Counsel for respondents urge that the evidence offered in support of the complaint not be accepted because of its unreliability and as being contrary to the evidence offered by respondents' witnesses. In two instances the claim of unreliability is based upon the fact that counsel supporting the complaint relied wholly upon letters written to respondents by the firms in question stating that the advertisement had not been authorized, such letters not being supported by any witness who talked to the solicitor.<sup>8</sup> Counsel contend that these letters are hearsay evidence and that no finding can be based thereon. However, it may be noted that no objection to these letters was made at the hearings based on the hearsay character thereof. Although the letters are undoubtedly hearsay they are a reliable type of hearsay, having been written contemporaneously with the events at issue, and the record fails to disclose that respondents ever replied to these letters to question the correctness of the statements therein made. Moreover, the circumstances under which respondents sought to foist an advertisement on these firms, as recorded in the letters, comports with other reliable evidence in the record.

In any event, even disregarding these two transactions, there is ample evidence in the record to support the charges in the complaint.

<sup>8</sup> These instances involve transactions with R. L. Bernardo & Sons and American Snuff Company, both of Memphis. ((CX 57, 77 and 79).

In at least two instances the testimony of witnesses concerning unauthorized dealings stands uncontradicted in the record and is corroborated by letters written contemporaneously with the event.<sup>9</sup> In one of these transactions the witness testified that he had advised the solicitor that he could not take an advertisement without the concurrence of his partner. Nevertheless he received a bill for \$150.00, upon receipt of which he wrote to respondents as follows:

"I did not give your Mr. Picard authority to run an advertisement in your publication, nor do I appreciate your apparent effort to try to force me to order an advertisement." (CX 70)

In another transaction involving the same solicitor, a witness testified that he told the latter to write a letter outlining his proposition but received instead a bill for \$100.00, whereupon he sent a telegram to respondents and then wrote as follows:

"Confirming our telegram we did not authorize your Mr. Bob Picard to insert an ad in your magazine.

"We did ask him to write us an air mail letter explaining in detail exactly what he was wanting.

"We do not authorize any donations by telephone \* \* \* and do not appreciate the high pressure methods involved in this instance." (CX 82)

While respondents' solicitors in several other instances claimed that they had received approval for an advertisement before having a bill sent to the firm, the examiner was not impressed with the testimony of these witnesses. It was evident that they had little recollection of their alleged conversations and were relying primarily on the fact that after the conversation with a representative of the firm in question they had filled out a form of sales memorandum, from which they concluded that the transaction must have been authorized. However, the examiner cannot accept this testimony in the light of the testimony given by apparently truthful witnesses who testified in support of the complaint and in the light of the generally unconvincing and unimpressive performance given by the solicitors, both with respect to the testimony on this issue and that discussed above.

Counsel for respondents urges that any instances of unauthorized dealings which may have been established by the record should be regarded as the unauthorized, isolated action of individual salesmen. However, the examiner does not find this to be the case. This type of

<sup>9</sup> These involve transactions with the solicitor previously mentioned who is no longer employed by respondents.

practice was too widespread to be regarded as the isolated action of individual solicitors.<sup>10</sup>

In the light of the evidence now in the record, the examiner is of the opinion that several instances of unauthorized dealings referred to in his prior decision which were then regarded as isolated transactions, not reflecting respondents' regular policy of doing business, can no longer be considered to be such. It is accordingly concluded and found, on the record as a whole, that respondents have engaged in the practice of billing firms for advertisements which were not authorized and of seeking to insert advertisements without authorization and then seeking to exact payment therefor.<sup>11</sup>

Counsel for respondents take the position that even if there were some instances of unauthorized dealings, there is no showing that respondents engaged in any fraudulent or deceitful conduct or attempted to collect payment by threats of lawsuit or other forcible methods. Counsel point out that where the customer advised respondents that the ad was unauthorized no further attempts were made to enforce payment. Counsel accordingly contends that the conduct established by the record fails to establish any violation of the Federal Trade Commission Act, citing particularly the cases which the examiner cited in his earlier decision.

Insofar as the facts are concerned, the record does show that respondents made persistent efforts to enforce payment for advertisements, including the sending of several letters and notices to the putative advertiser one of which was entitled "Final Notice" and advised the advertiser that his remittance:

"\* \* \* must reach this office by [a given date] \* \* \*. You will save us time and expense by immediate payment."

However, it is true that except for one instance there is no evidence that respondents continued to seek payment after being advised that the advertisement was not authorized.<sup>12</sup> Nevertheless, it is the opinion of the examiner that irrespective of whether strenuous efforts or threats were made to enforce payment, the engagement in a regular practice of billing customers for advertisements which were not authorized and seeking to collect therefor is itself a form of unfair

<sup>10</sup> In at least one instance even after respondents were advised that no authorization for the ad had been given they continued to bill the firm. (CX 78, 79.)

<sup>11</sup> The above finding is not based on the transaction with Home Savings Bank of Milwaukee, upon which counsel supporting the complaint relies. The record shows that this firm did agree to take an advertisement, albeit based on the representation that the paper was an official publication of the American Federation of Labor.

<sup>12</sup> See footnote "10" for a reference to this incident.

or deceptive practice proscribed by the Federal Trade Commission Act. To the extent that the examiner may have appeared to take a different position in his earlier decision, it may be regarded as hereby modified. The examiner has carefully studied the Commission cases cited in his earlier decision and is now convinced that the deliberate practice of billing for unauthorized ads falls within the purview of the Act. While it is true that similar conduct in a number of the cases cited occurred in a context of fraud and of threats to enforce payment, nevertheless, the Commission's order in each case specifically enjoined the practice of billing customers for or delivering merchandise not ordered, as well as the other practices found.<sup>13</sup>

### III. THE EFFECT OF THE PRACTICES FOUND

The record establishes, and it is so found, that respondents, in the conduct of their business, are in substantial competition in commerce with other firms and individuals likewise engaged in the publication of newspapers and other periodicals, some of which sell advertising to be inserted therein, and particularly with the publishers of newspapers and other periodicals published or endorsed by the American Federation of Labor or by unions and organizations affiliated with the American Federation of Labor.

The acts and practices of respondents above found, with respect to representing that their paper is endorsed by, affiliated with, or closely connected to, the American Federation of Labor have had and now have the tendency and capacity to mislead prospective purchasers of advertising space into the erroneous and mistaken belief that the said representations were and are true and into the purchase of advertising space because of such erroneous and mistaken belief. As a result, it may reasonably be inferred that substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce. The unfair practice engaged in by respondents of publishing unauthorized advertisements in their publication has subjected firms and individuals to harassment and unlawful demands for payment of non-existent debts.

<sup>13</sup> See, in addition to the cases cited in the examiner's earlier decision, *Dorfman v. F. T. C.*, 144 F. 2d. 737 (C. A. 8, 1944), affirming one of the cases cited by the examiner sub. nom. *Stetson Felt Mills*, 36 F. T. C. 651. In that case paragraph 6 of the order enjoined respondents from:

"Preparing orders for quantities of rugs or other merchandise in excess of the quantities requested by purchasers \* \* \*."

This paragraph was specifically approved by the court of appeals as follows:

"In short, the Order says to petitioners and their salesmen, cease deceiving your customers and stop padding their orders. The Order, in our opinion, places no unfair burden upon the petitioners. It should be strictly obeyed."

## CONCLUSION OF LAW

It is concluded that the acts and practices of respondents, as hereinabove found, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of section 5 of the Federal Trade Commission Act. It is accordingly concluded that this proceeding is in the interest of the public and that an order to cease and desist should issue enjoining respondents from engaging in such conduct.

## ORDER

*It is ordered,* That respondents Trade Union Courier Publishing Corporation, a corporation, its officers, and Maxwell C. Raddock, Charles Raddock and Bert Raddock, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale and sale of advertising space in the newspaper now designated as the "Trade Union Courier," whether published under that name, or any other name, and in connection with the offering for sale, sale and distribution of said newspaper, 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 said newspaper is endorsed by, affiliated with, sponsored by, or otherwise connected with the American Federation of Labor.
2. Placing, printing or publishing any advertisement on behalf of any person or firm in said paper without a prior order or agreement to purchase said advertisement.
3. Sending bills, letters or notices to any person or firm with regard to an advertisement which has been or is to be, printed, inserted or published on behalf of said person or firm, or in any other manner seeking to exact payment for any such advertisement, without a bona fide order or agreement to purchase said advertisement.

## ON APPEAL FROM INITIAL DECISION

Per CURIAM:

## Statement of the Case

Complaint herein issued on March 14, 1952, charging respondents with violation of Section 5 of the Federal Trade Commission Act by the use of unfair and deceptive acts and practices and unfair methods of competition through statements made in the Trade Union Courier,

and through oral statements made by respondents' duly authorized representatives, to the effect that the Trade Union Courier is endorsed by the American Federation of Labor; that said publication officially is endorsed by 2,000 A. F. L. unions, that it is affiliated with the American Labor Press Association and that it is serviced by the International Labor News Service and by the American Labor News Service [correctly identified in the record as American Federation of Labor News Service (T. 13)]. The complaint also charges respondents with having engaged in the further practice of placing advertisements of various business concerns in the Trade Union Courier without having received authorization therefor and of then seeking to exact payment for said advertisements from said concerns.

Thereafter, in the usual course, answer was filed and hearings were held before a hearing examiner duly designated by the Commission. On August 26, 1952, the hearing examiner filed his initial decision and order dismissing the complaint for lack of record evidence to sustain the allegations of the complaint and because the public interest did not require corrective action against the respondents. Appeal to the Commission was taken by counsel supporting the complaint with respect to the dismissal of two of the charges of the complaint. i. e.—

(1) that respondents falsely represented that their publication was endorsed by the American Federation of Labor, and

(2) that respondents placed advertisements of various business concerns in their publication without having received authorization therefor and of them seeking to exact payment for such advertisements from said concerns.

No appeal was taken from the dismissal of the other charges in the complaint.

By order of June 12, 1953, this Commission granted a motion filed by counsel supporting the complaint for permission to withdraw his partial appeal from the initial decision. The said order of June 12, 1953, also vacated the order of the hearing examiner dismissing the complaint as to the two charges appealed from, reopened the case for the introduction of testimony and evidence pro and con on the aforesaid two charges and remanded the proceeding to the hearing examiner for the reception of further testimony and evidence.

In due course further hearings before the hearing examiner were held and testimony and evidence adduced in support of and in opposition to the two charges of the complaint which were remanded to the hearing examiner. At the opening of the hearings on remand and at the close of evidence offered in support of the complaint, as well as

at the end of the entire case, respondents filed motions to dismiss which were denied by the hearing examiner. Briefs were submitted to the hearing examiner by counsel in support of their respective positions. And, upon the entire record and from his observation of the witnesses, the hearing examiner on December 29, 1954, filed his initial decision on remand consisting of his statement of the case, findings of fact, conclusion of law and order to cease and desist from:

1. Representing, directly or by implication, that said newspaper [Trade Union Courier] is endorsed by, affiliated with, sponsored by, or otherwise connected with the American Federation of Labor.

2. Placing, printing or publishing any advertisement on behalf of any person or firm in said paper without a prior order or agreement to purchase said advertisement.

3. Sending bills, letters or notices to any person or firm with regard to an advertisement which has been or is to be printed, inserted or published on behalf of said person or firm, or in any other manner seeking to exact payment for any such advertisement, without a bona fide order or agreement to purchase said advertisement.

Timely appeal from the hearing examiner's initial decision on remand was taken by respondents and briefs were filed with the Commission by both sides. The case is now before the Commission for final disposition on the merits on the full record, including a document filed by respondents April 28, 1955, withdrawing their request for oral argument on appeal before the Commission, and requesting that particular reference be made to a brief filed by respondents on November 12, 1952, as well as renewing a contention by respondents respecting certain rulings by the hearing examiner (T. 776-779, 802-803) with regard to statements given by witnesses to Federal Trade Commission investigators.

#### Statement of Facts

Respondent corporation publishes a biweekly tabloid size newspaper—Trade Union Courier. The named individual respondents are officers of the corporation and each is actively engaged in formulation, direction, management or control of the paper's policies and practices. Respondents employ from 9 to 12 advertising salesmen or solicitors who solicit advertising orders by personal contact and otherwise. Mainly, such solicitation is by long distance telephone. A large portion of respondents' income is derived from this sale to industrial and other business firms of advertising space, in the form of "institutional" advertising promoting "good labor-management relations" and "fighting against Communism in the labor movement."

## Appeal

51 F. T. C.

The publication is endorsed by a substantial number of American Federation of Labor trade unions and is affiliated with several labor press associations and news services. As previously indicated, all charges of the complaint, with two exceptions, were resolved in respondents' favor by the hearing examiner. The Commission's action of June 12, 1953, in remanding the case to the hearing examiner for further hearings on the two remaining issues, in effect sustained the hearing examiner's original initial decision dismissing the complaint on all points except those two issues which are now before us on appeal for final decision. At the time of issuance of the order of remand we did not specifically so hold. We do so now.

## Respondents' Appeal

Respondents vigorously contend at the outset that the hearing examiner erred in denying respondents' motions to dismiss paragraph 6 of the complaint and to dismiss the two remaining charges in the complaint filed at the end of the Commission's case and at the end of the entire case.

Paragraph 6 of the complaint reads in full as follows:

"In the course and conduct of their business, respondents have engaged in the further practice of placing advertisements of various concerns in their paper without having received authorization therefor and then seeking to exact payment for said advertisements from said concerns."

Respondents urge that the allegations of this paragraph are insufficient as a matter of law to constitute a violation of the Federal Trade Commission Act and that, therefore, the Commission is without jurisdiction "to entertain that item of the complaint." The hearing examiner denied the motion, holding that "the deliberate practice of billing for unauthorized ads falls within the purview of the Act." It is too well settled to require citation of authorities that the Commission, in the first instance, subject to the judicial review provided, has the determination of what practices come within the scope of the Act. It is our view, and we so find, that the hearing examiner correctly denied respondents' motions in this regard. The question of whether or not the evidence sustains the charge that respondents in fact engaged in the practice in question will be discussed hereinafter in connection with our disposition on the merits of the two issues before us.

Respondents also contend that the hearing examiner erred in denying motions to dismiss the two charges of the complaint which were the subject of the Commission's order remanding the proceeding to the

hearing examiner—i. e., endorsement of the Trade Union Courier by the A. F. of L. and unauthorized insertion of advertisements. They advance as principal grounds in support of those motions contentions, among others, that the findings, conclusion and order in respect to each of these issues are not within the scope of the complaint, that the testimony and evidence are insufficient to support the charges made, and that an order to cease and desist entered against respondents would not be in the public interest.

We turn first to the argument of respondents with regard to the alleged variance of the hearing examiner's findings, conclusion and order from the charges of the complaint. Essentially it is respondents' position that "Had they been faced with the type of charge which would support an order such as is proposed by the examiner, they would have known what they had to meet and could have presented their defense accordingly. The fact is that they were not; no such notice was given them." The complaint alleged that respondents, in the Trade Union Courier and through statements by its advertising solicitors, represented, directly or by implication, that the paper is endorsed by the American Federation of Labor and that respondents inserted advertisements in the said paper without prior authorization therefor and then sought to exact payment for those advertisements. Respondents answered, including seven pages of affirmative defenses therein, much testimony was taken and elaborate findings of fact were made by the hearing examiner, the ultimate conclusion of which is that respondents, in fact, had engaged in the practices described. The record is clear that respondents at all times in the proceeding were fully aware of the scope and intent of the charges against them and the disposition of the two issues by the hearing examiner corresponds generally to the actual situation sought to be corrected. There was not here any abandonment of the very substance of the original charges of the complaint and the substitution of other charges which respondents could not have anticipated and had no opportunity to meet.

Having been fully justified in his findings that respondents have engaged in the unfair and deceptive practices alleged in the complaint, the examiner equally was justified in entering an order which would be effective in preventing the use of such practices in the future. As was held by the Supreme Court in the case of *Federal Trade Commission v. Ruberoid Co.*<sup>1</sup>:

"Orders of the Federal Trade Commission are not intended to impose criminal punishment or exact compensatory damages for past acts, but to prevent illegal practices in the future. In carrying out

<sup>1</sup> *Federal Trade Commission v. Ruberoid Co.*, 343 U. S. 470, 473 (1952).

this function the Commission is not limited to prohibiting the illegal practice in the precise form in which it is found to have existed in the past. If the Commission is to attain the objectives Congress envisioned, it cannot be required to confine its road block to the narrow lane the transgressor has traveled; it must be allowed effectively to close all roads to the prohibited goal, so that its order may not be by-passed with impunity. Moreover, "[t]he Commission has wide discretion in its choice of a remedy deemed adequate to cope with the unlawful practices' disclosed. *Jacob Siegel Co. v. Federal Trade Comm'n*, 327 U. S. 608, 611 (1946)." We are of the opinion, and find, that the hearing examiner's order conforms to the theory of, and is reasonably related to, the charges contained in the complaint. The sufficiency of the evidence with respect thereto is hereinafter considered and weighed.

As indicated above, respondents in addition urge that an order to cease and desist entered against them would not be in the public interest claiming that there has been no showing whatever of any specific, substantial public interest in this case or of the type of practice and injury covered by the Act. We have here a situation where, in the entire context surrounding all actions of the respondents and their authorized representatives, the hearing examiner found that over a substantial period of time, over a representative area, and in a substantial number of transactions, through statements by salesmen, through correspondence, invoices, letterheads, etc. respondents engaged in the practices involved for the purpose of inducing sales of advertising space as charged in the complaint. Admittedly, respondents' solicitors contact several thousands of prospective customers a year, a considerable segment of the public, who through alleged misrepresentations are induced to purchase advertising space which, also admittedly, accounts for a large part of the corporate respondent's income. Evidence of record establishes also that the *Trade Union Courier* is competitive for the advertising dollar with several hundreds of other labor publications, of which there are several thousands, and that it reaches labor leaders throughout the country, of whom there are 300,000 to 500,000 at the present time. It is clear, therefore, that there is sufficient public interest present here to warrant this proceeding and to support the order which we determine below should issue.

Respondents also filed a number of specific exceptions to the findings, conclusion, and to certain rulings of the hearing examiner. The first four of respondents' exceptions are disposed of by our rulings above. The balance of the specific exceptions are disposed of in the

next succeeding paragraphs or are overruled in effect by our final disposition of this matter on the merits.

In their appeal respondents except specifically to the denial by the hearing examiner of motions to dismiss on the ground that the hearing examiner's 1952 initial decision dismissing the complaint was *res adjudicata*. The Commission's order of June 12, 1953, remanding the case adverted to hereinabove, disposes of this point. There, in ruling upon respondents' objections in opposition to remand, the Commission held that:

"The power to reopen a proceeding for the reception of additional evidence is inherent in trial tribunals and its exercise is a matter within their discretion. That the Commission delegates certain of its trial functions to hearing examiners does not divest it of its status as a trial tribunal, nor convert it into an appellate body. Whatever cogency respondents' objections might have were they made in a court proceeding between private litigants, they are not persuasive here in a proceeding which is predicated upon the public interest which demands that the Commission be fully informed concerning the practices in question."

This exception of respondents is denied.

Respondents further except to rulings of the hearing examiner admitting over objection testimony concerning "impressions" of certain witnesses as to what was said to them orally by respondents' solicitors. It is well established that there is no better method to resolve whether or not a statement or representation is misleading than to determine its meaning to those to whom such statements or representation has been made. The record discloses here that in most instances witnesses testified to their best recollection of the substance of their conversations with respondents' solicitors. Some did relate their impressions gained therefrom as to respondents' relationship with the A. F. of L. Wigmore<sup>2</sup> perhaps best states the rule controlling in the latter circumstances which we believe is dispositive of respondents' contention in this respect:

"The general rule, universally accepted is therefore that the substance or effect of the actual words spoken will suffice, the witness stating this substance as best he can from the impression left upon his memory. He may give his 'understanding' or 'impression' as to the net meaning of the words heard."

This exception of respondents is denied.

<sup>2</sup> Wigmore, On Evidence, Third Edition, Section 2097; See also *U. S. v. Krulewitch*, 167 F. 2d 943.

Respondents also except to the denial by the hearing examiner of motions to strike the testimony of one witness as not being connected with or binding upon respondents and to strike the testimony of another witness as not being within the issues of the case. In the first instance the witness testified he received a long distance call from New York for an ad in 1953, which he declined to authorize and that he was subsequently billed therefor as shown by a registered letter in evidence. Respondents' witness Koota, a solicitor, testified he called the witness but could not recall whether or not an ad was authorized. In the second instance the witness testified as to the substance of what was said to him over the phone; and an invoice for an ad, as well as a letter from respondents' advertising manager acknowledging the advertising order, connects up the witness' testimony with the issues in this proceeding. The Commission has concluded that the hearing examiner's rulings on these two motions were correct. Even if respondents' contentions here were well grounded, it would not affect final disposition of respondents' appeals herein since the greater weight of other testimony and evidence supports the initial decision on remand as herein appears. These exceptions of respondents are denied.

The hearing examiner denied a request and a motion by respondents' counsel that statements of interviews with witnesses by Federal Trade Commission investigators be produced at the hearings before the hearing examiner. These rulings were based upon the ground that reports of such investigations are made in the course of the discharge of official duties and are confidential except where used for the purpose of refreshing a witness' recollection, in which event their confidential nature is waived. Respondents excepted.

In a memorandum filed with the Commission April 28, 1955, respondents cite that in the case of *Gordon v. United States*<sup>3</sup> the Supreme Court definitively held that where a witness testifies to having given a statement to a Government investigator, the trial tribunal must examine that statement for inconsistencies with his statement on the stand, and in the event of such inconsistency must furnish the statement to the defendant. Reference also was made to *U. S. v. Krulewitch*.<sup>4</sup> Counsel for respondents contend that this rule applies irrespective of whether the witness used the statement on the stand. The case of *Gordon v. United States, supra*, is distinguishable from the situation here. The former was a criminal proceeding where the prosecution's case stood or fell on the testimony of a witness who admittedly had made prior statements contradictory to those made on

<sup>3</sup> *Gordon v. United States*, 344 U. S. 414 (1953).

<sup>4</sup> *U. S. v. Krulewitch*, 145 F. 2d 76 (2d Cir. 1944).

the witness stand. Here there is no criminal proceeding where the considerations involved in production of prior contradictory statements dictate strict application of the pertinent rules of evidence. In the *Gordon* case there was proof that the prior statements sought to be produced were in fact contradictory. That is not so here. Further, in its opinion, the Supreme Court recognized *inter alia* that the assertion of privilege as to confidential character could have defeated a move to require production of the contradictory statements if the statements there involved had been of that nature. The case of *U. S. v. Krulewitch, supra*, similarly is distinguishable. It, in pertinent part, merely restates the rule in the *Gordon* case.

Nor is there any question of waiver here. The witnesses involved did not use confidential reports of Commission investigators to refresh their recollections so as to constitute such waiver and the confidential character of the statements was asserted. This exception of respondents is denied.

This leads us now to consideration of the sufficiency of the evidence of record herein and to final disposition of the two issues remaining in this case.

#### Unauthorized Advertisements

The gravamen of the charge here is that respondents without prior authority inserted advertisements in the Trade Union Courier on behalf of various industrial and other concerns and thereafter sought to exact payment therefor. This charge is attacked by respondents on jurisdictional grounds which are disposed of above. In addition, employment of the practice categorically is denied by them.

The hearing examiner in his initial decision on remand reviews in considerable detail the testimony and evidence relevant to this point. He had an opportunity to observe at close hand the bearing and demeanor of the witnesses and he states in his initial decision that he was not impressed with the testimony of respondents' salesmen witnesses that particular advertisements had been authorized. The hearing examiner concluded that he could not accept this testimony in the light of the testimony of apparently truthful witnesses in support of the complaint and in the light of the generally "unconvincing and unimpressive performance given by the solicitors." While not bound by the findings and conclusions of the hearing examiner in this respect, our own examination of the whole cold record has convinced us that the testimony of the solicitors was based at best upon a vague recollection of their conversations with prospective customers and that, as found by the hearing examiner, they relied primarily upon

the fact that after a given solicitation they had filled out a sales memorandum from which they concluded that the transaction must have been authorized. And the record contains numerous instances of the unauthorized insertion of advertisements. The testimony of witnesses in support of the complaint establishes that no less than sixteen firms and individuals were billed in amounts from \$25.00 to \$350.00 for advertisements which they had not authorized, or which they had expressly refused to take. Documents in evidence further establish that payment for such advertisements was sought to be exacted through several follow-up letters and "Final Notices" requesting payment. Persistent efforts were made to enforce payment and the examiner concluded that the extent to which this practice was engaged in amounted to an unfair and deceptive practice proscribed by the Federal Trade Commission Act. Our examination of the "whole record" leads us to determine that the findings in this respect clearly are supported by the greater weight of the evidence. Respondents' appeal from the hearing examiner's initial decision on the issue of insertion of unauthorized advertisements and the efforts of respondents towards exaction of payment therefor as constituting a violation of the Federal Trade Commission Act is, therefore, denied

#### Endorsement by American Federation of Labor

The hearing examiner in his initial decision found that, on the record as a whole, respondents misrepresented the facts as to their relationship with the American Federation of Labor and that they sought to create, and did create, the impression among prospective advertisers that the Trade Union Courier is endorsed by, affiliated with, or bears a close connection with, the American Federation of Labor. This finding by the hearing examiner is based upon his evaluation of the versions given by some of the businessmen witnesses as to what respondents' advertising solicitors said to them when they were approached to take advertisements in the Trade Union Courier as follows:

1. That he wanted 'an ad for the AFL paper' and that the paper was the 'official organ of the AFL operating out of their national headquarters.'
2. That he 'represented the American Federation of Labor' and that the paper was a 'national publication of the AFL.'
3. That the paper 'represented' or 'was affiliated with the AFL.'
4. That the paper was 'an official publication of the AFL.'
5. That the solicitor was 'connected with the AFL unions or AFL.'

1275

## Appeal

6. That the solicitor was 'representing the AFL against Communism' and was soliciting ads for the newspaper 'through the sanction of the AFL.'

7. That the paper '[was represented as] part of' or was 'put out by the American Federation of Labor.'

8. That 'they were bringing out an issue for the convention of the American Federation of Labor and that they were the official publication of the American Federation of Labor.'

9. That the solicitor was 'with the A. F. of L.' and wanted an ad 'in the A. F. L. paper.'

10. That the paper was the 'national organ for the American Federation of Labor and that by our advertising in it we would be doing a national public relations job with the American Federation of Labor.'"

This testimony was attacked by respondents on the ground that it was unreliable because some of the witnesses on cross-examination admitted they were not sure as to exactly what the solicitor said to them and because some conceded that the solicitors might have used the term "A. F. of L. Unions" instead of "A. F. of L." The hearing examiner in this connection notes that in such instances the responses of the witnesses were affirmatively given to leading questions by respondents' counsel and that he, the hearing examiner, was satisfied that the witnesses did not appreciate the distinction between the two terms. He concluded that the evidence established that respondents' solicitors consistently stressed the paper's connection with the American Federation of Labor and not merely the fact of record of the paper's endorsement, affiliation, or connection with only some of the constituent unions of the Federation. Uncontroverted on the record and not subject to dispute is the fact that the American Federation of Labor, as such, endorses no newspaper that solicits, accepts or publishes advertising.

Further, the hearing examiner found this oral testimony to have been corroborated by written records made by some of these witnesses at a time when the conversations were clearly in their minds. For example, the hearing examiner in his initial decision points out that one witness, who testified that one of respondents' solicitors stated to him that respondents' paper was the paper of "the A. F. of L. unions nationally," in advising the paper, by a letter in evidence, that an order for an advertisement was being cancelled, gave the following reason:

"We have received information that your paper is not affiliated with the American Federation of Labor as represented by your [salesmen]."

In a reply to this letter, respondents' advertising manager made no clear cut denial as to any claim of representation of the Federation but stated ambiguously only that:

"THE TRADE UNION COURIER, leading independent labor newspaper in the country, was founded in January, 1936, and has been published regularly since that year, presenting the vital labor news affecting the nation and covering *the A.F.L. union it represents* from an anti-Communist standpoint and from the standpoint, too, of better labor-management relations." (*Italics supplied.*)

Another of these witnesses, the initial decision points out, within a month after a long distance telephone conversation with one of respondents' solicitors, wrote to respondents requesting return of his check in payment for an advertisement as follows:

"Upon checking further, we find that you have misrepresented. When soliciting us by phone, you gave us a lengthy description of how the American Federation of Labor was making a 'drive' to better relations between employer and employee, and that all the A. F. of L. locals were participating in this."

And, another witness had his secretary get on the phone as soon as one of respondents' solicitors identified himself. She recorded the latter as stating:

"I am with the Trade Union Courier of the American Federation of Labor."

Respondents' solicitors on the stand denied the statements attributed to them and, in this connection, the hearing examiner's initial decision concludes as follows:

\* \* \* A large portion of this testimony impressed the examiner as unconvincing and lacking in inherent probability. Despite the fact that the paper is endorsed by a number of unions affiliated with the American Federation of Labor and this would be a natural talking point in seeking to sell advertising, several of the witnesses [respondents' advertising solicitors] at first insisted that they made no reference to the American Federation of Labor in any way, shape or form in their conversations. When the absurdity of this situation became apparent to them, several of the witnesses conceded that they referred to the American Federation of Labor, but that this was only done in response to some query by the recipient of the call as to what connection they had with the labor movement. In such instances, according to these witnesses, they would mention the endorsement of the paper by American Federation of Labor unions.

"However, a careful examination of their testimony convinces the examiner that they did more than they had a right to do legitimately,

and that they deliberately set about to create an impression of some connection between the paper and the national A. F. of L. Thus, one of the solicitors testified:

“\* \* \* when I told Mr. Cooney we were a labor paper, he asked me what sort of a labor paper we are, and I told him we are a *pro-A. F. of L.* paper, and during the conversation there he asked me what affiliation you might have had *with the A. F. of L.*, and I told him we were *officially endorsed by the A. F. of L. Unions* \* \* \*.”

“Another solicitor testified that if a person asked him: ‘Are you people endorsed by CIO or A. F. of L.’ he would reply ‘[W]e are *endorsed by A. F. Unions.*’” (Emphasis supplied.)

In the light of the record the hearing examiner finally concluded that the sales pitch of respondents’ solicitors was pervaded with subtle, and sometimes not so subtle, insinuations which tended to create the impression of an association with the A. F. of L. as a national organization and that the solicitors did not limit themselves to stating the actual fact of record with respect to the paper’s endorsement by only some unions of the A. F. of L. The fact that the paper is endorsed by some A. F. of L. unions is undisputed, the hearing examiner so found, and the Commission does not question such finding. The Commission agrees with the hearing examiner, however, that while respondents may have some following in the labor movement, that does not justify their solicitors in seeking to create the impression that the paper is endorsed by the American Federation of Labor itself. The Commission is satisfied, on the whole record, that the hearing examiner was correct in finding that respondents’ authorized solicitors customarily followed the pattern indicated in their sales talk and that a significant portion of the public was in fact misled thereby. Respondents’ appeal from the hearing examiner’s initial decision in respect to the misrepresentation of the Trade Union Courier’s relationship with the American Federation of Labor is denied.

#### Scope of Order

In addition to contending that the order to cease and desist, contained in the initial decision on remand, is not within the scope of the complaint—which contention already has been denied above—respondents press the point that the said order is so broad and vague as to render respondents liable to the penalties of contempt for perfectly legitimate conduct. They claim they are given no guidance as to what instructions they must give their solicitors, nor are the solicitors themselves told what they can do and what they cannot do in simple, intel-

ligible terms. In essence their contention is that the proscriptions of the order are too general in scope and that the only order which can properly be entered here is one inhibiting the use of representations that the Trade Union Courier is "endorsed" by the American Federation of Labor.

There is no merit to this contention. The Commission's orders, being wholly prospective in operation and intended to prevent the occurrence in the future of illegal activity, must of necessity be somewhat general in their scope. To be effective, such orders must proscribe not only specific acts alleged or proved to have been engaged in in the past, but, to the extent that the pleadings and the proof will permit, the general, and other specific, related course of conduct as well.

We have found above that the terms of the order to cease and desist are reasonably related to, and within the scope of, the allegations of the complaint. Record proof further substantiates that finding since the testimony and evidence herein clearly establish a course of conduct on the part of respondents' authorized solicitors which was intended to, and did in fact mislead prospective purchasers of advertising space to authorize advertisements and to pay therefor in the mistaken belief that the Trade Union Courier was officially endorsed by, affiliated with, sponsored by, or otherwise connected with the American Federation of Labor as an organizational entity itself. Respondents' exception on this point is denied.

#### Conclusion

We have fully considered the whole record herein, including the transcript of hearings, exhibits, and briefs (including respondents' brief filed with the Commission November 12, 1952) of both parties.

For the reasons hereinabove stated, we conclude that the hearing examiner's initial decision on remand and his rulings on respondents' various motions are correct. Accordingly, respondents' appeal from the initial decision, including their exceptions thereto, is hereby denied and the initial decision of the hearing examiner is affirmed. Appropriate order will be entered.

#### FINAL ORDER

This matter having come before the Commission upon respondents' appeal from the hearing examiner's initial decision and the matter having been heard on the whole record, including briefs [request for oral argument having been withdrawn by respondents]; and the Com-

1275

Final Order

mission having rendered its decision denying respondents' appeal and affirming the initial decision:

*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 contained in said initial decision.

IN THE MATTER OF  
LOUIS BUCHWALTER ET AL. TRADING AS NATIONAL  
FEATHER & DOWN COMPANY

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

*Docket 6132. Complaint, Oct. 28, 1953—Decision, June 30, 1955*

Order requiring manufacturers in Brooklyn, N. Y., to cease misrepresenting the down and feather content of their pillows on labels affixed thereto or otherwise.

*Mr. Ames W. Williams* for the Commission.

*Davidson, Cohen & Zelkin*, of New York City, for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that the respondents have violated the provisions of the Federal Trade Commission Act by misrepresenting the contents of feather pillows which they manufacture and distribute in commerce, and, further, that they have falsely represented that their pillows have been laboratory-tested by the National Bureau of Standards, an agency of the United States Government.

After the filing of an answer, hearings were held, in which testimony and other evidence was presented, duly recorded and filed in the office of the Commission. By stipulation all the evidence in the companion feather cases was made a part of the record in this case, except so far as such evidence relates exclusively to the identification, contents and analyses of the feather samples in each of those cases.<sup>1</sup> Proposed findings of fact, conclusions and order have been submitted by counsel. On the basis of the entire record, the following findings of fact are made:

1. Respondents Louis Buchwalter and Emanuel Cohen are copartners trading as National Feather & Down Company, with their office and principal place of business at 160-166 Seventh Street, Brooklyn 15, New York.

2. Respondents are now, and for more than one year last past have been engaged in the manufacture of feather pillows, which they sell to dealers for resale to the public.

Respondents have caused and now cause their pillows, when sold

<sup>1</sup>The companion feather cases are: Docket 6132, National Feather & Down Company; Docket 6133, The L. Buchman Co., Inc., et al.; Docket 6134, Burton-Dixie Corp., et al.; Docket 6135, N. Sumergrade & Sons, et al.; Docket 6137, Northern Feather Works, Inc., et al.; Docket 6161, The Sallsbury Co., et al.; Docket 6188, Globe Feather & Down Co., et al.; and Docket 6208, Sanitary Feather & Down Co., Inc., et al.

1306

Decision

to be transported from their place of business 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 said pillows in commerce among and between the various States of the United States.

3. In the course and conduct of their aforesaid business respondents are now, and have been, in substantial competition in commerce with other partnerships, firms, corporations and individuals engaged in the sale and distribution of feather and down products, including pillows.

4. In the course and conduct of their aforesaid business, respondents have caused labels to be affixed to certain of their pillows purporting to state and set out the kinds or types and proportions of filling materials contained therein, and have made representations with respect to their pillows designated "Gem," as follows:

All new material  
consisting of  
Goose Down 20%  
Goose Feathers 80%,

and with respect to their pillows designated "Grace,"

All new material consisting  
of Goose Feathers.

5. Through the use of the aforesaid statements, respondents have represented that the filling material in the pillows designated "Gem" is composed of 20% new goose down and 80% new goose feathers and the filling material in the pillows designated "Grace" is composed of 100% new goose feathers.

6. Two pillows of each of the above-mentioned designations were procured by a representative of the Commission at the same time from the same retail dealer, and were introduced in evidence. The contents of these pillows were analyzed by an expert for the Commission and by an expert for the respondents. The analysis made by the Commission's expert showed as follows:

	Pillow 1 (by weight)	Pillow 2 (by weight)	Computed average
	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
Down.....	20.0	20.6	20.3
Goose feathers.....	47.9 <sup>1</sup> (56.8)	56.3 <sup>1</sup> (65.5)	52.1 <sup>1</sup> (61.15)
Duck feathers.....	17.2 <sup>1</sup> (17.6)	8.7 <sup>1</sup> (9.1)	12.95 <sup>1</sup> (13.35)
Chicken feathers.....	2.7	1.3	2.0
Damaged feathers.....	9.3	9.6	9.45
Feather fibers.....	1.7	2.1	1.9
Pith and scale.....	1.2	1.4	1.3
	<i>Grams</i>	<i>Grams</i>	
Amount analyzed.....	3.398	3.501	

<sup>1</sup> The figures in parentheses represent the total amounts of feathers of the particular designation, including the proportionate share of damaged feathers.

Decision

51 F. T. C.

Respondents' expert made but one analysis of the contents of the two pillows, which showed the following:

	<i>Percent by weight</i>
Feathers (predominantly goose).....	74.6
Down.....	24.7
Pith, scales, etc.....	0.7

With respect to respondents' pillows designated "Grace," the analyses were as follows:

	Pillow 1 (by weight)	Pillow 2 (by weight)	Computed average
By Commission's expert:	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
Down.....	4.8	4.6	4.7
Goose feathers.....	56.2 <sup>1</sup> (66.3)	64.8 <sup>1</sup> (74.7)	60.5 <sup>1</sup> (70.5)
Duck feathers.....	22.0 <sup>1</sup> (22.7)	11.4 <sup>1</sup> (13.6) (inc. 2d hand)	16.7 <sup>1</sup> (18.15)
Chicken feathers.....	2.6	3.9	3.25
Damaged feathers.....	10.8	10.3	10.55
Second-hand feathers.....	None	1.8	None
Feather fibers.....	1.2	1.2	1.2
Pith and scale.....	2.4	2.0	2.2
Amount analyzed.....	<i>Grams</i> 4.837	<i>Grams</i> 4.2366	

<sup>1</sup> The figures in parentheses represent the total amounts of feathers of the particular designation, including the proportionate share of damaged feathers.

	<i>Percent by weight</i>
By respondents' expert:	
Feathers (predominantly goose).....	95.7
Down.....	3.2
Pith, scale, etc.....	1.1

7. Respondents, also, have featured on their tags and on certain price lists, the following statements:

LABORATORY TESTED  
APPROVED  
NATIONAL BUREAU  
OF STANDARDS  
C. D. Pomerantz, B.S. M.A.  
Chemist  
ALL OUR PRODUCTS ARE TESTED  
AND GUARANTEED BY NATIONAL'S  
BUREAU OF STANDARDS.

8. Through the use of these statements respondents represented that their pillows had been tested and approved by the National Bureau of Standards, Washington, D. C., an agency of the United States Government. The fact is that the National Bureau of Standards to which the respondents referred was a trade name registered in 1946 in the County of Kings, State of New York, under which Charles Pomerantz, Louis Buchwalter and Emanuel Cohen functioned, and the testing to which the respondents referred in the above statements was made by these men operating under this registered designation. The record

shows that this commercial National Bureau of Standards performed no work and no tests for any firms or individuals other than respondents. The representations were discontinued April 9, 1953, prior to the issuance of the complaint in this proceeding, and respondents have stated that they will not be resumed. All labels containing these representations were destroyed.

9. In determining whether or not the representations as to the pillow contents are false within the meaning of the Act, it is helpful to have an understanding of the manufacturing methods used in the feather industry.

(1) In general, three sources of feather supplies are or have been available:

(a) *The American Source*

First, there are the domestic feathers, which ordinarily are properly labeled, but are not available in sufficient quantities to meet the industry's requirements.

(b) *The European Source*

Second, there is the European source of supply from which feathers are procured, but from this source it is impossible to get unadulterated, new stock, because of a common practice of mixing second-hand feathers with new. European feathers are purchased on the basis of samples, and each manufacturer must judge from these samples the quality and type of feathers available to him.

(c) *The Oriental Source*

The third source is the Orient, from which adequate supplies may be had; but in the Orient there is no careful sorting, and a bale of feathers purchased as good feathers may contain substantial quantities of duck or chicken feathers. These feathers are usually purchased through importers and commission merchants who submit offers to manufacturers. A typical offer will show as available for purchase by respondents or other pillow manufacturers 100 bales of 200 pounds each at 90¢ per pound, the feathers being Formosan grey goose feathers, 90% clean, maximum 20% duck feathers, 5% chicken feathers, 3% quills, minimum 30% down. Oriental feathers are purchased on the basis of these representations, without sampling.

(2) After raw feathers are procured by the manufacturer they are thoroughly washed, dried and fluffed up. Then they are sorted by means of a machine which separates the various constituents of

the feather bulk by a blowing or suction process. The feathers are put through the sorting machine in lots of fifty pounds. The down, being lighter, is more readily blown over the baffle in the sorting machine, and passes into its particular bin or container. Then follow the downy-type feathers, and the various other feathers, in appropriate classifications according to weight or specific gravity, each into a specially prepared container. By this process it is reasonably practical to segregate a high percentage of down, but in down, as in the other classifications, there are always some feathers which are inappropriate to the particular classification. In the downy-type feather receptacle will be some pure down and some heavier-type feathers. Similar discrepancies will occur in each of the other classifications. It is impossible to separate feathers according to type of fowl or to remove inferior or second-hand feathers. The only possible separations are those which can be obtained by the application of the principles of specific gravity. Feathers of the same degree of lightness will go over the baffle at the same time, irrespective of the kind of fowl from which they may have been plucked, or whether they are new or used.

(3) The down and feathers thus sorted and placed in separate containers have no uniformity or homogeneity; the heavier feathers will be at the bottom, the down at the top of each container. Although there be a vigorous agitation of the feathers and down in a storage bin, the resulting mixture will at no time be of uniform content throughout, and no mixture of feathers and down is or will remain uniform or constant throughout its bulk. When a pillow order is to be made up, the manufacturer puts into the filling bin the number of bags of each type of feather requisite to obtain the desired mixture. The filling bins usually are approximately 5 x 10 x 12 feet in size, and hold up to 350 or 400 pounds of feathers. Two or three hundred pairs of pillows may be filled out of one mixture, and it is not unusual for a manufacturer to fill from twelve to fourteen hundred pairs of pillows during a day.

(4) During the filling process, the feathers are agitated by means of wooden forks, and the pillows are filled by suction. The proportion of down and feathers that go into each pillow depends partly, of course, upon the filling-bin mixture, but also to a large extent upon what part of the bin the filling suction reaches. Even with the exercise of the greatest care, pillows filled from the same bin will vary in content. Those being filled from the bottom of the bin will contain the heavier feathers, and the greater amounts of pith, scale, and other extraneous matter. The exact amount or proportion of down and feathers going into any particular pillow cannot be controlled by

mechanical means. The expert whose testimony was presented in support of the complaint stated that the contents of pillows filled from the same bin will vary as much as 30%; that the same percentage will not be found in any two pillows; and that the mixture in each pillow will vary from the mixture in the filling bin. If any one pillow should contain exactly the same percentage of feathers and down as that originally placed in the filling bin, it would be pure accident. The closest practical indication of the contents of a pillow product of a manufacturer and the correctness of its labeling will result if several different pillows are sampled, preferably pillows obtained at different times and places.

(5) The same difficulties arise in analyzing the contents of a single pillow. Except by pure accident, no two samples will have the same content; so there is no sure or positive method of measuring the contents of feather pillows with scientific accuracy, other than by taking all of the content out of the pillow and separating it into its component elements, then weighing each element. Such a process is so completely impractical that, usually, a test is made by opening the pillow-ticking and taking samples from three different portions of the pillow. These samples are thoroughly mixed and a smaller testing sample, of which the analysis is to be made, is taken from this mixture. The expert who testified in support of the complaint selected three samples from the opening by inserting his hand and reaching to different portions of the pillow. Samples selected by the respondents were obtained by taking a small quantity of feathers from each of three openings in each pillow. The hearing examiner was present when respondents' samples were taken. As each opening was made in the pillow ticking, some down escaped, and as each withdrawal was made, more down escaped before the sample could be enclosed in a container; while the feathers, being heavier and bulkier, were easier to retain. No sample can be exactly representative of the original content of the pillow, just as the content of no one pillow can be exactly representative of the original mixture in the filling bin. The average sample for analysis weighed approximately 3 grams, representing between  $\frac{1}{4}$  and  $\frac{1}{2}$  of 1% of the contents of a pillow, and the appearance of a single heavy feather in a sample of this size would make as much as 4% difference in the final result. This method is far from satisfactory, and the resulting percentages are not conclusive.

(6) The crushing or curling process is a manner of giving a twist or curl to landfowl feathers, such as chicken and turkey, to increase their resiliency and tend to prevent their matting, and thus improve their quality for use as pillow-filling material. The same process is

applied to waterfowl quill feathers (that is, feathers from the wings and tails of ducks and geese), which otherwise would not be suitable for pillow-filling material. A considerable amount of fiber, pith and scale result from the crushing, and are carried over into the filling mixture. As to utility, crushed landfowl feathers are better than crushed waterfowl feathers, and crushed turkey feathers are better than crushed chicken feathers. The mixture of crushed feathers is made by weighing out the proper proportions of the various kinds of crushed feathers that are to be mixed, and taking alternate handfuls of feathers from the separate containers and throwing these into the hopper of the curling or crushing machine. Because of the nature of these larger feathers, they frequently go through the hopper in lumps, so that it is impossible to get a mixture with any degree of homogeneity. Despite agitation in mixing, slugs of chicken or turkey feathers and slugs of quill feathers will get into the pillows without ever being separated or mixed. The label "Crushed Feathers," showing the types of feathers used, can indicate no more than that the mixture was made from the types or kinds of feathers stated on the label. It is impossible to separate and analyze crushed feathers accurately. A pillow filled with crushed feathers is the cheapest product of the industry, and in the minds of the general public, there is very little distinction among the various kinds of crushed feathers, whether goose, duck, chicken or turkey. The expert who testified in support of the complaint indicated that pillows filled with crushed feathers are the least desirable of all pillows, and are the lowest class of pillows on the market. In his opinion, it is impractical to attempt to distinguish between the various types of crushed feathers in any batch of such pillows, and he suggested during the course of his tests for the Commission that no further pillows filled with crushed feathers be sent to him for analysis.

(7) On the basis of the foregoing, the conclusion is inescapable that as a practical matter, the contents of feather pillows cannot be accurately labeled. In fact, to require accurate labeling as to content, of a product such as feather pillows, which, by nature, vary constantly and at random in content, is to require an impossibility. No manufacturer of feather pillows could comply with such a requirement except by analyzing the filling of each pillow individually. Obviously that is an impossible task. Incidentally, it points up the dangers involved in attempting to reach a conclusion as to pillow content on the basis of testing two pillows out of a batch that may have included one hundred or two hundred pairs of pillows.

(8) Despite these facts, however, some 28 States have labeling requirements with which pillow manufacturers must comply; and the

1306

Decision

Federal Trade Commission, on April 26, 1951, promulgated Trade Practice Rules for the Feather and Down Products Industry, which undertake to interpret the Act and express the Commission's policy with respect to the practices complained of in this proceeding. Although these Rules are not binding upon the hearing examiner, they should be given careful consideration in applying the law to the facts of this proceeding. The pertinent parts of those Rules applicable thereto are as follows:

RULE 3—IDENTIFICATION AND DISCLOSURE OF KIND AND TYPE OF FILLING  
MATERIAL IN INDUSTRY PRODUCTS

I. In the sale, offering for sale, or distribution of industry products, it is an unfair trade practice to misrepresent or deceptively conceal the identity of the kind or type of filling material contained in any of such products, or of the kinds or types, and proportions of each, when the filling material is a mixture of more than one kind or type. Such identification and disclosure shall be made by tag or label securely affixed to the outside covering of each product and in invoices and all advertising and trade promotional literature relating to the product; and when the filling material is a mixture of more than one kind or type, each kind and type shall either be listed in the order of its predominance by weight, or be listed with an accompanying disclosure of the fraction or percentage by weight of the entire mixture which it represents.

II. Identification of the kind and type of feather and down stock by use of any of the terms listed and defined below will be considered proper when in accord with the definition set forth for such term:

*Definitions:*

(a) *Down*: The undercoating of waterfowl, consisting of clusters of the light, fluffy filaments growing from one quill point but without any quill shaft.

(b) *Down fiber*: The barbs of down plumes separated from the quill points.

(c) *Waterfowl feathers*: Goose feathers, duck feathers, or any mixture of goose and duck feathers.

(d) *Feathers (or Natural Feathers)*: Bird or fowl plumage having quill shafts and barbs and which has not been processed in any manner other than by washing, dusting, and sterilizing.

(e) *Quill feathers (or Quills)*: Wing feathers or tail feathers or any mixture of wing and tail feathers.

(f) *Crushed feathers*: Feathers which have been processed by a crushing or curling machine which has changed the original form of the feathers without removing the quill.

\* \* \* \* \*

(h) *Feather fiber*: The barbs of feathers which have been completely separated from the quill shaft and any aftershaft and which are in no wise joined or attached to each other.

\* \* \* \* \*

(j) *Damaged feathers*: Feathers, other than crushed, chopped, or stripped, which are broken, damaged by insects, or otherwise materially injured.

III. *Tolerance:* (a) Subject to the restrictions and limitations hereinafter set forth, the filling material of an industry product may be represented as being of but one kind or type when 85% of the weight of all filling material contained in the product is of the represented kind or type; or may be represented as being of a mixture of two or more kinds or types with accompanying disclosure of a fraction or percentage of the weight of the entire mixture represented by each if the fraction or percentage shown is not at variance with the actual proportion of the weight of the entire mixture represented by each such kind or type by more than 15% of the stated fraction or percentage. The tolerance provided for in this paragraph III is to be understood as being an allowance for error and as not embracing any intentional adulteration.)

*Limitations and Restrictions*

(b) When the filling material of an industry product is represented, directly or indirectly, as being wholly of down, any proportion within the tolerance percentage provided for in (a) above which is not down shall consist principally of down fiber and/or small, light, and fluffy waterfowl feathers, shall contain no quill feathers, crushed feathers, or chopped feathers, and shall not contain damaged feathers, quill pith, quill fragments, trash, or any matter foreign to feather and down stock in excess of 2% by weight of the filling material contained in the product, or which in the aggregate exceeds 5% of such weight.

\* \* \* \* \*

(c) When the filling material of an industry product is represented, directly or indirectly, as being wholly of a mixture of down and feathers, or of down and more than one kind or type of feathers, or of feathers of more than one kind or type, any proportion, or the aggregate of any proportions, of the filling material of the product at variance with the representation, but within the tolerance percentage provided for in (a) above, shall not contain quill pith, quill fragments, trash, or any matter foreign to feather and down stock in excess of 2% by weight of the filling material in the product or which in the aggregate exceeds 5% of such weight; and, unless nondeceptively disclosed in the representation, not in excess of 5% by weight of the filling material of the product shall consist of crushed feathers, chopped feathers, quill feathers, or damaged feathers.

*Note:* It is the consensus of the industry that determination as to whether any representation is violative of the provisions of this Rule should be based on an average of the results of tests of at least two products of the same type when same are readily available for testing, \* \* \*.

The Rules further provide that samples of equal weight and size be drawn from at least three different locations in the product; that such samples be thoroughly mixed; and that a test be made of not less than 3 grams of the mixture. Application of the law and a reasonable interpretation of these Rules to the facts of this proceeding results in the following:

*Conclusions:*

I. The test procedures adopted and followed by the experts who made the analyses of the pillow contents in this proceeding comply with the Trade Practice Rules.

II. Respondents' "Gem" pillows contain more than the 20% goose down which their label shows, but they do not contain 80% (or 68%, as would be required even with full tolerance) goose feathers as represented, and to this extent the labeling is faulty and the representation false.

If duck feathers and damaged feathers are added to and considered part of the goose feather content, the goose feather content would come within the 15% tolerance. Respondents contend that the damaged feathers should be included in the allowable content because the expert testifying in support of the complaint stated that he did not consider the presence of damaged feathers as adulteration, since the source of the damage is usually unknown and might have occurred after the feathers had been placed in the pillows; and further, that the damaged feathers were not in sufficient quantities to affect the utility or value of the pillows. This contention cannot be accepted. Respondents further contend that duck feathers should be considered the same as goose feathers, because duck feathers are difficult to distinguish from goose feathers, and are, in fact, worth one and one-half times more than China goose feathers. The addition of the duck feathers, it is contended, is an improvement of the product. This contention, likewise, is rejected. Neither the Rules nor the law provide that mislabeling shall become acceptable if the added, unlabeled content is of higher grade material than that stated on the label. The public is entitled to accurate labeling, and is not called upon to determine whether the added or substituted ingredients increase or decrease the value of the product in which they appear.

The respondents' test analysis shows 74.6% of the feathers "predominantly goose" in the "Gem" pillows, but since "predominantly" is not defined and there is no further breakdown of the content, this test result can be given no weight.

III. Respondents' "Grace" pillows contain less than the 85% of goose feathers allowable under the Rule, with tolerance. If duck feathers and damaged feathers be included as goose feathers, the result would be different; but, as explained under conclusion II, above, this cannot be done. Likewise, for the same reasons stated above, respondents' test report cannot be accepted.

IV. The respondents' discontinuance of the label bearing the legends "Laboratory Tested, Approved, National Bureau of Standards, C. D. Pomerantz, B. S., M. A., Chemist" and "All our products are tested and guaranteed by National's Bureau of Standards" was in good faith, and there is no reason to believe that there will ever be a resumption by the respondents of the use of this or any similar label.

Appeal

51 F. T. C.

Hence the issuance of an order covering this phase of the proceeding is not required.

V. The labeling and representations hereinabove found to be false (conclusions II and III, above) constitute unfair trade practices; are to the prejudice and injury of the public; and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce.

VI. The use by respondents of the false and misleading statements on the labels affixed to their pillows has had and now has the tendency **and capacity to mislead and deceive dealers and the purchasing public** into the erroneous and mistaken belief that such statements are true, and to induce the purchase of substantial quantities of their said pillows because of such erroneous and mistaken belief.

VII. This proceeding is found to be in the public interest, and the following order is found to be justified:

*It is ordered*, That Louis Buchwalter and Enamuel Cohen, trading as National Feather & Down Company, or under any other name, and their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of feather pillows or other feather and down products, do forthwith cease and desist from misrepresenting in any manner, or by any means, directly or by implication, the identity of the kind or type of filling material contained in any such products, or of the kinds or types, and proportions of each, when the filling material is a mixture of more than one kind or type.

ON APPEAL FROM INITIAL DECISION

By SECREST, Commissioner:

This is one of a group of ten cases, all tried and considered together, involving the use on labels of allegedly false and deceptive representations with respect to the filling materials contained in feather and down pillows. The hearing examiner having filed his initial decision in which he found that the respondents have in fact mislabeled certain of their pillows and in which he included an order directing them to forthwith cease and desist from such practices, the respondents appealed. The case was heard on the appeal brief and opposing brief filed by counsel supporting the complaint and oral arguments of counsel.

On the labels affixed to the pillows manufactured and sold in commerce by the respondents under the product name "Gem," the filling material was identified as "goose down" 20% and "goose feathers"

80%. While the down content appears to have been correctly described on the labels, analyses of samples of the filling materials withdrawn from two of such pillows revealed 56.8% goose feathers in one and 65.5% in the other and included in those percentages in each instance were substantial amounts of goose feathers which had been broken or suffered damage from insects, or had been either materially or slightly injured through other means. One of the tested samples contained 17.6% duck feathers and the other 9.1% and these amounts also included small percentages of similarly damaged or injured duck feathers. While not identical in amounts, the presence of duck feathers and injured or damaged goose and duck feathers likewise was revealed by analyses of samples of the filling materials from two of respondents' "Grace" pillows, the filling materials of which were identified on their labels as consisting of "goose feathers." The hearing examiner concluded that the respondents' pillows did not contain goose feathers in the quantities stated on their labels or in lesser amounts reflecting the tolerances recognized in certain circumstances under the trade practice rules, and the respondents except to the hearing examiner's refusal to include in the goose feather category the proportions actually represented by the duck feathers and the allegedly damaged feathers.

Since duck feathers are generically a separate and distinct kind of filling material from goose feathers, we think the hearing examiner correctly held that the filling material comprising duck feathers could not be properly classified as goose feathers. Inasmuch as the hearing examiner properly distinguished between the duck feather and goose feather filling materials in his computations, inclusion in the latter category of the allegedly damaged feathers would not serve to bring the goose feather content within the amounts claimed under the labels for the "Gem" and "Grace" pillows or those derived through application of the tolerances referred to in the trade practice rules. The hearing examiner's refusal to recognize the damaged and injured feathers as goose feathers accordingly did not constitute prejudicial error and no determination is required as to whether the record would adequately support conclusions that the content of broken and injured feathers designated by an aggregate percentage figure in each of the analyses has constituted damaged feathers as that term is understood in the feather and down industry.

The remaining issues presented under the appeal are essentially similar to those considered in the matter of Bernard H. Sumergrade, et al., Docket No. 6135, in which the Commission has written an opinion setting forth in some detail its views on the issues there in-

volved. The similarity between the cases renders the opinion in that case equally applicable here and the Commission is of the view that the hearing examiner correctly concluded that the respondents have misrepresented the contents of certain of their pillows in violation of the Federal Trade Commission Act and that the order to cease and desist contained in the initial decision is appropriate.

The appeal accordingly is denied and the initial decision is affirmed.

#### FINAL ORDER

The respondents having filed an appeal from the hearing examiner's initial decision in this proceeding; and the matter having been heard on briefs and oral argument, and the Commission having rendered its decision denying the appeal and affirming the initial decision:

*It is 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 the aforesaid initial decision.