IN THE MATTER OF

MAX SCHWARTZ AND SARAH SCHWARTZ TRADING AS MAX SCHWARTZ COMPANY

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

Docket 6192. Complaint, Mar. 11, 1954—Decision, Mar. 18, 1955

Order requiring an individual in New York City who purchased from mills and jobbers bolts of cloth which he cut into suit lengths and sold to peddlers, to cease labeling such domestic "cuts" falsely as imported from the British Isles; failing to disclose that certain wool-like fabrics were in fact made from rayon and acetate, and that others were "seconds", "mill ends", and "unmerchantables"; and failing to label certain wool products as required by the Wool Products Labeling Act, with respect to the constituent fibers, country of origin, and otherwise.

Before *Mr. Frank Hier*, hearing examiner.

Mr. George E. Steinnetz and *Mr. John J. McNally* for the Commission.

Mr. Hyman Fried, of New York City, for respondents.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated March 18, 1955, the initial decision in the instant matter of hearing examiner Frank Hier, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Complaint herein issued March 11, 1954, charges respondents as copartners with violation of the Federal Trade Commission Act (15 U. S. C. 45) and the Wool Products Labeling Act of 1939 (15 U. S. C. 68 (a)-(j)) in that it alleges that respondents:

1. Misrepresented domestically produced fabrics as being imports.
2. Failed to disclose true fiber contents on synthetic fiber fabrics simulating natural fiber fabrics.
3. Failed to disclose that inferior fabrics were not first quality.
4. Falsely labeled fabrics as to true fiber content.
5. Failed to label fabrics as to true fiber content.

Respondents' answer denied partnership, admitted jurisdictional facts, and denied the charges. Six hearings before the undersigned Hearing Examiner, theretofore duly designated by the Commission, resulted in 485 pages of testimony from 24 witnesses, and 47 exhibits, all received in support of the complaint and all of which were filed of record in the Office of the Commission. Respondents offered no evidence. On final consideration of the above, plus the proposed findings and conclusions submitted by all counsel, the Hearing Examiner finds that this proceeding is in the interest of the public and makes the following:

FINDINGS AS TO THE FACTS

1. Respondent Max Schwartz, an individual trading as Max Schwartz Company, has had his office and place of business located at 143 West 29th Street, New York City, New York, during 1950 and part of 1951. Since 1951 his place of business has been located at 27 East 20th Street, New York City. Respondent Sarah Schwartz is the wife of respondent Max Schwartz and occasionally visited his place of business and while there would occasionally answer the telephone or otherwise incidentally assist him, but there is no substantial evidence to indicate commercial partnership with him or complicity in or responsibility for the acts and practices charged.

2. Since 1949 to the present, respondent Max Schwartz, (hereinafter referred to as respondent) under his own name or as Max Schwartz Company, has been and is now engaged in the sale and distribution in interstate commerce, of wool, rayon and acetate fabrics, primarily to peddlers, located throughout the United States, for resale to the consuming public. Sales volume was between $75,000 to $85,000 annually.

3. Respondent's operation was the purchase of bolts or partial bolts of cloth, mostly from jobbers, a few of which he occasionally resold intact or in part to other jobbers, but the great majority of which he cut into 3½ yard pieces, known in the industry as "cuts" because this yardage is sufficient to make therefrom a suit, and these he sold to peddlers. The latter operate in various localities around the country with no fixed place of abode or business. They find out about respondent from each other, order by mail, either C. O. D. or with cash. Each bolt when bought is labeled as to fiber contents and usually, but not always, the invoice would state the fabric or the fiber content or both. Respondent kept these "cuts" in 25 piles of 25 each on tables in his premises assorted as to color or weave or type, unlabeled, however, as to origin, fabric or fiber content. On occasion, respondent does not reduce a bolt to "cuts" until he gets an order.

4. When an order is received, respondent, usually at the request of the customer, would impress on the inside of the cloth a "transfer" which is a decalcomania on tissue paper impressed on the cloth with a hot iron. Only one transfer was put on any one "cut." At least up until 1952, respondent used transfers reading "Bradford, England All Wool" and "Bradford, England," together with a depiction of a coat of arms or heraldic device. There is no evidence that the former transfer was used on any fabric not in fact all wool. On July 31, 1952, he registered with the U. S. Patent Office a trade mark of "Lord Leslie," together with a coat of arms depiction. He denied thereafter using the "Bradford" transfers, but the record shows that in 1953 he did buy substantial quantities thereof and it cannot be assumed, in the absence of other explanation, that they were not used.

5. The depictions of these coats of arms on these transfers are not, as urged by the respondent, duplicates of the royal British seal, but are close enough to it, and do resemble other British coats of arms so that without minute comparison, or training in heraldry, an ordinary citizen of this country would nevertheless think so. Mere inspection of these transfers convinces the Hearing Examiner that anyone outside the industry would assume that fabrics so marked were imports from the British Isles. There is also substantial and credible testimony that the ordinary purchaser would so believe. Actual deception is unnecessary—a tendency and capacity to deceive is sufficient. The fact is that practically all of the fabrics so marked were of domestic manufacture.[1] Respondent's testimony on this issue was either so evasive or so vague, and its contradiction in the record so patent, that it is rejected for lack of credibility.

6. Although there are American fabrics, whether wool or otherwise, which are just as good, if not better, than British fabrics, nevertheless the overwhelming evidence is that a substantial part of the American purchasing public believe the contrary to the extent that they will pay as much as dollar a yard more for a British import over an American product. "Although the false article is as good as the true one, the privilege of deceiving the public even for their own benefit is not a legitimate subject of commerce." [2]

7. Counsel for respondent urge that since respondent has, as he says, discontinued using these labels—the Bradford labels since 1951, and Leslie label since 1953—this charge should be dismissed. However, the evidence of discontinuance is in conflict, and respondent's

[1] No evidence was offered by respondent as to any imports.

[2] *Worden* v. *California Fig Syrup Co.*, 187 U. S. 516, 529; *National Silver Co.* v. *F. T. C.*, 88 F. 2d 425, 427.

lack of candor and surprisingly poor memory of details, which would ordinarily be fresh in his mind, convinces the Hearing Examiner that it is highly doubtful that the practice has ceased and still more doubtful that it will not be resumed when "the heat is off." The plea for dismissal is accordingly denied.

8. The conclusory finding on this issue therefore is that respondent's practice of labeling, as found above, has the tendency and capacity to deceive a substantial portion of the purchasing public into buying domestically made fabrics believing them to be British imports.

9. Rayon and acetate are synthetic textile fibers which may be and are manufactured so as to simulate wool or other natural fibers in texture and appearance. Fabrics manufactured from such fibers have the appearance and feel of wool, particularly where the weave and pattern are the same as well known and typical woolen fabrics, such as gabardine, covert, sharkskin, herringbone, serge, etc. Many in the textile business can distinguish them from what they simulate, but comparatively few other members of the public can do so. Some, with years of experience in textiles, are unable to so distinguish; certainly the Hearing Examiner could not from the exhibits in this case. There is no doubt in his mind that these synthetic fabrics simulating natural fiber fabrics have been purchased by a substantial number of the public for what they are not, since the bulk of respondent's sales were of these rayon and acetate fabrics and respondent did not label many of them as to content. Such a practice, under the circumstances, has, at least, the capacity and tendency to deceive and to induce purchases in that belief.

10. Effective relief, however, can be afforded by that prayed for under the fifth issue, and no separate prohibition under the Federal Trade Commission Act, as distinguished from the Wool Products Labeling Act, is deemed necessary.

11. The third issue is that of respondent selling "seconds," "tender or weak goods" and "unmerchantables" without marking them as such. A "second" is a fabric containing too many defects (in the color, weave or width) to be satisfactorily usable for all purposes. All fabrics contain some and the tolerance per 60 yard bolt seems to vary with the individual cloth producer's own standards. One allows 6 defects per bolt, another 24. Included in "seconds" are "tender or weak goods" which generally connotes a tensile strength less than what is necessary to withstand, without tearing, the strains put on various parts of a suit in ordinary wear. This also varies with the manufacturer. One will reject as a "second" any fabric which will not withstand 25 lbs. pull, others less. Eighteen pounds pull with-

out tearing seems, however, to be the minimum. "Unmerchantables" are "seconds" of the poorest grade—so many defects they are fit only for shrouds, certain linings or boys' caps. All of these substandard goods are made by all mills, sold by them as such, plainly marked, and at as little as ⅓ of the price of first quality merchandise.

12. Respondent admits buying this substandard merchandise most of the time. He did deny buying and reselling "tender goods," but a number of his purchase invoices shows that he did. If these were exceptional, respondent offered no evidence to that effect. One of his "cuts" in evidence was so "tender" that it tore in the hands. His records further show the purchase of "unmerchantables—as is" from mills. His own purchase records, plus his experience in the textile business, refutes any claim of ignorance on respondent's part that he was buying "seconds." The record amply establishes that upon resale this substandard quality was *not* marked, although he well knew that his customers peddled these "cuts" to individuals inexperienced in textiles, who would buy by appearance and price, without testing, to have suits made therefrom. Naturally such ultimate purchasers want only first quality merchandise, free from latent as well as patent defects to the extent that the suit would wear comparably with those purchased in responsible retail stores. Direct proof of this, of course, would be redundant. Actual deception need not be shown—the capacity and tendency is enough.[3]

13. It is now too well settled to admit of cavil, that one who puts into the hands of retailers or others the means and instrumentality whereby members of the purchasing public may be misled and deceived is equally responsible therefor. "That a person is a wrongdoer who so furnishes another with the means of consummating a fraud has long been a part of the law of unfair competition."[4] The record here shows that substantially all of respondent's sales were to itinerant peddlers, who bought from him by mail for cash or by C. O. D. to general delivery; that they move constantly from locality to locality, peddling from door to door; that they form sort of a gypsy brotherhood, tied by blood, marriage, common interest or method; that the National Better Business Bureau has voluminous files of complaints and a long record of fraud, swindling, misrepresentation, deceit, shoplifting and even thieving against them; and that at least one of them had obtained from respondent his business card with her name printed thereon as his representative. Respondent admitted furnishing these cards to anyone demanding them. These people apparently paint

[3] *Bockenstette* v. *F. T. C.*, 134 F. 2d 369; *Brown Fence & Wire Co.* v. *F. T. C.*, 64 F. 2d 934.

[4] *F. T. C.* v. *Winsted Hosiery Co.*, 258 U. S. 483, 494; *Chas. A. Brewer & Sons* v. *F. T. C.*, 148 F. 2d 74.

barns with alleged aluminum paint which, however, promptly washes off after the first heavy rain, or they sell, under their Scotch or English names, fabrics represented to be imports. They engage also in other activities, complained of, as confidence games and swindling schemes.

14. It is true, of course, as urged by respondent, that he cannot be held to be a guarantor or insurer of the honesty or dishonesty of his customers—no seller, absent complicity, can be punished for happening to sell to a thief. This evidence is not competent on that point, but it is competent to show the social importance of accurate and adequate labeling; that frauds could be and were practiced on purchasing consumers by his customers, made possible or at least easier by his failure to label or his mislabeling done at their request; and that respondent knowingly aided and abetted their practice. It is also competent in answer to respondent's contention that his mislabeling, failure to label, and failure to label properly did not deceive those to whom he sold. Of course, these peddlers were not deceived. From their character and record they apparently wanted just what respondent did or failed to do. This is borne out by the fact that the transfers connoting or suggesting importation were put on by respondent largely at the suggestion of these peddlers. It is obvious from this record as a whole that respondent, knowing the character and operations of those with whom he dealt and upon whom he depended for practically all of his business (and the Hearing Examiner is satisfied that he did know) failed to label at all, failed to label accurately, mislabeled and dealt in per se deceptive "seconds" to satisfy these swindlers and thereby increase his sales volume—in other words, aided and abetted them.

15. The remaining two charges allege violation of the Wool Products Labeling Act, namely, failing to label true fiber content and falsely labeling such content. As to the first, there is no doubt on this record. Respondent bought and resold wool fabrics and also rayon and acetate fabrics and mixtures of both. Wool purchases alone represented about 10 percent of the total. As to the woolens, the record is uncertain as to labeling. But as to the bulk of his sales, wool and rayon or acetate, by his own admission, respondent sold in interstate commerce without any marking as to fiber content whatsoever except such deceptive transfer markings described in Par. 4, supra, put on by him at the request of the peddler. Most of this material came to him marked as to fiber content as the law requires. Hence, the finding is that respondent misbranded most of his "cuts" in that he did not, when sold, affix thereto a stamp, tag, label, etc., which showed the percentage of wool and each fiber other than wool in violation of Section 4 (a) (2) of said Act.

16. As to false labeling, the record is barren as to how shipments of pure woolens were labeled as to fiber content, and since no tags were affixed to shipments of other fabrics showing their exact fiber content, there is nothing to show that respondent falsely tagged non-wool as wool. However the Act referred to provides in Section 2 (e) thereof that "wool product" means any product, or portion thereof, which contains, *or purports to contain or in any way is represented as containing* wool, etc. The charge, therefore, rests on the circumstances which would lead to the impression that fabrics were all wool or contained wool when in fact they were not.

17. Very little rayon or acetate made in the British Isles is imported into this country—so little that the public here believes an import from there to be woolen. Respondent, as found supra, has misrepresented domestic fabrics to be British imports by the use of the transfers hereinabove described in Par. 4. A very substantial part of respondent's sales were so marked regardless of fiber content. Specific examples are in the record, without fiber content, tag or other marking, except the transfers referred to. Many an unskilled person would assume that such fabrics were woolen. This false impression is heightened by the fact that these rayon and acetate fabrics resemble woolens in weave, color, pattern and type (see Par. 9, supra) and by the fact that these fabrics were made up at the mill in 60 inch or more widths, which, the record shows, is the usual width for woolens.

18. Moreover, there is in the record as an exhibit a "cut" [5] purchased by an investigator from a peddler and which upon scientific analysis for fiber content showed 17.0 to 17.3 percent wool, the balance rayon. This piece was unlabeled as to fiber content, except indirectly, in that it bore the "Lord Leslie" transfer. The peddler witness testified he became acquainted with the fact that respondent sold "cuts" through buying a number of them from a man in a poolroom. He subsequently bought from respondent 150 or more cuts, but was unable to say whether the sample he sold the investigator was so bought or was among the six or seven pieces he bought in the poolroom. Respondent's name and address were on the brown wrapping paper which surrounded these "poolroom cuts." There was thus some doubt at that time that the material analyzed for fiber content came from the respondent, but subsequent evidence dispels that doubt.

19. The analyzed piece has the "Lord Leslie" transfer. The die from which this transfer was made, was specially cut for and paid for by respondent by a transfer making concern. The mark was registered in the U. S. Patent Office by respondent for use in commerce on woolen

[5] Commission's Exhibit 14.

and rayon piece goods. The transfer making concern's officials testified categorically that when a die is especially made up by them for a particular customer it was available to no one else, although they sell transfers of their own designs. Respondent, however, in one place said six more used the same transfer,[6] in another place in the transcript said it "could be" others used it, that everyone uses transfers.[6] Respondent, as a witness, was so uncertain and so uncooperative that the credibility is clearly with the officials of the wholly disinterested transfer manufacturer and it is so found. The preponderant and substantial evidence therefore is that respondent by using these transfers, together with other facts noted, has sold in commerce fabrics which he represented to be woolen when in fact they either were not woolen or contained a very small percentage thereof, in violation of Section 4 (a) (1) of the Wool Products Labeling Act.

20. All conflicts between respondent's testimony and the testimony of others, or between respondent's testimony and documentary evidence or circumstances in the record have been resolved against the respondent due to what in the Hearing Examiner's judgment, from his observation of respondent as a witness, was a lack of candor, a most surprising lack of memory or knowledge about his business, and evasive answers.

CONCLUSION

The acts and practices of respondent as hereinabove found were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act (15 U. S. C. 45) and in violation of the Wool Products Labeling Act of 1939 (15 U. S. C. 68 (a)–(j)) and of the rules and regulations promulgated thereunder and by reason thereof constituted unfair methods of competition, and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondent Max Schwartz, individually, trading as Max Schwartz Company, or under any other name, and respondent's 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 fabrics, do forthwith cease and desist from:

[6] Transcript 47, lines 7–16.

1. Representing, directly or by implication, that fabrics manufactured in the United States are manufactured in any other country.

2. Selling fabrics known as "seconds" or "unmerchantables" without clearly and conspicuously marking said fabrics with the above words or terms or other words or terms of the same import, in such manner that such markings will not be obliterated.

It is further ordered, That the respondent, Max Schwartz individually, trading as Max Schwartz Company, or under any other name, and respondent's 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 Wool Products Labeling Act of 1939, of wool fabrics or other wool products, as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool" or "reused wool," as those terms are defined in said act, do forthwith cease and desist from misbranding such products by:

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

2. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products, either directly or by implication, as to the country of origin thereof.

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

(*a*) the percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding five percentum of said total 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, or distribution thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939. *Provided*, That the foregoing provisions concerning misbranding shall not be construed to prohibit

acts permitted by paragraphs (*a*) and (*b*) of Section 3 of the Wool Products Labeling Act of 1939; *and, provided further*, That nothing contained in this order shall be construed as limiting any applicable provisions of said Act or the rules and regulations promulgated thereunder.

It is further ordered, That complaint herein be, and the same hereby is, dismissed as to Sarah Schwartz, named as respondent herein.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent Max Schwartz, an individual trading as Max Schwartz Company, 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 March 18, 1955].

IN THE MATTER OF

GOLDIN-FELDMAN, 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 6266. Complaint, Nov. 26, 1954—Decision, Mar. 18, 1955

Consent order requiring furriers in New York City to cease violating the Fur Products Labeling Act through misbranding and false invoicing of mink stoles, jackets, and other fur garments as to the country of origin, and otherwise failing to comply with requirements of the Act.

Before *Mr. Frank Hier*, hearing examiner.
Mr. William R. Tincher for the Commission.
Baron & Baron, of Brooklyn, N. Y., for respondents.

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 Goldin-Feldman, Inc., a corporation; Morris Schilling and William Feldman individually and as officers of said corporation, and Morris Schilling, William Feldman and Fred Goldin, copartners trading as A. Goldin-S. Feldman Company, 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 Goldin-Feldman, Inc., is a corporation organized under the laws of the State of New York. Its officers are Morris Schilling, President, and William Feldman, Secretary-Treasurer. These individuals formulate, direct and control the acts and practices of corporate respondent. Respondents Morris Schilling, William Feldman and Fred Goldin are copartners trading as A. Goldin-S. Feldman Company. The office and principal place of business of all respondents is 345 Seventh Avenue, New York, New York.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, the respondents have introduced, manufactured for introduction, sold, offered for sale, transported, and dis-

tributed in commerce, as "commerce" is defined in the Fur Products Labeling Act, fur products, as that term is defined in such Act, and have manufactured for sale, sold, offered for sale, transported, and distributed, fur products, which have been made in whole or in part of fur, which had been shipped and received in commerce. Among such fur products were mink stoles, jackets and other garments.

PAR. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled or otherwise falsely and deceptively identified with respect to the name of the country of origin of imported furs contained in said fur products, in violation of Section 4 (1) of the Fur Products Labeling Act.

PAR. 4. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4 (2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced in that they were 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. 6. Certain of said fur products were falsely and deceptively invoiced in that such invoices misrepresented the name of the country of origin of imported furs contained in said fur products, in violation of Section 5 (b) (2) of the Fur Products Labeling Act.

PAR. 7. The aforesaid acts and practices of respondents were in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 March 18, 1955, the initial decision in the instant matter of hearing examiner Frank Hier, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, the Federal Trade Commission

on November 26, 1954, issued and subsequently served its complaint upon respondents herein, who have their principal place of business at 345 Seventh Avenue, New York, New York, and are engaged in the manufacture, sale and distribution of fur products.

On February 1, 1955, there was filed with the Federal Trade Commission a stipulation between the parties providing for entry of a consent order, which stipulation appears of record. By the terms thereof, respondents admit all the jurisdictional allegations set forth in the complaint; stipulate that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations and stipulate that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have engaged in any violation of law. The parties to such stipulation expressly waive the filing of an 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 or oral arguments before the Commission, and all other and further procedure before the hearing examiner and the Commission to which respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission. Such stipulation further provides that respondents agree that the order hereinafter entered shall have the same force and effect as if made after a full hearing, presentation of evidence, and findings and conclusions thereon; specifically waive any and all right, power or privilege to challenge or contest the validity of the order entered in accordance with the stipulation; further, that the stipulation, together with the complaint, constitutes the entire record herein and that the complaint may be used in construing the terms of the aforesaid order, which order may be altered, modified or set aside in the manner provided by the statute for orders of the Commission. Such stipulation further provides that it is subject to approval in accordance with Rule V and XXII of the Commission's Rules of Practice and that said order shall have no force and effect unless and until it becomes the order of the Commission.

On the basis of the foregoing, the undersigned hearing examiner concludes that this proceeding is in the public interest and in conformity with the action contemplated and agreed upon by such stipulation makes the following order:

ORDER

It is ordered, That respondent Goldin-Feldman, Inc., a corporation, and its officers; respondents Morris Schilling and William Feldman,

individually and as officers of said corporation, and Morris Schilling, William Feldman and Fred Goldin, copartners trading as A. Goldin-S. Feldman Company, or under any other name, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introducing into commerce, or the sale or offering for sale in commerce, or the transportation or distribution in commerce, of any fur products; or in connection with the manufacturing for sale, sale, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Falsely or deceptively labeling or otherwise identifying such products as to the name of the country of origin of any imported furs contained in such fur products.

2. Failing to affix labels to fur products showing:

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

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

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

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

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

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

B. Falsely or deceptively invoicing fur products by:

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

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

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

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

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

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

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

2. Using on invoices the name of any country of origin of fur or furs contained in any fur product other than the actual name of the country of origin of fur or furs contained in said fur product, or furnishing invoices which contain any form of misrepresentation or deception, directly or by implication, with respect to such fur product.

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 March 18, 1955].

IN THE MATTER OF

FOSTER-MILBURN COMPANY AND STREET & FINNEY, INC.

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

Docket 5937. Complaint, Nov. 20, 1951—Decision, Mar. 25, 1955

Consent order requiring a corporation in Buffalo, N. Y., and its advertising agency, to cease advertising falsely that the drug preparation "Doan's Pills" constituted a cure or remedy for diseases and disorders of the kidneys and bladder and would relieve symptoms thereof.

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

Mr. William L. Pencke and *Mr. Joseph Callaway* for the Commission.

Denning & Wohlstetter, of Washington, D. C., and *Ballantine, Bushby, Palmer & Wood*, 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 Foster-Milburn Company, a corporation, and Street & Finney, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Foster-Milburn Company is a corporation organized under the laws of the State of New York and having its office and principal place of business in Buffalo, New York.

PAR. 2. Said respondent is now and has been for more than five years last past engaged in the business of selling and distributing a preparation containing drugs as "drug" is defined in the Federal Trade Commission Act.

The designation used by respondent for said preparation, the formula, and directions for use thereof are as follows:

Formula:

Designation: Doan's Pills	*Per pill*
Theobromine—sodium salicylate	1.0 grains
Buchu	
Uva Ursi	Not more than
Extractives of Buchu	2.56 grains
Extractives of Uva Ursi	
Vitamin A	505 USP units
Volatile Oil (buchu by odor)	0.015 minims
Carbohydrates (sugars and starch)	2.52 grains

Directions for Use:

Before each meal and at bed time take 3 pills followed by a full glass of water. Children 4 or 6 pills daily.

The said respondent causes its said preparation, when sold, to be transported from its place of business in the State of New York to the purchasers thereof located in various States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained, a course of trade in its said preparation in commerce between and among the various States of the United States. Said course of trade has been and is substantial.

PAR. 3. Street & Finney, Inc., is a corporation organized, existing and doing business under the laws of New York, with its office and principal place of business at 330 W. 42nd Street in the city and State of New York.

Said respondent is now and has been for more than five years last past engaged in the business of conducting an advertising agency, preparing, disseminating and causing to be disseminated advertisements for vendors of various commodities, including the preparation "Doan's Pills" of respondent Foster-Milburn Company.

PAR. 4. Said respondents act in conjunction and cooperation with one another in the performance of the acts and practices hereinafter alleged.

PAR. 5. In furtherance of the sale and distribution of said medicinal preparation, said respondents, subsequent to March 21, 1938, have disseminated and caused the dissemination of certain advertisements concerning said preparation, Doan's Pills, by the United States mails, and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said preparation, including, but not limited to the Miami Herald, Miami, Florida, the Washington Daily News, and Photoplay; and respondents have disseminated and caused the dissemination of advertisements concerning said preparation by various means, including, but not limited to, the advertisements referred to above, for the purpose

of inducing and which are likely to induce, directly or indirectly, the purchase of its said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. Among the statements and representations contained in said advertising disseminated as aforesaid, (and especially in the Miami Herald, a newspaper published in Miami, Florida, on June 18, 1948), are the following:

Advertisement in the Miami Herald, Miami, Florida, June 18, 1948:

Backache Leg Pains May Be Danger Sign Of Tired Kidneys

If backache and leg pains are making you miserable, don't just complain and do nothing about them. Nature may be warning you that your kidneys need attention.

The kidneys are Nature's chief way of taking excess acids and poisonous waste out of the blood. They help most people pass about 3 pints a day.

If the 15 miles of kidney tubes and filters don't work well, poisonous waste matter stays in the blood. These poisons may start nagging backaches, rheumatic pains, leg pains, loss of pep and energy, getting up nights, swelling, puffiness under the eyes, headaches and dizziness. Frequent or scanty passages with smarting and burning sometimes shows there is something wrong with your kidneys or bladder.

Don't wait! Ask your druggist for Doan's Pills, used successfully by millions for over 40 years. They give happy relief and will help the 15 miles of kidney tubes flush out poisonous waste from the blood. Get Doan's Pills.

Advertisement in Washington Daily News, November 7, 1950:

Happy Is The Day When Backache Goes Away

As we get older, stress and strain, overexertion, excessive smoking or exposure to cold sometimes slows down kidney function. This may lead many folks to complain of nagging backache, loss of pep and energy, headaches, and dizziness. Getting up nights or frequent passages may result from minor bladder irritations due to cold, dampness or dietary indiscretions.

If your discomforts are due to these causes, don't wait, try Doan's Pills, a mild diuretic. Used successfully by millions for over 50 years. While these symptoms may often otherwise occur, it's amazing how many times Doan's gives happy relief—help the 15 miles of kidney tubes and filters flush out waste. Get Doan's Pills today!

Advertisement in the magazine "Photoplay" of May 1951.

Happy is the Day When Backache Goes Away * * *

When kidney function slows down, many folks complain of nagging backache, loss of pep and energy, headaches and dizziness. Don't suffer longer with these discomforts if reduced kidney function is getting you down—due to such common causes as stress and strain, over-exertion or exposure to cold. Minor bladder irritations due to cold or wrong diet may cause getting up nights or frequent passages.

Don't neglect your kidneys if these conditions bother you. Try Doan's Pills—a mild diuretic. Used successfully by millions for over 50 years. While often otherwise caused, it's amazing how many times Doan's gives happy relief from

these discomforts—help the 15 miles of kidney tubes and filters flush out waste. Get Doan's Pills today.

PAR. 7. Through the use of the advertisements containing the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondents represent as follows:

A. That the use of Doan's Pills, as directed, is a cure or remedy for diseases, disorders and dysfunction of the kidneys and will relieve the symptoms and conditions arising by reason thereof, among them being backache, leg pains, rheumatic pains, headaches, dizziness, loss of pep and energy, swelling, puffiness under the eyes, frequent or scanty passages with smarting and burning, and getting up nights.

B. That poisonous waste matter and excess acids in the blood cause the symptoms and conditions enumerated in Paragraph A above and that the use of Doan's Pills, as directed, will remove or cause the kidneys to remove such poisonous waste matter and excess acids and thereby relieve said symptoms and conditions.

C. That the process of aging, stress and strain, over-exertion, excessive smoking and exposure to cold or dampness slows down kidney function, resulting in backaches, headaches, dizziness, loss of pep and energy, and that the taking of Doan's Pills, as directed, will relieve such resultant symptoms and conditions.

D. That the use of Doan's Pills, as directed, is a cure or remedy for diseases and disorders of the bladder and will relieve the symptoms and conditions resulting therefrom, among them being getting up nights and frequent or scanty passages with smarting or burning.

PAR. 8. The said advertisements are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, the use of Doan's Pills, as directed or otherwise, is not a cure or remedy for nor will they have any therapeutic value in the treatment of any disease, disorder or dysfunction of the kidneys or bladder and will not relieve or have any beneficial effect upon any symptom or condition which may arise by reason of any disease, disorder or dysfunction of such organs. The use of said pills, as directed or otherwise, will not remove, or cause the kidneys to remove, poisonous waste matter or excess acids from the blood or have any beneficial effect upon any symptom which may result therefrom.

PAR. 9. The use by the respondents of the said advertisements containing materially misleading statements and representations has had, and now has, the tendency and capacity to mislead a substantial number of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and to induce the

purchase of substantial quantities of respondent Foster-Milburn's preparation by reason of said erroneous and mistaken belief.

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

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint in this proceeding charges that the respondents have violated the provisions of the Federal Trade Commission Act by misrepresenting the therapeutic qualities of Doan's Pills, a preparation containing drugs as "drug" is defined in the Act.

Respondent Foster-Milburn Company is a corporation organized under and existing by virtue of the laws of the State of New York, with its office and principal place of business located at 468 Dewitt Street, Buffalo, New York. It sells and distributes the Doan's Pills preparation in commerce throughout the entire United States.

Respondent Street & Finney, Inc., is also a New York corporation, with its office and principal place of business at 76 Ninth Avenue in the city of New York, New York. It is engaged in the advertising business and, in conjunction therewith, has prepared and disseminated throughout the United States advertisements for various commodities, including the preparation Doan's Pills.

Following issuance of the complaint and the filing of an answer thereto, numerous hearings were held. "Testimony adduced at said hearings has included that of certain experts called by counsel supporting the complaint and that of certain experts called by respondents, and other evidence has been taken, all as contained in the record herein consisting of one volume of pleadings, five volumes of testimony and seventeen volumes of exhibits."[1] Reception of further evidence was deferred in order to permit negotiations looking to the possibility of a consent settlement.

These negotiations have been completed and a consent settlement was agreed upon, which was submitted in the form of a Stipulation For A Consent Order. This is signed by both corporate respondents, by counsel for respondents and by counsel supporting the complaint, and is approved by the Director and the Assistant Director of the Commission's Bureau of Litigation. A memorandum of transmittal urging acceptance of this consent settlement is signed by counsel supporting the complaint and approved by the Director and Assistant

[1] Stipulation For Consent Order, paragraph 5, page 2.

Director of the Commission's Bureau of Litigation, the Chief of the Division of Scientific Opinions, Bureau of Investigation of the Commission, and by counsel for respondents. Thereafter, an amendment to the Stipulation For A Consent Order was agreed upon and submitted. The entire agreement of the parties is embodied in the stipulation as amended.

The stipulation, as amended, 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 answer to the complaint heretofore filed by respondents shall be withdrawn; 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 nor does it constitute a license or permission to respondents or either of them to represent either directly or indirectly that the Federal Trade Commission has approved any advertising heretofore used or proposed to be used"; 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 further hearings 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 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 other essential provisions of the agreement are embodied in five numbered paragraphs (6 to 10, inclusive) of the stipulation, which are as follows:

6. Each Doan's Pill at the time the complaint herein was issued and at present contains:

Theobromine Sodium Salicylate (of which the sodium salicylate component is .42 grain)	1.0 grain
Extract of Buchu	0.5 grain

Extract of Uva Ursi	1.5 grains
Vitamin A	500 USP units

7. The Respondents, in their recommendations for use, direct that the product be taken at the rate of three pills four times a day with a glass of water. The product, taken as so directed, provides a daily dosage of 12 grains of theobromine sodium salicylate (of which the sodium salicylate component is approximately 5 grains), 6 grains of extract of buchu, 18 grains of extract of uva ursi and 6,000 USP units of Vitamin A.

8. The challenge of the therapeutic value of the product, set forth in the complaint, goes to the product whether taken as directed or otherwise. The record herein shows differences of opinion among the expert witnesses who testified with regard, among other things, to (a) the relationship between kidney function and bladder irritation and factors and symptoms mentioned in the advertisements quoted in the complaint herein and in the circular packaged with the product; and (b) the therapeutic actions and effectiveness of the product.

9. It is stipulated and agreed that the requirements of the public interest will best be served and all of the issues in this proceeding disposed of by the entry of an Order in the form set out in paragraph numbered 13 below,[2] in conjunction with an agreement by the Respondents, which they hereby make, as follows:

The theobromine sodium salicylate content and the sodium salicylate content of each pill will be increased and the directions for use changed so that Doan's Pills, when taken as directed, will provide a daily dosage of not less than 30 grains of theobromine sodium salicylate, as compared with the present 12 grains, and a total daily dosage of not less than 30 grains of sodium salicylate (including the sodium salicylate content in the theobromine sodium salicylate) as compared with the present 5 grains.

10. The Respondents contemplate that upon the increase of the theobromine sodium salicylate and sodium salicylate provided for above, the additional ingredients of Doan's Pills (other than coating and filler) will be extract of buchu, extract of uva ursi and Vitamin A.

The fact that evidence has been presented in this proceeding does not militate against approval and acceptance of the stipulation as amended. The order agreed upon covers all the issues raised in the complaint. Accordingly, respondents' answer herein is withdrawn, and the stipulation, as amended, is accepted. Based upon the complaint and the stipulation as amended, this proceeding is found to be in the public interest, and the following order is issued:

It is ordered, That Respondents Foster-Milburn Company, a corportation, and Street & Finney, Inc., a corporation, and their respective officers, representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of Doan's Pills or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly:

[2] The order hereinafter adopted and issued is taken in full from paragraph 13 of the stipulation as amended.

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 through inference:

(*a*) That said product, used as directed or otherwise, is a cure or remedy for or will have any therapeutic value in the treatment of any disease, disorder or dysfunction of the kidneys or bladder or that it will relieve or have any beneficial effect upon any symptom or condition which may arise by reason of any disease, disorder or dysfunction of such organs.

(*b*) That said product, used as directed or otherwise, will remove, or cause the kidneys to remove, poisonous waste matter or excess acids from the blood or have any beneficial effect upon any symptom or condition which may result therefrom.

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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said product, which contains any of the representations prohibited in Paragraph 1 hereof.

Provided, however, That nothing in this order contained or provided shall be construed as prohibiting Respondents or either of them from disseminating or causing to be disseminated in commerce, as "commerce" is defined in the Federal Trade Commission Act, any and all claims and representations of the character set forth below, when made with respect to a product (whether sold under the name of Doan's Pills or under any other name) constituted and recommended for use as provided in Paragraphs 9 and 10 of the stipulation by which Respondents have agreed that the Order, of which this proviso is a part, may be entered in the disposition of this proceeding. The claims and representations referred to above are as follows:

"Factors often present in our daily lives such as over-exertion, the stresses and strains of active life and emotional upsets may be accompanied by such discomforts as backache, headache, dizziness and muscular aches and pains. Also factors such as dietary indiscretions may contribute to mild bladder irritations.

"When taken for the conditions described above Doan's Pills often help relieve such discomforts by their analgesic action, by a soothing effect to allay bladder irritation and by their mild diuretic action."

DECISION OF COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having come before the Commission upon the hearing examiner's initial decision herein filed January 10, 1955, accepting a

stipulation for a consent cease and desist order theretofore submitted by the parties pursuant to Rule V of the Commission's Rules of Practice; and

The Commission, by order entered February 18, 1955, having extended until further order of the Commission the date on which said initial decision would otherwise become the Commission's decision under Rule XXII; and

The Commission having now determined that the initial decision is adequate and appropriate to disposed of this proceeding:

It is ordered, That the aforesaid initial decision shall, on March 25, 1955, become the decision of the Commission, it being understood, however, that the proviso contained in the order to cease and desist shall not be construed as an approval, express or implied, by the Commission of any of the claims or representations therein referred to, or of any other claims or representations, when made with respect to any product, whether constituted and recommended for use as provided in paragraphs 9 and 10 of the stipulation by which respondents agreed that the order of which said proviso was a part may be entered in disposition of this proceeding, or otherwise.

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

IN THE MATTER OF

PHILIP MORRIS & COMPANY, LTD., INC.

Docket 4794. Complaint, Aug. 5, 1942—Decision, Mar. 27, 1955

Order dismissing complaint charging false advertising of cigarettes, on the ground that it was not in the public interest to proceed further on advertising claims which had been abandoned, and particularly in view of abandonment of the use of hygroscopic agent which was the basis for the advertising.

Mr. Frederick J. McManus and *Mr. Daniel J. Murphy* for the Commission.

Lee, Toomey & Kent, of Washington, D. C., and *Pennie, Edmonds, Morton, Barrows & Taylor* and *Conboy, Hewitt, O'Brien & Boardman*, of New York City, for respondent.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

This proceeding is before the Hearing Examiner upon motion of respondent to dismiss this proceeding without prejudice, affidavit in support thereof, and answer to respondent's motion filed by counsel in support of the complaint.

On December 29, 1952, the Commission issued its order to cease and desist [1] in this proceeding from which an appeal was taken to the United States Court of Appeals for the District of Columbia. Thereafter, on motion of the Commission, the United States Court of Appeals on August 28, 1953,[2] entered its order vacating the order to cease and desist issued by the Commission and remanded the petition for review to the Federal Trade Commission for reconsideration and such disposition as public interest, the facts and the law may warrant. Thereafter, on May 19, 1954, the Commission issued its order that this proceeding be reopened and remanded to the Hearing Examiner for the receipt of such further testimony and evidence as may be offered in support of and in opposition to the allegations of the complaint, which order was modified on November 26, 1954, by adding thereto that the Hearing Examiner should receive such further testimony and other proper evidence as may be offered as to the continuing public interest or lack of it in this proceeding. Prior to the taking of any testimony by the Hearing Examiner under the order of the Commission remanding this proceeding, the respondent filed its motion to dismiss without prejudice and affidavit in support thereof.

[1] 49 F. T. C. 703, 732.
[2] 5 S. & D. 790.

In his affidavit in support of said motion, O. Parker McComas, President of Philip Morris & Company, Ltd., Inc., stated: that the respondent had abandoned its advertising that the smoke from its "Philip Morris" brand of cigarettes is less irritating to the throat than the smoke from cigarettes of other leading brands; that said respondent had abandoned the use of the hygroscopic agent which was the basis for said advertising; and that the respondent had abandoned any advertising representing that the smoke from its said cigarettes will not leave an after taste. It was further stated in said affidavit that it is not the intention of the respondent to resume said advertising or the use of said hygroscopic agent. In its answer to respondent's motion and affidavit, counsel in support of the complaint stated, that on the basis of the facts regarding abandonment of the questioned advertising and the use of the hygroscopic agent and the intention not to resume such advertising or the use of the former hygroscopic agent, that no objection is offered to respondent's motion to dismiss the complaint without prejudice.

The Hearing Examiner, having considered said motion and affidavit in support thereof, the answer of counsel in support of the complaint thereto, and the record herein, and being now duly advised in the premises, is of the opinion that it is not in the public interest to proceed further on advertising claims which have been abandoned, particularly in view of the change of the composition of the cigarettes so far as the hygroscopic agent is concerned and the expressed intention of the respondent not to resume said advertising.

It is therefore ordered, That the complaint herein be, and the same is hereby, dismissed without prejudice.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on March 27, 1955, become the decision of the Commission.

IN THE MATTER OF

NEW YORK COFFEE AND SUGAR EXCHANGE, INC., ET AL.

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

Docket 6235. Complaint, Oct. 7, 1954—Decision, Apr. 1, 1955

Consent order requiring the Coffee Exchange, the Coffee Clearing Association and their officials, to cease using restrictive contracts for trading in coffee for future delivery—specifically the "S" contract specifying Santos as the only Brazilian point of origin of coffee for futures trading in the United States, modified to include three other Brazilian ports, coffee from which was deliverable only at fixed penalties under values for Santos coffee—and to permit trading in all types of coffee in general use in this country.

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

Mr. Philip R. Layton and *Mr. Fletcher G. Cohn* for the Commission.

Van Vorst, Siegel & Smith, of New York City, for New York Coffee and Sugar Clearing Ass'n, Inc. and along with—

Covington & Burling, of Washington, D. C., for New York Coffee and Sugar Exchange, Inc. and certain members thereof.

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 the parties hereinafter referred to as respondents have violated the provisions of Section 5 of the Federal Trade Commission 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 this respect as follows:

PARAGRAPH 1. Respondent, New York Coffee and Sugar Exchange, Inc., hereinafter referred to as "Respondent Exchange," was incorporated as the "Coffee Exchange of the City of New York" under a special act of the New York State Legislature on June 2, 1855. The only important change in the corporate setup of the Respondent Exchange since its organization occurred in 1916 when its scope was extended to include sugar and its name was changed to that which it now has. It is a non-stock membership corporation with its office and principal place of business being located in the city of New York, New York.

Respondent New York Coffee and Sugar Clearing Association, Inc., hereinafter referred to as "Respondent Association," is a stock corporation organized and doing business under the laws of the State of New York with its office and principal place of business being located in New York City, New York.

Respondent Gustavo Lobo, Jr., is President of the Respondent Exchange for the year 1954, as well as a member of its Board of Managers, and likewise is a member of Respondent Exchange; he is a stockholder in respondent Association and is affiliated with Lobo & Company, which is a clearing member of Respondent Association. His office and principal place of business is located at 99 Wall Street, New York 5, New York.

Respondent Leon Israel, Jr., is Vice President of the Respondent Exchange for the year 1954, as well as a member of its Board of Managers, and likewise is a member of Respondent Exchange; he is a stockholder in Respondent Association and is affiliated with Leon Israel & Bros., which is a clearing member of Respondent Association. His office and principal place of business is located at 101 Front Street, New York 5, New York.

Respondent William F. Prescott is Treasurer of the Respondent Exchange for the year 1954, as well as a member of its Board of Managers, and likewise is a member of Respondent Exchange; he is a stockholder in Respondent Association and is affiliated with Farr & Co., which is a clearing member of Respondent Association. His office and principal place of business is located at 120 Wall Street, New York 5, New York.

Respondent G. W. Knauth is Secretary of the Respondent Exchange for the year 1954, as well as a member of its Board of Managers; he is a stockholder in Respondent Association and is affiliated with the New York Sugar Refining Company, which is a clearing member of Respondent Association. His office and principal place of business is located at 100 Wall Street, New York 5, New York.

Respondent Jack R. Aron is a member of the Respondent Exchange; he is a stockholder in Respondent Association and is affiliated with J. Aron & Co., Inc., which is a clearing member of Respondent Association. His office and principal place of business is located 336 Magazine Street, New Orleans, Louisiana.

Respondent Louis Blumberg is a member of the Respondent Exchange; he is a stockholder in Respondent Association and is affiliated with J. Aron & Company, which is a clearing member of Respondent Association. His office and principal place of business is located at 91 Wall Street, New York, New York.

Respondent Alfred Boedtker is a member of the Respondent Exchange; he is a stockholder in Respondent Association and is affiliated with Volkart Brothers Company, which is a clearing member of Respondent Association. His office and principal place of business is located at 60 Beaver Street, New York 4, New York.

Respondent Adrian C. Israel is a member of Respondent Exchange; he is a stockholder in Respondent Association and is affiliated with A. C. Israel & Co., which is a clearing member of Respondent Association. His office and principal place of business is located at 95 Front Street, New York 5, New York.

Respondent Chandler A. Mackey is a member of Respondent Exchange; he is a stockholder in Respondent Association and is affiliated with C. A. Mackey & Co., which is a clearing member of Respondent Association. His office and principal place of business is located at 111 Wall Street, New York 5, New York.

Respondent Phillips R. Nelson is a member of Respondent Exchange; he is a stockholder in Respondent Association and is affiliated with Ruffner, Burch & Co., which is a clearing member of Respondent Association. His office and principal place of business is located at 98 Front Street, New York 5, New York.

Respondent S. A. Schonbrunn is a member of Respondent Exchange; he is a stockholder in Respondent Association and is affiliated with S. A. Schonbrunn & Co., which is a clearing member of Respondent Association. His office and principal place of business is located at 77 Water Street, New York 5, New York.

Respondent Gustav Wedell is a member of Respondent Exchange; he is a stockholder in Respondent Association and is affiliated with The East Asiatic Co., Inc., which is a clearing member of Respondent Association. His office and principal place of business is located at 103 Front Street, New York 5, New York.

The aforesaid respondents, Jack R. Aron, Louis Blumberg, Alfred Boedtker, Adrian C. Israel, Chandler A. Mackey, Phillips R. Nelson, S. A. Schonbrunn, and Gustav Wedell, individually as members and also as representatives of other members of New York Coffee and Sugar Exchange, Inc., do not constitute the entire membership of the Respondent Exchange which is approximately 314 with the number and membership of Respondent Exchange varying from year to year so that it is impracticable to specify here by name each and all of the present members of the Respondent Exchange without manifest delay and inconvenience. Therefore, the Commission names and includes as respondents in this proceeding the aforementioned individuals, both individually as members and as representatives of the entire member-

ship of said respondent, and all such members as a group are therefore made respondents herein and hereinafter are referred to as "respondent members."

PAR. 2. The purposes of the Respondent Exchange, as set forth in its charter, are:

1. To provide, regulate and maintain a suitable building, or rooms, for the purchase and sale of coffee and other similar articles in the city of New York.

2. To adjust controversies between its members.

3. To inculcate and establish just and equitable principles in trade.

4. To establish and maintain uniformity in its rules, regulations, and usage.

5. To adopt standards of classifications.

6. To acquire, preserve, and disseminate useful and valuable information, and generally,

7. To promote the coffee and sugar trades in the city of New York, to increase their amounts and to augment the facilities with which they may be conducted.

The government of the Respondent Exchange is vested in a Board of Managers, consisting of three officers, the president, vice president and treasurer, and twelve members divided into two classes of six members each, with one class automatically retiring each year. This board combines in one body all of the executive management, legislative, regulative and quasi-judicial functions exercised by the Respondent Exchange in its daily operations. The by-laws of the Respondent Exchange provide that the president of the Respondent Exchange shall, subject to the approval of the Board of Managers, appoint approximately twenty standing committees.

Among these is a committee on coffee which consists of five members, at least one of whom, the chairman, must be a member of the Board of Managers; and two members must be identified with the Mild Coffee Trade. This committee considers, reports and recommends to the Board of Managers, for its action, such matters pertaining to coffee as they consider advisable and beneficial to the interests of the Respondent Exchange.

The by-laws of the Respondent Exchange provide that "no contract for the future delivery of Coffee shall be recognized, acknowledged or enforced by the Exchange or any Committee or Officer thereof, unless both parties thereto shall be members of the New York Coffee and Sugar Exchange, Inc., provided, however, that members shall

offer their contracts for clearance to the New York Coffee and Sugar Clearing Association, Inc., which shall become by substitution a party thereto in place of a member, and, thereupon, such Association shall become subject to the obligations thereof and entitled to all the rights and privileges of a member in holding, fulfilling or disposing thereof."

The by-laws of the Respondent Exchange further specifically provide that all contracts for the future delivery of coffee shall be in a form set forth in said by-laws.

The by-laws of Respondent Exchange cannot be altered or amended unless same has been approved by a two-thirds vote of the Board of Managers present and voting, and ratified by a majority vote of the respondent members voting by ballot, at an election held for that purpose, of which proper notice has been given.

PAR. 3. The purpose of the Respondent Association, with respect to coffee, is the purchase and sale of coffee for future delivery and the acquisition by purchase or otherwise of contracts, made in accordance with the by-laws, rules and regulations of the Respondent Exchange "for the purchase or sale of Coffee * * * for future delivery, and the assumption of the obligations arising thereunder; the settling, adjusting and clearing for compensation of such contracts; the buying, selling, receiving, carrying, storing and delivering of Coffee * * * but only in connection with the foregoing purchases."

PAR. 4. Respondent Association has less than 100 stockholders, each of whom is a member of respondent Exchange. Each of said stockholders individually, or the firm or corporation with which he is affiliated, is known as a "clearing member" of Respondent Association. Respondent members enter into contracts with each other for the future delivery of coffee in accordance with the by-laws, rules and regulations of the Respondent Exchange, and in so doing avail themselves of the facilities and services furnished by said Respondent Exchange. Such contracts, thus entered into by respondent members, are cleared through the Respondent Association by its clearing members of the Respondent Association, with the result that the Respondent Association assumes the obligations of the respondent members of the Respondent Exchange under such contracts.

Such contracts for the future delivery of coffee are entered into by respondent members for their own account or for the account of others who either have an interest in coffee or are speculating. Such contracts provide for the purchase and sale of a specified amount of green coffee of certain grades and qualities at a certain price for delivery at a certain place within a certain month in the future.

Such contracts for future delivery on Respondent Exchange ordinarily are not actually performed by making or taking delivery of the coffees specified therein but are offset by other contracts which assume a contrary obligation.

PAR. 5. "Transactions in futures," as exemplified in the buying and selling of coffee for future delivery by the respondent members on the Respondent Exchange and Respondent Association, are affected with a national public interest. The prices for the coffee involved in such futures contracts are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the actual prices to the producers and consumers of coffee. There is a direct relationship existing between the prices specified in a contract for delivery of coffee at a future date and the "spot" price of that same coffee on this date.

In order for the respondent members to be enabled successfully to offset their obligations to sell and purchase under futures contracts, that is, in order to "hedge," the "spot" prices must be based upon the future market. As a result, those who purchase and sell coffee on the "spot" market continually turn to the prices determined in the Respondent Exchange for future deliveries of coffee.

PAR. 6. Coffee consists of some two dozen species or growths and is grown in many countries of Central and South America and Africa. Brazil, the largest producer, accounts for about 47% of the world's supply of coffee. None is produced in the continental United States. The American trade deals almost exclusively in coffee which is grown in the Western Hemisphere. The trade makes a broad distinction between coffees produced in Brazil, which are described as "Brazils" and all the others, which are described as "milds."

Furthermore, Brazilian coffees are classified into several growths, which, broadly speaking, bear the names of the ports in Brazil through which, for the most part, they are exported, one of which, for example, is Santos.

There is also a variation among the "milds." They typically bring a better price than Brazils. Colombian, other Central and South American coffees, some Arabian and some African coffees are the principal "milds."

A beverage may be made from any one coffee but the product usually sold commercially to consumers is a blend. While the composition of any given blend ordinarily is a trade secret, it is known that the standard brands of good coffee in the United States are a blend of 15 to 40 percent of mild Columbian and Central American coffees with the balance being of Brazilian coffees.

The United States is the largest coffee consumer in the world, taking approximately 65% of the world's exportable production. In 1953 this country imported 2.78 billion pounds of coffee valued at almost one and a half billion dollars. Fifty percent of the total coffee imported into the United States is from Brazil. About forty percent of all imports from Brazil (or about twenty percent of total imports) enters the United States through the port of New York. Approximately fifty percent of such Brazilian coffee shipped to New York (or about ten percent of total imports) is shipped from the port of Santos, Brazil, with the bulk of the balance being shipped from the three other Brazilian ports which are referred to in Paragraph 10. A substantial part of this Brazilian coffee coming into New York is scheduled for processing by its owners and is usually not available for other purposes.

PAR. 7. Respondents collectively are engaged in interstate commerce, as such "commerce" is defined in the Federal Trade Commission Act, in the business of operating a coffee futures market. Each of the respondents, individually, enters into contracts or furnishes services or facilities, or both, which constitute a separate business as well as a part of said futures market business.

Said futures market business is based upon contracts for the purchase and sale of coffee for future delivery entered into by and between respondent members on their own account, or for the account of others located in many foreign countries and in States other than the State of New York. Said contracts are traded in on the Respondent Exchange under the terms of its by-laws and rules and by the use of its services and facilities. Thereafter, said contracts are cleared through Respondent Association by respondent members, in the manner hereinbefore described, with the result that said Association assumes the obligations of respondent members under said contracts.

Involved in said futures market business, and without which said business could not be conducted, is the continuous transmission of great quantities of money or credit, documents, information, and communications between the State of New York and many other States of the United States and also many foreign countries.

Furthermore, many of respondent members are also directly engaged, for their own account or for the accounts of others, in the purchase and sale of coffee in some form, in connection with which they ship, or cause to be shipped, such coffee from many foreign countries into the United States and also between and among the several States of the United States, or both. Involved in, and part of, said interstate commerce, so engaged in by a substantial number of

said respondent members, is the purchase and sale of coffee for future delivery under the terms of the aforesaid contracts traded in as aforesaid.

PAR. 8. Competition exists, on the Respondent Exchange and in the Respondent Association, between the respondent members as well as between such members and others who, while not members, act through some respondent members, in the purchase and sale of contracts for future delivery of coffees produced in different parts of Brazil as well as those produced in other parts of the world, regardless of ports of importation into the United States and regardless of the grades, growths and qualities of such coffees; competition also exists between some of the respondent members and between such members and others in the purchase and sale of coffee in some form: except insofar as both types of such competition have been restricted and restrained by the illegal agreement, understanding and planned common course of action between and among the respondents and the acts and practices performed by said respondents as part of and in pursuance thereto, as hereinafter set forth.

PAR. 9. The Respondent Exchange, acting for itself and also on behalf of its officials and the respondent members, the respondent members themselves, and the Respondent Association acting for itself and the respondent members, have, since about 1946, entered into and maintained, and are still maintaining, an agreement, understanding and planned common course of action to restrict and restrain, and are still restricting and restraining the entering into of, and trading in, contracts on the Respondent Exchange for the buying and selling of coffee for future delivery and also the actual buying and selling of coffee itself.

PAR. 10. Pursuant to and in furtherance of the aforesaid agreement, understanding and planned common course of action, respondent members, in accordance with the provisions of the by-laws of the Respondent Exchange, hereinbefore set forth in Paragraph 2, did, in conjunction with, and in cooperation with, Respondent Exchange, in November 1948, adopt and have since maintained a form of contract for the buying and selling of coffee for future delivery by respondent members on Respondent Exchange, which unreasonably restricts, restrains and limits competition in interstate and foreign commerce in coffee and the entering into of, and trading in, contracts in interstate and foreign commerce on Respondent Exchange and in Respondent Association, for the future delivery of coffees of grades, growths and qualities other than those covered by said form of contract.

Under the terms of said contract, which is designated by said Respondent Exchange as the "S" contract and which was amended and modified by the respondent members in conjunction with Respondent Exchange in 1953, there was, and is, deliverable only coffee of certain specified grades which is grown in Brazil and shipped from a limited number of specified ports therein to the port of New York. Prior to said modifications, said contract specified Santos as the only Brazilian port of origin. After said modification, said contract specified four Brazilian ports of origin, including Santos, but provided that deliverable coffee, shipped from said Brazilian ports other than Santos, was deliverable only at fixed differentials under the values for deliverable coffee shipped from Santos.

Although there may have been and may be available on Respondent Exchange and in Respondent Association, for the purpose of buying and selling coffee for delivery in the future, contracts other than the aforesaid contract "S," the provisions of such other contracts, pursuant to and in futherance of the aforesaid agreement, understanding and planned common course of action, were and are so prepared, constructed and construed by respondents so as to prevent, and they have and do actually prevent, the respondent members from dealing on the Respondent Exchange and through and by means of respondent Association in any contracts except the aforesaid contract "S."

PAR. 11. The purpose and effect of the aforesaid agreement, understanding and planned common course of action between and among the respondents and the acts and practices done in furtherance thereof, and pursuant thereto, have been and are:

1. To restrict and restrain unduly trading by respondent members in contracts for the future delivery of coffee in the Respondent Exchange and by and through Respondent Association;

2. To prevent the trading by the respondent members on the Exchange, and by and through Respondent Association, from being an adequate reflection of the interaction of a substantial part of the total supply and demand of coffee;

3. To prevent the prices of futures in coffee from reflecting the reasoned judgment of many traders on both sides of the market;

4. To permit and enable, and they have permitted and enabled, the prices of futures to be subject to false starts, erratic movements, concentration in trading, and maneuvers that both reflect and create expectations and trading patterns inconsistent with actual supply and demand;

5. To narrow the effective commodity basis for futures contracts, traded in by respondent members on Respondent Exchange and by

and through Respondent Association, to coffee of certain specified grades which is grown in Brazil and shipped from four ports therein, including Santos, to the port of New York; and to tend to narrow said basis still further to said coffee shipped from only one of said ports, namely, Santos;

6. To tend to tie closely, at least for short periods of time, the prices of all coffees to those resulting from the trading on Respondent Exchange of contracts restricted to coffee production, and conditions of marketing, in a limited geographical area;

7. To prevent a substantial amount of "hedging" of coffee, including Brazilian coffee, in the futures market conducted by respondents;

8. To tend to bring about and result in prices at which coffees are actually bought, sold and delivered being inconsistent with competitive supply and demand conditions.

PAR. 12. In addition to the effects, as hereinbefore set forth, the aforesaid agreement, understanding and planned common course of action between and among the respondents and the acts and practices of the respondents, done in furtherance thereof and pursuant thereto, likewise have contributed to and promoted substantial increases in the prices which the consuming public has been required to pay for coffee, and have a dangerous tendency unduly to hinder competition in the purchase and sale of coffee in interstate and foreign commerce.

PAR. 13. Each of the respondents herein has, directly or indirectly, participated in, approved or adopted the aforesaid agreement, understanding and planned common course of action and the acts and practices done in furtherance thereof and pursuant thereto.

PAR. 14. The agreement, understanding and planned common course of action between and among the respondents, and the acts and practices done in furtherance thereof and in pursuance thereto, as hereinbefore alleged, have a dangerous tendency unduly to hinder and restrain competition between and among respondent members and between such members and others in the trading on Respondent Exchange, and by and through Respondent Association, of contracts for future delivery of coffee in commerce, as "commerce" is defined in the Federal Trade Commission Act, and have likewise restricted and restrained competition between and among respondent members and with others in the purchase and sale of coffee in commerce as same is defined by the Federal Trade Commission Act, and such agreement, understanding, planned common course of action and such acts and practices, all and singularly, are all to the prejudice and injury of the public and constitute unfair acts and practices and unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated April 1, 1955, the initial decision in the instant matter of hearing examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges respondents with violation of the Federal Trade Commission Act through the use of contracts which unduly restrict and restrain trading on the respondent Exchange in coffee for future delivery. A stipulation has now been entered into by respondent New York Coffee and Sugar Exchange, Inc., its four officers who were named as respondents, and respondent New York Coffee and Sugar Clearing Association, Inc., and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the filing of an answer to the complaint is waived, and that the complaint and stipulation shall constitute the entire record in the proceeding; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission to which respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if made after a full hearing, presentation of evidence, and findings and conclusions thereon, respondents specifically waiving any and all right, power and privilege to challenge or contest the validity of such order; that the order may be altered, modified or set aside in the manner provided by the Federal Trade Commission Act for other orders of the Commission; and that the signing of the stipulation is for settlement purposes only and does not constitute an admission by any respondent that he or it has violated the law as alleged in the complaint.

The hearing examiner has considered such stipulation and the order therein contained. The order provides a proper basis for settlement and conclusion of this proceeding. Inasmuch as the order relates to the forms of contract or contracts offered for trading on the respondent Exchange, the public interest is adequately safeguarded

by an order against the respondents named in the cease and desist order contained in the stipulation, and the dismissal of the complaint is appropriate as to the respondents named as individuals, or as members of the Exchange, or as representatives of other members of the Exchange.

The stipulation is hereby accepted and made a part of the record, the following jurisdictional findings made, and the following order issued:

1. Respondent New York Coffee and Sugar Exchange, Inc. (hereinafter referred to as "respondent Exchange"), is a corporation organized, existing and doing business under the laws of the State of New York, with its office and principal place of business located at 113 Pearl Street, New York 4, New York.

Respondent New York Coffee and Sugar Clearing Association, Inc., is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 66 Beaver Street, New York 4, New York.

Respondent Gustavo Lobo, Jr., is now and was President of the respondent Exchange for the year 1954, as well as a member of its Board of Managers. His office and principal place of business, as President and member of the Board of Managers of respondent Exchange, is located at 113 Pearl Street, New York 4, New York.

Respondent Leon Israel, Jr., is now and was Vice President of the respondent Exchange for the year 1954, as well as a member of its Board of Managers. His office and principal place of business, as Vice President and member of the Board of Managers of respondent Exchange, is located at 113 Pearl Street, New York 4, New York.

Respondent William F. Prescott was Treasurer of the respondent Exchange for the year 1954, as well as a member of its Board of Managers. His office and principal place of business for business of respondent Exchange is located at 113 Pearl Street, New York 4, New York.

Respondent G. W. Knauth was Secretary of the respondent Exchange for the year 1954 and is now Treasurer of respondent Exchange as well as a member of its Board of Managers. His office and principal place of business, as an official of respondent Exchange, is located at 113 Pearl Street, New York 4, New York.

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

ORDER

It is ordered, That respondents, New York Coffee and Sugar Exchange, Inc., a corporation, its successors, assigns, officers, directors, employees, agents and representatives; New York Coffee and Sugar Clearing Association, Inc., a corporation, its successors, assigns, officers, directors, employees, agents, and representatives; Gustavo Lobo, Jr., as President and member of the Board of Managers of respondent Exchange, his successors in each of said offices; Leon Israel, Jr., as Vice President and member of the Board of Managers of respondent Exchange, his successors in each of said offices; William F. Prescott, as Treasurer and member of the Board of Managers of respondent Exchange for the year 1954, and his successors in each of said offices; G. W. Knauth, as Secretary of respondent Exchange for the year 1954, and his successors in such office, directly or indirectly, jointly or severally, or through any corporate or other means or device, in connection with the operation of a coffee futures market, and in connection with the formation, adoption, entering into, trading in or the fulfillment of contracts for the purchase or sale of coffee in any form for future delivery in commerce, as 'commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in or carrying out any agreement, understanding or planned common course of action, whether express or implied, between any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts or practices:

1. Restricting or limiting trading in coffee for future delivery exclusively to the contracts open for trading on the respondent Exchange as of the date of August 1, 1954;

2. Restricting or limiting trading on respondent Exchange in coffee for future delivery to any contract or contracts which have the effect of excluding as deliverable thereunder Arabica coffee, other than grades or types which are not suitable for futures trading because of inferior quality, insufficient supply, or lack of uniformity, from any country which, during the initial three of the four preceding calendar years, exported to the United States a yearly average of 750,000 or more bags (adjusted to a weight of 132.276 pounds per bag) of Arabica coffee.

Provided, however, That it shall be a defense to any charge that respondents have violated this order by the use in any contract or contracts of premiums or discounts, if respondents show (1) that such premiums and discounts, when adopted, were realistically related

to values in the spot market, and (2) that such premiums and discounts were re-examined and readjusted not less frequently than every six months to relate realistically to values in the spot market and that all such readjusted discounts and premiums were incorporated in the contract or contracts thereupon opened for trading for new delivery months.

Provided, further, however, In the event of any modification or change, or discontinuance of, any futures contract open for trading on the respondent Exchange, nothing in this order shall be interpreted as prohibiting in any way the continued trading in any such futures contract only until the end of any delivery month for which an open interest has already been taken on such Exchange at the time of any such modification, change or discontinuance.

It is further ordered, That the complaint herein be, and it is herewith, dismissed as to Gustavo Lobo, Jr., Leon Israel, Jr., William F. Prescott, G. W. Knauth, Jack R. Aron, Louis Blumberg, Alfred Boedtker, Adrian C. Israel, Chandler A. Mackey, Phillips R. Nelson, S. A. Schonbrunn and Gustav Wedell, as individuals, as members of the respondent Exchange and as representatives of other members of respondent Exchange but not as to Gustavo Lobo, Jr., Leon Israel, Jr., William F. Prescott and G. W. Knauth as officials of the respondent Exchange.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents, New York Coffee and Sugar Exchange, Inc., New York Coffee and Sugar Clearing Association, Inc., and Gustavo Lobo, Jr., Leon Israel, Jr., William F. Prescott, and G. W. Knauth as officials of the respondent New York Coffee and Sugar Exchange, Inc., shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of April 1, 1955].

Complaint

IN THE MATTER OF

RECIPE FOODS, INC., ET AL.

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

Docket 6286. Complaint, Jan. 11, 1955—Decision, Apr. 1, 1955

Consent order requiring one of the largest manufacturers of beverage syrup in the United States to cease, as an inducement to wholesale grocers and retail chain store organizations to discontinue handling competitive brands, buying and exchanging their stocks of competitive syrups either for cash or for credit against purchases of its own product; guaranteeing that their profits would be equalled or doubled and tripled if its products were handled exclusively; and selling stocks of competitive products obtained from them below cost and below competitors' prices.

Before *Mr. Everett F. Haycraft*, hearing examiner.
Mr. Andrew C. Goodhope for the Commission.
Nyburg, Goldman & Walter, of Baltimore, Md., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission having reason to believe that Recipe Foods, Inc., a corporation, Theodore Marks, an individual and its president, and Isadore S. Rosen, an individual and its vice president, hereinafter referred to as respondents, have violated the provisions of Section 5 of said Act (15 U. S. C. A. Sec. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Recipe Foods, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, having its principal office and place of business located at 4805 Garrison Boulevard, Baltimore, Maryland, with a branch plant located at Terre Haute, Indiana.

Respondent Theodore Marks, is an individual and president of corporate respondent Recipe Foods, Inc.

Respondent Isadore S. Rosen, is an individual and vice president of corporate respondent Recipe Foods, Inc.

The individual respondents Theodore Marks and Isadore S. Rosen have at all times hereinafter mentioned controlled and directed corporate respondent Recipe Foods, Inc., and its policies and practices, including the methods, acts and practices mentioned herein.

PAR. 2. Respondents are now and for many years have been engaged in the processing, canning, sale and distribution of food items, including mayonnaise, salad dressing, chili sauce and prune juice, and for the last two years have been engaged in the preparation, manufacturing and distribution of liquid beverage concentrates primarily for home consumption, (commonly known as and hereinafter referred to as beverage syrup). The respondents' beverage syrup is sold in approximately eight different flavors and is packaged in glass containers containing approximately 12¾ fluid ounces and is sold under the respondents' trade name "Bennett's Fix-A-Drink." Respondents sell and distribute their beverage syrup throughout the United States, principally through the medium of food brokerage concerns to wholesale grocers and retail chain store organizations.

Respondents are one of the largest manufacturers of beverage syrup and are a substantial and important competitive factor in the preparation, manufacture, sale and distribution of beverage syrup in the United States; their total sales of such product during the year 1953 being $916,653 and from January 1, 1954 to July 30, 1954 being $1,318,207.00.

PAR. 3. Respondents now sell, and for the last two years have been selling, their beverage syrup, above described, throughout the States of the United States and the District of Columbia and cause such products, when sold, to be transported from the place of manufacture or storage to purchasers thereof located in States other than the place of manufacture or storage and there is now, and has been, a constant current of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act, in said products between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business as herein described, respondents are now, and for the last two years have been, in substantial competition in the sale of beverage syrup in commerce between and among the various States of the United States and the District of Columbia with other corporations, persons, firms and partnerships likewise engaged in the preparation, manufacture, sale and distribution of beverage syrup.

PAR. 5. In the course and conduct of their business in commerce, above described, respondents have engaged and are now engaging in the following methods, acts and practices:

(*a*) As an inducement to wholesale grocers and retail chain store organizations to discontinue competing brands of beverage syrup and handle respondents' beverage syrup, the respondents have bought and exchanged and have offered to buy or exchange and are now buying or

exchanging and offering to buy or exchange the stocks of competitive beverage syrup stocks and handled by such wholesale grocers and retail chain store organizations either for cash or for credit against purchases of beverage syrup from respondents.

(*b*) As an inducement to wholesale grocers and retail chain store organizations to discontinue competing brands of beverage syrup and to stock and handle respondents' beverage syrup, the respondents have guaranteed and offered to guarantee and are now guaranteeing and offering to guarantee that if respondents' beverage syrup is stocked and handled exclusively in place of competitors' products that such wholesale grocers' or retail chain store organizations' profits during the year respondents' products are stocked exclusively will be equal to or will be more than or will double or will triple the total profits obtained on all competitive beverage syrups stocked and sold in the previous year.

(*c*) Sold or offered to sell and selling or offering to sell beverage syrups manufactured by competitors of respondents which were purchased or obtained by respondents from customers (as alleged in (*a*) above) to other customers, including competitors' customers, at prices below the cost of such products to the respondents and at prices substantially lower than the prices charged by respondents' competitors for the same products.

PAR. 6. The aforesaid methods, acts and practices of respondents, as alleged in Paragraph Five have had and now have the following capacity, tendency, purpose and effect:

(*a*) To induce grocery wholesalers and retail chain store organizations which are customers of competitors of respondents to discontinue purchasing, stocking and selling said competitors' beverage syrups and instead to purchase, stock and sell respondents' beverage syrup;

(*b*) To enable wholesale grocers and retail chain store organizations, who purchase beverage syrups from respondents which were originally manufactured and sold by competitors of respondents, to sell such beverage syrups at prices below those at which competitors' customers are able to sell the same products;

(*c*) Unreasonably to injure, hinder, hamper and restrain competing manufacturers and to demoralize their markets, in that by selling, or offering to sell, at low prices and below cost, products originally manufactured by competitors, the respondents have created a condition whereby grocery wholesalers and retail chain store organizations, who have been buying from competitors at regular prices, are forced either to discontinue such purchases, or, by continuing to purchase from competitors of respondent, risking the necessity of meeting the low

resale price offered by other wholesale grocers and retail chains, who purchase the same products from proposed respondent. The demoralization of the markets of competing manufacturers as above described, has the additional effect of hampering and restraining said competing manufacturers in acquiring new outlets or sources of distribution; such prospective customers of said competing manufacturers are faced with the necessity of competing with purchasers of the same products who have secured said products from respondent on more advantageous terms as above alleged;

(*d*) Unreasonably to injure, hinder, hamper, restrain and preclude competing manufacturers of competitive products from disposing of their merchandise to grocery wholesalers and retail chain store organizations, and unreasonably to lessen, eliminate, restrain, hamper and suppress competition in the sale of beverage syrup.

PAR. 7. The aforesaid methods, acts and practices of respondents, as herein alleged, have the tendency and capacity to unfairly divert, and have unfairly diverted, trade to respondents from its competitors, and, in consequence thereof, injury has been done, and is now being done, by respondents to competition in commerce among and between the various States of the United States and the District of Columbia, and said methods, acts and practices are all to the prejudice and injury of the public and of respondents' competitors and customers of respondents' competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, within the meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated April 1, 1955, the initial decision in the instant matter of hearing examiner Everett F. Haycraft, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on January 11, 1955, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act. Thereafter, a stipulation was signed by the parties 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 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 set forth in the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations. Said stipulation further provides that all parties 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 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 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, presentation of evidence and findings and conclusions thereon and specifically waive any and all right, power or privilege to challenge or contest the validity of the order entered. It has been further stipulated and agreed that said stipulation, together with the complaint, shall constitute the entire record herein and that the complaint herein may be used in construing the terms of the said order to cease and desist, as hereinafter set forth, which may be altered, modified or set aside in the manner provided by the statute for the orders of the Commission, and 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.

This proceeding having now come on for final consideration by the Hearing Examiner on the complaint and the aforesaid stipulation for consent order dated February 11, 1955, the parties having expressly waived the filing of an answer, 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. Respondent Recipe Foods, Inc., is now, and at all times mentioned herein has been, a corporation organized and existing by virtue of the laws of the State of Maryland with its office and principal place of business located at 4805 Garrison Boulevard in the city of Baltimore, State of Maryland.

Respondent Theodore Marks is an individual and president of corporate respondent Recipe Foods, Inc.

Respondent Isadore S. Rosen is an individual and vice president of corporate respondent Recipe Foods, Inc.

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

ORDER

It is ordered, That respondents Recipe Foods, Inc., a corporation, Theodore Marks, an individual and president, and Isadore S. Rosen, an individual and vice president of corporate respondent Recipe Foods, Inc., and any officers, representatives, agents and employees of corporate respondent, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of beverage syrup in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from doing, directly or indirectly, any of the following acts or practices or using any of the following methods:

1. Buying or exchanging or offering to buy or exchange the stocks of competitive beverage syrup stocked and handled by any wholesale grocers or retail chain store organizations either for cash or credit against purchases of beverage syrup from respondents.

2. Guaranteeing or offering to guarantee to wholesale grocers or retail chain store organizations that if respondents' beverage syrup is stocked and handled exclusively in place of competitors' products, such wholesale grocers' or retail chain store organizations' profits during the year respondents' products are stocked exclusively will be equal to or will be more than or will double or will triple the total profits on all competitive beverage syrups stocked and sold in the previous year.

3. Selling or offering to sell beverage syrups which were purchased by respondents from any of its customers and which were manufactured by competitors of respondents at prices below the cost of such products to the respondents or at prices lower than the prices charged by respondents' competitors for the same products.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of April 1, 1955].

IN THE MATTER OF

KNOMARK MANUFACTURING COMPANY, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT AND OF SECS. 2 (d) AND 2 (e) OF THE CLAYTON ACT AS AMENDED

Docket 6264. Complaint, Nov. 19, 1954—Decision, Apr. 7, 1955

Consent order requiring one of the three largest manufacturers of shoe polishes, dyes, etc., including its "Esquire" brand, to cease discriminating in price between competing customers through (a) paying to some of them promotional allowances for furnishing services and facilities, and (b) furnishing certain others with facilities such as wire racks or dispensers for displaying its products and free demonstrator service, while not making proportional allowances or facilities available to competitors of those favored, in violation of subsections (d) and (e) of sec. 2 of the Clayton Act as amended; and to cease buying dealers' stocks of competing products and selling them to jobbers at reduced prices, and making cash payments to buyers of certain large customers without apprising their employers thereof, in violation of the Federal Trade Commission Act.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Paul R. Dixon and *Mr. William A. Mulvey* for the Commission.

Mr. Abraham Zemlock, of New York City, for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the corporation named as the respondent in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of sub-sections (d) and (e) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C. A., Sec. 13), and provisions of the Federal Trade Commission Act (15 U. S. C. A., Sec. 45), hereby issues its complaint stating its charges with respect thereto as follows:

Count I

PARAGRAPH 1. Respondent, Knomark Manufacturing Company, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 330 Wythe Avenue, Brooklyn, New York.

PAR. 2. Respondent is now and for many years has been engaged in the business of manufacturing and selling shoe polishes, including pastes, creams, dyes and other related products. Certain of these products are being, and have been sold under the brand name, "Esquire." It is one of the two or three largest firms engaged in the business of manufacture, sale and distribution of shoe polishes in the United States. It has grown with acceleration in recent years.

Respondent manufactures its products, or most of them, at its plant located in Brooklyn, New York, and sells such products to over 3400 retailer customers or purchasers in the United States and in other places subject to the jurisdiction of the United States for resale within such places to consumers.

Substantially all of such customers or purchasers are, either chain shoe stores, jobbers and retailers solely engaged either in the sale or repair of shoes, food and drug chain stores, variety chain syndicates and major department stores. Two or more of such customers or purchasers are located in each of a large number of different towns, cities and other trading areas, and such customers or purchasers, when so located, are in competition with each other in offering for resale and reselling respondent's products.

PAR. 3. In the course and conduct of its business, respondent engaged in commerce, as commerce is defined in the Clayton Act as amended by the Robinson-Patman Act, having shipped said products or caused them to be transported from their plant to their customers, having places of business located in the same and other States of the United States and the District of Columbia. Said products were sold by respondent to such customers for resale within the United States.

PAR. 4. In the course and conduct of its business in commerce, particularly during the past two or three years, respondent paid or contracted for payment money, credits, allowances or other things of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers, in connection with the sale or offering for sale of respondent's products, which it manufactures, sells or offers for sale; and respondent did not make or contract to make, such payments or considerations available on proportionally equal terms to all other of its customers competing in the sale and distribution of respondent's products.

PAR. 5. Included among and illustrative of the payments alleged in Paragraph 4 were credits and sums of money, by way of allowances, rebates and quantities of free merchandise, as compensation or in consideration for general promotional services or facilities in connection

with the offering for sale or sale of respondent's products, including displays and advertising in various forms. Such payments are hereinafter referred to as promotional allowances.

Promotional allowances were not available on proportionally equal terms to all of respondent's customers competing in the distribution of its shoe polishes, as alleged in Paragraph 4, in that:

(1) Respondent paid or contracted to pay promotional allowances to some competing customers, and respondent did not offer to pay or otherwise make available promotional allowances to all other competing customers.

(2) Respondent paid or contracted to pay promotional allowances to competing customers in amounts not determined by any percentage, and not equal to the same percentage of dollar volume of purchases or of any other measurable base; and respondent did not offer to pay or otherwise make available promotional allowances to all of such competing customers in amounts equal to and determined by the same percentage of dollar volume of purchase or of any other measurable base.

(3) Respondent paid or contracted to pay to some competing customers by granting and giving free quantities of its products to said customers, particularly to chain stores, in amounts not determined by any percentage, and not equal to the same percentage of dollar volume of purchases or of any other measurable base; and respondent did not offer to pay or otherwise make available this form of promotional allowance to all of such competing customers in amounts on an equally proportional basis or on any basis.

PAR. 6. The acts and practices of respondent as alleged above in Count I violates sub-section (d) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act. (15 U. S. C. A. Sec. 13)

Count 1

PARAGRAPH 1. The allegations of this paragraph are the same as the allegations made in Paragraphs 1, 2 and 3 of Count 1.

PAR. 2. In the course and conduct of its business in commerce, particularly during the past two or three years, respondent discriminated in favor of some purchasers against other purchasers of its product, bought for resale by contracting to furnish, furnishing, or contributing to the furnishing of services or facilities connected with the handling, sale, or offer for sale of such products so purchased upon terms not accorded to all competing purchasers on proportionally equal terms.

PAR. 3. Included among and illustrative of the services or facilities alleged in Paragraph 2 were wire racks or dispensers, fixtures espe-

cially designed for use in retail stores to display and offer for sale shoe polishes purchased from respondent. Said display racks or dispensers are priced and sometimes sold by respondent.

Display racks were not accorded on proportionally equal terms to all of respondent's purchasers competing in the distribution of its shoe polishes, as alleged in Paragraph 2, in that respondent contracted to furnish or furnished display racks or dispensers to some competing purchasers without charge, and respondent did not offer to furnish or otherwise accord display racks or dispensers without charge to all other of such competing purchasers but only offered to sell or sold display racks to such other competing purchasers.

PAR. 4. Also included among and illustrative of the services and facilities alleged in Paragraph 2 was the practice of respondent of furnishing prizes, money or merchandise to some competing customers for promotional enterprises without charge. This service was not accorded on proportionally equal terms to all of respondent's purchasers competing in the distribution of respondent's products in that respondent furnished this service to some of such competing customers and did not offer to furnish or otherwise accord it to all other of such competing customers.

PAR. 5. Also included among and illustrative of the services or facilities alleged in Paragraph 2 was the practice of respondent of furnishing some competing purchasers with free demonstrator service. This service was not accorded on proportionally equal terms to all of respondent's purchasers competing in the distribution of respondent's products in that respondent furnished this service to some of such competing customers and did not offer to furnish or otherwise accord it to all other competing customers.

PAR. 6. The acts and practices of respondent as alleged above in Count II violates sub-section (e) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act. (15 U. S. C. A., Sec. 13)

Count III

PARAGRAPH 1. The allegations of Paragraphs 1 and 2 of Count I of this complaint are hereby adopted and incorporated herein by reference and made a part of this Count III the same as if they were repeated here verbatim.

PAR. 2. In the course and conduct of its business, respondent engaged in commerce, as commerce is defined in the Federal Trade Commission Act, as amended, having shipped its products or caused them to be transported from New York to such customers or purchasers located

in the same and in the other States of the United States, and in other areas subject to the jurisdiction of the United States.

PAR. 3. Except to the extent that competition has been hindered, frustrated and lessened as set forth in this complaint, respondent has been and is in substantial competition with other corporations and individuals, firms and partnerships, engaged in the sale and distribution of shoe polishes and related products in commerce as the term is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, particularly during the past two years, respondent, in attempting to sell and in the sale and distribution of said products in interstate commerce, has used, engaged in, done and performed, among others, the following acts, practices, and methods with the effect of interfering with the sale of merchandise bearing the trade names and trademarks of competitors:

(1) Offered to buy and bought from retail dealers existing stocks of shoe polishes and related products sold and distributed by competitors to such retail dealers.

(2) Offered to sell and sold the shoe polishes and related products mentioned in sub-paragraph (1) above to jobbers at reduced prices who in turn offered for sale and sold said products to retail customers at prices substantially below those prices customarily obtained for such products.

(3) Offered to give and gave cash payments to buyers of certain large customers without apprising said customers or employers of said buyers of such payments.

PAR. 5. The above alleged acts, practices and methods of the respondent, all and singularly, have a dangerous tendency unduly to restrain, hinder, suppress and eliminate competition between and among respondent and its competitors in the sale and distribution of shoe polishes and related products in commerce within the meaning of the Federal Trade Commission Act, and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated April 7, 1955, the initial decision in the instant matter of hearing examiner Frank Hier, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Clayton Act, as amended by the Robinson-Patman Act (15 U. S. C. A. 12), and the Federal Trade Commission Act (15 U. S. C. A. 41), the Federal Trade Commission on November 19, 1954, issued its complaint in this proceeding against respondent, upon whom such complaint was duly served and thereafter answered.

Respondent is a New York corporation, located at 330 Wythe Avenue, Brooklyn, New York, and is engaged in the manufacture and sale of shoe polishes and related products under the brand name, "Esquire."

On January 20, 1955, counsel for the parties hereto entered into a stipulation providing for entry of a consent order, which stipulation appears of record. By the terms thereof, respondent admits all of the jurisdictional allegations set forth in the complaint; stipulates that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations; expressly waives 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 other and further procedures before the hearing examiner and the Commission to which respondent may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission. By the terms of said stipulation, respondent withdraws its answer heretofore filed by it; agrees that the order hereinafter set forth shall have the same force and effect as if made after a full hearing, presentation of evidence, and findings and conclusions thereon; specifically waives any and all right, power or privilege to challenge or contest the validity of said order; agrees that the stipulation, together with the complaint, shall constitute the entire record herein; agrees that the complaint herein may be used in construing the terms of said order, which order may be altered, modified, or set aside in the manner provided by the statute for the orders of the Commission; and agrees that the stipulation is subject to approval in accordance with Rules V and XXII of the Commission's Rules of Practice and that said order shall have no force and effect unless and until it becomes the order of the Commission. Said stipulation further provides that it is made for settlement purposes only and does not constitute an admission by the respondent that it has violated the law as alleged in the complaint.

On the basis of the foregoing, the undersigned hearing examiner concludes that this proceeding is in the public interest and in conformity with the action therein contemplated and agreed upon makes the following order:

ORDER

It is ordered, That respondent Knomark Manufacturing Company, Inc., a corporation, its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with the sale of shoe polishes and related products or of any other related products, in commerce, as "commerce" is defined in the aforesaid Clayton Act as amended, do forthwith cease and desist from:

I

A. Making or contracting to make any payment to or for the benefit of any customer unless a payment is offered to be made or otherwise made available to each of all other competing customers.

B. Making or contracting to make, to or for the benefit of competing customers, any payments in amounts which are not determined by a percentage of dollar volume of purchases or by some other measurable basis.

C. Making, or contracting to make, to or for the benefit of any customer, any payments in an amount equal to and determined by any percentage of dollar volume of purchases or of any other measurable base unless such a payment, in an amount equal to and determined by the same percentage of dollar volume, or of such other measurable base, as the case may be, is offered to be made or otherwise made available to each of all other competing customers.

D. Making, or contracting to make, to or for the benefit of any customer, any payment, unless such a payment is made available on proportionally equal terms to each of all other competing customers.

As used in Part I of this Order, "payment" means the payment of anything of value as compensation, or in consideration for any services or facilities furnished by or through any customer of respondent in connection with his handling, offering for sale or sale of products sold to him by respondent.

II

A. Discriminating between or among competing purchasers by furnishing any service or facility to any of them unless a service or facility is offered to be furnished or otherwise accorded to each of all of the others.

B. Discriminating between or among competing purchasers by furnishing any service or facility without charge to any of them unless a service or facility is offered to be furnished or otherwise accorded without charge to each of all of the others.

C. Discriminating between or among competing purchasers by furnishing them any service or facility in amounts which are not deter-

mined by a percentage of dollar volume of purchases or of some other measurable base.

D. Discriminating between or among competing purchasers by furnishing any service or facility to any of them in amounts equal to and determined by any percentage of dollar volume of purchases or of any other measurable base unless such service or facility in an amount equal to and determined by the same percentage of dollar volume of purchases or of such other measurable base, as the case may be is offered to be furnished or otherwise made available to each of all of the others.

E. Discriminating between or among competing purchasers by furnishing any service or facility to them upon terms not accorded to all of them on proportionally equal terms.

As used in Part II of this order:

1. "Service or facility" means any services or facilities connected with the handling, offering for sale, or sale of respondent's products by purchasers who bought them from respondent.

2. "Furnishing" means furnishing, contracting to furnish, or contributing to furnish.

It is further ordered, That respondent Knomark Manufacturing Company, Inc., a corporation, its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with the sale of shoe polishes and related products, or of any other related products in commerce as commerce is defined in the aforesaid Federal Trade Commission Act as amended, do further cease and desist from:

A. Offering to buy or buying and taking over stocks of shoe polishes and related products sold and distributed by competitors to retail sellers.

B. Offering to sell or selling shoe polishes and related products mentioned immediately in "A" above to jobbers at prices lower than the prices at which competitors ordinarily offer for sale and sell such products to jobbers.

C. Offering to give and making gifts of cash payments to buyers of its customers without the knowledge of such customers or employers of said buyers.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist [as required by said declaratory decision and order of April 7, 1955].

IN THE MATTER OF

CLEAN-RITE VACUUM STORES, INC., SAMUEL BERENSON, AND ETTA BERENSON

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

Docket 6181. Complaint, Feb. 18, 1954—Decision, Apr. 8, 1955

Order requiring a retail dealer in Washington, D. C., to cease representing falsely in "bait" advertising that it was making a bona fide offer to sell reconditioned vacuum cleaners at exceptionally low prices and that the machines would do a satisfactory job of cleaning, when such offers were made for the purpose of obtaining leads as to prospective buyers and in follow-up calls on persons responding to them, respondent's salesmen disparaged the advertised cleaners and attempted to, and often did, sell them much more expensive cleaners.

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

Mr. William J. Tompkins and *Mr. Michael J. Vitale* for the Commission.

Koonin & Chalfonte, of Washington, D. C., for respondents.

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 duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this his findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

1. Respondent Clean-Rite Vacuum Stores, Inc., is a corporation organized under the laws of the State of Maryland with its principal office and place of business located at 925 F Street, N. W., Washington, D. C. Respondents Samuel Berenson and Etta Berenson are individuals and are President and Secretary-Treasurer, respectively, of the corporate respondent. These individual respondents formulate, control and direct the policies, acts and practices of the corporate respondent.

2. The respondents are now, and for several years last past have been, engaged in the sale and distribution of vacuum cleaners in inter-

state commerce and in the District of Columbia, and are engaged in direct and substantial competition with other concerns engaged in the sale and distribution of vacuum cleaners in interstate commerce and in the District of Columbia.

3. In the course and conduct of their business the respondents, for the purpose of inducing the purchase of their vacuum cleaners, have engaged in extensive advertising in newspapers and in television and radio broadcasts. Among and typical of the statements and representations made in such advertising were the following:

How would you like to get a superbly reconditioned Electrolux Vacuum Cleaner, rebuilt by the Cleanrite Vacuum Stores, for only $8.75. Yes, only $8.75 complete with these work-saving attachments that are specially designed to save you hours and hours of work every week on your household cleaning. You should see what a terrific job this rug attachment does, and how effortless too. It just glides over the carpet, but the powerful suction of this machine picks up every piece of lint, every dog hair, and it gets underneath the deep pile of the carpet and pulls out the dirt that's buried there.

* * * * * * *

Now this Electrolux doesn't cost you one cent until you're absolutely positive that this is the machine you've been looking for. We want you to try it before you buy it. A Cleanrite representative will call at your home and give you a complete free home demonstration with absolutely no obligation on your part.

* * * * * * *

Yes, this beautiful reconditioned Electrolux, with a full one year guarantee on both parts and labor, plus all the attachments, plus a sprayer attachment, can be yours for only $8.75 and on the easiest of easy terms. So, go to your phone right now, and call REpublic 7-0606. That's Republic 7-0606.[1]

CLEAN-RITE STORES
"Washington's Vacuum Center"
ME. 8-5600 925 F St. N. W. Open Daily to 6

RECONDITIONED
Beautifully
Reconditioned
By Clean-Rite
Cleaner of 101 Uses
COMPLETE WITH
CLEANING TOOLS
Written Guarantee
for 1 Year
(Parts and Labor)
10.95
FULL CASH PRICE

ELECTROLUX

(Picturization of an
Electrolux Vacuum
Cleaner)

ADVERTISED
ITEMS ALWAYS
AVAILABLE

[1] Commission Exhibit No. 3, being an advertisement which respondents caused to be broadcast over Radio Station WMAL in the year 1953.

887 Conclusion

Easy Terms Arranged—Liberal Allowance on Your Old Cleaner

FOR FREE HOME
DEMONSTRATION
Phone ME. 8–5600 [2]

Through the use of the aforesaid statement and representations, respondents represented, directly or by implication, that they were making a bona fide offer to sell reconditioned Electrolux vacuum cleaners at prices of $8.75 and $10.95, and that said cleaners would do a satisfactory job of cleaning.

4. The advertisements hereinabove described and others of similar import used by the respondents were not bona fide offers to sell the reconditioned Electrolux vacuum cleaner described therein, but were, in fact, a part of a sales plan or procedure adopted by the respondents to sell their higher priced vacuum cleaners. In fact, the vacuum cleaners so advertised were of little or no value and would not do a satisfactory job of cleaning. When a member of the purchasing public answered respondents' advertisement a salesman was sent out with such vacuum cleaner for the purpose of making a demonstration. In so doing, the salesman made no effort to sell such vacuum cleaner, but instead used every effort to discourage such sale and belittle and disparage such cleaners and only in those instances where the customer was sufficiently insistent did the salesman sell the machine advertised, and in some instances refused and neglected to sell or deliver the vacuum cleaner demonstrated. The salesman customarily brought with him new or more expensive machines which he insisted on demonstrating in comparison with the machine advertised, and endeavored to induce and in many instances was successful in inducing the prospect to purchase a new or more expensive vacuum cleaner.

5. Through the use of the aforesaid false, deceptive and misleading statements and representations in advertising as a part of, and in conjunction with, respondents' sales plan hereinabove described, the respondents have induced a substantial portion of the purchasing public to purchase substantial quantities of respondents' more expensive vacuum cleaners as is indicated by the fact that respondents' gross volume of business for the year 1951 amounted to $364,000; for 1952, $340,000; and for 1953, $290,000.

CONCLUSION

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

[2] Commission Exhibit No. 2. Advertisement in the Washington Post August 14, 1953.

ORDER

It is ordered, That respondents Clean-Rite Vacuum Stores, Inc., a corporation, and its officers and respondents Samuel Berenson and Etta Berenson, individually and as officers of the corporate respondent, and their respective representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of vacuum cleaners or other similar merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

2. The use of any sales plan or procedure involving the use of false, deceptive or misleading statements or representations in advertising which are designed to obtain leads or prospects for the sale of other or different merchandise.

3. Representing, directly or by implication, that vacuum cleaners which have little or no value as cleaning devices will, in fact, do a satisfactory job of cleaning.

ON APPEAL FROM INITIAL DECISION

By MEAD, Commissioner:

Presented here for final determination upon the merits is the appeal of respondents from the hearing examiner's initial decision which ruled that the named respondents, Clean-Rite Vacuum Stores, Inc., and two individuals, Samuel Berenson and Etta Berenson, have engaged in unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. These individual respondents formulate, control and direct the policies, acts and practices of the corporate respondent.

The findings and conclusions of the hearing examiner follow generally the allegations of the complaint. In substance they are that respondents offered for sale, through extensive advertising in newspapers, and on radio and television, reconditioned Electrolux vacuum cleaners at prices of $8.95 and $10.95, which machines, in fact, were of little or no value and would not do a satisfactory job of cleaning; that such offers were not bona fide, but were, in fact, part of a sales plan adopted by respondents to sell higher priced vacuum cleaners; that such offers were made to obtain leads and information as to potential purchasers of vacuum cleaners responding to advertisements, after which respondents' salesmen called upon prospects to demon-

strate the machines advertised. It was found below also that salesmen made no effort to sell the reconditioned vacuum cleaners advertised but, instead, belittled and disparaged them; that only where customers were insistent were the advertised vacuum cleaners sold; and that in some instances respondents, through their salesmen, refused or neglected to sell or deliver the reconditioned machines demonstrated. The hearing examiner found, as well, that salesmen customarily offered and insisted on demonstrating machines which were new or more expensive in comparison with those advertised and in many instances were successful in inducing the purchase of new and more expensive machines. Finally, the hearing examiner found that, through the use of false and misleading advertising, and in conjunction with the sales plan described, respondents have induced the purchase of substantial quantities of more expensive vacuum cleaners, as is indicated by the respondents' gross annual volume of business in 1951 of $364,000; in 1952 of $340,000; and for 1953 of $280,000.

Respondents' appeal seeks to have the initial decision set aside on the ground that the allegations of the complaint have not been sustained and to have the complaint herein dismissed. Respondents submitted specific exceptions to the initial decision adverted to in their brief, and hereinafter discussed; and in addition to specific record references set forth therein, included the entire stenographic record and all exhibits offered by both parties. We have fully considered the entire record, including the transcript of hearings, exhibits, briefs of both parties and oral argument of counsel.

For the reasons hereinafter stated, we have concluded that the hearing examiner's initial decision is correct, that respondents' exceptions thereto are without merit and that respondents' appeal should be denied.

Appellants excepted to the findings of the hearing examiner to the effect that:

1. Advertisements involved did not make bona fide offers to sell the merchandise advertised;

2. Vacuum cleaners advertised were of little or no value and would not do a satisfactory job of cleaning;

3. Advertisements offering reconditioned cleaners were part of a plan to sell higher priced vacuum cleaners;

4. Through use of false and misleading advertising, and in conjunction with their sales plan, respondents induced purchase of substantial quantities of higher priced vacuum cleaners as evidenced by gross sales volume for each of the years 1951, 1952 and 1953.

At the outset we will consider exceptions 1 and 3 together.

Nine of the witnesses testifying in support of the complaint were shown to have been induced by the questioned advertising in various media to seek to purchase reconditioned vacuum cleaners from respondents. From our examination of their uncontroverted testimony it is clear that the representations which stimulated them to act were not bona fide offers to sell the items advertised. It truly was "bait" advertising resorted to in order to get the feet of respondents' salesmen in the doors of prospective customers. This accomplished, the "sales pitch" utilized, as disclosed by the record, uniformly involved aggressive and deliberate belittlement and disparagement of the advertised reconditioned units, outright refusal to demonstrate or to sell, and resort to high pressure methods, hardly legitimate in several instances, to induce the purchase of more expensive machines. We think the testimony and exhibits are thoroughly convincing that the advertising employed by respondents to further the sale of more expensive vacuum cleaners was false, misleading and deceptive in that respondents had no intention of selling the reconditioned machines except as part and parcel of a sales scheme to sell more expensive vacuum cleaners. Such sales schemes, whereby many persons are, or may be, induced to purchase merchandise other than that featured in advertisements, are contrary to public policy and, in themselves, are an injury to the public and constitute unfair and deceptive acts and practices in commerce. We expressly find respondents' exceptions 1 and 3 to be totally lacking in merit.

Respondents' second exception goes to the hearing examiner's finding that the reconditioned vacuum cleaners were of little or no value and would not do a satisfactory job of cleaning. There is direct and uncontroverted testimony that these machines were as found by the hearing examiner. For example, two witnesses testified that reconditioned machines demonstrated "had a motor that was so weak * * * there was no suction at all," or that "it would not pick a thread up, and it would not pick a straw up * * * no suction at all." [1] Also, we find the record shows respondents' salesmen to be in substantial agreement with the hearing examiner on this finding when, as part of their "sales pitch," they belittled and disparaged the reconditioned machines in attempting to induce the purchase of higher priced ones. We find respondents' second exception to be without merit and so reject it.

Respondents' fourth exception, in substance, is that there is no basis in the record for the hearing examiner's finding and conclusion that respondents' gross volume of sales for the years 1951 ($364,000), 1952 ($340,000) and 1953 ($280,000) indicated that the questioned adver-

[1] Record, pp. 24, 40, 47.

tisements resulted in the sale of a substantial quantity of respondents' more expensive vacuum cleaners. The argument is made that the testimony of the witness Samuel Berenson on this aspect of the case dealt entirely with the gross annual volume of sales for the years indicated, with no breakdown of such figures as to "reconditioned" or "new and more expensive" vacuum cleaners.

We think the inference drawn by the hearing examiner is valid on the record. He did not find that the entire gross annual sales volume resulted from respondents' use of "bait" advertising in conjunction with the sales scheme described. Nor is that the position we take. The record establishes that sales in fact were made; and, that "bait" advertising accounted for some of those sales. The inference is reasonable, and we so find, that respondents' gross volume of business for the years stated *indicates*, in the circumstances, that substantial quantities of more expensive vacuum cleaners were sold as a result of the respondents' sales scheme. Respondents elected to introduce no evidence to contravene the allegations of the complaint in this regard or to offset the testimony of the witnesses supporting the finding. There are present in the record here undisputed facts and circumstances, the weight of which support the ultimate fact found—namely, that the advertisements complained of did result in the sale of a substantial quantity of respondents' more expensive vacuum cleaners. Consequently, we reject respondents' fourth and last exception. The respondents' appeal is denied and the initial decision of the hearing examiner is affirmed.

Commissioner Howrey did not participate.

FINAL ORDER

Respondents Clean-Rite Vacuum Stores, Inc., a corporation, and Samuel Berenson and Etta Berenson, individually, having filed, on August 4, 1954, their appeal from the initial decision of the hearing examiner in this proceeding; and the matter having been heard by the Commission 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 aforesaid 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 contained in said initial decision.

Commissioner Howrey not participating for the reason that he did not hear the oral argument.

IN THE MATTER OF

SOUTHERN NATIONAL INSURANCE COMPANY

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

Docket 6251. Complaint, Oct. 14, 1954—Decision, Apr. 14, 1955

Consent order requiring an insurance company in Little Rock, Ark., to cease advertising falsely the duration, medical examination requirements, indemnification, and coverage of its accident and health insurance policies.

Before *Mr. J. Earl Cox*, hearing examiner.
Mr. William A. Somers and *Mr. Robert R. Sills* for the Commission.
Catlett & Henderson, of Little Rock, Ark., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as that Act is applicable to the business of insurance under the provisions of Public Law 15, 79th Congress (Title 15, U. S. Code, Sections 1011 to 1015, inclusive), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Southern National Insurance Company, a corporation, 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. The respondent, Southern National Insurance Company, is a corporation duly organized, existing and doing business under and by virtue of the laws of the State of Arkansas, with its office and principal place of business located at Little Rock, Arkansas.

PAR. 2. Respondent is now, and for more than two years last past has been, engaged as an insurer in the business of insurance in commerce, as "commerce" is defined in the Federal Trade Commission Act, by entering into insurance contracts with insureds located in various States of the United States other than the State of Arkansas, in which states the business of insurance is not regulated by state law to the extent of regulating the practices of respondent alleged in this complaint to be illegal. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said insurance policies in commerce between and among the several States of the United States.

Respondent during the two years last past has issued a variety of policies providing indemnification for losses resulting from accidental injury and sickness, including those designated and identified by it as Hospital and Surgical Benefit Policies, forms H–752 and H–853–T.

The respondent is licensed as provided by state law to conduct an insurance business in the States of Oklahoma, Texas, Louisiana, Alabama, Mississippi, and Arkansas. The respondent is not now, and for more than two years last past has not been, licensed as provided by state law to conduct an insurance business in any state other than those last above mentioned.

Many purchasers of respondent's aforesaid policies are now residents of and located in states other than those in which the respondent has been duly licensed as aforesaid, and respondent mails to such purchasers notices and receipts relating to the payment of renewal premiums and receives from such purchasers premiums mailed to it repurchasing the coverage purchased for the period of time covered by the premium submitted. The renewal of term insurance in this manner constitutes trade in commerce to the same extent as the original purchase of said insurance.

PAR. 3. In the course and conduct of its said business, and for the purpose of inducing the purchase of said insurance policy, the respondent has made, and is now making, numerous statements and representations concerning the benefits provided in said policies of insurance, by means of circulars, folders, form letters, and other advertising material distributed throughout various States of the United States, including each of the states in which it is licensed to do business. Typical, but not all inclusive, of such statements and representations are the following:

1. Does not Terminate as you get older—or Reduce in—Benefits. Pays full benefits regardless of age. Southern National neither cuts the benefits nor raises the rates when our Policyholder reaches 65 years of age, or at any age after the policy is issued.
   INSURE ONE OR THE
   WHOLE FAMILY
   AGES 0–80
2. No rigid medical examination required.
3. Let Us Pay Your HOSPITAL and DOCTOR BILLS. A small premium deposit will provide adequate hospital care in the event of accident or sickness.

YOUR POLICY IS ON DUTY 365 DAYS EACH YEAR FOR YOUR SPECIAL BENEFIT.

PAYS FOR:

Hospital Room	Ambulance
Operating Room	Nurses Care
Anesthetics	Emergency First Aid
Laboratory Service	Infant Mothers Care
Blood Transfusion	Maternity Benefits
X-ray	Doctors Surgical Fees
Medicines	Penicillin
Surgical Supplies	Streptomycin
Hypodermics	Aureomycin
Oxygen	Accidental Death
Iron Lung	And many other benefits

"The day your policy is issued we become obligated to you—your surgeon—and the hospital for the full amount of benefits provided by your policy."

4. Doctors' fees for surgical operations up to $300.00. Up to $10.00 a day for room and board; up to $300.00 for surgeon's fees.

PAR. 4. Through the use of such statements and representations, and others of similar import and meaning not specifically set out herein, respondent represents and has represented, directly or by implication:

1. That the benefits provided by the insurance policy referred to can be continued, at the option of the insured, until the insured reaches the age of 80.

2. Full coverage regardless of previous conditions of health can be secured without a medical examination.

3. That the benefits provided for are payable for any sickness or accident suffered by the insured.

4. That said policy provides for payment to the insured in all cases of sickness or accident for the cost of hospital room and board up to $10.00 a day and for the cost of surgical fees up to $300.00 plus other incidental hospitalization costs in full.

PAR. 5. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact:

1. The benefits provided by said insurance policy can not be continued at the option of the insured until he or she attains the age of 80, or any other age, but on the contrary, said insurance policy can be terminated at any premium-paying period at the option of the respondent by refusing to accept the renewal premium.

2. Full coverage regardless of previous conditions of health cannot be secured as said policy does not provide for the payment of any benefits if the cause of the sickness is traceable to a condition existing prior to 15 days after the effective date of the policy.

3. The benefits are not payable for any sickness or accident suffered by the insured. On the contrary, if the cause of any sickness is traceable to a condition existing prior to or 15 days after the effective date of the policy, or, in cases of accident, if no bodily injury which is effected solely through accidental means is suffered, no benefits will be payable.

Said insurance policy excludes the payment of benefits to the insured resulting wholly or partly from "tuberculosis, heart trouble, cancer, hernia, fibroid tumor, gallstone or gall bladder or any of the generative organs not common to both sex, or any organic functional disorder of the brain or nervous system" if such loss occurs before the said policy has been maintained in continuous force for six months, and in cases of cancer or tuberculosis the hospital benefits shall not exceed 15 days.

No benefits are payable to insured before six months have elapsed for tonsillectomy or adenoidectomy and after which time the respondent will pay the insured $50.00 in lieu of all hospitalization benefits for such losses. In lieu of all other benefits the respondent will pay the insured ten times the daily hospital room benefit for childbirth or miscarriage.

No benefits will be paid by respondent for injury or sickness from which the insured received benefits by workmen's compensation or employer's liability insurance, and if the insured carries additional insurance covering the same loss, without giving respondent written notice, the respondent shall not be liable except for that portion of the indemnity as the said indemnity bears to the total amount of like indemnity in all other policies covering such loss.

4. Said policy does not provide for payment to the insured in all cases of sickness or accident for the cost of hospital room and board up to $10.00 a day or for the cost of surgical fees up to $300.00, plus other incidental hospitalization costs in full.

Benefits for surgical operations necessitated by any one accident or sickness up to $300.00 will not be paid to the insured except in three instances in which the "Schedule of Surgical Operation Fees" sets up and allows such amount for three different operations. Said "Schedule of Operation Fees" sets out fees allowable for 99 different operations and for 69 of said listed operations the respondent provides a maximum benefit of $75.00 or less. Payment shall not be made for more than one operation as the result of any one sickness or accident. No payment for surgical operation shall be paid because of any sickness which is traceable to a condition existing prior to 15 days after the effective date of the policy or because of any sickness necessitating an operation before the policy has been in effect three months. Surgi-

cal operation benefits will not be paid the insured if resulting wholly or partially from "tuberculosis, heart trouble, cancer, hernia, fibroid tumor, gallstone or gall bladder or any of the generative organs not common to both sex, or any organic functional disorder of the brain or nervous system" until the said insurance policy has been maintained in continuous force for the six preceding months.

No payment for hospital room and board is provided for by said policy under the circumstances described in subparagraph 3 above in which no benefits are payable.

PAR. 6. The use by the respondent of said false statements and representations with respect to its insurance policies has had, and now has, the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations were and are true, and to induce such portion of the purchasing public to purchase a substantial number of said insurance policies by reason of said erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated April 14, 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

Southern National Insurance Company, a corporation duly organized, existing, and doing business under and by virtue of the laws of the State of Arkansas, with its office and principal place of business located at Little Rock, Arkansas, is named respondent in the above-entitled proceeding and charged with having violated the Federal Trade Commission Act by misrepresenting various provisions of the insurance policies which it issues.

A Stipulation For Consent Order has been entered into between said respondent and counsel supporting the complaint herein, which stipulation has been approved by the director and Assistant Director

of the Commission's Bureau of Litigation and transmitted to the Hearing Examiner.

The stipulation provides, among other things, that respondent admits 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 statute for orders of the Commission; that the signing of the stipulation is for settlement purposes only and does not constitute an admission by respondent that it has 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 respondent 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 in substance 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 respondent Southern National Insurance Company, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any accident, health, hospital or surgical insurance policy, do forthwith cease and desist from representing, directly or by implication:

1. That said policy may be continued in effect indefinitely or for any period of time, when, in fact, said policy provides that it may be cancelled by respondent or terminated under any circumstances over which insured has no control, during the period of time represented;

2. That no medical examination is required or that applicant's health is not a factor in securing insurance, unless the representation is clearly and conspicuously limited in immediate connection therewith to insurance on claims not caused by previous conditions of health of the insured;

3. That said policy provides for indemnification to insured in cases of sickness or accident generally or in any or all cases of sickness or accident, when such is not the fact;

4. That said policy will pay in full or in any specified amount or will pay up to any specified amount for any medical, surgical or hospital service unless the policy provides that the actual cost to the insured for that service will be paid in all cases up to the amount represented.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That respondent Southern National Insurance Company, a corporation, shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist [as required by said declaratory decision and order of April 14, 1955].

IN THE MATTER OF

V. LA ROSA & SONS, INC.

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

Docket 6289. Complaint, Jan. 25, 1955—Decision, Apr. 14, 1955

Consent order requiring a manufacturer with office in New York City and plants in Connecticut and Pennsylvania, to cease advertising falsely that its macaroni and spaghetti were low-calorie and non-fattening foods, especially when prepared with the sauces recommended.

Before *Mr. Frank Hier*, hearing examiner.
Mr. Joseph Callaway for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by reason of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that V. La Rosa & Sons, Inc., a corporation, 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 V. La Rosa & Sons, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 473 Kent Avenue, Brooklyn, New York, New York, and with plants in Danielson, Connecticut, and Hatboro, Pennsylvania.

PAR. 2. The respondent is now and for several years last past has been engaged in the business of selling and distributing macaroni and spaghetti, which are food products as "food" is defined in the Federal Trade Commission Act. Said foods are sold and distributed under the trade names La Rosa macaroni and La Rosa spaghetti. The ingredients of La Rosa macaroni and La Rosa spaghetti are No. 1 Seminola flour to each 100 pounds of which is added one ounce of enrichment and less than 13% water. The amount of water originally added is 20 to 25% and the preparation is then dehydrated. The enrichment consists of vitamins B_1, B_2, iron and niacin.

The directions on the carton of the one pound package of macaroni are as follows:

To cook one pound of macaroni, bring six quarts of water to a violent boil. Add three tablespoonsful of salt. When water is boiling fast, add contents of

this package. Stir often. Boil until tender. Drain and place on platter or in individual dishes. Pour over it whatever sauce or gravy you have prepared and mix well. Eat while hot.

The directions on the cartons of spaghetti are similar to those on the carton of macaroni.

PAR. 3. Respondent causes its said food products, when sold, to be transported from the place of business of respondent in the State of New York and from its plants in the States of Connecticut and Pennsylvania to purchasers thereof located in various other States of the United States, and maintains and at all times mentioned herein has maintained a course of trade in said food products between and among the various States of the United States.

PAR. 4. In the course and conduct of its said business respondent within the past three years has disseminated, and caused the dissemination of, certain advertisements concerning its said food products by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including advertisements inserted in newspapers of general circulation, in radio continuities broadcast from radio stations with sufficient power to cross State lines and in other advertising matter, for the purpose of inducing and which were likely to induce, directly or indirectly the purchase of respondent's said products and respondent has disseminated and caused the dissemination of advertisements concerning its said products, including but not limited to the advertising matter referred to above for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of its said products in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical, but not all inclusive of the statements, and representations, disseminated as aforesaid are the following:

FOOD RESEARCH PROVES
LA ROSA HAS LESS CALORIES

* * * * * * *

HAS LESS CALORIES, MORE PROTEIN
THAN OTHER IMPORTANT FOODS

Look better * * * feel younger!

AVOID EXCESS WEIGHT Don't let extra pounds hold you down. You'll look more attractive—have a figure that people admire. Medical science advises "count your calories!" Now nutritional research reveals that La Rosa Macaroni contains less fat-producing calories than many other important foods. La Rosa helps you keep trim—it's rich in health-building protein—supplies many essential food elements.

A LONGER LIFE * * * A LARGER INCOME!

Doctors and insurance companies warn that overweight is one of America's greatest health dangers. The relationship between weight and life expectancy, between weight and heart trouble (as well as many other illnesses) are medically proven facts. Good health and vigor are most important for high earning capacity. You can't afford to ignore your waistline!

* * * * * * *

LESS CALORIES

Here's amazing proof!

LA ROSA CONTAINS LESS FAT-PRODUCING
CALORIES THAN THESE IMPORTANT FOODS

(chart purporting to show calorie content of various foods)

Compare with other cooked foods
(calorie content per 4 oz. serving)

LA ROSA SPAGHETTI
OR MACARONI
Contains 103 calories!

* * * * * * *

MORE PROTEIN

La Rosa enriched Macaroni contains
MORE MUSCLE-BUILDING PROTEIN THAN THESE
IMPORTANT, HEALTHFUL FOODS:

(Chart purporting to show protein
content of other foods)

IMPORTANT HEALTH NEWS, LA ROSA HAS
LESS CALORIES
plus
MORE PROTEIN
than other
important foods.

High in Protein * * * low in calories, enriched with extra vitamins and minerals * * * La Rosa Grade A * * * America's largest selling macaroni, spaghetti and egg noodles * * * La Rosa * * * internationally famous for that *real* Italian taste.

PAR. 5. Through the use of said advertisements and others similar thereto, not set out specifically herein, respondent has represented directly and by inference that a four ounce portion of its macaroni or its spaghetti, prepared for consumption as directed on the cartons or containers of said products, and as recommended and pictured in its advertising, will provide only 103 calories; that said products are low calorie foods and may be eaten as desired without increasing the body weight; that its said products prepared in accordance with directions on the cartons or containers of said products, and as recommended and pictured in its advertising will furnish more protein and at the same time less calories than other foods with which said products are compared.

PAR. 6. The said advertisements are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, a four ounce portion of respondent's spaghetti or macaroni prepared for human consumption in a manner so as to be palatable provides considerably more than 103 calories. Furthermore, the directions for preparation on the carton or containers of said products include pouring over the cooked macaroni, "whatever sauce or gravy you have prepared" before serving. Such sauce or gravy would ordinarily add more calories. La Rosa spaghetti with meatballs, La Rosa macaroni with shrimp, La Rosa spaghetti with tomato-beef sauce, La Rosa macaroni with American cheese, and other combinations mentioned in respondent's advertising would add still more calories. Respondent's products prepared for human consumption are not low calorie foods. They cannot be eaten as desired, without the risk of increasing body weight, since increase in body weight normally depends on whether more calories have been consumed than are used in energy expended over a given period of time. Respondent's said products prepared for human consumption in accordance with directions on the cartons or containers and as recommended and as pictured in its advertising will not furnish more protein and at the same time less calories than many of the other foods with which respondent's said products are compared in the advertising, either in four ounce portions or as said foods are ordinarily served. Respondent's said products prepared for human consumption are not higher in protein than are many of the foods with which said products are compared in respondent's advertising. The protein content of respondent's cooked macaroni and spaghetti is far below that of those foods which are consumed primarily as sources of protein such as meat, fish, eggs, and even bread. When served with rich sauces or as components of mixed dishes which contain meat or cheese or both, the complete dish may be relatively high in protein by virtue of the other foods added to the macaroni or spaghetti. At the same time the calorie content of the complete dish is correspondingly increased.

PAR. 7. The use by respondent of the foregoing false and misleading representations disseminated as aforesaid has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of such statements are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief to purchase respondent's said products.

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

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated April 14, 1955, the initial decision in the instant matter of hearing examiner Frank Hier, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 25, 1955, issued and subsequently served its complaint on respondent herein, who has its principal place of business at 473 Kent Avenue, Brooklyn, New York, New York, and is engaged in the manufacture and sale of macaroni and spaghetti.

On February 21, 1955, there was filed with the Federal Trade Commission a stipulation between the parties providing for entry of a consent order, which stipulation appears of record. By the terms thereof respondent admits all the jurisdictional allegations set forth in the complaint; stipulates that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations; stipulates that the agreement is for settlement purposes only and does not constitute an admission by respondent that if it has engaged in any violation of law. The parties to such stipulation expressly waive the filing of an 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 or oral arguments before the Commission, and all other and further procedure before the hearing examiner and the Commission to which respondent may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission. Respondent further agrees therein that the order hereinafter entered shall have the same force and effect as if made after a full hearing, presentation of evidence, and findings and conclusions thereon and specifically waives any and all right, power or privilege to challenge or contest the validity of the order entered in accordance with the stipulation. The stipulation further provides that it, together

with the complaint, shall constitute the entire record herein and that the complaint may be used in construing the terms of the afore-mentioned order, which order may be altered, modified or set aside in the manner provided by the statute for the orders of the Commission and such stipulation further provides that it is subject to approval in accordance with Rules V and XXII of the Commission's Rules of Practice and that said order shall have no force and effect unless and until it becomes the order of the Commission.

On the basis of the foregoing, the undersigned hearing examiner concludes that this proceeding is in the public interest and in conformity with the action contemplated and agreed upon by such stipulation makes the following order:

ORDER

It is ordered, That the respondent, V. La Rosa & Sons, Inc., a corporation and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of the food products La Rosa spaghetti and La Rosa macaroni or of any product of substantially similar composition, whether sold under the same names or under any other name or names, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated by means of 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 any portion or serving of its products will provide an amount of calories other than that which will be, in fact, provided when such portion or serving is prepared in accordance with respondent's directions or recommendations;

(*b*) that said products are low calorie foods or may be eaten as desired without increasing body weight;

(*c*) that said products will at the same time provide more protein and fewer calories than other foods with which said products are compared, unless said representation be true;

(*d*) that said products are both high in protein and low in calories.

2. Disseminating or causing to be disseminated by means of United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, any advertisement which misrepresents the amount of calories or protein provided by respondent's products in comparison with other foods, or in any other manner.

3. 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 in commerce as "commerce" is defined in the Federal Trade Commission Act, of respondent's said products, which advertisement contains any of the representations prohibited in Paragraph One hereof or any misrepresentation forbidden in Paragraph Two hereof.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist [as required by said declaratory decision and order of April 14, 1955].

IN THE MATTER OF

NATIONAL TRAINING SERVICE, INC., ET AL.

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

Docket 6283. Complaint, Jan. 10, 1955—Decision, Apr. 19, 1955

Consent order requiring a correspondence school in Greenwich, Conn., selling home-study courses for passing Civil Service examinations, to cease representing falsely that it was connected with the U. S. Government or the U. S. Civil Service Commission and that its agents were representatives thereof, that passing its courses was the only way to obtain a Government job and that it guaranteed civil service positions near the homes of enrollees, that persons solicited were specially selected, etc.

Before *Mr. Abner E. Lipscomb*, hearing examiner.
Mr. William L. Pencke for the Commission.
Mr. Abraham Berkowitz, of Philadelphia, Pa., for respondents.

COMPLAINT

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

PARAGRAPH 1. National Training Service, Inc., is a corporation, organized and existing under the laws of the State of Connecticut, with its principal office and place of business at 34 East Putnam Street, Greenwich, Connecticut.

Respondent Michael F. Bell is an individual and president of said corporation. This individual formulates all the policies and controls and manages all of the affairs of said corporation. His principal office and place of business is the same as that of the corporate respondent.

Prior to the date of incorporation of said corporate respondent, said individual respondent was President of National Training Service, Inc., a New Jersey corporation, with its principal office in Camden, New Jersey. Said corporation was dissolved in January, 1953, and

prior to said time, said individual respondent formulated, controlled and managed all of the affairs and policies of said New Jersey corporation.

PAR. 2. For more than one year last past respondents have been and are now engaged in the sale and distribution of a course of study and instructions intended for preparing students thereof for examination for certain Civil Service positions in the United States Government, which said course of study is pursued by correspondence through the United States mails. Respondents, in the course and conduct of said business cause said course of study to be transported from their said place of business in the State of Connecticut to purchasers thereof located in States other than Connecticut. Prior to January 1, 1953, respondent Bell caused said courses of study to be transported as aforesaid from the then place of business in Camden, New Jersey, to purchasers located in States other than New Jersey.

There has been at all times mentioned herein a substantial course of trade in said course of instruction so sold and distributed by respondents in commerce between the various States of the United States.

PAR. 3. In the conduct of said business, as aforesaid, respondents, in soliciting prospective purchasers for said course, distribute return postal cards to high school graduates in various States of the United States on which are made the following representations:

Do you want to prepare
for a GOVERNMENT JOB?

NATIONAL TRAINING SERVICE
P. O. BOX 873
GREENWICH, CONNECTICUT

CIVIL SERVICE EXAMINATIONS FOR GOVERNMENT JOBS
ARE ANNOUNCED FREQUENTLY

Go after one of these jobs—a job that offers you good pay, good hours and a good future. Discover the many thousands of real opportunities offered in civil service jobs. Get full information on Government Jobs, salaries paid, minimum requirements, examinations, etc. You are told where to get official application forms, how to fill them in properly, and where to send them for best results. You are given all the information you need to successfully pass a Civil Service Examination—including examination type questions. Proper methods of study for your examination are suggested, with guaranteed results.

Please furnish me with FREE INFORMATION on how to get a GOVERNMENT JOB through civil service examinations. * * *
Age_____ Veteran_____ Your Occupation_____
Citizen_____ Are You now attending school_____
Education_____.

By means of the statements made on said postal cards, respondents represent and imply that civil service examinations for positions in

the U. S. Government are held frequently; that there are thousands of opportunities and many advantages in said service and that respondents have available all pertinent information with respect thereto, including information pertaining to salaries, general requirements and the times, places and subjects of examination; and that by pursuing respondents' methods of instruction, applicants are assured of employment in said civil service.

PAR. 4. The representations and implications made by respondents as aforesaid are deceptive and misleading. In truth and in fact, while examinations for positions in the U. S. Civil Service may be announced frequently, and while vacancies do occur in the various departments of the U. S. Government, respondents do not have full and complete information with respect thereto, and, moreover, cannot obtain information which is not available to the general public; examinations are held and vacancies filled in accordance with various requirements pertaining to the availability of applicants on the registers of the various districts, veterans' preferences, promotions and other conditions not within the knowledge of respondents. Regardless of any methods of preparation, respondents cannot guarantee employment in the U. S. Civil Service. In addition, the repeated reference to government jobs and civil service, as well as the questionnaire and return address to "National Training Service" on said postal cards imply that respondents are connected with some branch or agency of the United States Government, whereas respondents operate a private business for profit and are not in any manner connected with the U. S. Government or any branch thereof.

PAR. 5. In the further course and conduct of said business, as aforesaid, respondents employ sales agents or representatives who call upon prospective purchasers of said course of study. By means of oral statements made by said sales agents, respondents represent and imply to said prospective purchasers of their said course:

1. That National Training Service, Inc., is connected with, or a branch of, or operated by, the United States Civil Service Commission or the United States Government;

2. That respondents' sales agents are representatives or employees of the United States Civil Service Commission or have some connection therewith;

3. That said National Training Service, Inc., is a non-profit organization sponsored by the Government of the United States, and that the money paid by purchasers of said course to respondents is turned over to the government by respondents to defray operating expenses in connection with said course of study;

4. That the taking of respondents' course is the only way to obtain a government job;

5. That only one or two persons are selected in each town or district, or that only those high school graduates having made the highest grades are eligible for taking said course;

6. That National Training Service guarantees or assures positions in the U. S. Civil Service to those who pass Civil Service examinations or that such positions will be at or near the homes of enrollees or places selected by them;

7. That unless prospects enroll at the time of the agent's visit, they will lose the opportunity to enroll in said course and for civil service employment;

8. That the taking and passing of a U. S. Civil Service examination assures an enrollee immediate employment in such Civil Service;

9. That the sales agent or some other representative of the school would call upon enrollees for the purpose of checking on their progress and assist in their studies;

10. That by obtaining certain civil service jobs enrollees would be enabled to keep out of military service.

PAR. 6. All of said statements, representations and implications are grossly exaggerated, false and misleading. In truth and in fact:

1. Respondent National Training Service, Inc., is not connected with the U. S. Civil Service Commission in any manner whatever, nor is it connected with the United States Government or any branch or agency thereof;

2. Respondents' sales agents or representatives are not employees, or connected with, the United States Civil Service Commission or the United States Government or any agency thereof;

3. Said corporate respondent is a corporation for profit; it is not sponsored by the United States Government, and the money collected by it through the sale of training courses is used for the operation of said business, and no part of such money is paid to the United States Civil Service Commission or any other agency of said government;

4. It is not necessary for any person to take respondents' course of study in order to take a civil service examination or obtain a position in the United States Civil Service;

5. Respondents do not select students for any reason and do not restrict enrollment for said course in any manner, but on the contrary, accept enrollments from as many students as their said salesmen are able to enroll;

6. Respondents cannot guarantee or assure positions in the U. S.

Civil Service to persons who have taken said course of study and passed civil service examinations or that such positions will be at places or locations selected by said persons;

7. Refusal to purchase said course of study at the time of the visit of respondents' sales agents does not result in the loss of Opportunity to enroll and prepare for or take civil service examinations at a later time.

8. The taking of a civil service examination and becoming eligible for employment, does not assure any applicant of immediate employment for the reason that the time of employment of eligibles depends upon a number of factors, such as their availability in various Civil Service Districts, their rating, veterans' preferences and other conditions over which neither the respondents nor eligibles have any control;

9. The salesmen, after having sold said course of study, do not return at any time for the purpose of checking the progress made by said purchasers or assisting them in their study problems; nor do respondents send any other agents to said purchasers for such purpose;

10. Employment in the United States Civil Service does not enable such employee to avoid, or be relieved from, military service in the armed forces of the United States.

PAR. 7. In addition to the representations made by respondents' salesmen, as described in Paragraph Five hereof, the impression that said agents and said corporate respondent are in some manner connected with the United States Government is enhanced and increased by one or more of the following means:

The use of the return postal cards as described in Paragraphs Three and Four hereof; the display of credentials by salesmen which simulate the official credentials carried by employees or officials in the United States Government Service; the display by said salesmen of publications by the United States Civil Service Commission entitled "Specimen Questions from U. S. Civil Service Examinations" and "Working for the U. S. A.," and other literature resembling official publications, and, in that connection, dwelling on civil service work and all phases connected therewith, without referring to the corporate respondent, National Training Service, Inc. Said practices, together with the representations made as aforesaid, induce members of the public to subscribe to said course, in the belief that they are dealing with some official agency of the U. S. Government.

In many instances said salesmen fail to explain the terms of the enrollment contract or afford prospective purchasers the time to read, consider and comprehend said terms; and in some instances said sales-

men explain the provision appearing at the bottom of said contract to the effect that respondents or their agents are not connected with the Government and cannot promise jobs, by stating that as a matter of course, no government agency, or any school connected with the Civil Service can promise jobs to anyone.

As a result of said practices said prospects are unable to learn the true provisions of said enrollment contract and execute such contract in reliance upon the oral representations made by said agents and in the belief that they are dealing with some branch of the U. S. Government.

PAR. 8. The use by the respondents of the statements and representations aforesaid has had and now has the tendency and capacity to and does confuse, mislead and deceive members of the public into the erroneous and mistaken belief that such statements and representations are true and to induce them to purchase respondents' course of study in said commerce on account thereof.

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

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated April 19, 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

The Federal Trade Commission, on January 10, 1955, issued its complaint in this proceeding, charging respondents with the dissemination, during the year last past, of confusing, misleading and deceptive advertisements concerning their course of study and instruction designed for the preparing of students for examinations for certain Civil Service positions in the United States Government, in violation of the provisions of the Federal Trade Commission Act.

On February 25, 1955, respondents entered into an agreement with counsel supporting the complaint, and pursuant thereto, submitted to the Hearing Examiner herein a Stipulation For Consent Order disposing of all the issues in this proceeding.

Respondent National Training Service, Inc. is identified in the stipulation as a corporation organized under and existing by virtue of the laws of the State of Connecticut, with its office and principal place of business at 34 East Putnam Street, Greenwich, Connecticut. Respondent Michael F. Bell is identified in the stipulation as an individual, and as president of said corporation.

Respondents admit all 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. Respondents, in effect, request the withdrawal of their answer, filed on February 7, 1955, and expressly waive 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 further and other proceedings before the Hearing Examiner or the Commission to which they may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission.

It is agreed by 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. Respondents specifically waive any and all right, power or privilege to challenge or contest the validity of the order entered in accordance with their stipulation. They also agree 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 stipulations further provides that the signing of the Stipulation For Consent Order is for settlement purposes only, and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

In view of the facts outlined above, and the further fact that the order embodied in said stipulation is identical with the order accompanying the complaint, and is adequate to forbid all the acts and practices charged therein, it appears that such order will safeguard the public interest to the same extent as could be accomplished by full hearing and all other adjudicative proceedings waived in said stipulation. Accordingly, in consonance with the terms of the aforesaid stipulation, the Hearing Examiner grants the request for with-

drawal of respondents' answer, 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 respondent, National Training Service, Inc., a corporation, and its officers, and Michael F. Bell, individually and as an officer of said corporation, and the respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution, in commerce, as "commerce" is defined in the Federal Trade Commission Act, of a course of study and instruction intended for preparing students thereof for examination for civil service positions under the United States Government, or any similar courses of study, do forthwith cease and desist from:

1. Representing, directly or by implication:

(*a*) Through the use of postal cards or other sales literature, that respondents have any information pertaining to the United States Civil Service which is not available to the general public; or that persons pursuing respondents' methods of preparation for United States Civil Service examinations are assured of employment in said service;

(*b*) That respondents have any connection with the United States Civil Service Commission or any other agency of the United States Government;

(*c*) That respondents' sales agents are representatives or employees of the United States Civil Service Commission or any other government agency, or have any connection therewith;

(*d*) That respondent, National Training Service, Inc., is anything other than a business operated for profit or is sponsored by the United States Government or Civil Service Commission, or that any money paid to it is paid to the United States Civil Service Commission or any other United States government agency;

(*e*) That it is necessary for persons seeking United States Civil Service positions to take respondents' course of study in order to qualify for or obtain such positions;

(*f*) That applicants or prospective purchasers of respondents' course of study are especially selected or that the number of applicants is restricted;

(*g*) That persons having completed respondents' course of study and passed a civil service examination are guaranteed or assured of positions in the United States Civil Service or at locations selected by them;

(*h*) That unless prospective purchasers decided to purchase respondents' course of study at the time of the sales agents' visit, they will lose the opportunity to enroll in said course or for civil service employment;

(*i*) That the taking and passing of a United States Civil Service examination assures eligibles of immediate employment in said civil service;

(*j*) That sales agents or representatives of respondents give personal assistance or instruction at any time after the sale of said course of study to purchasers thereof;

(*k*) That persons employed in the United States Civil Service are not required to serve in the Armed Forces of the United States.

2. Inviting or soliciting inquiries by means of postal cards or other sales literature in such manner as to imply or suggest that respondents have some connection with the United States Civil Service or some branch or agency of the United States Government;

3. Using credentials resembling official identifications or using or displaying official publications of the United States Governement, or other books or publications resembling them in such a manner as to represent or imply that respondents or their agents are connected with the United States Government or any branch thereof;

4. Soliciting, procuring or accepting contracts for respondents' course of study without permitting prospects to read the same over fully and thoroughly.

It is further ordered, That request for withdrawal of respondents' answer to the complaint herein be, and the same hereby is, granted.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That respondents National Training Service, Inc., a corporation, and Michael F. Bell, individually and as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of April 19, 1955].

IN THE MATTER OF

RALPH ADAMS ET AL. DOING BUSINESS AS ADAMS BROTHERS PRODUCE CO.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (C) OF THE CLAYTON ACT AS AMENDED

Docket 6263. Complaint, Nov. 16, 1954—Decision, Apr. 21, 1955

Consent order requiring dealers in fresh fruit, produce, and other food products in Birmingham, Ala., to cease receiving and accepting from sellers, commissions, etc., on substantial purchases of food products for their own account for resale, in violation of sec. 2 (c) of the Clayton Act as amended.

Before *Mr. Abner E. Lipscomb*, hearing examiner.
Mr. Edward S. Ragsdale and *Mr. Cecil G. Miles* for the Commission.
Pritchard, McCall & Jones, of Birmingham, Ala., 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 (c) of Section 2 of the Clayton Act (U. S. C. Title 15, Section 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. Respondents Ralph Adams, Carl Adams, Sr., Paul Adams, Carl Adams, Jr., Hugh Adams, Charles H. Adams, and James R. Adams are individuals and copartners doing business as Adams Brothers Produce Co. and have their offices and principal place of business located at 1703 Morris Avenue, Birmingham, Alabama. The individual respondents, as well as the partnership itself, are hereinafter sometimes referred to as respondents.

PAR. 2. The respondents, individually and as partners trading as Adams Brothers Produce Co. for a substantial period of time since 1939, but more particularly since January 1, 1951, have been and are now engaged in the business of buying, selling, and distributing for their own account, fresh fruit and produce and other food products, hereinafter sometimes referred to as food products. Respondents sell and distribute these food products in substantial quantities throughout the State of Alabama and, to a lesser extent, in the States of Georgia, Mississippi, and Tennessee. Respondents purchase such food products

from a number of sellers located in various states other than the state in which respondents are located, which sellers ship these food products across state lines to respondents at their place of business or to respondents' customers when so directed by respondents. Respondents' sales for the past several years have been between $4,000,000 and $5,000,000 annually.

PAR. 3. Respondents have for a substantial period of time, but more particularly since January 1, 1951, made numerous and substantial purchases from at least one of its principal suppliers of fresh fruits located in the State of Florida, and pursuant to said purchases, such food products have been and are now being shipped and transported in commerce by the seller thereof from the respective State of Florida, across State lines either to respondents or, pursuant to respondents' instructions and directions, to the respective customers of respondents. There has been at all times since January 1, 1951, and is now a constant current of trade and commerce in such food products across state lines between these respondents and the seller thereof.

PAR. 4. Respondents for a substantial period of time, but more particularly since January 1, 1951, in connection with the purchase of food products in commerce, as hereinabove alleged and described, have received and accepted, and are now receiving and accepting directly or indirectly things of value as commissions, brokerages, other compensations, and allowances or discounts in lieu thereof from at least one such seller from whom respondents make substantial annual purchases of said food products in commerce for their own account for resale, in the manner and under the circumstances described herein. These commissions, brokerages, or discounts in lieu thereof are the same, or substantially the same, as allowed by this particular seller to its intermediaries or brokers who effect sales for it as principal.

PAR. 5. The foregoing acts and practices of the respondents, and each of them, as hereinabove alleged and described violate subsection (c) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act (U. S. C. Title 15, Section 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 April 21, 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 November 16, 1954, the Federal Trade Commission issued its complaint in this proceeding, charging the Respondents with receiving and accepting, directly or indirectly, commissions, brokerage fees or other compensations, allowances or discounts in lieu thereof from sellers in connection with the purchase in commerce of food products for their own account, in violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U. S. C. Title 15, Sec. 13).

Thereafter, on February 28, 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 the issues involved in this proceeding.

Respondents are identified in the stipulation as individuals and co-partners doing business as Adams Brothers Produce Co., with their office and principal place of business located at 1703 Morris Avenue, Birmingham, Alabama.

Respondents admit all 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 parties hereto request that the answer of Respondents, heretofore filed with the Commission on December 20, 1954, be withdrawn, and expressly waive the filing of answer, a hearing before a hearing examiner of the Commission, the making of findings as to the facts 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 Clayton Act, as amended, or the Rules of Practice of the Commission. It is agreed by 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. 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, 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 grants the request for withdrawal of Respondents' answer, 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 Respondents Ralph Adams, Carl Adams, Sr., Paul Adams, Carl Adams, Jr., Hugh Adams, Charles H. Adams, and James R. Adams, individually, as copartners doing business as Adams Brothers Produce Co. or through any other device, their representatives, agents, or employees, directly or indirectly, in connection with the purchase of food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of food products or other commodities for their own account, or for the account of Adams Brothers Produce Co., or while acting for or in behalf of Adams Brothers Produce Co. or any other buyer as an intermediary or agent, or subject to the direct or indirect control of such buyer.

It is further ordered, That the request of all parties hereto, that Respondents' answer to the complaint herein be withdrawn, be, and the same hereby is, granted.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That respondents Ralph Adams, Carl Adams, Sr., Paul Adams, Carl Adams, Jr., Hugh Adams, Charles H. Adams, and James R. Adams, individually and as copartners doing business as Adams Brothers Produce Co., shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of April 21, 1955].

IN THE MATTER OF

UNITED STATES STEEL CORPORATION ET AL.

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

Docket 6078. Complaint, Jan. 21, 1953—Decision, Apr. 28, 1955

Consent order requiring the manufacturers controlling 75% of the domestic steel drum business, to cease cooperating in fixing prices for steel drums, including the base price for a "standard" drum and extras added to and deductions from any base price for variations, etc.

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

Mr. James I. Rooney, *Mr. James S. Kelaher*, *Mr. Fletcher G. Cohn* and *Mr. Everette MacIntyre* for the Commission.

Mr. Thomas Lynch, of New York City, and *Mr. L. L. Lewis*, *Mr. Merrill Russell*, *Mr. John C. Bane, Jr.* and *Reed, Smith, Shaw & McClay*, of Pittsburgh, Pa., for United States Steel Corp. and United States Steel Co.

Mr. J. Theodore Ross, of Pittsburgh, Pa., for Jones & Laughlin Steel Corp. and Jones & Laughlin Barrel Co.

Mayer, Froedlich, Spiess, Tierney, Brown & Platt, of Chicago, Il., for Inland Steel Co. and Inland Steel Container Co.

Dickler & Halbert, of New York City, for Rheem Manufacturing Co.

Mr. Thomas F. Patton, *Mr. Harold C. Lumb* and *Mr. William J. De Lancey*, of Cleveland, Ohio, for Republic Steel Corp.

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 the parties named in the caption hereof, and more particularly described and referred to hereinafter as respondents, have violated the provisions of Section 5 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 as follows:

PARAGRAPH 1. Respondent United States Steel Corporation is a New Jersey corporation with its office and principal place of business located at 71 Broadway, New York, New York, and through its subsidiaries is the leading steel producer in the United States.

Respondent United States Steel Company is a New Jersey corporation and is doing business under the trade name and style of "United States Steel Products Division, United States Steel Company," with its office and principal place of business located at 30 Rockefeller Plaza, New York, New York, and is a wholly-owned subsidiary and under the immediate direction and control of respondent United States Steel Corporation. Said respondents are hereinafter referred to as "U. S."

Respondent Jones & Laughlin Steel Corporation is a Pennsylvania corporation with its office and principal place of business located in the Jones & Laughlin Building, Pittsburgh, Pennsylvania, and is the fourth largest steel producer in the United States.

Respondent Jones & Laughlin Steel Barrel Company is a New Jersey corporation with its office and principal place of business located at 70 East 45th St., New York, New York, and is a wholly-owned subsidiary and under the immediate direction and control of respondent Jones & Laughlin Steel Corporation. Respondents Jones & Laughlin Steel Corporation and Jones & Laughlin Steel Barrel Company are hereinafter referred to as "J & L."

Respondent Inland Steel Company is a Delaware corporation with its office and principal place of business located at 38 South Dearborn St., Chicago, Illinois, and is the seventh largest steel producer in the United States.

Respondent Inland Steel Container Company is an Illinois Corporation with its office and principal place of business located at 6532 South Menard Ave., Chicago, Illinois, and is a wholly-owned subsidiary and under the immediate direction and control of respondent Inland Steel Company. Respondents Inland Steel Company and Inland Steel Container Company are hereinafter referred to as "Inland."

Respondent Rheem Manufacturing Company is a California corporation with its office and principal place of business located in the Russ Building, San Francisco, California. Said respondent is hereinafter referred to as "Rheem."

Republic Steel Corporation is a New Jersey corporation with its office and principal place of business located in the Republic Building, Cleveland, Ohio, and is doing business under the trade name and style of "Niles Steel Products Division, Republic Steel Corporation." Republic Steel Corporation, hereinafter referred to as "Republic," is the third largest steel producer in the United States.

PAR. 2. Respondents U. S., J & L, Inland, Rheem and Republic are engaged in the manufacture and sale, among other products, of steel

shipping containers, including steel drums. A steel drum is any single walled cylindrical or bilged container of 13 gallons to 110 gallons capacity, inclusive, constructed of steel sheet and inclusive of all gauges. Steel drums are essential for the transportation of food, petroleum, chemical, paint, and other products, many of which are vital in the defense mobilization program of the United States Government.

PAR. 3. Respondents U. S., J & L, Inland, Rheem and Republic manufacture steel drums in twenty-four plants, located throughout the United States as follows:

Respondent	*Plant Location*
Rheem (7 plants)	Bayonne, New Jersey; Sparrows Point, Maryland; Chicago, Illinois; New Orleans, Louisiana; Houston, Texas; San Francisco, California; and Los Angeles, California.
U. S. (6 plants)	Sharon, Pennsylvania; Chicago, Illinois; New Orleans, Louisiana; Beaumont, Texas; San Francisco, California; and Los Angeles, California.
J & L (6 plants)	Bayonne, New Jersey; Philadelphia, Pennsylvania; Cleveland, Ohio; N. Kansas City, Missouri; West Port Arthur, Texas; and New Orleans, Louisiana.
Inland (3 plants)	Jersey City, New Jersey; Chicago, Illinois; and New Orleans, Louisiana.
Republic (2 plants)	Niles, Ohio.

In the course and conduct of their respective businesses, all of said respondents for many years last past (respondent United States Steel Corporation through its wholly-owned subsidiary United States Steel Products Company until December 31, 1951 and thereafter through its wholly-owned subsidiary United States Steel Company, United States Steel Products Division) have caused and still cause their products, when sold by them, to be transported from the State of origin of the shipment to purchasers thereof located in various other States of the United States and in the District of Columbia in a regular current and flow of commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent U. S., J & L, and Inland began the manufacture of steel drums about 1939, at which time respondents Rheem and Republic were already engaged in the manufacture of said product. Prior to 1939, the steel drum industry was regarded as a "small business" industry. Since 1939, respondents U. S., J & L, Inland, Rheem and Republic have acquired a major portion of the steel drum business

in the United States, and they now control, and for many years past have controlled, at least 75 percent thereof.

Said respondents have the power to dominate and manipulate the market in which purchasers must buy steel drums and other shipping containers, and to frustrate, destroy, suppress, and eliminate competition between themselves.

PAR. 5. Each of said respondents has been and is in competition with the others in making or seeking to make sales in commerce within the United States of their steel drums, except insofar as said competition has been adversely affected as hereinafter alleged.

PAR. 6. Steel drums are classified by said respondents into various product types according to construction and use. Said types are manufactured in various sizes and gauges.

For many years past and continuing to the present time, said respondents have designated and described a specific drum of each product type as "standard." The specifications for said "standard" drums are uniform among respondents and are descriptive of a finished product, including such components thereof as type of head, size and location of openings, type of flanges, plugs and gaskets to be inserted and type of paint to be applied.

Said respondents quote "base prices" for the various sizes and gauges of drums described as "standard." Prices for drums other than those designated as "standard" are calculated through use of pricing factors for "extras" to be added to and "deductions" to be made from the "base prices" of "standard" drums.

The "base prices" of respondents, or adjustments thereto due to "extras" or "deductions," constitute the minimum prices charged by said respondents and generally apply to purchases of 200 steel drums or more. Said respondents charge higher than minimum prices for purchases in lesser quantities, pursuant to published "quantity differential" schedules.

The "standard" drum specifications, "base prices," "extras," "deductions," "quantity differentials," as well as prices for replacement parts, terms and conditions of sale and delivery, and any and all other elements of the pricing structure for steel drums of said respondents have been and now are substantially the same.

PAR. 7. For many years past and continuing to the present time, respondents have been engaged in unfair methods of competition and unfair acts and practices in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that they have acted, and are still acting unlawfully to hinder, suppress, and prevent competition by cooperating, combining, agreeing, and entering into and carrying out an

understanding and planned common course of action between and among themselves with respect to prices, terms and conditions of sale, and other pricing practices, in connection with the offering for sale, sale and distribution in commerce of steel drums.

PAR. 8. Pursuant to, as part thereof, in furtherance of, and in order to make effective the purposes and objectives of the aforesaid cooperation, combination, agreement, understanding and planned common course of action, respondents have formulated, adopted, performed and put into effect, among other things, the following acts, practices, methods, and policies in connection with the offering for sale, sale and distribution in commerce of steel drums:

1. Agreed to adopt and maintain, and have adopted and maintained uniform "standards," or specifications, for pricing purposes.

2. Agreed to fix and maintain and have fixed and maintained uniform "base prices" for "standard" steel drums.

3. Agreed to fix and maintain, and have fixed and maintained uniform pricing factors for "extras" to be added to and "deductions" to be made from "base prices" with respect to variations of "standard" steel drums.

4. Agreed to fix and maintain, and have fixed and maintained uniform price differentials for specified quantity purchases of steel drums.

5. Agreed to fix and maintain, and have fixed and maintained uniform terms and conditions of sale and delivery for steel drums.

6. Agreed to fix and maintain, and have fixed and maintained uniform prices for replacement parts for steel drums.

7. Agreed to adopt and maintain, and have adopted and maintained the same pricing formula, or mathematical device, for uniformly rigging prices for steel drums in the manner more particularly set forth and alleged hereinafter in Paragraph Nine.

8. Agreed to utilize, and have utilized said pricing formula, or mathematical device, described hereinafter in Paragraph Nine to arbitrarily and uniformly enhance, fix and maintain prices for steel drums.

PAR. 9. For many years past and continuing to the present time, respondents have used an arbitrary formula, or mathematical device, for raising and lowering "base prices" for "standard" steel drums.

As an integral part thereof, respondents publish and use arbitrary "differentials," or pricing factors, ranging from two cents (2¢) per drum to twenty cents (20¢) per drum dependent upon the size and gauge of each steel drum.

Respondents utilize these "differentials," or pricing factors, to calculate revisions, either upward or downward, in "base prices." The

amounts of said revisions are computed in terms of "differentials." Thus, a revision of one (1) "differential" results in changes in "base prices" by the amounts of the published "differentials." Revisions of more or less than one "differential" are readily calculated by multiplying the published "differentials," or pricing factors, by any desired number. For example, a price revision of one-half (.5) a "differential" is calculated by multiplying the published "differentials" by .5 and a price revision of five and one-half (5.5) "differentials" is calculated by multiplying the published "differentials" by 5.5. Under said formula, or mathematical device, the exact amount of a price revision for any particular steel drum is readily ascertainable.

Respondents are thus enabled, through the common use of the aforesaid formula, or mathematical device, to control the price level on steel drums by arbitrarily and uniformly fixing and adjusting "base prices," which form the keystone of the pricing structure for said drums, and to which all other elements of price, such as "extras," "deductions" and "quantity differentials" are related, as heretofore described in Paragraph Six.

PAR. 10. The aforesaid acts, practices, methods, agreements and understandings of respondents as hereinbefore alleged, all and singularly, are to the prejudice of the public; have a dangerous tendency and capacity to hinder, lessen, restrain and eliminate competition between and among respondents in the sale of steel drums in commerce and actually have hindered, lessened, restrained and eliminated such competition; have a dangerous tendency to create and have actually created in respondents a monopoly in the sale and distribution of said product, and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated April 28, 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 January 21, 1953, the Federal Trade Commission issued its complaint in this proceeding, charging the Respondents with unfair

methods of competition and unfair acts and practices in commerce, by cooperating, combining, agreeing, and entering into and carrying out an understanding and planned common course of action between and among themselves with respect to prices, terms and conditions of sale, and other pricing practices, in the offering for sale, sale and distribution in commerce of steel drums, in violation of the Federal Trade Commission Act.

Thereafter, on March 8, 1955, Respondents, by their duly authorized attorneys, entered into an agreement with counsel supporting the complaint and, pursuant thereto, submitted to the Hearing Examiner a Stipulation For Consent Order for the purpose of disposing of all the issues involved in this proceeding.

Respondent United States Steel Corporation is identified in the stipulation as a corporation, organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at No. 71 Broadway, New York, New York.

Respondent Jones & Laughlin Steel Corporation is identified in the stipulation as a corporation, organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 401 Liberty Avenue, Gateway Center, Pittsburgh, Pennsylvania.

Respondent Inland Steel Company is identified in the stipulation as a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 38 South Dearborn Street, Chicago, Illinois.

Respondent Rheem Manufacturing Company is identified in the stipulation as a corporation, organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 801 Chesley Avenue, Richmond, California.

Respondent Republic Steel Corporation is identified in the stipulation as a corporation, organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located in the Republic Building, Cleveland, Ohio.

Respondents admit all 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.

The stipulation contains a statement that Respondents withdraw their answers to the complaint, and, accordingly, their answers shall hereafter be considered as withdrawn.

Respondents also expressly waive the right to file answer herein. In addition, they expressly waive hearing before a hearing examiner or the Commission, the making of findings as to the facts or conclusions of law by the Hearing Examiner or the Commission, the filing of exceptions and oral argument before the Commission, and all further proceedings before the Hearing Examiner and the Commission to which Respondents may be entitled under the provisions of 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 it were made after full hearing, presentation 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 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.

Counsel supporting the complaint states, in his memorandum submitting the Stipulation For Consent Order to the Hearing Examiner, that the order contained in the stipulation differs from the order accompanying the complaint. He avers, however, that the order agreed upon provides adequate relief from all the violations charged in the complaint.

Included as part of the order presented in the stipulation is a provision requiring a report of compliance with the order to cease and desist within sixty days from the service thereof upon respondents. According to the Commission's present practice, such orders of compliance are issued by the Commission itself as a part of its notification to a respondent that the initial decision of the Hearing Examiner has become the decision of the Commission. Observance of this practice avoids confusion as to the expiration date of the sixty-day period allowed for submission of reports of compliance. Accordingly, no

provision concerning the requirement of a report of compliance is included in the order hereinafter issued in this initial decision.

In view of the above facts, and in the light of the statement presented by counsel supporting the complaint, it appears that the order to cease and desist contained in the stipulation will safeguard the public interest to the same extent as if it had been issued after the completion of hearings 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 Respondents, United States Steel Corporation, a corporation, Jones & Laughlin Steel Corporation, a corporation, Inland Steel Company, a corporation, Rheem Manufacturing Company, a corporation, and Republic Steel Corporation, a corporation, and their respective officers, agents, representatives, and employees, in, or in connection with, the offering for sale, sale, and distribution in interstate commerce of the steel drums involved in this proceeding, do forthwith cease and desist from entering into any planned common course of action, understanding or agreement between any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, and from cooperating in, carrying out, or continuing any such planned common course of action, understanding, or agreement, to do or perform any of the following things:

(1) Adopting, establishing, fixing, or maintaining prices or any element thereof at which steel drums shall be quoted or sold, including but not limited to base prices, the extras which shall be added to, or the deductions which shall be made from, any base price for any specified characteristic, or other conditions of sale;

(2) Collecting, compiling, circulating, or exchanging between or among respondents, or any of them, any pricing factor, statement of pricing method, or extra charges thereto or deductions therefrom for any specified characteristic or quantity of steel drums or services connected therewith used or to be used in computing prices or price quotations of steel drums; or using, directly or indirectly, as a factor in computing price quotations or in making, quoting, or charging prices, any such factor or method so collected, compiled, circulated, or exchanged;

(3) Quoting or selling steel drums at prices calculated or determined pursuant to, or in accordance with, any system or formula which produces identical price quotations or prices or delivered costs, or which establishes a fixed relationship among price quotations or prices or delivered costs, or which prevents purchasers from securing any

advantage in price in dealing with one or more of the respondents as against any of the other respondents.

It is further ordered, That each of the respondents do forthwith cease and desist from acting, individually or otherwise, so as knowingly to contribute to the maintenance or operation of any planned common course of action, understanding, or agreement between and among any two or more of the respondents or between any one or more of them and others not parties hereto through the commission of any of the acts, practices, or things prohibited by subparagraphs (1) through (3) of paragraph I of this order.

Provided, however, That in interpreting and construing the foregoing provisions of this order, it is understood that:

(1) The Federal Trade Commission is not considering evidence of uniformity of prices or any element thereof of two or more sellers at any destination or destinations alone and without more as showing a violation of law;

(2) The Federal Trade Commission construes the phrase "planned common course of action" and the word "continuing" contained in this order as interpreted by the Supreme Court in *FTC* v. *Cement Institute*, 333 U. S. 683, at page 728, and by the court in *American Chain & Cable Co.* v. *FTC* (CA 4th 1944), 139 F. 2d 622;

(3) The Federal Trade Commission is not acting to prohibit or interfere with delivered pricing or freight absorption as such when innocently and independently pursued, regularly or otherwise, with the result of promoting competition.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That respondents United States Steel Corporation, Jones & Laughlin Steel Corporation, Inland Steel Company, Rheem Manufacturing Company, and Republic Steel Corporation, corporations, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of April 28, 1955].