

Complaint

IN THE MATTER OF

MERIT PHARMACAL COMPANY ET AL.

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

Docket 6314. Complaint, Mar. 22, 1955—Decision, Aug. 31, 1955

Consent order requiring sellers in Chicago to cease making false claims in advertising as to the effectiveness of their "X-TRON" hair and scalp preparations.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Joseph Callaway for the Commission.

Mr. Henry Junge and *Mr. Richard G. Bodenstab*, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Merit Pharmacal Company, a corporation, and A. B. Marks, M. A. Marks and A. Skadler, individually and as officers of Merit Pharmacal Company and also doing business as Apex Pharmacal Company and as Apex Pharmacal Distributing Company, and Anthony J. Kemp, individually, 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 Merit Pharmacal Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 3704 W. North Avenue, Chicago, Illinois. Respondents A. B. Marks, M. A. Marks, and A. Skadler are the officers, and Anthony J. Kemp is the General Manager of the corporate respondent. These individuals formulate and control the policies, acts and practices of the corporate respondent, including the acts and practices hereinafter alleged. The individuals also are and have been doing business from the same address as that of the corporate respondent as Apex Pharmacal Company and as Apex Pharmacal Distributing Company. The address of respondents A. B. Marks and M. A. Marks is 2626 W. Iowa Street, Chicago, Illinois, that of respondent A. Skadler is the same as that of the corporate respondent;

and the address of respondent Anthony J. Kemp is 460 North Walnut Street, Elmhurst, Illinois.

PAR. 2. The said respondents are now and have been since April 1952 engaged in the business of selling and distributing cosmetic and medicinal preparations for external use in the treatment of conditions of the hair and scalp. Said respondents cause said preparations, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States. Said respondents maintain, and at all times mentioned herein have maintained, a course of trade in said preparations between and among the various States of the United States. The business of said respondents in said preparations has been substantial.

PAR. 3. The said preparations, consisting of an ointment and a lotion, are sold under the trade name of X-TRON and are composed of the following ingredients:

<i>Ointment</i>	<i>Lotion</i>
Isopropyl Alcohol	Polyethylene Glycol 400
Benzyl Alcohol	Monostearate
Alkyl Dimethyl	Benzocaine
Benzyl Ammonium	Vitamin A Palmitate
Chloride	34000 units/oz.
Lactic Acid (to pH 5)	Vitamin D ₃ 7000 units/oz.
Sodium Lactate (add	
Sodium Hydroxide	
to pH 6)	

The directions for use provide that the ointment be applied to the hair and scalp followed by the lotion.

PAR. 4. In the course and conduct of their aforesaid business, respondents have disseminated and have caused the dissemination of advertisements concerning said preparations by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act for the purpose of inducing and which were likely to induce directly or indirectly the purchase of said preparations; and respondents have also disseminated and caused the dissemination of advertisements concerning said preparations, by various means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations contained in said advertisements, principally in newspapers, leaflets, circulars,

215

Complaint

and over the radio, disseminated and caused to be disseminated as hereinabove set forth are the following:

If you are suffering from an unsightly scalp and hair condition DON'T GIVE UP HOPE! X-TRON FORMULA has brought aid and relief to thousands of people who thought they were destined to go through life with an itchy scalp, dandruff and falling hair. * * *

We unconditionally guarantee to Stop Itching Scalp
Eliminate Dandruff Completely
Stop Falling Hair
Help Renew Hair Growth Or your money back

X-TRON actually has grown new hair on bald heads

* * * the X-TRON liquid hair medicine and the X-TRON hair and scalp salve, the same combination formula, that stopped hair loss, stopped falling hair by the handful, stopped dandruff * * * the formula that did all this in closely observed clinical research trials you have already read about.

PAR. 5. Through the use of the aforesaid statements and representations and others similar thereto, not specifically set out herein, respondents have represented, directly and by implication that by the use of respondents' preparations: (a) dandruff, itching and irritation of the scalp will be permanently eliminated, (b) excessive hair fall will be stopped, (c) baldness will be prevented and overcome, and (d) new hair will be induced to grow.

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, regardless of the exact formula or the combination of the ingredients or preparations, or the method of application, the use of respondents' preparations (a) will not permanently eliminate dandruff, itching, or irritation of the scalp; (b) will not stop excessive hair fall; (c) will not prevent or overcome any type of baldness or hair loss or correct these conditions or have any favorable influence on their underlying causes; and (d) will not induce new hair to grow.

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

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute

unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 22, 1955, issued and subsequently served its complaint on respondents herein, who have their principal office and place of business at 3704 W. North Avenue, Chicago, Illinois and are engaged in the business of selling and distributing cosmetic and medicinal preparations for external use in the treatment of conditions of the hair and scalp. The address of individual respondents, A. B. Marks and M. A. Marks, is 2626 W. Iowa Street, Chicago, Illinois; that of individual respondent A. Skadler is 3704 W. North Avenue, Chicago, Illinois; and that of individual respondent Anthony J. Kemp is 460 N. Walnut Street, Elmhurst, Illinois.

On May 12, 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 all 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; stipulate that the agreement is for settlement purposes only and does not constitute an admission by respondent 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 either; the filing of exceptions or oral argument 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.

Respondents further agree in said stipulation that the order hereinafter entered shall have the same force and effect as if made after 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 in accordance with the stipulation. Said stipulation further provides that it, together with the complaint, may be used in construing the terms of the aforementioned order, which order may be altered, modified or set aside in the manner provided by statute for the orders of the Commission and said stipulation further provides that it is subject to approval in accordance with Rules V and XXII of the Commission's

215

Order

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 Merit Pharmacal Company, a corporation, and its officers and respondents A. B. Marks, M. A. Marks and A. Skadler, individually and as officers of said corporation, and doing business as Apex Pharmacal Company and as Apex Pharmacal Distributing Company, or under any other name or names, and Anthony J. Kemp, individually, and respondents' agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of X-TRON preparations or of any preparations of substantially similar composition or possessing substantially similar properties, do forthwith cease and desist from:

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

- (a) Cause the permanent elimination of dandruff, itching or irritation of the scalp;
- (b) Stop excessive hair fall;
- (c) Have any effect in preventing or overcoming baldness;
- (d) Induce the growth of new hair.

2. Disseminating or causing to be disseminated by any means, any advertisement for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representations prohibited in subparagraphs (a), (b), (c), or (d) of paragraph 1. hereof.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Sec. 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 31st day of August, 1955, become the decision of the Commission; and, accordingly:

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.

IN THE MATTER OF
MASTERLINE CORPORATION ET AL.

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

Docket 6291. Complaint, Jan. 26, 1955—Decision, Sept. 1, 1955

Order requiring a corporate seller in Philadelphia (individual respondents having been dismissed) in advertising aluminum storm doors, aluminum storm windows, and aluminum awnings, to cease misrepresenting the terms and conditions of sale, guarantees, indorsements, protective features, prices, and combination offers.

Mr. Daniel J. Murphy and Mr. William L. Taggart for the Commission.

Fox, Rothschild, O'Brien & Frankel, of Philadelphia, Pa., for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 26, 1955, issued and subsequently served its complaint in this proceeding upon the respondents Masterline Corporation, a corporation, and Morris Marder, Henry Yusem, Myrna Yusem and Rita Marder, individually and as officers of said corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. In the "Notice" portion of said complaint there was set out a provisional order with the statement that such order shall issue unless the respondent shall file an answer within the time designated in the complaint and appear at the time and place fixed for the hearing.

Subsequent thereto, the respondent Masterline Corporation, a corporation, failed to file its answer in this proceeding or to appear before the hearing examiner on April 6, 1955, the date set for initial hearing in the complaint, and was declared in default. Upon motion of the attorney in support of the complaint the proceeding was continued to May 12, 1955, at which time said attorney presented an affidavit executed by the individual respondents Morris Marder and Henry Yusem, stating that they were officers of the respondent corporation at the time of the issuance of the complaint and that the respondents Myrna Yusem, wife of Henry Yusem, and Rita Marder, wife of Morris Marder, were nominal directors and nominal officers

Findings

of said corporation and were not engaged in the operation of said corporation; that said corporation was declared bankrupt by order of the United States District Court, Eastern District of Pennsylvania, and the assets of said business were being disposed of by a receiver in bankruptcy appointed by said United States District Court; that said respondents are not now engaged in the storm window business and do not intend to resume said business; and that in any business in which they may henceforth engage they will not allow or permit themselves to be part of practices of the types as alleged in the complaint. On the basis of said affidavit, the attorney in support of the complaint moved that the individual respondents, Morris Marder, Henry Yusem, Myrna Yusem and Rita Marder, be dismissed, which motion having been sustained by the hearing examiner, and default having been entered against the corporate respondent, Masterline Corporation, and the hearing examiner, having duly considered the record herein, makes the following findings as to the facts, conclusions drawn therefrom and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Masterline Corporation is a corporation organized under the laws of the State of Pennsylvania with its office and principal place of business located at the time of the filing of the complaint at the southeast corner of Cedar and Cambria Streets, Philadelphia 34, Pennsylvania.

PAR. 2. For several years last past said respondent, Masterline Corporation, a corporation, has been engaged in the sale and distribution in interstate commerce of aluminum storm windows, aluminum storm doors and aluminum awnings. In the course of said business the respondent has made many statements and representations, concerning said products, by means of advertisements inserted in newspapers and by other means in commerce which represent directly or by implication—

1. When purchases are made on credit the first payment is not due for a specified period of time, usually several months and that purchasers may use the products free in the meantime.
2. Respondents' products are unconditionally guaranteed, that their installations are fully guaranteed to last a lifetime and that purchasers are guaranteed a lifetime of trouble-free service.
3. Respondents' aluminum windows are approved or endorsed by disinterested organizations of national repute.
4. Respondents' doors and windows have 100% burglar proof locks or latches.

Findings

52 F. T. C.

5. An aluminum door, with an ornamental grille is a gift or gratuity without charge except for a slight charge for installation and hardware.

6. Respondents' products are sold at the lowest prices in America.

7. A regular \$90 screen storm door may be purchased at a greatly reduced price when purchased in combination with other merchandise and that accessory items such as mail slot, door pump, lock, safety chain, ornamental grille and weather resistant door sweep are included in the reduced price and that only the cost of installation is extra.

8. A bona fide offer is being made to sell products pictured or described in advertisements at a greatly reduced price in combination with the purchase of other products.

PAR. 3. The foregoing representations were grossly exaggerated, false and misleading. In truth and in fact—

1. The purchasers on credit may not use the products free until the due date of the first payment as they are required to pay additional interest charges to cover the period preceding the payment of the initial installment.

2. Respondents' products are not unconditionally guaranteed; their installations are not fully guaranteed to last a lifetime and purchasers are not guaranteed a lifetime of trouble-free service.

3. Respondents' aluminum doors are not nationally approved.

4. Respondents' doors and windows are not equipped with 100% burglar proof locks or latches.

5. An aluminum door with ornamental grille is not a gift or gratuity without charge except for a slight charge for installation and hardware.

6. Respondents' products are not sold at the lowest prices in America.

7. The greatly reduced price for a regular \$90 screen storm door, purchased in combination with other merchandise, does not include the cost of accessories such as mail slot, door pump, lock, safety chain, ornamental grille and weather resistant door sweep.

8. Offers were not bona fide offers to sell products pictured or described at greatly reduced prices in combination with the purchase of other products. On the contrary, respondents' said offers were made for the purpose of developing leads as to prospective purchasers of respondents' products at greatly increased prices.

PAR. 4. The said respondent, in the course and conduct of its business, was in substantial competition in commerce with other corpora-

220

Order

tions and with individuals, partnerships and others engaged in the sale of aluminum storm windows, aluminum storm doors and aluminum awnings.

PAR. 5. The use by the respondent of the foregoing false, misleading and deceptive representations and statements had the tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true, and into the purchase of substantial quantities of respondent's products because of such erroneous and mistaken belief. As a result thereof, trade has been unfairly diverted to the respondent from its competitors in commerce and substantial injury has been done to competition in commerce.

CONCLUSION

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

ORDER

It is ordered, That respondent Masterline Corporation, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device in connection with the sale or distribution of aluminum storm doors, aluminum storm windows, or aluminum awnings in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That credit customers have free use of items for the period preceding the due date of the initial payment, when in fact they are charged with interest during such period.
2. That any of said products are fully guaranteed, or are unconditionally guaranteed, or are sold with a lifetime guarantee, or that installations are guaranteed for a lifetime of service or that the guarantee assures users of a lifetime of trouble-free performance.
3. That any of said products are guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform are clearly and conspicuously disclosed.
4. That their Alumatic windows are nationally approved.
5. That the locks or latches with which their storm doors and windows are equipped are burglar proof.

Order

52 F. T. C.

6. That any of said products are free or may be purchased at reduced prices, without clearly and conspicuously disclosing in immediate conjunction with any such offer all of the terms and conditions thereof, including the need to purchase additional merchandise, if such is the case.

7. That any of said products are offered at America's lowest price.

8. By pictorial illustrations or otherwise, that the advertised price of any of said products includes any equipment or accessories for which an additional charge is made.

9. That products are offered for sale when such offer is not a bona fide offer to sell the products, so, and as, offered.

It is further ordered, That the complaint be, and the same is hereby, dismissed as to the individual respondents Morris Marder, Henry Yusem, Myrna Yusem and Rita Marder.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did, on the 1st day of September, 1955, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Masterline Corporation, 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.

Complaint

IN THE MATTER OF

GADGET-OF-THE-MONTH CLUB, INC., ET AL.

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

Docket 6256. Complaint, Oct. 29, 1954—Decision, Sept. 8, 1955

Consent order requiring sellers in Los Angeles, Calif., to cease misrepresenting the number to be received within a stated period and the total retail price of "gadgets" sent to members of its Gadget-of-the-Month Club.

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

Mr. Michael J. Vitale and *Mr. Edward F. Downs* for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Gadget-of-the-Month Club, Inc., a corporation, and Don L. Davis, and Mary Lou Moffitt Davis, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Gadget-of-the-Month Club, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California, with its office and principal place of business located at 6600 Lexington Avenue, Los Angeles, California. Respondent, Don L. Davis and Mary Lou Moffitt Davis, are President and Secretary-Treasurer, respectively, of corporate respondent. These individuals formulate, direct, and control the policies, acts, and practices of said corporation. The address of the individual respondents is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the business of offering for sale, and selling to members of the purchasing public miscellaneous articles of merchandise referred to as "gadgets." In the course and conduct of their business, respondents cause and have caused their said "gadgets" when sold, to be transported from their place of business in the State of California to purchasers thereof located in various other States in the United States, and maintain and at all times mentioned herein have

Complaint

52 F. T. C.

maintained, a course of trade in said "gadgets" in commerce among and between the various States of the United States. Their volume of trade in said commerce has been and is substantial.

PAR. 3. Respondents sell their gadgets through the sale of subscriptions to what they designate as the Gadget-of-the-Month Club. The annual subscription price for membership in said club is \$12.00 and an additional \$2.00 to the inventors of gadgets who wish to submit their inventions to respondents as possible gadgets to be furnished to subscribers to said club in the future or for general commercial purposes. Respondents' method of attracting the attention of the public to the manner in which their club is operated is through appearances of one of the aforesaid officers of corporate respondent on television programs; as a lecturer before various types of organizations and in articles in newspapers and national magazines. When inquiries from the public concerning subscriptions to the Gadget-of-the-Month Club are received, respondents mail subscription blanks to those inquiring which set out the terms and conditions of membership in the club together with a booklet which also sets out the terms and conditions of membership and a detailed explanation of the manner in which this club is operated. Such material is accomplished by a transmittal letter which also sets out the terms and conditions of membership.

PAR. 4. In the pamphlet, subscription blank, letter referred to above and other literature respondents represent and have represented:

1. That the Gadget-of-the-Month Club, Inc. will mail to each subscriber twelve gadgets within a twelve month period from the date the first mailing is made.

2. That the total retail price for said gadgets is greater than the subscription fee paid.

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

1. Respondents have not mailed twelve gadgets within a twelve month period from the date of the first mailing to many persons who have subscribed to the Gadget-of-the-Month Club.

2. The total retail price of said gadgets is substantially less than the amount of the subscription fee.

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations have had and now have the tendency and capacity to mislead and deceive a substantial

portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true and to induce the purchasing public to become subscribers to respondents' Club as a result of such erroneous and mistaken belief.

PAR. 7. 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 ABNER E. LIPSCOMB, HEARING EXAMINER

On October 29, 1954, the Federal Trade Commission issued its complaint in this proceeding, charging the Respondents with unfair and deceptive acts and practices in connection with the retail sale of miscellaneous articles of merchandise referred to as "gadgets," in violation of the Federal Trade Commission Act.

Thereafter, on November 26, 1954, respondents filed with the Commission their Answer to the complaint, and on June 30, 1955, entered into an agreement with counsel supporting the complaint, and, pursuant thereto, submitted to the hearing examiner an Agreement For Consent Order disposing of all the issues involved in this proceeding.

Respondent Gadget-of-the-Month Club, Inc., is identified in the agreement as a corporation organized and existing by virtue of the laws of the State of California, with its office and principal place of business located at 6600 Lexington Avenue, Los Angeles, California. Respondents Don L. Davis and Mary Lou Moffitt Davis are identified in the agreement as individuals and officers of said corporation, with the same business address.

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 agree that the Answer filed by Respondents on November 26, 1954, be withdrawn, and for all legal purposes said answer will hereafter be regarded as withdrawn. All parties expressly waive a hearing before a hearing examiner or the Commission; the making of findings of fact or conclusions of law by the hearing examiner or the Commission; the filing of exceptions and oral argument before the Commission, and all further and other procedure before the hearing examiner and the Commission to which Respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission. Respondents agree that the order contained in the agreement shall have the same force and effect as if made after a full hearing, presentation of evidence, and findings and

Order

52 F. T. C.

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 Agreement For Consent Order, together with the complaint, shall constitute the entire record in this proceeding, upon which the initial decision shall be based. The agreement 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 agreement further provides that the signing of the Agreement 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 agreement is identical with the order accompanying the complaint except for clarification of Paragraph 2 thereof by the substitution of the word "price" for the word "value," since respondents' representations therein referred to were with respect to price rather than value, 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 agreement. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement For Consent Order submitted herein; finds that this proceeding is in the public interest; and issues the following order:

It is ordered, That Respondents, Gadget-of-the-Month Club, Inc., a corporation, and its officers, Don L. Davis and Mary Lou Moffitt Davis, individually and as officers of said corporation, and said Respondents' representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of miscellaneous articles of merchandise, do forthwith cease and desist from:

1. Representing, directly or by implication, that subscribers to the Gadget-of-the-Month Club, or other purchasers of Respondents' merchandise, will receive any specified number of articles of merchandise within any stated period of time, unless the number of articles specified are actually delivered within the stated period of time;

2. Representing that the total retail price of the articles of merchandise delivered to subscribers is greater than the subscription price

225

Decision

or misrepresenting in any manner the retail price of Respondents' merchandise.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 8th day of September, 1955, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Gadget-of-the-Month Club, Inc., a corporation, and Don L. Davis, and Mary Lou Moffitt Davis, individually and as officers 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.

Complaint

52 F. T. C.

IN THE MATTER OF

FREDERICK C. BLOXOM, SR., ET AL.
TRADING AS F. C. BLOXOM & COMPANYCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (c)
OF THE CLAYTON ACT*Docket 6259. Complaint, Nov. 4, 1954—Decision, Sept. 8, 1955*

Consent order requiring copartners engaged in Seattle, Wash., as brokers and as buyers of food products, to cease violating sec. 2 (c) of the Robinson-Patman Act by receiving commissions, brokerage, etc., from sellers on purchases of food products for their own account for resale.

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

Mr. Edward S. Ragsdale and *Mr. Cecil G. Miles* for the Commission.

Bayley, Fite, Westburg, Madden & Goodin, of Seattle, Wash., 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 been, 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 Frederick C. Bloxom, Sr., Frederick C. Bloxom, Jr., and Kinne M. Hawes, individually and as copartners, trading as F. C. Bloxom & Company, have their offices and principal place of business located at 1105 Western Avenue, Seattle, Washington. Said respondents are engaged in the business of buying, selling and distributing fresh fruits and vegetables and other products (all of which are hereinafter referred to as food products).

Respondents' sales for the past several years have averaged from approximately \$1,500,000 to \$2,500,000 annually.

PAR. 2. The respondents, named in the caption hereof individually and as copartners, trading as F. C. Bloxom & Company, for a substantial period of time since January 1, 1942, have been engaged, and are now engaged, in the business of buying, selling, and distributing food products by two separate and distinct methods, namely and principally: (1) as brokers, and (2) as buyers.

First: Respondents' principal business as "brokers" of food products may be described as follows:

Respondents in such capacity act as sales agents negotiating the sale of food products for and on behalf of seller-principals and respondents' only compensation for such services is a commission or brokerage fee paid by such seller-principals. The respondents solicit and obtain orders from such food products at the respective seller-principals' prices and on such seller-principals' terms of sale. Respondents, as brokers, transmit purchase orders to their numerous seller-principals, who, thereafter, generally invoice and ship such food products directly to the seller-principals' customers, and collect the purchase price from such customers.

Respondents, as brokers of food products, have no financial interest in the food products they sell except the commissions or brokerage fees they receive and accept from their seller-principals for their services in making the sales. Such commissions or brokerage fees are customarily based on a percentage of invoice sales price of food products sold. The respondents, in this capacity, are brokers and not traders for profit. Respondents in such transactions do not take title to or have any financial interest in the food products sold, and neither make a profit nor suffer a loss on the transactions. This phase of respondents' business is not challenged by the complaint.

Second: Respondents' business as "buyers" of food products may be described as follows:

Respondents transmit their own purchase orders for food products directly to the various sellers from whom they buy. Such sellers invoice and ship such food products directly to respondents for respondents' account for resale.

The respondents, in connection with such purchases, are direct buyers, purchasing and reselling such food products, in their own name, and for their own account, at their own prices and on their own terms, taking title thereto, and assuming all the risks incident to ownership, and as such are traders for profit.

When the respondents sell such food products, they invoice the products to their customers in respondents' own trade name and for their own account and at prices and on terms respondents determine, either receiving a profit or accepting a loss thereon, as the case may be. Respondents receive, directly or indirectly, from the respective sellers from whom they purchase such food products for their own account, commissions, brokerage fees, or other compensation or allowances or discounts in lieu thereof.

Decision

52 F. T. C.

Respondents' business as "buyers" of food products for their own account on which they receive brokerage is challenged by the complaint herein.

PAR. 3. Respondents, for a substantial period of time since January 1, 1942, have made, and are now making, numerous and substantial purchases of food products from sellers located in States other than the State where respondents are located, and pursuant to said purchases, and respondents' directions, such food products were and are now being, shipped and transported in commerce by the various sellers thereof from the respective States in which such sellers are located across State lines, either to respondents, or pursuant to respondents' instructions, to the respective customers of respondents to whom such products were and are now being sold by respondents. Thus, there has been since January 1, 1942, and is now, a constant current of trade and commerce conducted by said respondents, in such food products, between and among the various States of the United States.

PAR. 4. Respondents, for a substantial period of time since January 1, 1942, and more particularly since January 1, 1950, 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, commissions, brokerage or other compensation, or allowances or discounts in lieu thereof, from some, but not all of the various sellers from whom they purchase food products, in commerce for their own account for resale, usually in the manner and under the circumstances set out in the "SECOND" or last part of Paragraph Two above.

PAR. 5. The foregoing acts and practices of the respondents, directly or indirectly, since January 1, 1942, and more particularly since January 1, 1950, in receiving and accepting commissions, brokerage, or other compensation or allowances or discounts in lieu thereof from various sellers in connection with their purchase of food products in commerce are in violation of subsection (c) of Section 2 of the Clayton Act as amended.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

On November 4, 1954, the Federal Trade Commission issued its complaint in this proceeding, charging the Respondents with violation of subsection (c) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936, by receiving and accepting, directly or indirectly, commissions, brokerage or other compensation, or allowances or discounts in lieu thereof, from some,

but not all of the various sellers from whom they purchase food products in commerce for their own account for resale.

Thereafter, on December 1, 1954, Respondents filed with the Commission their Answer to said complaint, and on July 11, 1955, entered into an agreement with counsel supporting the complaint, and, pursuant thereto, submitted to the hearing examiner a Stipulation For Consent Order disposing of all the issues involved in this proceeding.

Respondents are identified in the stipulation as individuals and as copartners trading as F. C. Bloxom & Company, with their office and principal place of business located at 1105 Western Avenue, Seattle, Washington, and it is recited in such identification that Respondent Frederick C. Bloxom, Sr., died prior to the service of the complaint herein.

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

All parties request the withdrawal of Respondents' Answer, filed herein on December 1, 1954, and for all legal purposes said answer will hereafter be regarded as withdrawn. All parties expressly waive the filing of answer; a hearing before a hearing examiner or the Commission; the making of findings of fact or conclusions of law by the hearing examiner or the Commission; the filing of exceptions and oral argument before the Commission; and all further and other procedure before the hearing examiner and the Commission to which Respondents may be entitled under the Clayton Act, as amended, or the Rules of Practice of the Commission. Respondents agree that the order contained in the stipulation shall have the same force and effect as if made after a full hearing, 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 except for the omission therefrom of the name of Frederick C. Bloxom, Sr., deceased, as to whom the complaint herein will, of course, be dismissed, it appears that such order will safeguard the public interest to the same extent as could be accomplished by the issuance of an order after full hearing and all other adjudicative procedure waived in said stipulation. Accordingly, in consonance with the terms of the aforesaid stipulation, the hearing examiner accepts the Stipulation For Consent Order submitted herein; finds that this proceeding is in the public interest; and issues the following order:

It is ordered, That Respondents Frederick C. Bloxom, Jr., and Kinne M. Hawes, individually or as copartners, trading as F. C. Bloxom & Company, or under any other name, their respective representatives, agents and employees, in connection with the purchase of food products or other commodities 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 commodity, made for their own account or where the Respondents Frederick C. Bloxom, Jr., and Kinne M. Hawes, individually or as copartners, trading as F. C. Bloxom & Company, or under any other name, are the agents, representatives, or other intermediaries acting for, or in behalf of, or subject to the direct or indirect control of any buyer.

It is further ordered, That the complaint herein, insofar as it relates to Respondent Frederick C. Bloxom, Sr., deceased, be, and the same hereby is, dismissed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 8th day of September 1955, become the decision of the Commission; and, accordingly:

It is ordered, That Respondents Frederick C. Bloxom, Jr., and Kinne M. Hawes, individually and as copartners trading as F. C. Bloxom & Company, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Complaint

IN THE MATTER OF

T. F. DENMAN TRADING AS THE FUR DOCTOR

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

Docket 6298. Complaint, Feb. 25, 1955—Decision, Sept. 8, 1955

Consent order requiring a furrier in San Francisco, Calif., to cease violating the Fur Products Labeling Act by labeling, invoicing, and newspaper advertising which named other animals than those producing the fur in certain fur products or failed to name any animal or the country of origin of imported furs, and failed in other respects to conform to requirements of the Act.

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

Mr. John T. Walker and *Mr. Edward F. Downs* for the Commission.

Mr. Ralph Leon Isaacs, of San Francisco, Calif., for respondent.

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 T. F. Denman, an individual trading as The Fur Doctor, hereinafter referred to as respondent, has 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 T. F. Denman is an individual trading as The Fur Doctor, with his principal place of business located at 1521 Market Street, San Francisco, California.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has been, and is now, engaged in the introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce of fur products, and has sold, advertised, 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, as "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act.

Complaint

52 F. T. C.

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 or names of the animal or animals that produced the fur from which said fur products had been manufactured, 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 misbranded in that, on labels attached thereto, respondent set forth the name of an animal other than the name of the animal that produced the fur product, in violation of Section 4 (3) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder.

PAR. 6. Certain of said fur products were misbranded, in violation of the Fur Products Labeling Act, in that they were not labeled in accordance with the rules and regulations promulgated thereunder in the following respects:

(A) Required information was set forth in abbreviated form, in violation of Rule 4 of the aforesaid rules and regulations.

(B) The term "Fur Origin" did not precede the country of origin on labels as part of the required information, in violation of Rule 12 (e) of the aforesaid rules and regulations.

(C) Required information was mingled with non-required information on labels, in violation of Rule 29 (a) of the aforesaid rules and regulations.

(D) Required information was set forth in handwriting on labels, in violation of Rule 29 (b) of the aforesaid rules and regulations.

PAR. 7. 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. 8. Certain of said fur products were falsely and deceptively invoiced, in violation of the Fur Products Labeling Act, in that they were not invoiced in accordance with the rules and regulations promulgated thereunder in that required information was set forth in abbreviated form, in violation of Rule 4 of the aforesaid rules and regulations.

PAR. 9. Certain of said fur products were falsely and deceptively advertised, in violation of the Fur Products Labeling Act, in that

respondent caused the dissemination in commerce, as "commerce" is defined in said Act, of certain advertisements concerning said fur products, by means of newspapers and by various other means, which advertisements were not in accordance with the provisions of Section 5 (a) of the Fur Products Labeling Act, and which advertisements were intended to and did aid, promote, and assist, directly or indirectly, in the sale and offering for sale of said fur products.

PAR. 10. Among and including the advertisements as aforesaid, but not limited thereto, were advertisements of respondent which appeared in issues of the "Sun Reporter," a newspaper published in San Francisco, California, and having wide circulation in that State and in adjacent areas of other States of the United States. By means of the aforesaid advertisements, and through others of similar import and meaning, not specifically referred to herein, the respondent falsely and deceptively advertised its fur products, in that said advertisements:

(A) Failed to disclose the name or names of the animal or animals producing the fur or furs contained in the fur products as set forth in the Fur Products Name Guide, in violation of Section 5 (a) (1) of the Fur Products Labeling Act.

(B) Contained the name or names of an animal or animals other than those producing the fur contained in the fur product, in violation of Section 5 (a) (5) of the Fur Products Labeling Act.

(C) Failed to set forth the country of origin of imported furs contained in fur products as required by Section 5 (a) (6) of the Fur Products Labeling Act or in the manner and form permitted by Rule 38 (b) of the rules and regulations promulgated thereunder.

PAR. 11. The aforesaid acts and practices of respondent, as herein alleged, were in violation of the Fur Products Labeling Act and the rules and regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

On February 25, 1955, the Federal Trade Commission issued its complaint in this proceeding, charging the Respondent with unfair and deceptive acts and practices in connection with the sale in commerce of imported and domestic fur products, in violation of the Fur Products Labeling Act and the Federal Trade Commission Act.

Thereafter, on March 28, 1955, Respondent filed with the Commission his Answer To Complaint, and on June 9, 1955, entered into an agreement with counsel supporting the complaint, and, pursuant

thereto, submitted to the hearing examiner a Stipulation For Consent Order disposing of all the issues involved in this proceeding.

Respondent is identified in the stipulation as an individual with his office and principal place of business located at 1521 Market Street, in the city of San Francisco, State of California.

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

Respondent states in the Stipulation For Consent Order that he withdraws his answer, filed by him on March 28, 1955, and for all legal purposes said answer will hereafter be regarded as withdrawn. Respondent 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 further and other procedure before the hearing examiner or the Commission to which Respondent may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission. Respondent agrees that the order contained in the stipulation shall have the same force and effect as if made after a full hearing, presentation of evidence, and findings and conclusions thereon. Respondent specifically waives 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 either an admission or a denial by Respondent 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 herein, it appears that such order will safeguard the public interest to the same extent as could be accomplished by the issuance of an order after full hearing and all other adjudicative procedure waived in said stipulation. Accordingly, in consonance with the terms of the aforesaid stipulation, the hearing examiner accepts the Stipulation For Consent Order submitted herein; finds that this proceeding is in the public interest; and issues the following order:

It is ordered, That respondent, T. F. Denman, an individual trading as The Fur Doctor or under any other trade name, and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product, or in connection with the sale, advertising, 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 any such product as to the name or names of the animal or animals that produced the fur from which such product was manufactured.

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.

3. Setting forth, on labels attached to fur products, the name or names of any animal or animals other than the name or names provided for in Paragraph A (2) (a) above.

4. Setting forth on labels attached to fur products:

(a) Required information in abbreviated form or in handwriting;

(b) Non-required information mingled with required information.

5. Failing to show on labels attached to fur products made in whole or in part of imported fur the term "Fur Origin" preceding the country of origin on said labels, as required by Rule 12 (e) of the aforesaid rules and regulations.

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 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 and address of the person issuing such invoice;

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

2. Setting forth required information in abbreviated form.

C. Falsely or deceptively advertising fur products, through the use of any advertisement, representation, public announcement, or notice which is intended to aid, promote, or assist, directly or indirectly, in the sale or offering for sale of fur products, and which:

1. Fails to disclose:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur products as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) The country of origin of imported furs, as required by the Fur Products Labeling Act or in the manner and form permitted by Rule 38 (b) of the rules and regulations promulgated thereunder.

2. Contains the name or names of any animal or animals other than the name or names provided for in Paragraph 5 (a) (1) of the Fur Products Labeling Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 8th day of September, 1955, become the decision of the Commission; and, accordingly:

It is ordered, That respondent T. F. Denman, an individual, trading as The Fur Doctor, 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.

Complaint

IN THE MATTER OF

CHESTER A. PAGE DOING BUSINESS AS BROWNSVILLE
WOOLEN MILLS ET AL.

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

Docket 6360. Complaint, June 6, 1955—Decision, Sept. 8, 1955

Consent order requiring operators of a woolen mill at Brownsville, Ore., to cease violating the Wool Products Labeling Act by falsely labeling certain blankets as to their constituent fibers and by otherwise failing to conform to labeling requirements of the Act.

Before *Mr. Everett F. Haycraft*, hearing examiner.
Mr. R. D. Young, Jr. for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Chester A. Page, individually, trading and doing business as Brownsville Woolen Mills, and Chester E. Page, individually, hereinafter referred to as respondents, have violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Chester A. Page, is an individual trading and doing business under the name of Brownsville Woolen Mills. Respondent Chester E. Page is superintendent of the mill operated by Chester A. Page as Brownsville Woolen Mills and is responsible for the tagging and labeling of wool products manufactured at said mill as to the fiber content thereof. Said respondents have their offices and principal place of business at Brownsville, Oregon.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since January 1951, respondent Chester A. Page, doing business as Brownsville Woolen Mills, has manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in said Act, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded within the intent and meaning of Section 4 (a) (1) of said Wool Products Labeling Act and the Rules and Regulations promulgated thereunder in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded products were blankets labeled or tagged as consisting of "25% Virgin Wool, 75% Reused Wool," and "25% Wool, 75% Reused Wool," whereas in truth and in fact said blankets did not consist of 25% virgin wool, 75% reused wool, or 25% wool, 75% reused wool as those terms are defined in the Wool Products Labeling Act.

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

PAR. 5. The acts and practices of respondents, as herein alleged, constitute misbranding of wool products and are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder; and all of the aforesaid acts and practices, as alleged herein, are 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 EVERETT F. HAYCRAFT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on June 6, 1955, charging them with the misbranding of woolen products in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and with unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. After being duly served with said complaint and before an answer was received, the respondents entered into an agreement with counsel supporting the complaint, dated July 6, 1955, providing for the entry of a consent order disposing of all the issues in this proceeding. Said agreement has been approved by the Director of the Bureau of Litigation and has been submitted to the above-named hearing examiner, heretofore duly designated, for his consideration in accordance with Section 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional allegations of the complaint and agreed that the

record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations. Said agreement further provides that respondents expressly waive the filing of an answer herein, a hearing before a hearing examiner, 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 agreement 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 said order. It was also agreed that the aforesaid agreement, together with the complaint, shall constitute the entire record herein; that the said complaint may be used in construing the terms of the order provided for in said agreement; that said agreement is subject to approval in accordance with Sections 3.21 and 3.25 of the Commission's Rules of Practice; that the order issued herein shall have no force and effect unless and until it becomes the order of the Commission; and that the signing of said agreement 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 agreement for consent order and it appearing that said agreement provides for an appropriate disposition of this proceeding, the same is hereby accepted by the hearing examiner who makes the following findings for jurisdictional purposes and order:

1. Respondent Chester A. Page is now and has been at all times mentioned herein an individual trading and doing business under the name of Brownsville Woolen Mills, and respondent Chester E. Page is now and has been at all times mentioned herein superintendent of said Brownsville Woolen Mills, and both said respondents have their office and principal place of business located at Brownsville, Oregon.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named; the complaint herein states a cause of action against said respondents under the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939.

Order

52 F. T. C.

ORDER

It is ordered, That respondent Chester A. Page, individually, trading and doing business as Brownsville Woolen Mills, or trading under any other name, and respondent Chester E. Page, individually, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of blankets 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," "re-processed wool," or "reused wool," as those terms are defined in said Act, do forthwith cease and desist from misbranding such products by:

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

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

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

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

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

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.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 8th day of September, 1955, become the decision of the Commission; and, accordingly:

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.

Complaint

52 F. T. C.

IN THE MATTER OF
IRVING KATHMAN DOING BUSINESS AS HATHAWAY
WATCH COMPANY

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

Docket 6357. Complaint, June 6, 1955—Decision, Sept. 13, 1955

Consent order requiring a seller in New York City to jobbers and dealers to cease representing that exaggerated, fictitious prices of "Hathaway" watches were the usual retail prices, that the watches were "jeweled," manufactured by him, and fully guaranteed.

Before *Mr. James A. Purcell*, hearing examiner.
Mr. Frederick J. McManus for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, having reason to believe that Irving Kathman, an individual doing business as and trading under the name of Hathaway Watch Company, 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 Irving Kathman is an individual doing business as and trading under the name of Hathaway Watch Company, with an office and principal place of business located at 545 Fifth Avenue, New York, New York. The said respondent is now and for several years last past has been engaged in the business of selling and distributing watches and other articles of merchandise. Said watches are so sold and distributed under the brand name Hathaway.

PAR. 2. In the course and conduct of his business respondent causes said watches, when sold, to be transported from his place of business in the State of New York to jobbers and dealers located in various other States and in the District of Columbia. Said jobbers and dealers in turn sell said watches to retailers for resale to the general public.

PAR. 3. In the course and conduct of his aforesaid business and for the purpose of inducing the purchase of his watches, the respondent has made many false, misleading and deceptive statements and representations relative to his said watches in display cards and in other written or printed matter which are widely circulated and distributed. Among and typical of such false, misleading and deceptive statements and representations are the following:

Complaint

Designed to Sell for 49.00
Now only 9.95
For limited time only
Precision Jeweled
Guaranteed
1 Year Guarantee Certificate
34 years of Precision Watch Making

PAR. 4. Through the use of the foregoing statements and representations of similar import and meaning, not specifically set out herein, the respondent represents and has represented, directly and by implication, that the regular and customary price at which the said watches are offered for sale is \$49.00; that the said watches are jeweled watches and contain movements that are jeweled movements; that respondent manufactures the watches which he offers for sale; and that the said watches are guaranteed in every respect.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact, the price of \$49.00 is not the usual and customary price at which respondent's watches are offered for sale and sold at retail. Respondent's watches are customarily and usually offered for sale at retail at a price of \$9.95. The movements in respondent's watches contain but one jewel and said watches are not "jeweled" watches nor do they contain jeweled movements. As generally understood in the industry, a jeweled watch or a jeweled movement watch is one which contains at least 7 jewels, each of which serves a mechanical purpose as a frictional bearing. Hathaway watches are imported from Switzerland and are not manufactured by respondent. Respondent does not guarantee the said watch for one year in every respect. The so-called guarantee provides for payment of a service charge. The nature and extent to which such guarantee applies and the manner in which the guarantor will perform thereunder are not disclosed.

PAR. 6. In the course and conduct of his business, respondent is in direct and substantial competition with other firms, individuals and corporations engaged in the sale, in commerce, of watches.

PAR. 7. The use by respondent of the foregoing false and misleading statements and representations has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and into the purchase of substantial quantities of said watches because of such erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and

Decision

52 F. T. C.

unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

1. The Federal Trade Commission on June 6, 1955, issued its complaint in this proceeding charging the respondent with violation of the Federal Trade Commission Act as will more particularly appear by reference to said complaint. Due service thereof was had upon the respondent and thereafter, on July 26, 1955, respondent entered into an "Agreement Containing Consent Order to Cease and Desist" with counsel supporting the complaint, all in conformity with the provisions of Paragraph No. 3.25 of the Rules of Practice and Procedure of the Commission. Thereafter, on August 1, 1955, said Agreement, after approval by the Director, Bureau of Litigation, was submitted to the hearing examiner who, being of opinion that same effectually disposes of all of the issues herein, hereby accepts same.

2. Said Agreement recites:

(a) Respondent Irving Kathman is an individual doing business as and trading under the name of Hathaway Watch Company, with an office and principal place of business located at 545 Fifth Avenue, New York, New York. The said respondent is now and for several years last past has been engaged in the business of selling and distributing watches and other articles of merchandise. Said watches are so sold and distributed under the brand name Hathaway.

(b) Respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

(c) That the agreement disposes of all of this proceeding as to all parties.

(d) Respondent waives:

(i) Any further procedural steps before the hearing examiner and the Commission;

(ii) The making of findings of fact or conclusions of law; and

(iii) All of the rights he may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

(e) That the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

(f) That said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

(g) That said agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

(h) That the hereinafter set forth order to cease and desist may be entered in this proceeding by the Commission without further notice to respondent. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

3. Pursuant to the said Agreement and in order to effectuate the intent thereof, the hearing examiner, being of the opinion that the order agreed upon will effectually safeguard the public interest, and that this proceeding is in the public interest, issues the following order:

ORDER

It is ordered, That respondent, Irving Kathman, trading as Hathaway Watch Company, or trading under any other name, his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of watches in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That the retail price of a watch is any amount which is in excess of the price at which said watch is usually and regularly sold at retail;

2. That a watch is a "jeweled" watch, or that it contains a jeweled movement, unless said watch contains at least 7 jewels, each of which serves a mechanical purpose as a frictional bearing;

3. That he manufactures the watches offered for sale, or sold by him, or that he is a watch manufacturer;

4. That the watches he offers for sale or sells are guaranteed unless and until the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 13th day of September, 1955, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

BARBARA E. MARTIN ET AL. DOING BUSINESS AS
HOUSEHOLD SEWING MACHINE COMPANYORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6148. Complaint, Dec. 3, 1953—Decision, Sept. 16, 1955*

Order requiring retailers of new and rebuilt sewing machines in Washington, D. C., to cease selling sewing machines of which Japanese-made heads were a part without adequate disclosure of foreign origin; to cease, in advertising their machines, using "bait" prices which were not bona fide offers to sell but were made to obtain leads to possible purchasers, using a misleading "20 Year Guarantee" carrying no qualifications, and implying that attachments and sewing lessons were included in the price of the machines; and representing through use of words "Home," "American Home," etc., as brand names, that their Japanese-made machines were products of the well-known firm of that name.

Mr. William L. Taggart, counsel supporting the complaint.

Mr. Leonard B. Sussholz and Mr. Marvin P. Sadur, of Washington, D. C., counsel for respondents.

INITIAL DECISION OF HEARING EXAMINER JOHN LEWIS

STATEMENT OF THE CASE

The Federal Trade Commission issued its complaint against the above named respondents on December 3, 1953, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act. Copies of said complaint and notice of hearing were duly served upon respondents. Said complaint, in substance, charges respondents with failing to properly disclose the country of origin on certain Japanese sewing machines sold by them, with improperly using American trade names on such sewing machines, with engaging in what is commonly known as "bait advertising," and with engaging in certain other false and deceptive practices with respect to the prices of the sewing machines advertised by them, the nature of the guarantee covering such machines, and other terms and conditions of sale. Respondents appeared by counsel and filed a joint answer in which they denied having engaged in certain of the illegal practices charged, and alleged that they had

250

Findings

discontinued others of the practices prior to the issuance of the complaint herein.

Pursuant to notice, hearings were thereafter held before the undersigned hearing examiner, theretofore duly designated by the Commission to hear this proceeding, on various dates between March 30, 1954, and January 6, 1955, in Washington, D. C. At such hearings testimony and other evidence were offered in support of and in opposition to the allegations of the complaint, which testimony and other evidence were duly recorded and filed in the office of the Commission. Both sides were represented by counsel, participated in the hearings, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the close of the evidence in support of the complaint counsel for respondents moved to dismiss the complaint for insufficiency of evidence and, pursuant to leave granted, memoranda were filed in support of and in opposition to said motion. Said motion was denied, except as to one allegation of the complaint, by order of the undersigned dated September 29, 1954. At the close of all the evidence, counsel for respondents renewed their motion to dismiss the complaint. Said motion is disposed of in accordance with the findings, conclusions and order hereinafter made.

Proposed findings of fact and conclusions of law have been filed by counsel supporting the complaint, and counsel for respondents have also filed proposed findings and conclusions, together with a supporting memorandum and a motion for oral argument upon their proposals. In view of the fact that the issues are fully discussed in the proposed findings and supporting memorandum, and in view of the fact that there are no novel or unusually complex issues involved in this proceeding, the examiner is of the opinion that there is no need for further argument and the motion for oral argument is accordingly denied.

Upon the entire record in the case and from his observation of the witnesses, the undersigned finds that this proceeding is in the public interest and makes the following:

FINDINGS OF FACT

I. The Business of Respondents

On December 3, 1953, when the complaint herein was issued, the respondents Barbara E. Martin, Hershel Martin,¹ and Dennis Martin were, and had been since approximately August 1952, copartners doing business under the name of Household Sewing Machine Com-

¹ The first name of this respondent is incorrectly spelled in the complaint as Herschel.

Findings

52 F. T. C.

pany, having their principal place of business at 1226 H Street, N. E., Washington, D. C. On January 5, 1954, said respondents formed a corporation known as Household Sewing Machine Company, Inc., which was organized and exists under the laws of the State of Delaware. Said corporation is the successor in interest of the co-partnership previously conducted by said respondents.²

The respondents are now, and have been for several years last past, engaged in the retail sale of sewing machines, including sewing machines the heads of which are imported from Japan.³ In the course and conduct of their business, respondents cause their said products, when sold, to be transported from their place of business in the District of Columbia, to purchasers thereof located in the States of Maryland and Virginia and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the District of Columbia and the States of Maryland and Virginia, and in the District of Columbia. Their volume of trade in said commerce has been and is substantial.

II. The Alleged Illegal Practices

A. *The Sale of Inadequately or Deceptively Labeled Japanese Machines*

A substantial portion of the heads on the sewing machines sold by respondents are imported from Japan. Most of these machines are purchased by respondents from Royal Sewing Machine Company of Brooklyn, New York, which imports the heads from Japan. When the machines are received by respondents, they have affixed thereto on the front lower portion of the vertical arm of the machine head a small medallion bearing the legend "Made in Japan." The machines also contain on the front of the horizontal arm, the brand or trade name "American Home DeLuxe." The complaint contains two separate charges concerning the labeling or marking of these machines, (1) that respondents have failed to adequately disclose on the heads of the machines that they are of Japanese origin, and (2) that the

² Respondents have waived service of process upon said corporation and have requested that this proceeding be regarded as one against the corporation. In view of the responsibility of the respondents hereinabove named for the acts and practices hereinafter found, said request is denied to the extent that it seeks a substitution of the corporation in place and in lieu of said respondents.

³ In their proposed findings counsel for respondents state that the respondent Dennis Martin sold and conveyed his interest in the business on March 6, 1954. There is no evidence in the record to sustain this statement. Moreover, in view of the association of said respondent, with the business during the period when the acts and practices herein-after discussed occurred, his departure from the business after the issuance of the complaint herein would not relieve him from responsibility.

use of the trade or brand name "American Home" has tended to lead the public to believe that the machines are manufactured by American companies using a similar name. These charges are separately discussed below.

1. Sufficiency of markings of Japanese origin

The complaint alleges that the markings of Japanese origin on respondents' sewing machines are deficient in three respects: (a) That when the machines are received by respondents they contain the inscription "Made in Japan" on the back of the vertical arm of the machine head, but that the inscription becomes obscured from view when respondents attach a motor to the head; (b) that the medallion containing the inscription "Made in Japan" which is affixed to the front of the vertical arm can easily be removed; and (c) that the inscription on the medallion does not constitute adequate notice to the public that the heads are imported because it is too small and indistinct. In their answer respondents have denied the foregoing allegations and allege affirmatively (a) that they do not perform any assembling operations which would cause any inscription to become obscured; (b) that the medallion appearing on the front of the machine cannot easily be removed, and when removed leaves unsightly holes; and (c) that the medallion affixed to the front of the vertical arm is conspicuous and distinct and has been approved by the United States Customs Bureau. The issues thus raised with respect to the sufficiency of the markings of Japanese origin on respondents' machines are each hereinafter discussed.

a. *The obscuring of country of origin*

There is no evidence in the record, whatsoever, with respect to a label or other inscription of foreign origin on the back of the vertical arm of respondents' machines. Moreover, the record fails to establish that respondents perform any assembling operations in the course of which any such inscription is obscured by a motor. Assembling operations consisting of the attachment of a motor, light and rheostat are performed by Royal Sewing Machine Company prior to the receipt of the machines by respondents. The only further operation performed by respondents is the placing of the sewing machine heads in a portable case or console cabinet. There is no evidence that this causes any inscription of Japanese origin to become obscured.

b. *Removability of the medallion*

It is undisputed that a small medallion showing country of origin appears on the front lower portion of the vertical arm of the machine

head. The only evidence offered by counsel supporting the complaint tending to establish the charge that this medallion can easily be removed is that of the manager of a competitor of respondents who expressed the opinion that all metal medallions can be removed without marring the machine. It does not appear from the record that this witness has had any actual experience in removing a medallion of the type used by respondents. Another witness, who had purchased one of respondents' machines, testified that he removed the medallion in order to have it available in connection with his testimony and to obviate the necessity of bringing the sewing machine to the hearing room. However, he gave no indication of whether it was difficult or easy to remove the medallion or whether it could be done without marring the machine.

In support of their contention that the medallion is not easily removable and cannot be removed without marring the machine, counsel for respondents rely largely on the testimony of the respondent Hershel Martin, who stated that he had removed one of the medallions with a screw driver and that although he had proceeded with due care, the machine was scratched and the medallion bent. He further stated that after the medallion had been removed, there appeared underneath on the head of the machine, the inscription "Made in Japan." The manager of Royal Sewing Machine Company, who also testified on behalf of respondents, stated that the medallions on the machines sold to respondents were difficult to remove because they were riveted to the machine from the inside.

Considering the evidence as a whole, the examiner is of the opinion and finds, that counsel supporting the complaint has failed to sustain the burden of proof with respect to the charge concerning the removability of respondents' medallions.

c. Legibility of the medallion

Most of the evidence offered by counsel supporting the complaint regarding the charge of insufficiency of notice of country of origin is based on the allegation that the inscription, "Made in Japan," appearing on the medallion which is affixed to the lower front portion of the vertical arm of the machine, is too small and indistinct to give adequate notice to the public. The evidence relates mainly to a gilt-colored medallion with raised letters of the same color, which was used by respondents until approximately November 1953, when respondent's source of supply began shipping machines with a gun-metal colored medallion. Typical of the gilt medallions is one which is approximately $1\frac{5}{8}$ by $1\frac{3}{8}$ inches in size and bears the following inscription: On top, the legend "1952 Series" in numbers and letters

$\frac{1}{8}$ inch in height; in the center, the words "DeLuxe Model" in letters $\frac{1}{4}$ to $\frac{1}{6}$ of an inch in height; and on the bottom, the words "Made in Japan" in letters $\frac{1}{12}$ of an inch in height.

The Commission in its recent decision in the *Standard Sewing Equipment Corporation* case,⁴ in which it reviewed most of the cases dealing with the sale of Japanese sewing machines, held that a gilt medallion containing the inscription "Made in Japan" in gilt letters $\frac{1}{8}$ inch in length, does not give adequate notice to purchasers and the public of the country of origin of the machine. Since the inscription "Made in Japan" on the gilt medallion used by respondents in this case is only $\frac{1}{12}$ of an inch in height, there would appear to be no question, under the precedent cited, that the medallion does not give adequate notice of country of origin.

Aside from this precedent, however, and based solely on the record in this case, the examiner is satisfied and finds that the gilt medallion used by respondents does not give adequate notice of country of origin. Most of the witnesses who purchased respondents' machines containing the gilt-colored medallion, did not notice the medallion at the time the machine was demonstrated to them and, in a number of instances, were not aware that the machine was of Japanese origin until sometime after it was delivered to their homes. This was true not only of witnesses called in support of the complaint but also of a number of purchasers whom respondents called as witnesses.

Counsel for respondents sought to show that the inscription "Made in Japan" could be read by witnesses in the hearing room when standing a distance of one or $1\frac{1}{2}$ feet from the machine. In most instances, however, it was necessary for the witness to bend his or her head to the level of the machine in order to read the inscription. Aside from this, the fact that a witness can read an inscription in the hearing room when his attention is specifically directed to it, is hardly a fair test of the adequacy of notice of the medallion under normal conditions of purchase. The most eloquent testimonial to the inadequacy of the notice given by the medallion is that most of the witnesses who testified, including a number called by respondents, had not seen the medallion until the machine had been in their homes for some time. Some of respondents' witnesses who had purchased the machine did not know even at the time of the hearing what inscription the medallion contained.

Counsel for respondents also sought to show that respondents' salesmen were instructed to advise prospective purchasers of the foreign origin of the machines. The record shows that many pur-

⁴ Docket No. 5888, May 2, 1955.

chasers were not informed by the salesmen that the sewing machine heads had been imported from Japan.⁵ Aside from this, however, it is the opinion of the hearing examiner that the giving of adequate notice to the public cannot be made to depend on the whim of individual salesmen who are paid on a commission basis, but requires that the machine itself should be adequately marked.

In the answer filed on their behalf, respondents take the position that the medallion used by them gives adequate notice to the public. Counsel for respondents appeared to take a similar position during most of the course of the hearings held herein. However, counsel sought to show through the testimony of respondents Barbara and Hershel Martin that respondents have been using a gun-metal medallion instead of the gilt medallion since approximately November 1953, and that they do not propose to resume the use of the latter. Counsel for respondents contend that the gun-metal medallion which respondents are now using has been accepted by the Commission as complying with the Act in a proceeding against respondents' source of supply, Royal Sewing Machine Company, in which an order, based on the use of a gilt medallion, was issued May 5, 1953 (49 F.T.C. 1351). Counsel accordingly argue that since respondents abandoned use of the gilt medallion prior to the issuance of the complaint herein and have been using a gun-metal medallion of the type which has been approved by the Commission in the *Royal Sewing Machine Company* case, there is no longer any public interest in this aspect of the proceeding. With this argument the examiner cannot agree.

While the case of counsel supporting the complaint was based mainly on the testimony of witnesses who had purchased sewing machines containing the gilt medallion, one of the witnesses called by him had purchased a sewing machine with the gun-metal medallion from respondents in November, 1953. This witness' testimony was substantially similar to that of purchasers who had bought machines with the gilt medallion, *viz*, that she did not notice the medallion at the time the machine was demonstrated to her and was not aware that the machine was of Japanese origin until someone called her attention to the medallion after the machine had been in her home for some time. From the testimony of this witness, it would appear that the gun-metal medallion now in use is not significantly clearer

⁵The testimony of most of the witnesses called in support of the complaint, who purchased a Japanese sewing machine from respondents, indicates that they were not informed by the salesmen at the time of purchase that the head was of Japanese origin. While some of the purchasers called as witnesses by respondents recalled being told that the machine was made in Japan, or that the "parts" were imported, or that the machine was "imported," several of them testified that they had not been informed that the machine was of Japanese origin. (See, e. g., R. 768, 838.)

than the gilt one previously used. It may also be noted that the gun-metal medallion accepted as compliance in the *Royal Sewing Machine Corporation* case, is referred to in the Commission's decision in the *Standard Sewing Equipment Corporation* case, *supra*, as having letters $\frac{1}{8}$ of an inch in height, while the letters in the legend "Made in Japan" in the instant case are $\frac{1}{12}$ of an inch in size. Moreover, it is not merely a question of the size of the letters on the medallion or the color of the medallion but also where the medallion is placed on the sewing machine head. In the instant case, the medallion is affixed to the lower portion of the vertical arm where it is considerably less conspicuous than it would be were it placed near the top of the vertical arm, adjacent to the brand name "American Home DeLuxe."

However, it is not necessary to determine at this time whether the gun-metal medallion gives any more adequate notice to the purchasing public than did the gilt one which preceded it, since the examiner is not convinced that respondents intend irrevocably to abandon selling machines with the gilt medallion. Although counsel for respondents argue that respondents have agreed not to use the gilt medallion, the testimony of respondent Barbara E. Martin indicates that she still regards the gilt medallion as giving adequate notice to the public and that her basic reason for stating that she did not intend to use this medallion was "because the machines are not coming through [from Royal Sewing Machine Company] that way" (R. 1085), rather than because of any true conviction as to the inadequacy of the medallion. Moreover, irrespective of what respondents have stated concerning their intention to abandon the use of the gilt medallion, the record shows that respondents are still selling machines with the gilt medallion and may reasonably be expected to do so for some time in the future. The intention expressed by respondents Barbara and Hershel Martin, not to sell machines with the gilt medallions, specifically excepts therefrom machines which have been repossessed from customers. Such machines constitute approximately 5 to 10 percent of the machines sold monthly by respondents, an amount which cannot be regarded as de minimus.⁶ Furthermore, while respondents Barbara and Hershel Martin testified that their firm had not been selling the machines with the gilt medallion since approximately November, 1953 (except for repossessions), the testimony of their store manager indicates that respondents have been selling machines with the gilt medallion during the past twelve months (R. 1010).

⁶ The fact that such machines are sold at a lower price than the new machines does not, as argued by counsel for respondents, dispense with the necessity for giving adequate notice of country of origin to the public. The requirement for adequate notice does not depend on whether a machine is new or repossessed or is sold at a greater or lesser price.

Findings

52 F. T. C.

Despite the contention of counsel for respondents that respondents have abandoned the use of the gilt-colored medallions, in the memorandum submitted in connection with their proposed findings counsel have questioned the authority of the Commission to require respondents to change the origin marking on their machines in view of the fact that the Bureau of Customs of the Treasury Department has approved such markings under the Tariff Act. This contention has been specifically overruled by the Commission in the *Standard Sewing Equipment Corporation* case, *supra*, and it is unnecessary for the examiner to discuss it at this point. However, the fact that respondents continue to question the legal right of the Commission to require them to properly mark the country of origin on their sewing machines is an additional indication of the need for corrective action.⁷

d. *The preference for American products*

The question of whether respondents' sewing machines are adequately marked as to country of origin presupposes that there is some obligation to the public, on the part of a vender, to make such disclosure. In this connection, the complaint alleges that, (a) when sewing machines are not clearly marked, the purchasing public assumes the machines are of American origin, and (b) there is a preference among members of the public for American-made products over those of other countries. Respondents have admitted in their answer, and it is so found, that in the absence of proper notice, the public assumes a product is domestically manufactured. However, respondents contend that most purchasers are primarily concerned with price, quality and availability of replacement parts rather than with country of origin.

The position of respondents in this respect overlooks the essential principle which controls in determining whether a practice has the tendency to mislead or deceive. It is not a question of whether all or even a majority of the public has a preference for American-made products. It is sufficient, to require the giving of adequate notice, if a substantial segment of the public has such a preference. It is not necessary, moreover, that this preference be the primary factor controlling the purchase of a product. It is sufficient if it is a significant factor which the public takes into consideration in making its purchases.

There is no question from the record in this proceeding, and it is so found, that a substantial part of the purchasing public has a

⁷ See *C. Howard Hunt Pen Co. v. FTC*, 197 F. 2d 273, 282 (C. A. 3, 1952).

preference for American-made products, including sewing machines. This preference has been found to exist in a number of cases, both by the Commission and the courts.⁸ While some of the witnesses called in support of the complaint conceded on cross-examination that price and quality are important factors in making a purchase, this does not gainsay the fact, as counsel for respondents apparently assume, that the origin of the product is also a significant factor and that there exists a preference for American-made products, all other things being equal.⁹

2. The use of the brand name "American Home"

Across the front of the horizontal arm of respondent's machines there appears in large, conspicuous letters, the brand name "American Home DeLuxe." The complaint charges that the word "Home" is part of the name of well-known American companies and that some of these companies use the word "Home" as part of the brand name of their product, including sewing machines. It is alleged that by using the word "Home" as part of the brand name of their machines, respondents have represented that such machines are made by one of the American companies with which such name has been associated. Respondents contend that the word "Home" is a free word which is not the dominant part of respondents' brand name, and that their machines are different in appearance from those using the word "Home" as part of their name.

The evidence shows that there has been a sewing machine on the American market using the name "New Home" since the 1860's, and that millions of dollars have been spent in advertising this machine in various national magazines and other publications. The machine is presently manufactured by the Free Sewing Machine Company, which also manufactures the Free Westinghouse machine. Advertising literature and circulars used in connection with the sale of the New Home sewing machine refer to the manufacturer as the "New Home Sewing Machine Company." It is not clear from the record whether the New Home Sewing Machine Company is a separate entity or is a division of the Free Sewing Machine Company. However, this fact has no material significance since it is clear that the name "New

⁸ See *Standard Sewing Equipment Corporation, supra*, and *L. Heller & Son, Inc. v. FTC*, 191 F. 2d 954 (C. A. 7, 1951).

⁹ In the *Heller* case, the Court of Appeals specifically recognized that the preference for American-made products presupposed that "other considerations such as style and quality are equal." The relativity of the preference was also recognized by one of respondents' witnesses who testified that, "everything else being equal," he preferred American-made products and wished to be advised whether a product was of foreign origin (R. 899, 903).

Findings

52 F. T. C.

Home" is widely associated in the public mind with a sewing machine of domestic origin.¹⁰

Counsel supporting the complaint produced a number of witnesses who had purchased respondents' American Home machine and who testified that they had confused the name with that of the New Home machine or thought it was made by the same company. Some of the witnesses testified that they actually thought they were getting a New Home machine and did not learn until some time later that the American Home and New Home were not one and the same machine, or were not made by one and the same company. Counsel for respondents, on the other hand, produced a number of witnesses who had purchased the American Home machine and who, with one exception, testified that they had not confused the name American Home with the name New Home.

Counsel for respondents suggest in the memorandum submitted by them that there is a necessary conflict between the testimony of the two groups of witnesses, and argue that the testimony of their witnesses should be accepted while the testimony of the witnesses called in support of the complaint should be rejected as not worthy of belief. Counsel cite numerous examples from the testimony of the witnesses in support of the complaint purporting to show that they were either confused or lying or were prejudiced against respondents. However, substantially all the examples cited are of such a minor and inconsequential nature that they do not, in the opinion of the examiner, materially affect the credit or weight to be given to the testimony of these witnesses.¹¹

¹⁰ Counsel for respondents argue that under the complaint, counsel supporting the complaint must not only establish that the word "Home" is part of the name of a well-known American machine, but must also show that it is part of the corporate name of the American Company manufacturing such machine. The examiner cannot agree with this highly technical construction of the complaint. The confusion in the public mind, if it does exist, results from the public's identifying the name "Home" with an American-made sewing machine, irrespective of whether that word is technically a part of the name of an American company. It may also be noted, in connection with the question of whether there is a New Home Sewing Machine Company, that respondents' manager testified that it was his understanding that the New Home machine was made by the New Home Sewing Machine Company (R. 1006).

¹¹ Examples of the alleged confusion, contradiction or prejudice cited by counsel for respondents are: (a) The fact that some of the witnesses who testified that they had confused the two names had failed to mention this fact in a letter of complaint which they wrote to the Better Business Bureau; (b) the fact that some witnesses referred to the "New Home" machine as a product of the "New Home Sewing Machine Company," whereas, according to counsel, there is no such company; (c) the fact that some of the witnesses were uncertain as to the color or appearance of the New Home machine or when they had seen it; (d) the fact that some witnesses thought that the machine demonstrated to them was the "New Home"; and (e) the fact that many witnesses have received and read copies of the complaint in this proceeding. Most of the examples cited hardly require comment. However, it may be noted in passing that the fact some witnesses thought the machine they saw bore the name "New Home," so far from indicating a lack of credit-worthiness in their testimony, actually tends to establish the very confusion in names charged in the

Counsel apparently expect a degree of precision in recollection and testimony that is beyond the capacity of most lay witnesses of the type here involved, including not only those who testified in support of the complaint, but also those called on behalf of respondents. Similar instances of confusion and minor contradiction could be cited from the testimony of respondents' witnesses most of whom, like those called in support of the complaint, had evidently had little or no courtroom experience and were at times nervous and confused.¹² In the opinion of the hearing examiner, both groups of witnesses gave a substantially accurate account of their experiences in dealing with respondents. There is no necessary conflict, as counsel for respondents seeks to suggest, in the fact that one group of witnesses experienced a confusion in names while another, by and large, did not. It is quite possible that some members of the public may find two names confusing because of their apparent similarity, while others may not.

The hearing examiner is convinced, however, that the experience of the witnesses who testified in support of the complaint is not at all unusual or atypical, but is such that it can reasonably be expected to be shared by many other members of the purchasing public. The reasonableness of their confusion is attested to by the fact that one of respondents' own witnesses testified that she too had confused the names American Home and New Home briefly, but that the confusion was cleared up when the salesman told her the American Home machine was foreign made. Since a number of other witnesses called by respondents also claimed to have been told by the salesman of the machine's foreign origin, this may account for the lack of confusion on their part.

In any event, the record establishes the existence of confusion and the likelihood of confusion from the use of the name "American Home" of sufficient proportions as to establish a need for corrective action in the public interest. As has already been suggested above, it is not necessary that all or that even a majority of the members of the public be misled. The Federal Trade Commission Act was intend-

complaint. The fact that, admittedly, many of the witnesses received copies of the complaint is a fact of very minor significance in the opinion of the examiner, and there is no evidence that any of the witnesses were prejudiced against respondents because of this fact. Furthermore, it appears that some, at least, of respondents' witnesses had talked to a representative of respondents prior to testifying in this proceeding and apparently were informed as to respondents' version of the facts.

¹² Counsel for respondents cite the case of a witness called in support of the complaint whose excessive loquacity and lack of responsiveness to questions caused the examiner to admonish her several times. However, a similar example may be cited of a witness called on behalf of respondents, and there were a number of other instances of volunteering of information and lack of responsiveness among respondents' witnesses.

Findings

52 F. T. C.

ed to protect not merely the cognitive and the sophisticated, but the "ignorant, the unthinking, and the credulous."¹³ The fact that any significant segment of the public may be deceived is sufficient to support a finding that the Act has been violated.¹⁴ Based on the credible testimony in the record, the examiner is convinced and finds that the name "American Home DeLuxe" used by respondents on their sewing machines can be readily confused with the name "New Home," a name used on a well-known machine of American origin, and that the use of said name by respondents has tended to, and does, mislead and deceive a significant portion of the purchasing public.¹⁵

B. The "Bait Advertising" Charge

The complaint charges respondents with having engaged in what is known in common parlance as "bait advertising." It is alleged, in this respect, that respondents advertised Free-Westinghouse machines, purporting to sell for as much as \$119.50, for prices as low as \$38.88; that respondents' offers to sell such machines were not genuine and bona fide but were made for the purpose of obtaining leads as to persons interested in buying sewing machines; and that when persons responded to respondents' advertisements, respondents or their salesmen refused to sell, made no effort to sell, or ignored or disparaged the advertised machine, and tried to sell a higher-priced machine, usually one of Japanese origin. Respondents, while admitting in their answer that one of the purposes in advertising was to obtain leads and information as to persons interested in purchasing sewing machines and also that they have apprised prospective purchasers of other machines carried, have denied the remainder of the bait advertising charge.

The record discloses that respondents regularly advertised the Free-Westinghouse machine, on the average of three and four times a week, in most of the newspapers in Washington, D. C. The advertisements, which were substantially similar to content, carried the familiar slogan "You Can Be Sure If It's Free-Westinghouse," underneath which was a picture of the machine; contained reference to a relatively high price as the "Value" of the machine but offered to sell it at a substantially lower price, payable \$1 down and \$1 a week; listed a number of desirable performance "features" of the machine; referred to a "20 Year-Guarantee"; and invited interested persons to call for

¹³ *Positive Products Co. v. FTC*, 132 F. 2d 165 (C. A. 7, 1942).

¹⁴ *Prima Products Inc. v. FTC*, 209 F. 2d 405, 409 (C. A. 2, 1954).

¹⁵ In making the above finding the examiner finds it unnecessary, in view of the more direct evidence in the record, to rely on the testimony of the manager of the firm which manufactures the New Home machine that his company has received complaints from persons who confused the name American Home with New Home.

a home demonstration and to reserve a machine. In most instances when a person called in response to the advertisement an appointment was made for a salesman to call at his or her home to demonstrate the machine. The salesman in almost every instance brought with him a more expensive machine, usually one of the Japanese "American Home" machines.

Counsel supporting the complaint called fourteen witnesses who testified as to their experiences in attempting to purchase a Free-Westinghouse machine in response to one of respondents' advertisements. In most instances, the machine was demonstrated in the home of the witness but a few came directly to respondents' store. The testimony of most of these witnesses reflects a tactic on the part of respondents and their salesmen of seeking to discourage the purchase of the Free-Westinghouse by advising customers not to purchase it, by disparaging its performance, by stating that it would not perform certain operations although they were among the advertised "features" of the machine, and by displaying a general attitude of reluctance to sell the machine or of indifference toward it, and finally of seeking to induce customers to purchase a more expensive type machine, usually one of the Japanese machines.

The attitude of respondents' salesmen was characterized by some of the witnesses as: "[V]ery reluctant" to answer questions concerning the machine (R. 25); "[h]e talked it down in a lot of different ways" (R. 254); [h]e kept telling me how bad the machine was * * * and trying to discourage me" (R. 296); "[h]e more or less began to run down the machine, much to my amazement" and "immediately began trying to sell me a different machine" (R. 340); he "sort of shrugged it off" (R. 575). Most of the witnesses referred to the unusually noisy performance of the machine and mentioned, in some instances, that this had received comment from the salesman as indicative of the undesirability of the machine. Other adverse comments by the salesmen which were referred to by witnesses supporting the complaint were, that the machine would not sew backward and forward (although the advertisements stated that is "Sews forward and reverse"), that it skipped stitches or that the stitch could not be regulated (although the advertisement stated that the machine had a "Precision stitch regulator"), that it would not sew over pins (although the advertisement stated "Sews over pins and heaviest seams"), that you couldn't get parts for the machine (although the advertisement stated that there was a "20-Year parts guarantee"), that it was a "toy," and that it had a long bobbin which was less desirable than the round bobbin on the Japanese machines.

Findings

52 F. T. C.

After the customers had been sufficiently discouraged by the disparaging remarks of the salesman and noisy performance of the machine,¹⁶ the salesman then tried to sell a more expensive machine, usually one of the "American Home" Japanese machines, some of which sold for several times the price of the Free-Westinghouse. Seven of the witnesses called in support of the complaint eventually succumbed to the tactics of the salesman and bought a more expensive machine, but six of them stuck to their guns and despite all efforts to discourage them, insisted on buying the Free-Westinghouse machine.

However, none of these witnesses was successful in their efforts to obtain the Free-Westinghouse at the time they sought to purchase it. They were given various excuses and were shunted back and forth between the salesman and persons at the store, all to no avail. In several instances, the salesman would not take a deposit but told the customer to telephone the store or that a driver would get it. When they telephoned the store, they were given some excuse for not selling them the machine, such as the fact that respondents had "oversold" on the machine or that the machines in stock had certain attachments which the customer would have to take at additional cost. Several witnesses who were successful in getting the salesman to accept a deposit were later told, upon telephoning the store, that respondents were "oversold" on the machine. Several witnesses who went directly to the store in response to an advertisement, were told that respondents did not have any machines in stock.¹⁷ In most instances, according to the testimony of a number of these witnesses, shortly after they had been told that they could not obtain a Free-Westinghouse machine because respondents were "oversold" or for some other reason, they saw another advertisement by respondents in the newspaper offering to sell the machine. When several of them telephoned they were again met with an offer to send a demonstrator. One witness, after several months of telephoning, was finally told that she could have a Free-Westinghouse machine, but she had become so skeptical of the way respondents did business that she no longer wished to deal with them.

Counsel for respondents urge that the testimony of the witnesses called in support of the complaint not be credited because they were prejudiced against respondents and because their testimony was

¹⁶ The noisy performance of the Free-Westinghouse was alone sufficient to discourage one customer, without any active support from the salesman.

¹⁷ One of these witnesses had first telephoned respondents and stated that he wanted to buy the machine. He was met with an offer to send a demonstrator. After declining this offer and stating that he wished to buy the machine and not to have it demonstrated, he went directly to the store where he was told that the salesmen had all the machines out as demonstrators (R. 316).

contradicted by the witnesses who testified on behalf of respondents. Counsel apparently regard the witnesses who testified in support of the complaint as a group of disgruntled customers who embellished and distorted their experiences because of their "animus" toward respondents, aided and abetted by the "blueprint" furnished to them in the form of copies of the complaint herein.

The examiner is wholly in disagreement with counsel's evaluation of the testimony. If these witnesses had any "animus" toward respondents it would not be surprising in the light of the experiences which they related. However, after a careful review of their testimony and from his recollection of their demeanor in testifying, the examiner is convinced that the accounts they gave were essentially true. It is inconceivable to the examiner that such a large group of persons, so apparently lacking in guile and stratagem, could have all fabricated essentially similar accounts of their experiences with respondents. While counsel suggests that the centrality of their theme may be accounted for by the fact that they had received copies of the complaint in advance of the hearing, the hearing examiner cannot agree with this argument. Despite the similarity of their testimony in essentials, the wide variety in the details of their individual testimony was such as to indicate that it sprang from the wellspring of actual experience, rather than from some Machiavellian plot among them and possibly, counsel in support of the complaint. Moreover, the testimony of the witnesses called by respondents, so far from contradicting the testimony of those called in support of the complaint, in many respects corroborates it and tends to support the charges in the complaint.

Counsel for respondents called fourteen witnesses who had responded to advertisements for the Free-Westinghouse machine. Of this number, seven actually bought the machine and the remainder purchased the "American Home" Japanese machine.¹⁸ While many of these witnesses attested to the conclusionary fact, frequently in response to leading questions, that the salesman who demonstrated the Free-Westinghouse did not "disparage" or "criticize" it, the testimony of some of them reveals that the salesman did in fact engage in a tactic of discouraging the purchase of the Free-Westinghouse machine, albeit in some instances it was more subtle and less pronounced than that experienced by witnesses called in support of the complaint. Thus, one witness, when asked the leading question whether the salesman had "disparaged" the Free-Westinghouse machine, gave the answer: "No. If it was what I wanted, it was all right

¹⁸ It was stipulated that respondents could call four additional witnesses who would also testify that they had purchased the Free-Westinghouse machine. In addition, there were received in evidence nine sales invoices representing sales of Free-Westinghouse machines to other retail customers.

with him." When the same witness was asked what the salesman actually did say, he testified: "He told me I could get a better machine if I wanted one" (R. 723). The witness insisted, however, that he wasn't "pressured." Another witness, after testifying that he hadn't purchased the Free-Westernhouse because it "sounded like a rattle-trap," when asked whether the salesman made any comment about this, replied: "I believe he made one statement to the effect that you probably wouldn't want this, you would want a little better machine" (R. 770). Another witness, while stating that the salesman "didn't run down" the Free-Westernhouse machine, testified that he told her that the American Home machine was "a much better machine" and "would last longer" (R. 840). Another witness was told by the salesman that the Free-Westernhouse would not go forward and reverse but that the American Home would although, as previously mentioned, this was one of the advertised features of the Free-Westernhouse machine. Several witnesses were told that the noisy performance of the machine was due to the fact that the Free-Westernhouse had a long bobbin, while the round bobbin on the American Home machine was quieter and better.

There are undeniably a number of instances in the record where customers rejected the Free-Westernhouse machine because of its deficiencies in performance, particularly its unusual noise in operation, and where there is no evidence of any overt criticism or disparagement by the salesmen. However, this does not necessarily impugn the testimony of those witnesses who claimed that the salesman had discouraged them from purchasing the machine, nor does it necessarily disprove the bait advertising charge. In the first place, the examiner is not convinced that the noisy performance of the Free-Westernhouse machine was due entirely to the fact that it had a long bobbin, as contended by respondents. The testimony of so many of the witnesses on both sides concerning the unusually noisy performance of the machine suggests that the demonstrated models had been tampered with in some way so as to accentuate the noise.¹⁹ While long bobbin machines may be noisier than the round bobbin variety, the examiner is not convinced that the difference is as great as that of the machines here demonstrated.²⁰

¹⁹ The unusually noisy character of the machine was described by the witnesses in such terms as "rattletrap," "threshing machine," "terribly noisy," "terrific amount of noise" and "awful noise."

²⁰ One of respondents' own witnesses testified that she had owned an inexpensive long bobbin machine for ten years and that it was no noisier than the round bobbin Japanese machine which she purchased from respondents and was less noisy than the Free-Westernhouse which she rejected because she "couldn't stand the noise" (R. 841, 842). One of the witnesses called in support of the complaint testified that she and her husband decided to buy the Free-Westernhouse despite its noise because they felt the noise could be remedied by tightening a few screws.

Even assuming, however, that the noise was a normal incident of the operation of the machine which resulted in persuading many purchasers to buy the American Home machine in preference to the Free-Westinghouse, this does not disprove the claims of these witnesses who testified that they were discouraged from buying the machine by the salesman since it is possible that some salesmen engaged in open disparagement of the machine, while others did not, relying instead on the performance of the machine to do the job for them. The fact that respondents continued to advertise the machine three and four times a week in such glowing terms, creating the impression that here was a most wonderful machine which was being practically given away, while knowing that many customers would decline to buy it because of its disappointing performance and would be induced to buy a more expensive machine,²¹ is itself part of a pattern of bait advertising of a more subtle variety. Under these circumstances, it was unnecessary in many instances for the salesman to dissuade the customer from buying the Free-Westinghouse and to switch him to the American Home, since the salesman had a built-in dissuader in the form of the performance of the Free-Westinghouse machine which he demonstrated.

The fact that a number of respondents' witnesses were able to purchase the Free-Westinghouse machine does not, as argued by counsel for respondents, demonstrate the falsity of the testimony of the witnesses called in support of the complaint who claimed that they were unable to buy the machine. The fact that respondents refused to take orders or avoided taking orders for the advertised machine is not only attested to by the credible testimony of witnesses called in support of the complaint, but by the testimony of respondents' own sales manager who admitted receiving complaints with regard to salesmen not taking orders for the machines. While he claimed that this occurred only "once in a while," the examiner is not convinced that this was a sporadic occurrence. At least two salesmen engaged in this practice with sufficient regularity that, according to the sales manager's testimony, one of them was discharged and the other one was asked to resign. The witness also conceded that other salesmen had engaged in the practice as well. Since the salesmen were paid on a straight commission basis of 10 per cent, it would not be unusual if they sought to avoid selling the inexpensive Free-Westinghouse machine and tried

²¹ Respondents' sales manager testified that most customers commented on the noisy performance of the machine. Both he and one of the salesmen conceded that it did not have the advertised "forward and reverse feature."

Findings

52 F. T. C.

to sell the more expensive Japanese machine.²² Despite the claims of respondents' sales manager, the examiner is convinced that the practice of not taking orders for the Free-Washinghouse was not a sporadic practice among a few salesmen. The credible testimony in the record establishes that it was widespread and that even the respondents themselves participated in the practice of trying to avoid selling the advertised machine.²³ In any event, respondents are responsible for the acts of their salesmen acting within the scope of their apparent authority.²⁴

Counsel for respondents regard the allegation of refusal to sell the Free-Westingshouse machine as being the core of the bait-advertising charge and contend that the fact the record discloses a number of Free-Westingshouse machines were actually sold to customers disproves the charge that the offers to sell the machine were not genuine. Aside from the fact that the record also discloses there was a refusal to sell the machine in a number of instances, counsel's argument overlooks the fact that the sale (or the refusal to sell) was merely the culmination of a tactic of dissuasion, sometimes brazen and sometimes subtle, in which every effort was made to induce the purchase of something other than the advertised machine. This tactic was so successful, as demonstrated by the record, that in most instances there was no necessity of a refusal to sell because the customer was induced to buy a more expensive machine. So far from establishing that any considerable number of Free-Westingshouse machines were sold by respondents, as contended by counsel, the record indicates that the sale of such machines was a relatively minor factor in respondents' business, amounting to probably less than 14 a month.²⁵

²² The motivation of the salesman under these circumstances was described by the sales manager as follows:

"Well, a salesman wouldn't turn the order in because if he had only a dollar deposit he might go back and get a larger deposit and sell the person a more expensive machine."

²³ One witness who went to respondents' store in response to an advertisement was told by a person whom he identified as the respondent Barbara E. Martin, that the respondents did not have any machines other than those which the salesmen were using as demonstrators (R. 316). Another witness who went to the store testified that a man identified as Mr. Martin "more or less began to run down" the Free-Westingshouse machine and induced him to buy another one (R. 340). Another witness testified that Mr. Martin told him at the store that the Free-Westingshouse was a "toy" and that he wouldn't want it (R. 474, 501). Other witnesses testified to telephone conversations with Miss Martin in which they were told the advertised machine had been oversold."

²⁴ *Standard Distributors, Inc. v. FTC*, 211 F. 2d 7, 13 (C. A. 2, 1954).

²⁵ While the evidence is somewhat fragmentary, insofar as showing the total sales of the Free-Westingshouse machine, it is possible to approximate such figures. According to respondents' sales manager, his sales of the Free-Westingshouse amounted to 1 or 2 a week as compared to 7 or 8 of the American Home. Another salesman estimated his sales of Free-Westingshouse as 10 to 15 a month as compared to 25 or 30 American Home. It may be doubted that the sale of the Free-Westingshouse ran even as high as these estimates since invoices of respondents' Free-Westingshouse purchases during the nine-month period August 1952 to April 1953 indicate that their total purchases of such machines, including some different and more expensive models, averaged only about 14 machines a month. It may be assumed that respondents didn't sell more machines than they purchased.

Any doubt as to whether respondents were seriously trying to sell the Free-Westinghouse machine or were merely advertising it as a way of getting leads for the purpose of selling the American Home machine and other more expensive machines is dissipated when consideration is given to the economic realities of the situation. The record discloses that the Free-Westinghouse machines advertised by respondents were actually being sold below the cost of such machines to respondents.²⁶ When other items of cost are included in addition to what respondents paid for the machines, such as salesmen's commissions and advertising costs, it is evident that respondents could not long remain in business if they relied on the sale of the Free-Westinghouse machine. Contrasting with the loss factor which the sales of the Free-Westinghouse represented, the evidence discloses that the American Home machine, which was usually involved in the competition with the Free-Westinghouse during the period in question, was being sold at well above the cost of such machine.²⁷ In the light of these stark economic facts, the possibility that respondents were seriously offering to sell the Free-Westinghouse machine becomes extremely remote. Such facts establish beyond doubt the reasonableness of the testimony of the witnesses called in support of the complaint.

The practice of respondents in offering to sell these machines at a loss cannot be analogized to the "loss leader" type of practice or, as suggested by counsel, to the practice of offering a product which is found by the customer, after examination, to be less desirable than another product of the vendor. In a "loss leader" situation the store advertises a product at a loss in the hope of getting the customer into the store where he will buy *additional* articles. Respondents' scheme here involves an effort to *substitute* another product for the advertised product.

Respondents' practices are wholly dissimilar to legitimate merchandising practices. Here the respondents have undertaken to advertise a product which they hope and intend not to sell, except on a very limited basis, and to substitute therefor another, more expensive prod-

²⁶ A console model (52 F-302) which respondents frequently advertised for \$35.88 and \$43.33, actually cost respondents \$59.96. A portable model (52F-1216) which was advertised for as low as \$29.50, actually cost \$46.63 and \$48.45. Counsel for respondents contend that evidence as to the prices paid by respondents is immaterial and cite a ruling of the examiner as purporting to uphold this position. However, the ruling which the examiner made was in connection with a line of examination which he understood as relating to another allegation of the complaint having to do with misrepresentation of the retail price and not with the bait advertising charge.

²⁷ The American Home machine, Model 772, which respondents sold for such prices as \$119.50 and \$189.50, actually cost respondents \$50. Model 771 which respondents sold for \$119.50, \$129.50 and \$139.50, cost respondents \$52.50. Model 300, which respondents sold for \$119.50 and \$189.50, cost respondents \$51 and \$52.50. Similar differentials appear in other models.

Findings

52 F. T. C.

uct. The product which they want to sell and on which they make a profit is usually an unknown product, a Japanese sewing machine which would have limited advertising appeal. The product which they advertise is an American product whose name is almost a household word. They embark upon a campaign to sell the unadvertised produce under the guise of offering to sell the well-known product. They embellish their advertisements with the latter product's familiar "You Can Be Sure" slogan, with a list of many desirable features, with a 20-year guarantee and with an extremely low price. When persons respond to the advertisements, respondents proceed to attempt to get them to switch to the nonadvertised product. The switch tactic revolves about the so-called demonstration. Persons who call in response to the ad and offer to buy the machine outright are frequently told they must have a demonstration. The demonstrator inevitably brings along with him a more expensive Japanese machine. Then by a process akin to "brain washing" the salesman seeks to induce a switch to the more expensive machine. Sometimes the salesman is quite frank and tells the customer the Free-Westingshouse is no good; sometimes he is more subtle and calls attention to features here and there which create doubt in the mind of the average housewife for whose benefit most of the demonstrations are performed; and in some instances the raucous performance of the machine does the trick. However, where the customer will not be switched from the Free-Westingshouse, the salesmen seek in many instances to avoid selling the machine.

While respondents do sell a limited number of the Free-Westingshouse machines where they have been unable to induce the customer to purchase the more expensive machine, this is a mere incidental by-product of their fundamental strategy and is intended to give respondents' practices an aura of legitimacy. Since the Free-Westingshouse machines are sold below cost and respondents would go bankrupt if they continued to sell them in large numbers, the laws of probability suggest that they would bend every effort to sell the Japanese machines and avoid selling the Free-Westingshouse. The record in this case amply demonstrates that respondents and their salesmen have not failed to do the expected.

It is accordingly concluded and found that respondents' offers to sell the Free-Westingshouse machine were not genuine and bona fide but were made for the purpose of obtaining leads and information as to persons interested in purchasing a more expensive machine and that when persons responded to their advertisements, respondents or their salesmen disparaged the advertised machine, made no effort to sell it or ignored it and attempted to sell a more expensive machine, usually

one of Japanese origin, and where persons indicated a desire to purchase the advertised machines respondents or their salesmen in many instances refused to see it.²⁸

C. The Misrepresentation as to Price

The complaint charges respondents with having misrepresented the regular price of the Free-Westinghouse machine in their advertisements and the amount of savings to be realized at the price offered by respondents. Typical of the statements charged as misleading, which appear in the advertisements, is one referring to the machine as "\$119.50 Value," offering to sell it for \$38.88, and stating that this will "Save \$80.62." Respondents have admitted in their answer advertising the machine in the manner indicated, but deny that this constituted a representation that the stated value was the regular price of the machine.

The primary issue which arises under this allegation of the complaint revolves about the meaning of the term "value" in the context of respondents' advertisements. The theory of counsel supporting the complaint is that by stating that the machine had a particular "value," respondents were representing that that was the price at which the respondents themselves had currently been selling the machine. The position of counsel for respondents is that by advertising the machine in this manner respondents were not claiming that the stated "value" was their regular price for the machine, but rather that it was the "regular market value" of the machine, by which the examiner assumes counsel means the "regular market price" of the machine.

The examiner does not agree with counsel supporting the complaint that a statement that a product has a certain "value" amounts to a representation that the figure indicated has been the regular price of the particular advertiser. In the opinion of the examiner a product may be said to have a certain "value" if the product is being sold regularly, i.e., to any substantial extent, at that price in the community, even though the particular advertiser has never sold it at that price.

The question which next arises is whether the statements made by respondents concerning the "value" and the concomitant "savings" on the machines are true or false. Most of the advertisements in the record involve the same model Free-Westinghouse machine, a console 52-F-302. There is only a minor difference in the testimony concerning the retail price of this machine. According to the testimony of the

²⁸In making the above findings the examiner has placed no reliance on matters dehors the record herein which are referred to in the proposed findings of counsel supporting the complaint, such as the action taken by the Council of State Governments, the Massachusetts bait advertising statute, and a brochure of the Better Business Bureau.

witnesses called in support of the complaint, the retail price of this machine at the time it was advertised was \$79.95, while according to the testimony of the respondent Barbara E. Martin it was \$89.95. Even accepting the latter figure, it is obvious that the regular retail price of the machine was substantially below the advertised "value" of \$119.50.²⁹ Although respondents make the doubtful claim that the current price of one of the other models advertised (8-F-1482) was actually \$119.50, there are a sufficient number of other instances of price misrepresentation in the record to sustain the charges in the complaint, without regard to the advertisement in question.³⁰

The only justification which respondents offered for advertising the Free-Westinghouse machine as a \$119.50 "value" was based upon the testimony of respondent Barbara E. Martin that the value was arrived at by taking the current list price of the machine, \$89.95, and adding thereto the value of certain additional items which were included in the price of the machine, *viz.*, a pinking shears and ten sewing lessons. The examiner cannot accept this explanation as establishing the truthfulness of the representations made in the advertisements. In the first place, the value of the additional items cannot be deemed part of the value of the machines. The advertisements patently refer to the value of the machine and not to any ancillary items. Such items were offered "free" or "at no extra cost" and cannot, therefore, be regarded as part of the represented value of the machine.³¹

Moreover, the examiner is convinced that respondents' explanation is merely a bit of *ex post facto* rationalizing and has nothing to do with respondent's reasons for fixing the "value" of the advertised machine. In 1952 respondents had used the phrase "regular value" in advertising their machines. According to the testimony of the respondent Barbara E. Martin, she was advised by a Commission investigator in October 1952, that this amounted to a representation that the figure stated was the regular price of the machine and for

²⁹ Counsel for respondents argue that there was no showing as to what the regular price of the machine in the Washington, D. C., market was since there was no evidence as to the number of retailers in the market and as to what their prices generally were. However, counsel supporting the complaint did establish what the current list price of this machine was, that retailers usually sold at or about the list price, that at least two retailers in the Washington area were selling the machine at that price, and that respondents were selling it below the price. From this it may be readily inferred that the regular market price of the machine was substantially less than \$119.50. The burden of showing that any sizable number of retailers were actually selling the machine at or about \$119.50 would then shift to respondents.

³⁰ Respondent Barbara E. Martin testified that the list price of this machine was \$119.50 at the time it was so advertised. Counsel for respondents contend that her testimony was corroborated by that of a representative of the manufacturer of the machine. However, the latter's testimony was to the effect that this was the price of the machine in 1950 and 1951, and that it had not been manufactured since that time. The manufacturer's price list, which was introduced in evidence, fails to contain any price for this model.

³¹ Cf. *Walter J. Black, Inc.*, Docket No. 5371, September 11, 1953.

that reason the word "regular" was dropped from the advertisements thereafter. In the advertisements in evidence in which the phrase "regular value" was used, the amount mentioned coincides in most instances with the former list price of the machine. The amounts stated in the advertisements in evidence for 1953, in which the word "value" alone was used, all coincide with the former list price of the machines. It seems evident that respondents were merely trying to continue their former practice of claiming that the old list price was the value of the machine, while purporting to meet the objections of the Commission investigator by dropping the word "regular." The examiner is convinced that this, rather than any additional value, created by the offer of sewing lessons and pinking shears, is the explanation for the amounts chosen by respondents as the value of the machine. It may be noted, in this connection, that the word "value" appeared in the advertisements without regard to whether pinking shears and sewing lessons were offered or not, and even though in some instances both of these additional inducements were offered while in others only one of them was offered.

It is accordingly concluded and found that by advertising that the Free-Westinghouse machines had a "value" of \$119.50 or some other amount, respondents represented that such amount was the price at which said machines were regularly being sold in the market, and that the amount which the purchaser would "save" was based upon the regular market price of said machines. It is further concluded and found that such representations were false, misleading and deceptive in that a number of the advertised machines were not being sold in the Washington, D. C. market for the price indicated to be the value of the machines, at or about the time they were so advertised, and the amount of the savings which would be realized was substantially less than the amount represented, based on the regular market price of said machines.

D. *The "Guarantee"*

The complaint alleges that respondents in their advertising have represented that their sewing machine carries a "20 Year Guarantee." It is further alleged that the use of such statements of guarantee without disclosing the terms and conditions of the guarantee, the name of the guarantor and the manner in which the guarantor will perform is confusing and misleading. Respondents admit in their answer advertising a 20-year guarantee, but allege that since October 1952 the advertised guarantee has clearly contained the name of the guarantor and, substantially, the terms of such guarantee. It is further alleged that to require respondents to publish additional details of the guarantee would be unduly burdensome.

Findings

52 F. T. C.

The evidence with respect to the advertising of a 20-year guarantee relates primarily to the Free-Westinghouse machine.³² The record discloses that in advertising such machines respondents used the phrase "20 Year Guarantee." This phrase appeared in a prominent place in the advertisements, usually directly underneath a picture of the Free-Westinghouse machine, and was printed in bold letters approximately $\frac{3}{8}$ of an inch in height.

The contention of respondents with regard to changing their advertising is based on the testimony of respondent Barbara E. Martin, that around October 1952, a Commission investigator advised her that the advertisements should state what the guarantee covered, and that thereafter she changed the advertisements so as to indicate that the guarantee was on parts only.³³ The change in advertising, upon which respondents rely, does not involve any modification in the use of the phrase "20 Year Guarantee," which continues to have the same prominent place in their advertisements as before. There is no reference in this portion of the advertisement to the fact that the guarantee is limited to parts. However, in another portion of the advertisement in which are listed the "Features" of the machine, there appears the phrase "20 Year Parts Guarantee." This phrase is included in the middle of a number of performance "features" of the machine and is printed in small letters, approximately $\frac{1}{16}$ of an inch in height.

The contention of counsel supporting the complaint that the "guarantee" allegation of the complaint has been sustained by the evidence is based primarily on testimony and other evidence relating to a "Guarantee Bond," which was given or promised to purchasers of respondents' Japanese "American Home" machine.³⁴ The authority which counsel cites in support of his position, the *Bega Sewing Machine* case,³⁵ relates to a "Warranty Certificate" which was advertised in connection with the sale of Japanese machines. However, in

³² Most of the advertisements offered in evidence by counsel in support of the complaint in which there is reference to a 20-year guarantee involves the Free-Westinghouse machine. There are two exhibits relating to a Singer machine (CX 6 and 7) and one exhibit relating to an unknown brand of machine (CX 11).

³³ The record discloses that as late as November 5, 1952, respondents were still advertising the Free-Westinghouse as bearing a 20-year guarantee, without qualification. The earliest evidence of an advertisement referring to the guarantee as being limited to parts is an advertisement dated March 11, 1953. It will be assumed, however, for purposes of this decision that sometime between November 1952 and March 1953, there was a change in respondents' advertising which is reflected in the advertisement of March 11, 1953, appearing in the record.

³⁴ Counsel's argument in this respect is as follows:

"The writing itself shows on its face that there is neither a 20 year warranty nor any other kind of warranty, and no warranty backs up one of these imported Japanese machines when either wholesaled or retailed for the reason that any warranty or guaranty bond is backed up by the force of its manufacturer for warranties on bonds and not the retailer."

³⁵ Docket No. 5893, September 18, 1953.

the instant case the complaint is not based on the insufficiency of any "guarantee bond" or "warranty certificate" advertised or given in connection with the sale of Japanese machines. The complaint alleges a failure to make full disclosure of a "20-year guarantee" referred to in advertisements placed by respondents in newspapers. However, as already indicated above, such advertisements relate primarily to the Free-Westinghouse machine, and there is no evidence that the "Guarantee Bond" given in connection with the sale of the Japanese machines is the same as the 20-year guarantee advertised in connection with the Free-Westinghouse machines.

Despite the irrelevance of much of the argument of counsel supporting the complaint, there is, nevertheless, sufficient evidence in the record to sustain the allegations of the complaint without regard to any guarantee given in connection with the Japanese machines. As has already been found, respondents advertised the Free-Westinghouse as carrying a "20 Year Guarantee." Many readers seeing such advertisement would assume that it reflected a full 20-year guarantee, without limitation. While respondents did in the latter part of 1952 or early 1953 include an additional phrase in their advertisements relating to parts, this phrase appeared in much smaller print and in a less prominent place in the advertisement. In the opinion of the examiner, in order to properly inform the public that the guarantee was limited to parts, either the word "parts" should have been inserted in the prominently used phrase "20 Year Guarantee," or the separate phrase, "20 Year Parts Guarantee" should have been placed in close proximity to the phrase "20 Year Guarantee" and in letters of substantially the same size.³⁶ It is accordingly found that both the former and the present arrangement of respondents' advertisements tend to confuse and mislead the public in that they fail to adequately disclose material limitations with respect to the terms and conditions of the guarantee or the manner of performance thereof.

Respondents' advertisements of a 20-year guarantee are objectionable for the additional reason that they fail to disclose the identity of the guarantor. While respondents state in their answer that the name of the guarantor is now clearly disclosed as a result of the changes which occurred around October 1952, reference to the advertisements indicates that there has been no change in this respect.

³⁶ See in this connection *Parker Pen Co. v. FTC*, 159 F. 2d 509 (C. A. 7, 1946), involving an unqualified guarantee appearing in large letters in a conspicuous place in advertisements, and a limitation on the guarantee appearing in small letters in a less conspicuous place, where the court commented:

"We conclude that the objection to petitioner's advertisement is that the limiting words of the guarantee appear in small print, plus the further fact that the location of the limiting words is some distance from the words of the guarantee."

Findings

52 F. T. C.

The name of the advertiser "Household Sewing Machine Company" appears in the advertisements now, as it did prior to the alleged change in format. However, there is no indication whether that company or the manufacturer of the Free-Westinghouse machine is the guarantor under the advertised guarantee.

Counsel for respondents argue that no case has been established because there has been no showing that anyone was misled or confused by respondents' advertisements. However, it is elementary that evidence of actual deception is unnecessary since it is sufficient if the advertisements have the capacity to deceive.³⁷ The finding here made that there is a tendency to mislead and deceive is not based on any "naked allegation [in the complaint] alone," as counsel appear to assume, but on the advertisements which are in evidence and the admitted fact that the guarantee is limited to parts, from which the Commission and its examiner can appropriately draw inferences without the use of so-called public witnesses.³⁸

Neither the *Astor Industries* nor the *Modern Sewing Machine* cases,³⁹ cited by counsel for respondents, is in any way inconsistent with the position here taken and with the authorities above cited. In the *Astor Industries* case, the allegation of deception was based on a "Guarantee Bond" appearing in a booklet given by respondents to their retailers, who in turn gave it to purchasers. It was alleged that the guarantee bond did not sufficiently set forth the terms and conditions of the guarantee. However, since the terms of the guarantee were actually set forth in the bond *in extenso*, the issue narrowed down to whether the bond was sufficiently clear as to whether it was a guarantee by the manufacturer or the dealer. Based on the plain wording of the bond, which provided for signature by the "Dealer," and the testimony of reliable witnesses, it was found that the guarantee was not misleading. This does not amount to a holding that the Commission and the examiner cannot find a guarantee to be misleading based on the guarantee document itself or on an advertisement relating to it.⁴⁰

³⁷ *Parker Pen Co. v. FTC*, *supra*; *Charles of the Ritz Co. v. FTC*, 143 F. 2d 676 (C. A. 2, 1944).

³⁸ *Zenith Radio Corporation v. FTC*, 143 F. 2d 29 (C. A. 7, 1944); *Rhodes Pharmacal Company, Inc. v. FTC*, 208 F. 2d 382 (C. A. 7, 1953).

³⁹ Docket No. 5889, February 17, 1954; 49 FTC 1111.

⁴⁰ Counsel for respondents refer, in this connection, to a ruling of the examiner which they contend requires that the guarantee itself be produced in order to establish a prima facie case. This was not the holding of the examiner in the ruling to which counsel refer. The occasion for the ruling was an effort by counsel supporting the complaint to establish the terms of the warranty through a facsimile contained in a booklet. The substance of the examiner's ruling was that, to the extent counsel was seeking to establish the terms of the guarantee, he should do so through a copy of the guarantee and not by some facsimile in a booklet.

In the *Modern Sewing Machine* case, the allegation of deception was based on circulars in which respondents described their machines as "Guaranteed factory rebuilt sewing machines." It was found that there was no likelihood of confusion to the disadvantage of customers since the evidence showed that respondents either furnished another machine or refunded the purchase price to dissatisfied customers. This decision amounts to a holding that by using the expression "guaranteed" respondents had, in effect, represented that their machines were fully guaranteed without qualification, and that since the evidence showed respondents had fully performed on their guarantee there was no likelihood of deception. In the present case there is not a full guarantee but a partial guarantee, which is not sufficiently disclosed in the advertisements nor is it adequately disclosed who the guarantor is.

It is accordingly concluded and found that in advertising that their machines carry a "20 Year Guarantee" respondents have, in effect, represented that their machines are fully guaranteed without limitation, and have failed to adequately disclose a material limitation on the nature and extent, or manner of performance, of the guarantee, and the identity of the guarantor. With respect to respondents' argument that it would be burdensome to set forth all the terms and conditions of the guarantee in advertisements, it may be noted that the examiner does not understand that they are required to do so. Only to the extent that there is a material limitation on what might otherwise appear to be an unlimited guaranty, is there an obligation to make reference to it in their advertisements.

E. *The Advertising of Attachments*

The complaint alleges that respondents in their advertising represented that their machines would perform certain functions with the use of attachments, but failed to disclose that the cost of the attachments was not included in the advertised price. The advertisements complained of are mainly those for the Free-Westinghouse machine. It is not disputed that respondents stated in a number of their advertisements that their machines would perform certain functions with the use of attachments, such as embroidering, buttonholing, darning, etc., and that they failed to disclose in certain of these advertisements that the price of the attachments necessary to perform these operations was not included in the advertised price of the machine. It is also undisputed that at some time after the visit of the Commission investigator, previously referred to, respondents changed their advertisements in order to make reference to the fact that the attachments were available at additional cost. Such change involved the addition of

the words "Attachment Extra" in small letters, beneath a list of "Features" of the machine. The position of counsel for respondents on this issue is, (a) that there is a deficiency in the proof offered in support of the complaint since there has been no showing that any member of the public was misled by respondents' former practice, and (b) there is no longer any need for corrective action since the practice was discontinued prior to the issuance of the complaint.

The examiner cannot agree with the contention of counsel based on the alleged lack of evidence of actual deception. Where an advertisement states that a machine will perform certain functions with the use of attachments and offers to sell the machine at a specified price, it is implied that the price includes the machine with the attachments which will perform the stated functions. The fact that there is actually an additional charge for the attachments is a material fact which should be clearly revealed in the advertisements, the failure to reveal which, has a tendency to mislead and deceive the public. That the failure to reveal this fact has such a tendency is a matter which the Commission and its examiner can infer and find from the advertisements without the necessity for testimony of actual deception.

With respect to counsel's second contention, based on the alleged change in respondent's method of advertising with respect to attachments, it may be noted, first, that it is not entirely clear that respondents have abandoned the objectionable practice. The use of the phrase "Attachment Extra," appearing in small letters at a point removed from the description of the items which may be performed "with the aid of wonderful easy-to-use attachments," is hardly calculated to give the reader clear notice of the additional cost of such attachments. It may be noted further, in this connection, that in respondents' more recent advertising they have dropped specific reference to the operations which may be performed with the aid of the attachments and have eliminated the phrase that the price of the attachments is extra. However, they have continued to include among the so-called "Feature" items of the machine the phrase: "Cover feed for embroidering, darning, monogramming, hemstitching and buttonholing." There is no question that these latter operations can only be performed with the use of attachments. Counsel for respondents argue that the reference to a "cover feed" for the attachments is not the same as referring to the attachments themselves. However, while a sophisticated housewife who is thoroughly experienced in the fine points of the sewing art may appreciate this distinction. It is the opinion of the examiner that many persons, less well-informed, would assume that the attachments for performing these operations were included in the offer.

In any event, assuming that there has been a material change in respondents' advertising practices so as to eliminate the confusion which existed concerning the matter of attachments, it is the opinion of the examiner that there is still a need for corrective action in this respect. As counsel for respondents themselves recognize, the mere discontinuance of an illegal practice does not necessarily dispense with the need for the issuance of an order in the public interest.⁴¹ The facts here indicate violations of the Federal Trade Commission Act on a wide scale and the engagement in some practices which were deliberately calculated to deceive the public. Although respondents purported to modify some of their advertising practices on advice of a Commission investigator, they did so grudgingly, and in a manner calculated to bring them just barely within the law—the letter of the law, and certainly not its spirit. Under all the circumstances, it is the opinion and finding of the examiner, that there is still a need for corrective action with respect to the practice here at issue and that unless appropriate provision is made, there is a reasonable possibility that respondents may resume the objectionable practices in the same or in an altered form.

F. *The Offer of Free Sewing Lessons*

The complaint alleges that respondents stated in their advertising that a purchaser would be entitled to and would receive ten sewing lessons upon the purchase of a sewing machine. It is alleged that this representation was untrue in that respondents "did not furnish any sewing lessons in the sense that the word 'lessons' is generally understood, that is, personal instruction" but that any so-called lessons given by respondents were written.

As stated in the examiner's order of September 29, 1954, denying respondents' motion to dismiss at the close of the evidence in support of the complaint, there is a failure of proof with respect to this allegation of the complaint. Provision for dismissal thereof will, accordingly, be hereinafter made.

IV. Effect of the Illegal Practices

The failure of respondents to adequately disclose on their sewing machine heads that they are made in Japan and also the use of the trade or brand name "American Home De Luxe" has had and now has the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that respondents' sewing

⁴¹ See, e. g., *Consolidated Royal Chemical Corp. v. F. T. C.*, 191 F. 2d 896; *Hillman Periodicals, Inc. v. F. T. C.*, 174 F. 2d 122.

Order

52 F. T. C.

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

Respondents, in the course and conduct of their business, are in substantial competition in commerce with the makers and sellers of domestic machines.⁴² As a result of the false, misleading and deceptive statements and practices hereinabove found, it may reasonably be inferred that substantial trade in commerce has been and is being unfairly diverted to respondents from their competitors and that substantial injury has been and is being done to competition in commerce.

CONCLUSION OF LAW

The acts and practices of respondents, as hereinabove found, are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair 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 respondents Barbara E. Martin, Hershel Martin and Dennis Martin, individually and as co-partners doing business as Household Sewing Machine Company, or under any other name, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of sewing machines, sewing machine heads, or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

⁴² The complaint also alleges that respondents are in competition with other sellers of imported machines some of whom adequately inform the public as to the source of origin of their said products. There is no evidence to sustain the allegation with respect to other sellers of imported sewing machines adequately informing the public concerning the origin of their product, and accordingly no finding to this effect is made.

2. Representing, directly or by implication, that a specified amount is the value of merchandise being offered for sale when such amount is in excess of the price at which said merchandise is regularly and customarily sold in the normal course of business in the same trade territory.

3. Representing, directly or by implication, that any savings are afforded on the sale of merchandise represented as having a certain value, unless the represented savings are based upon the price at which said merchandise is regularly and customarily sold in the normal course of business in the same trade territory.

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

5. Representing, directly or by implication, that their sewing machine heads or sewing machines are guaranteed for 20 years or for any period of time, or that they are otherwise guaranteed, without clearly and conspicuously disclosing the existence of any material limitations upon the nature and extent of such guarantee or the manner of performance thereof, and the identity of the guarantor.

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

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

It is further ordered, That with respect to any issue raised by the complaint other than those to which this order relates, the complaint be, and the same hereby is, dismissed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did on the 16th day of September, 1955, become the decision of the Commission; and, accordingly:

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.

IN THE MATTER OF
MAX FEUER ET AL. TRADING AS FEUER FUR COMPANY

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

Docket 6296. Complaint, Feb. 25, 1955—Decision, Sept. 16, 1955

Consent order requiring Chicago furriers to cease misbranding, false advertising, and false invoicing of fur products in violation of the Fur Products Labeling Act.

Before *Mr. Frank Hier*, hearing examiner.

Mr. John J. McNalley and *Mr. Daniel J. Murphy* for the Commission.

Kirkland, Fleming, Green, Martin & Ellis, of Chicago, Ill. and Washington, D. C., 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 Max Feuer and Sue Feuer, individually and as copartners trading and doing business as Feuer Fur 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. Respondents, Max Feuer and Sue Feuer, individually and as copartners trading and doing business as Feuer Fur Company, formulate, direct and control the acts, policies and practices of the said company, with their office and principal place of business located at 7 West Madison Street in the city of Chicago, State of Illinois.

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, advertised, offered for sale, transported and distributed fur products in commerce, and have manufactured for sale, sold, advertised, 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, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling

Act. Certain of said fur products have been misbranded, falsely advertised and falsely invoiced in violation of the Fur Products Labeling Act and of the Rules and Regulations promulgated thereunder.

PAR. 3. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act, in that respondents caused the dissemination in commerce, as "commerce" is defined in said Act, of certain advertisements concerning said fur products by means of newspapers and by various other means, which advertisements were not in accordance with the provisions of Section 5 (a) of the Fur Products Labeling Act and of the Rules and Regulations promulgated under the said Act, and which advertisements were intended to, and did, aid, promote, and assist, directly and indirectly, in the sale and offering for sale of said fur products.

PAR. 4. Among and including the advertisements, as aforesaid, but not limited thereto, were advertisements of respondents which appeared in the February 25, 1954, issue of the "Chicago Daily Tribune"; in the July 25, 1954, September 12, 1954, and October 17, 1954 issues of the "Chicago Sunday Tribune," publications having wide circulation in the State of Illinois and in various other States of the United States. Certain, but not all, of said advertisements are set forth and described in Paragraphs Fifteen through Seventeen hereof and are incorporated herein by reference.

By means of the aforesaid advertisements, and through others of the same import and meaning, not specifically referred to herein, the respondents falsely and deceptively:

(a) Failed to disclose the name or names of the animal or animals that produced the fur contained in the fur products as set forth in the Fur Products Name Guide in violation of Section 5 (a) (1) of the Fur Products Labeling Act.

(b) Failed to disclose that fur contained in a fur product is bleached, dyed or otherwise artificially colored, when such is the fact, in violation of Section 5 (a) (3) of the Fur Products Labeling Act.

(c) Abbreviated words or terms of required information, and failed to state in type of equal size all parts of the required information in violation of Rules 4 and 38 (a) respectively of the aforesaid Rules and Regulations.

(d) Misrepresented, by means of comparative prices and percentage savings claims not based upon current market values, the amount of savings to be effectuated by purchasers of said fur products, in violation of Rule 44 (b) of the aforesaid Rules and Regulations.

(e) Misrepresented that they manufacture and design fur products which actually have been manufactured and designed by other firms and that they are "Chicago's Largest Exclusive Furrier," contrary to

the fact, in violation of Rules 42 and 49 of the aforesaid Rules and Regulations.

PAR. 5. Respondents, in making the pricing claims and representations referred to in subparagraph (d) of Paragraph 4 hereof, failed to maintain full and adequate records disclosing the facts upon which such claims and representations were purportedly based, in violation of Rule 44 (e) of the aforesaid Rules and Regulations.

PAR. 6. Respondents in substituting their own labels for those of the manufacturer on fur products failed to maintain full and adequate records in violation of Sections 3 (e) and 5 (d) of the Fur Products Labeling Act and Rules 40 and 41 of the aforesaid Rules and Regulations.

PAR. 7. 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. 8. Certain of said fur products were misbranded in that respondents, on labels attached thereto, set forth the name of an animal other than the animal producing the fur contained in the fur product in violation of Section 4 (3) of the Fur Products Labeling Act.

PAR. 9. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in that required information was mingled with non-required information in violation of Rule 29 (a) of the aforesaid Rules and Regulations.

PAR. 10. 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. 11. Certain of said fur products were falsely and deceptively invoiced in that respondents, on invoices furnished to purchasers of said fur products, set forth the name of an animal other than the animal producing the fur contained in the fur product in violation of Section 5 (b) (2) of the Fur Products Labeling Act.

PAR. 12. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act, in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in that required information on invoices was abbreviated in violation of Rule 4 of the aforesaid Rules and Regulations.

PAR. 13. The aforesaid acts and practices of respondents, as alleged in Paragraphs 1 through 12 hereof, 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 under the Federal Trade Commission Act.

PAR. 14. In the course and conduct of their business, respondents have, for several years last past been, and are now, engaged in the purchase, sale and distribution of fur products to members of the purchasing public. Respondents cause and have caused the aforesaid fur products to be transported from their place of business in the State of Illinois, to the purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said fur products in commerce, among and between the various States of the United States.

PAR. 15. In the course and conduct of their business, respondents caused the dissemination of certain advertisements relating to their aforesaid fur products. Among and included in said advertisements, but not limited thereto, were the following:

In the "Chicago Sunday Tribune," issue of July 25, 1954:

(Listing of 13 groups of capes, jackets, stoles, etc. at a selling price of \$100)
Save 30% to 50%.....

In the "Chicago Sunday Tribune," issue of September 12, 1954:

Max Feuer, the master furrier, who buys, designs, styles and even cuts and sews fur for these many years, emphasizes the values that have made him Chicago's Largest Exclusive Furrier.....Formerly Priced from \$175 to \$275 now \$100.....

Natural Ranch Capes.....	\$100
Natural Sheared Beaver Jackets.....	100
Moonglow Dyed Muskrat Jackets.....	100
Dyed Sheared Raccoon Side Jackets.....	100
Dyed Broadtail Proc. Lamb Jackets.....	100
Mahogany Dyed Muskrat Coats.....	100
Natural Grey Kid Coats.....	100
.....	

In the "Chicago Sunday Tribune," issue of October 17, 1954:

MORE FOR YOUR MONEY FROM CHICAGO'S LARGEST EXCLUSIVE FURRIER
NORMAL RETAIL PRICE \$175 to \$500..... \$120...

	<i>Price Market</i>	<i>Price Sale</i>
Sheared Canadian Beaver Jackets.....	\$400	*\$120
Blond Dyed Sheared Raccoon Coats.....	400	* 120
Genuine Spotted Cat Coats.....	325	* 120
Silver Blue Mink Shrug Capes.....	325	* 120
Black Dyed Persion Lamb Coats.....	500	* 120
.....		

*Plus new low 10% fed. ex. tax.

Complaint

52 F. T. C.

PAR. 16. By means of the aforesaid statements and others of the same import and meaning, but not specifically set forth herein, respondents represented, directly or by implication:

(a) That said fur products were being offered during such sales at prices from 30 to 50% less than the usual prices charged by respondents for such products during the recent regular course of their business;

(b) That the higher prices stated therein were the usual prices charged by respondents for such products during the recent regular course of their business;

(c) That respondents are the manufacturer of such fur products;

(d) That respondents are the largest exclusive furrier in the city of Chicago.

PAR. 17. The aforesaid statements and representations were false, misleading and deceptive. In truth and in fact:

(a) Said fur products were not being offered by respondents during such sale at from 30 to 50% less than the usual prices charged by respondents for such products during the recent regular course of their business;

(b) The higher prices stated therein were not the usual prices charged by respondents for such products during the recent regular course of their business;

(c) In the main, the furs advertised and sold by respondents as aforesaid were manufactured by individuals, firms and corporations other than respondents;

(d) Respondents are not the largest exclusive furriers in the city of Chicago.

PAR. 18. Respondents in the course and conduct of their business have been and now are engaged in commerce as "commerce" is defined in the Federal Trade Commission Act, and are in substantial competition in commerce with other firms, corporations, copartnerships and individuals also engaged in the sale of fur products to members of the purchasing public.

PAR. 19. The use by the respondents of the aforesaid false, misleading and deceptive statements and representations as alleged in Paragraphs 15 through 17 hereof 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 said statements and representations were and are in fact true and into the purchase of substantial quantities of respondents' fur products by reason of such erroneous and mistaken belief. As a result thereof substantial trade in commerce has been unfairly diverted to respondents from

their competitors and substantial injury has been and is being done to competition in commerce.

PAR. 20. The aforesaid acts and practices of respondents, as alleged in Paragraphs 14 through 19 hereof, are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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 February 25, 1955, issued and subsequently served its complaint on respondents herein who are individuals and copartners trading as Feuer Fur Company with their office and principal place of business located at 7 West Madison Street in the City of Chicago, State of Illinois, and are engaged thereat in the introduction into commerce, and in the sale, advertising and offering for sale in commerce, of fur products.

On July 27, 1955, there was submitted to the undersigned hearing examiner an agreement between respondents and counsel and counsel in support of the complaint providing for the entry of a consent order. By the terms thereof respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been made in accordance with such allegations and expressly waive any further procedural steps before the hearing examiner and the Commission, the making of findings of facts and conclusions of law by either, and all the rights respondents may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. Said agreement further stipulates that the record, on which the initial decision and the decision of the Commission shall be based, shall consist solely of the complaint and the agreement; that the agreement shall not become part of the official record unless and until it becomes a part of the decision of the Commission; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint. Said agreement further provides that all portions of the complaint which charge that respondents have misrepresented that they are "Chicago's Largest Exclusive Furriers" as alleged in Paragraphs Four (e) and Seventeen (d) be dismissed for lack of proof and that the agreement disposes of the proceeding as to all parties.

Order

52 F. T. C.

On the basis of the foregoing, the undersigned hearing examiner concludes that this proceeding is in the public interest; that such agreement is an appropriate disposition of the proceeding and in accordance with the action contemplated and agreed upon, makes the following order:

ORDER

It is ordered, That respondents, Max Feuer and Sue Feuer, individually and as copartners trading as Feuer Fur Company, or under any other trade name, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or the manufacture for introduction, or the sale, advertisement, offer for sale, transportation or distribution of fur products in commerce, or in connection with the manufacture for sale, sale, advertising, offer for sale, transportation or distribution of fur products which have been made in whole or in part of fur which had 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. 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 bleached, dyed, or artificially colored fur when such is a fact;

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

(d) 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 for sale in commerce, or transported or distributed it in commerce.

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

2. Setting forth on labels attached to fur products, the name or names of any animal or animals other than the name or names provided for in Paragraph A (1) (a) above.

3. Setting forth on labels attached to fur products, non-required information mingled with required information.

B. Falsely or deceptively invoicing fur products by:

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

282

Order

(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 bleached, dyed, or artificially colored fur when such is a fact;

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

(d) The name and address of the person issuing such invoices;

(e) The name of the country of origin of any imported furs contained in the fur product.

2. Using on invoices the name or names of any animal or animals other than the name or names provided for in Paragraph B (1) (a) above.

3. Setting forth on invoices pertaining to fur products required information in abbreviated form.

C. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement or notice, which is intended to aid, promote or assist, directly or indirectly in the sale or offering for sale of fur products, and which:

1. Fails to disclose the name or names of the animal or animals producing the fur or furs contained in the fur products as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations;

2. Fails to disclose that fur products contain or are composed of bleached, dyed, or otherwise artificially colored fur when such is the fact;

3. Uses abbreviated words or terms of required information or which, if printed, fails to state in type of equal size all parts of the required information;

4. Represents, directly or by implication:

(a) That a sale price enables purchasers of fur products to effectuate any savings in excess of the difference between the said price and the price at which comparable products were sold during the time specified or, if no time is specified, in excess of the difference between said price and the current price at which comparable products are sold;

(b) That any fur products were manufactured or designed by respondents, when such is contrary to the fact.

5. Makes the pricing claims or representations referred to in Paragraph C (4) (a) above, unless there is maintained by respondents full and adequate records disclosing the facts upon which such claims

and representations are based, as required by Rule 44 (e) of the Rules and Regulations.

D. Failing to maintain and preserve full and adequate records, in the manner and form required by Rules 40 and 41 of the Rules and Regulations, showing the information set forth on labels which respondents have removed from fur products and in lieu thereof substituted and affixed respondents' labels thereto.

It is further ordered, That respondents Max Feuer and Sue Feuer, individually and as copartners trading as Feuer Fur Company, or under any other trade name, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of fur products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do further cease and desist from making, directly or by implication, any of the representations prohibited by Paragraph C (4) of this order.

It is further ordered, That all other charges contained in the complaint not specifically covered in the above order are herewith dismissed as to both respondents.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 16th day of September, 1955, become the decision of the Commission; and, accordingly:

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.

Complaint

IN THE MATTER OF

MACKVINE CORPORATION ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS LABELING ACTS*Docket 6332. Complaint, Apr. 20, 1955—Decision, Sept. 17, 1955*

Consent order requiring manufacturers in New Haven, Conn., to cease violating the Wool Products Labeling Act through misrepresenting the constituent fibers of certain batts and battings on labels and sales invoices.

Before *Mr. John Lewis*, hearing examiner.

Mr. R. D. Young, Jr. and *Mr. George E. Steinmetz* for the Commission.

Spiro & Levine, of Danbury, Conn., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Mackvine Corporation, a corporation; and Edward Levine, David Levine, and Bernard E. Levine, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Mackvine Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Connecticut, with its principal place of business located at 54 Eddy Street, New Haven, Connecticut.

The individual respondents, Edward Levine, David Levine and Bernard E. Levine are President, Treasurer and Secretary, respectively, of the corporate respondent, Mackvine Corporation. Said individuals formulate, direct and control the acts, policies and practices of said corporate respondent. Said individual respondents have their business offices at the same address as corporate respondent.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since January, 1954, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment and

Complaint

52 F. T. C.

offered for sale in commerce as "commerce" is defined in said Act, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded within the intent and meaning of Section 4 (a) (1) of said Wool Products Labeling Act and the Rules and Regulations promulgated thereunder in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein.

Among such wool products were batts or battings labeled or tagged by respondents as consisting of "70% Wool, 30% Other Fibers," whereas, in truth and in fact, said products were not composed of 70% wool, 30% other fibers, as tagged or labeled by said respondents.

PAR. 4. Said wool products described as batts or battings were further misbranded within the intent and meaning of Section 4 (a) (1) of said Wool Products Labeling Act and of the Rules and Regulations promulgated thereunder in that they were falsely and deceptively described and identified in sales invoices and shipping memoranda applicable thereto as "70% Reprocessed Wool, 30% Man Made Fibers"; whereas in truth and in fact, said products contained substantially less than 70% reprocessed wool and substantially more than 30% non-woolen fibers.

PAR. 5. Certain of said wool products were further misbranded within the intent and meaning of Section 4 (a) (2) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder.

Among such wool products were batts or battings which were misbranded in that they were not stamped, tagged or labeled so as to disclose the name or the registered identification number of the manufacturer thereof, or of one or more persons subject to Section 3 of said Act with respect to said wool products.

PAR. 6. The acts and practices of respondents, as set forth in Paragraphs 2, 3, 4 and 5 hereof, constituted misbranding of wool products and were in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 7. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of said wool products described herein as batts or battings, respondents have made various statements concerning their products in sales invoices and shipping memoranda applicable thereto. Among and typical, but not all inclusive, of such statements are the following:

Decision

70/30 Batting
70% Reprocessed Wool
30% Man Made Fibers

PAR. 8. Through the use of such statements and representations to describe said wool batts and batting, respondents represented, directly and by implication, that said products were composed of 70% reprocessed wool, 30% other non-woolen fibers.

PAR. 9. The aforesaid statements and representations are false, misleading, and deceptive, since, in truth and in fact, respondents' said products described as batts or battings were not composed of 70% reprocessed wool, 30% man made fibers, but were composed of substantially less than 70% reprocessed wool and substantially more than 30% other fibers.

PAR. 10. Respondents, in the course and conduct of their business are and were in competition with other corporations and with firms and individuals likewise engaged in the sale of batts or battings, in commerce.

PAR. 11. The use by respondents of statements herein set forth, in the course of selling and offering for sale their products in commerce as above described, has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements were and are true, and to induce the purchase of such products on account of such beliefs induced as aforesaid. As a result thereof substantial trade in commerce has been unfairly diverted to respondents from their competitors, and substantial injury has thereby been done to competition in commerce.

PAR. 12. The acts and practices of the respondents as set forth in Paragraphs 7, 8, 9, 10 and 11 herein were all to the prejudice and injury of the public and of respondents' competitors and constituted unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on April 20, 1955, charging them with having violated the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act, through the misbranding of certain wool products. After being duly served with said complaint, the respondents appeared by counsel and filed their answer thereto. Thereafter this proceeding came on for hearing before the undersigned, thereto-

fore duly designated to act as hearing examiner in said proceeding, on June 16, 1955, in New York, New York. After the opening of said hearing, but before the taking of testimony, counsel requested an adjournment of the hearing on the ground that substantial agreement had been reached on the terms of a consent settlement of the proceeding. Said request was accordingly granted. Prior to the adjourned date of said hearing, the undersigned was advised that an agreement for consent order had been signed, and an order was therefore issued by the hearing examiner cancelling further hearings. Thereafter there was submitted to the hearing examiner, in accordance with Section 3.25 of the Commission's Rules of Practice, an agreement for consent order dated June 27, 1955, signed by counsel supporting the complaint, counsel for respondents, and the respondents Mackvine Corporation and Bernard E. Levine, and approved by the Director of the Commission's Bureau of Litigation.

Respondents, pursuant to the aforesaid agreement, have agreed to the withdrawal of their answer and have admitted all the jurisdictional allegations of the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations. Said agreement further provides that all parties expressly waive a hearing before the hearing examiner or the Commission, and all further and other procedure 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 agreement for consent order shall have the same force and effect as if made after a full hearing, and specifically waive any and all right, power, or privilege to challenge or contest the validity of said order. It has been further agreed that the complaint herein may be used in construing the terms of the order provided for in said agreement, and that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The order which has been agreed upon is the same as the order proposed in the notice portion of the complaint, except for the elimination therefrom of respondents Edward Levine and David Levine. In connection with the elimination of said respondents from the order, there has been submitted to the hearing examiner three (3) affidavits, each signed by one of the individual respondents, attesting to the fact that the respondents Edward Levine and David Levine are minority stockholders of the corporate respondent, do not formulate, direct and control its acts, practices and policies, and do not have their business address at the same address as said respondents. By memorandum

Order

dated June 30, 1955, transmitting the agreement for consent order and the aforesaid affidavits, counsel supporting the complaint have advised the hearing examiner that, based on the facts stated in the aforesaid affidavits, they recommend dismissal of this proceeding as to the two respondents not included in the order, and further that the agreement for consent order was entered into on the understanding and agreement between counsel that it was conditioned upon a dismissal of the proceeding as to said respondents.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement for consent order and accompanying affidavits, the answer previously filed by respondents being hereby deemed withdrawn, and the hearing examiner being satisfied, on the basis of the statements made in said affidavits and the transmittal memorandum of counsel supporting the complaint, that the aforesaid agreement for consent order provides for an appropriate disposition of this proceeding, the said agreement and accompanying affidavits are hereby accepted and are ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and the hearing examiner makes the following jurisdictional findings and order:

1. The respondent corporation, Mackvine Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Connecticut, with its principal place of business located at 54 Eddy Street, New Haven, Connecticut. Respondent Bernard E. Levine is now and has been at all times mentioned herein, Secretary of said corporate respondent, Mackvine Corporation. Said individual respondent has his business office at the same address as corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Wool Products Labeling Act of 1939 and the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That the respondents Mackvine Corporation, a corporation, and its officers, and Bernard E. Levine, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of

Order

52 F. T. C.

batts and battings or other "wool products," as such products are defined in and subject to said Wool Products Labeling Act 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 contained therein;

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

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

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

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

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 respondents Mackvine Corporation, a corporation, and its officers, and Bernard E. Levine, individually and as an officer of said corporation and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of batts or battings or any other wool products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Misrepresenting the constituent fibers of which their wool products are composed, or the percentages or amounts thereof in sales invoices, shipping memoranda or in any other manner.

It is further ordered, That the complaint be, and the same hereby is, dismissed without prejudice as to the respondents Edward Levine and David Levine.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 17th day of September 1955, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents Mackvine Corporation, a corporation, and its officers, and Bernard E. Levine, 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.

Complaint

52 F. T. C.

IN THE MATTER OF

EDWARD McSWIGGAN DOING BUSINESS AS UNIVERSAL
TRAINING SERVICECONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6845. Complaint, May 5, 1955—Decision, Sept. 17, 1955*

Consent order requiring seller of a correspondence course in Miami, Fla., to cease representing falsely that his "Universal Training Service" was sponsored by the Government or was a branch of the Civil Service Commission, that his course must be taken for a civil service job, which one might obtain near home, that persons in U. S. Civil Service jobs were exempt from military service, etc.

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

Mr. Morton Nesmith for the Commission.

Smith, Risting & Smith, of Washington, D. C., for respondent.

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 Edward McSwiggan, trading as Universal Training Service, 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 Edward McSwiggan is an individual trading and doing business as Universal Training Service with his office and principal place of business located at 1872 N. W., 7th Street, Miami 52, Florida.

Said respondent is now and has been for more than two years last past engaged in the sale and distribution of a course of study and instruction intended for preparing students thereof for examination for certain civil service positions in the United States Government which said course is pursued by correspondence through the United States mails. Respondent, in the course and conduct of said business, causes said course to be transported from his said place of business in the State of Florida, to, into and through States of the United States other than Florida to purchasers thereof located in such other States. Prior to establishing his principal office and place of business

298

Complaint

in the State of Florida, as aforesaid, respondent maintained his main office and place of business in the City of Wilmington and State of Delaware and caused his said course of study to be transported, in the manner aforesaid, to purchasers thereof located in States other than Delaware.

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

PAR. 2. In connection with the sale of said course of study, respondent has made and is making use of postal cards and printed circular letters distributed to prospective students and enrollees in the several States in which said course is sold, in and by which many representations have been and are made in regard to said course and matters and things connected therewith. Typical representations made on said postal cards and circular letters distributed as aforesaid, are the following:

Do You Want To Prepare
For A Government Job?

Civil Service Examinations For
Government Jobs Are Announced
Frequently!!!

Go after one of these positions. Act Now! Get full information without obligation on Government Work. LEARN THE FACTS about minimum requirements, examinations, and salaries paid. Full information about application forms, how to properly execute them, where to send them for best results will be promptly furnished to you. You will be given information to successfully pass a civil service examination.

BE PREPARED TO GET ON UNCLE SAM'S PAYROLL

Please furnish me with FREE INFORMATION on how to get a GOVERNMENT JOB. I have checked the positions which appealed to me. * * *

File Clerk	Air Postal Service	Secretary
Statistical	Rural Mail Carrier	Billing Typist
Receptionist	City Mail Carrier	Correspondent Typist
Travel Clerk	Forest and Field Service	Telephone Operators
Personnel	Stock Clerk	Accounting Clerk
Rating Clerk	Storekeeper	Production Clerk
Payroll Clerk	Customs Inspector	Securities Clerk
Correctional Officer	Immigrant Inspector	Bookkeeper Clerk
Stenographer	Typist	Bookkeeper Typist
Post Office Clerk	Librarian	Social Worker
Railway Postal Service		

Proper methods of study for your examination are suggested, with guaranteed results.

There is a place for you in government service.

Department of Administration

From the Office of Universal Training Service

Complaint

52 F. T. C.

We have before us a card submitted to this office by you bearing your name asking for information concerning the possibilities for you to prepare for some phase of activity under Civil Service. * * *

We have a representative * * * who will call upon you within the near future to interview you personally concerning your qualifications for this training. * * *

You will find our representative to be a man thoroughly trained in his duties. He carries with him properly authorized credentials. * * *

We feel confident that you will understand and appreciate the fact that our agent's time is very limited which may prevent his making but one direct contact with you.

Department of Instruction
Field Registrar

PAR. 3. By means of the foregoing statements and representations and others of the same import not herein specifically set out, respondent represented and implied:

1. That his said business is a branch of, or connected with, the United States Government or the United States Civil Service Commission.

2. That the positions listed by respondent on said postal card are open and available to all persons who pass a civil service examination; and that upon completion of respondent's course of study such positions are guaranteed.

3. That respondent maintains an educational institution consisting of various departments, including a Department of Administration and a Department of Instruction.

4. That respondent's agents or representatives, sometimes designated as field registrars, are highly trained and capable of determining the qualifications of applicants for civil service positions after personal interviews with such applicants.

5. That the time of respondent's agents or representatives is so limited that said persons can make only one call on each prospect.

6. That the credentials carried by said agents or representatives are issued by the United States Civil Service Commission.

PAR. 4. In the course and conduct of said business, as aforesaid, respondent employes sales agents or representatives who call upon prospective purchasers and endeavor to sell said course of study.

In the course of such solicitations said sales agents or representatives orally represent and imply to prospective purchasers of said course of study:

1. That Universal Training Service is connected with, or is a branch of the United States Civil Service or the United States Government or some agency thereof;

2. That said school is a non-profit organization and sponsored by the United States Government or the Civil Service Commission for

the purpose of training and preparing applicants for civil service positions;

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

4. That prospective students or purchasers of said course have been especially recommended or selected;

5. That completion of respondent's course of study makes persons eligible for appointment to, or assures them of, or guarantees, United States Civil Service Positions;

6. That after completion of said course, enrollees are assured of employment immediately or within a short time;

7. That persons completing respondent's course of study may obtain employment in the civil service at or near their homes or within a short distance therefrom;

8. That purchasers of said course will receive specialized training for specific positions;

9. That respondent's course of study must be taken and completed in order to obtain civil service positions, or that such positions are difficult to obtain without having taken said course;

10. That the time of the sales agent is limited and that unless a prospect enrolls at the time of said agent's visit he will lose the opportunity to enroll;

11. That enrollees who do not have the experience, or the physical, mental or educational qualifications or veterans' status required in many positions for which respondent offers training, may nevertheless qualify for examination and be employed in such positions;

12. That persons employed in jobs under United States Civil Service are exempt from military service.

PAR. 5. All of said statements, representations, implications and practices were and are grossly exaggerated, false, deceptive and misleading. In truth and in fact:

Neither respondent, nor his school, nor any of his agents or representatives are connected in any manner whatsoever with the United States Civil Service, the United States Government or any agency thereof.

While there may be frequent announcements for civil service examinations, there are many positions, including those specifically listed on respondent's postal card, which are not open to applicants generally, but are either restricted to persons of veteran status or require special physical and educational qualifications and practical experience.

Complaint

52 F. T. C.

Positions in the postal service are restricted to persons living within the area of a given post office and, almost invariably, appointments are made to substitute clerk and substitute carrier positions. No examinations have been announced for the position of storekeeper for years and none is contemplated. Positions in the Customs Service are restricted to men only, and most of those positions are open only to veterans. Positions in the Immigration Service and of Correctional Officers are restricted to veterans and require special training. Examinations for positions in the Forest Service have not been announced for a number of years and, moreover, require special qualifications and training.

Other positions listed by respondent, such as librarian, Social Worker, and Personnel Officer, require special educational or experiential qualifications.

The completion of said course of study does not make enrollees eligible for appointment to said positions or assure them of, or guarantee them appointment to, United States Civil Service positions immediately or at any time after completing said course of study.

Respondent does not maintain separate Departments of Education and Administration in the sense in which such designations are understood in the field of education, and his business is not an educational institution but a commercial enterprise devoted to the sale of a correspondence course for preparing students for civil service examinations in the basic subject of general information.

Respondent's agents or representatives are salesmen employed to sell correspondence courses of study on a commission basis, and not registrars, with duties or responsibilities ordinarily incumbent upon officers of educational institutions employed and designated as registrars; nor are said salesmen qualified to determine the eligibility of applicants for civil service positions.

Prospects do not lose the opportunity to enroll because sales agents are pressed for time and will not return for further solicitation, but may enroll at any time they choose.

The credentials issued by respondent to his agents or representatives are merely identifications; but the use of a photograph of the agent or representative and the general appearance of said identification and the designation "credentials" as well as the manner of presenting the same to prospects, implies that they have been issued by the United States Civil Service Commission.

Said school is not a non-profit organization and is not sponsored by the United States Government or any agency thereof for the training of applicants to civil service positions. On the contrary,

respondent is engaged solely in the operation of a private business for profit.

Prospective purchasers of said course are not especially selected or recommended by anyone; on the contrary, respondent sells said course to any person solicited who is willing and able to pay therefor.

The taking and passing of an examination for a particular position does not assure immediate employment, for the reason that appointments are subject to various conditions, including the availability of eligible persons in the various civil service districts or regions, the rating of eligibles, veterans preferences and various other conditions.

There is no assurance that persons completing respondent's course of study will obtain employment in the civil service at all or if they pass a civil service examination and obtain employment, that such employment will be at an particular location.

Respondent does not sell separate courses of instruction in specific subjects, such as forestry, but sells only one course in general civil service preparation, as aforesaid.

There is no requirement by the United States Civil Service Commission to take respondent's course in order to qualify applicants for civil service examinations or positions; nor is it difficult for persons to take and pass civil service examinations without having taken said course.

Persons who do not possess the educational, physical or experiential qualifications or veterans' status for positions requiring such qualifications or status, will not be employed in the United States Civil Service by reason of having taken respondent's course of study.

Persons qualified for military service will not be exempt from such service by reason of employment in a position under civil service.

PAR. 6. A majority of prospects solicited by respondent's agents or representatives live in rural and farming areas where information regarding Civil Service and the methods of obtaining employment therein is not readily available. The impression of some form of government connection, originally created by respondent's said sales literature as set forth in Paragraph Three hereof, is furthered and strengthened by the representations made by said agents or representatives as described in Paragraph Four hereof, and in failing to explain the terms of the enrollment contract or afford prospective purchasers the time to read, consider and comprehend said terms.

In many instances said agents or representatives have rushed prospective purchasers into signing respondent's enrollment contract without affording them an opportunity to think over and consider the advisability of enrolling, or reading and understanding the terms and provisions of said contract.

PAR. 7. The use by respondent of the statements and representations aforesaid has had and now has the tendency and capacity to confuse, mislead and deceive members of the public into the erroneous and mistaken belief that such statements are true and to induce them to purchase respondent's course of study in said commerce on account thereof.

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.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges respondent with violation of the Federal Trade Commission Act through the use of certain practices in connection with the sale of his correspondence courses of study. An agreement has now been entered into by respondent and counsel supporting the complaint which provides, among other things that respondent admits all the jurisdictional allegations in the complaint; that the answer heretofore filed may be withdrawn, and that the complaint and agreement 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 respondent 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, respondent 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 agreement is for settlement purposes only, and does not constitute an admission by respondent that he has violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an appropriate basis for settlement and disposition of the proceeding, the agreement is hereby accepted and made a part of the record, the following jurisdictional findings made, and the following order issued:

1. Respondent Edward McSwiggan is an individual doing business under the name of Universal Training Service, with his place of business located at 1872 N. W. 7th Street, Miami, Florida.

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

ORDER

It is ordered, That the respondent, Edward McSwiggan, individually and doing business under the name of Universal Training Service, or any other name, and his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act of courses of study and instruction, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That respondent, his school, his agents or representatives, or any one of them, have any connection with the United States Civil Service Commission or any other agency of the United States Government.

(b) That any civil service position is open to all persons, unless such is the fact.

(c) That the completion of respondent's course of instruction assures or guarantees a civil service position.

(d) That prospective students lose the opportunity to enroll for respondent's course of study unless they enroll at the time of the first visit of respondent's agent or representative.

(e) That respondent's school is a non-profit organization or is sponsored by the United States Government or any agency thereof.

(f) That every prospective student or purchaser of respondent's course of study is especially recommended or selected.

(g) That completion of respondent's course of study makes persons eligible for appointment to, or assures them of, or guarantees them United States Civil Service positions or employment immediately or at any time.

(h) That there is any assurance that persons who complete respondent's course of study and obtain civil service positions will be employed at any particular location.

(i) That respondent's course of study must be taken in order to qualify for civil service positions or that it is difficult to obtain such positions without taking respondent's course of study.

(j) That civil service requirements as to veterans' status, physical, mental, educational and experiential qualifications do not apply to persons taking respondent's course of study.

(k) That persons holding positions under the United States Civil Service are exempt from service in the Armed Services.

Decision

52 F. T. C.

2. Using the word "registrar" or any word of similar import to designate or describe respondent's agents or representatives; or otherwise representing that respondent's agents or representatives perform the functions usually performed by officers of educational institutions known as registrars.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 17th day of September, 1955, become the decision of the Commission; and, accordingly:

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

Findings

IN THE MATTER OF
NORTH SHORE PRODUCTS COMPANY, INC., ET AL.
ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT

Docket 6154. Complaint, Dec. 23, 1953—Decision, Sept. 19, 1955

Order requiring sellers in Skokie, Ill., of electric coffee sets, wrist watches, and other articles, to cease selling such merchandise by means of a game of chance, and supplying push cards or lottery devices designed or intended to be used in the sale or distribution thereof to the public.

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

Mr. Arthur H. Schwab and *Nash, Ahern & McNally*, of Chicago, Ill., for respondents.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on December 23, 1953, issued and subsequently served its complaint upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. Respondents filed their answer in due course whereupon hearings were held at which testimony and other evidence in support of the allegations of said complaint were received by the above-named Hearing Examiner theretofore designated by the Commission, said testimony and evidence being duly recorded and filed in the office of the Commission. Respondents, aside from cross-examination of the one witness heard in the proceeding, offered no testimony or other evidence in opposition to the complaint.

Thereafter the proceeding came on for final consideration by the Hearing Examiner on the complaint, the answer, testimony and other evidence, proposed findings as to the facts and conclusions not having been requested nor submitted by counsel on either side, and oral argument not having been requested; and the Hearing Examiner, having duly considered the record herein, finds that this proceeding is in the public interest and makes the following findings as to the facts, conclusions drawn therefrom, and order :

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, North Shore Products Company, Inc., is a corporation organized and doing business under and by virtue of

Findings

52 F. T. C.

the laws of the State of Illinois since August 15, 1952, with its office and principal place of business located at 7916 Lincoln Avenue, in the city of Skokie, Illinois, and its mailing address P. O. Box 225, Skokie, Illinois. Respondent Harvey Gould is an individual and president of the corporate respondent, North Shore Products Company, Inc., with his office and place of business located at the same address. The individual respondent, Harvey Gould, owns, and has dominant control of the policies and sales activities of the corporate respondent, said corporation being a family affair, the officers being Harvey Gould, president as aforesaid, his mother-in-law, M. Schumacher, vice-president and his wife, Edna Gould, secretary-treasurer, neither of the two persons last mentioned participating in the conduct of the corporate affairs or otherwise engaged in any of the practices forming the basis for this proceeding. Both the said respondents have cooperated with each other and have acted in concert in doing the acts and things hereinafter found.

PAR. 2. Respondents are now, and since August 15, 1952 have been, engaged in the sale and distribution of wrist watches, electric coffee sets, electric food mixers, power tools, wallets and other articles of merchandise and have caused said merchandise, when sold, to be transported from their place of business in Skokie, Illinois, to purchasers thereof located in the various States of the United States other than the State of Illinois. There is now, and has been for the period above mentioned, a substantial course of trade by respondent in such merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, between and among the various States of the United States.

PAR. 3. In the course and conduct of their business, respondents, in soliciting the sale of, and in selling and distributing their merchandise, furnish and have furnished various plans of merchandising which involve the operation of games of chance, gift enterprises or lottery schemes when said merchandise is sold and distributed to the purchasing and consuming public. Among the methods and sales plans adopted and used by respondents, which is typical of the practices of respondents, is the following:

Respondents distribute, and have distributed, to operators and to members of the public, certain literature and instructions including, among other things, push cards, order blanks, circulars including thereon illustrations and descriptions of said merchandise, said circulars explaining respondents' plan of selling and distributing their merchandise and of allotting it as premiums or prizes to the operators of said push cards and as prizes to members of the purchasing and consuming public who purchase chances or "pushes" on said cards.

307

Findings

One of respondents' said push cards bears 37 names, with ruled columns on the back of said card for writing in the name of the purchaser of the "push" corresponding to the name selected. Said push card has 37 partially perforated discs. Each of said discs bears one of the names corresponding to those on the list. Concealed within each disc is the number which is disclosed only when the customer pushes or separates a disc from the card. The push card also has a larger master seal, and concealed within the master seal is one of the names appearing on the disc. The person selecting the name corresponding with the one hidden from view under the master seal receives a coffee set. The push card bears the following legend or instructions:

LUCKY NAME UNDER
SEAL RECEIVES THIS

Aluminum Electric Coffee set by [Enterprise]	(Picture of Electric Coffee Set	(Picture of Wallets)	by Enterprise Manufacturers of the World Famous Drip-O-Lator The Better Drip Coffee Maker Made in U.S.A. Guaranteed Pure Aluminum Reg. U.S. Patent Office
[Master Seal]	No. 1 pays 1¢		
Push Out	No. 6 pays 6¢		
with	No. 12 pays 12¢		
Pencil	No. 19 pays 19¢		
All others pays 39¢—			
NONE HIGHER			

(Panels bearing seals and names)

Write Your Name on Reverse Side Opposite Name you Select

Sales of respondents' merchandise by means of said push cards are made in accordance with the above-described legend or instructions, and said prizes or premiums are allotted to the customers or purchasers from said card in accordance with the above legend or instructions. Whether a purchaser receives an article of merchandise, or nothing, for the amount of money paid, the amount to be paid for the merchandise, or the chance to receive said merchandise, are thus determined wholly by lot or chance. The articles of merchandise have a value substantially greater than the price for the individual chances or "pushes."

Respondents furnish and have furnished various other push cards accompanied by order blanks, instructions and other printed matter for use in the sale and distribution of their merchandise by means of games of chance, gift enterprises or lottery schemes. The sales plans or methods involved in the sale of all of said merchandise by means of said other push cards is similar to that hereinabove described, vary-

Conclusions

52 F. T. C.

ing only in detail as to the merchandise distributed and the prices of chances and the number of chances on each card.

PAR. 4. The persons to whom respondents furnish and have furnished said push cards use the same in selling and distributing respondents' merchandise in accordance with the aforesaid sales plans. Respondents thus supply to and place in the hands of others the means of conducting games of chance, gift enterprises or lottery schemes in the sale of their merchandise in accordance with the sales plans hereinabove set forth. The use by respondents of said sales plans or methods in the sale of their merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 5. Respondent, Harvey Gould, called as a witness by the Commission testified that the business of respondents is conducted by means of the United States mails throughout the several States, the names of solicitees being secured from mailing lists especially purchased in furtherance of respondents' selling scheme; that respondents have caused the distribution of in excess of four hundred thousand sets of push cards and descriptive literature, effecting as a result thereof in excess of five thousand sales of merchandise, whereupon it was stipulated between counsel that the business transacted by respondents "has been substantial." Witness further testified in detail concerning the actual *modus operandi* of the push card device in effecting the sale of merchandise and admitted that such cards, and the descriptive literature disseminated in connection therewith, were designed and used for the express purpose of facilitating the sale of merchandise.

PAR. 6. The sale of merchandise to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons are attracted by said sales plans or methods used by respondents and the element of chance involved therein, and thereby are induced to buy and sell respondents' merchandise.

CONCLUSIONS

The use by respondents of a sales plan or method involving distribution of merchandise by means of chance, lottery or gift enterprise is contrary to the public interest and the acts and practices hereinabove found are all to the prejudice and injury of the public and therefore constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

307

Appeal

ORDER

It is ordered, That respondents, North Shore Products Company, Inc., a corporation, and its officers, and respondent, Harvey Gould, individually, and respondents' representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of watches, electric coffee sets, electric food mixers, electric power tools, wallets or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease from:

1. Supplying to or placing in the hands of others push cards or other lottery devices, either with merchandise or separately, which said push cards or other lottery devices are designed or intended to be used in the sale or distribution of said merchandise to the public.
2. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

ON APPEAL FROM INITIAL DECISION

Per Curiam:

The initial decision of the hearing examiner held that the respondents have been engaging in unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act, and respondents have appealed from that decision.

The complaint, under which this proceeding was instituted, alleges, among other things, that the respondents in soliciting sales for and selling their electric coffee sets, wrist watches and other articles of merchandise in commerce, have furnished various plans of merchandising which involve the operation of games of chance, gift enterprises or lottery schemes, when such merchandise is sold and distributed to the purchasing public. Distributed and supplied by the respondents, the complaint additionally alleges in that connection, has been advertising literature including push cards containing instructions for distributing the merchandise by means of allotting it as premiums or prizes. After the filing of answer by the respondents, testimony and other evidence was received into the record during the course of a hearing before the hearing examiner. The initial decision held that the charges of the complaint were sustained by the greater weight of the evidence and its order, among other things, would forbid the respondents, in connection with their offering for sale and sale of merchandise in commerce, from supplying push cards or lottery devices designed or intended to be used in its sale or distribution to the public.

In contending that the record does not afford adequate support for findings of law violation, or sound basis for the initial decision's order, appellants assert, among other things, that there is no evidence that customers to whom the sales literature and push cards are mailed have used the cards in distributing the company's merchandise. Supplying the means of conducting lotteries in the sale of merchandise is a practice contrary to public policy, and judicial interpretations of the Federal Trade Commission Act have established that proof expressly showing instances of use of push cards furnished as a part of a merchandising program is unnecessary. *Jaffe v. Federal Trade Commission*, 139 F. 2d 112 (C.C.A. 7, 1943).

Respondents have distributed in excess of 350,000 sets of push cards and other sales promotional matter to prospective purchasers located throughout the several States and the testimony clearly shows that a substantial volume of merchandise has been sold. This proof affords adequate basis for the hearing examiner's finding that respondents have furnished others with the means of conducting lotteries in the sale of merchandise and amply supports the initial decision's order. *Seymour Sales Company, et al. v. Federal Trade Commission*, 216 F. 2d 633 (C.A.D.C. 1954). The push cards and other promotional matter supplied in connection therewith comprise respondents' only form of soliciting sales in commerce for their products. In the circumstances here, it would be absurd to assume that the respondents would continue to engage in the empty and financially wasteful practice of enclosing push cards with their various mailings of sales literature if such cards were not used in the manner intended by the respondents and counseled on the push cards. *In the Matter of Benmar Sales Company, et al.*, Docket No. 6128 (Decided December 17, 1954). We have considered the various exceptions and objections urged in support of this aspect of the appeal but concur in the hearing examiner's conclusions that the weight of the evidence clearly shows that the practices used in promoting the sales of respondents' merchandise constitute unfair acts and practices within the meaning of the Act. The appeal's contentions that the initial decision is erroneous in that respect and that the proceeding should be dismissed are, accordingly, rejected.

Joined in the complaint as parties to this proceeding were respondent North Shore Products Company, Inc., a corporation, and respondent Harvey Gould, an individual, and the appeal additionally objects to the latter's inclusion as a party to the initial decision's order to cease and desist. Excepted to as erroneous, among other things in this connection, is the hearing officer's finding that Mr. Gould has dominated the corporate respondent's policies and sales

307

Order

activities. Respondent Harvey Gould is president of the corporate respondent, all of the capital stock of which is owned by him and Edna Gould, his wife; and they, together with her mother, Mrs. Schumacher, are its officers and directors. According to his testimony, however, Mrs. Gould and her mother are inactive in the business. The corporate respondent was organized in August, 1952, and Mr. Gould further testified that he had engaged in a similar business prior to the formation of the respondent corporation, although not, however, to a substantial extent.

Since respondent Harvey Gould shares ownership of the capital stock of the respondent corporation with his wife and all managerial functions admittedly are exercised by him exclusively, the initial decision's reference to him as owner rather than as co-owner of the corporation, while technically inaccurate perhaps, cannot be considered as substantially erroneous. Furthermore, the facts of record fully support the initial decision's additional conclusions in reference to Mr. Gould's domination and control over the corporation's policies and sales activities, and attest to his role of cooperation and participation as a principal in the unfair acts and practices found to have been engaged in. In these circumstances, there is no valid basis in law for the appeal's contentions that respondent Harvey Gould is insulated in his individual capacity from legal responsibility under the Federal Trade Commission Act for the unlawful acts and practices. Not only is his inclusion as a party to the order in that capacity legally warranted, but such course is additionally appropriate, in the circumstances, for preventing future evasion of the order.

We have examined the matters additionally urged in support of the appeal and are of the view that the initial decision is free from substantial error. Respondents' appeal, accordingly, is denied and the initial decision is affirmed.

FINAL ORDER

The respondents having filed an appeal from the hearing examiner's initial decision in this proceeding; and the matter having come on to be heard upon the record including the briefs of counsel, and the Commission having rendered its decision denying the appeal and affirming the initial decision:

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