

COMPLAINT

IN THE MATTER OF

MISS YOUTH FORM CREATIONS CORPORATION ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6351. Complaint, May 16, 1955—Decision, Oct. 25, 1955*

Consent order requiring distributors in New York City to cease furnishing retailers and dealers means for deceiving the purchasing public by misrepresenting on advertising mats, reprints, and other promotional material supplied them, and on tickets affixed to garments, the retail selling price, savings involved, and the quality and value of women's slips and underclothes.

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

Mr. Terral A. Jordan for the Commission.

Mr. Leroy E. Rodman, of New York City, and *Friedman, Locker & Schlezinger*, of Washington, D. C., 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 the Miss Youth Form Creations Corporation, a corporation, and Sid Kay and Irving L. Brown, 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 Miss Youth Form Creations Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 38 East 30th Street, New York, New York. Respondents Sid Kay and Irving L. Brown are President and Treasurer, and Vice-President and Secretary, respectively, of said corporate respondents. These individuals acting in conjunction with each other formulate, direct and control all of the policies, acts and practices of said corporation. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now and have been, for more than six months last past, engaged in the sale and distribution of women's

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wearing apparel, including underclothes and slips, to retailers and dealers in commerce among and between the various States of the United States and in the District of Columbia. Said wearing apparel is sold to retailers and dealers for resale to the purchasing public.

Prior to the formation of the corporate respondent, Miss Youth Form Creations Corporation, the aforesaid business was transacted and conducted by Miss Youth Form Lingerie, Inc., a corporation. Subsequent to the formation of the said corporate respondent the latter named Miss Youth Form Lingerie, Inc., was consolidated therewith and the business continued in the aforesaid manner.

PAR. 3. In the course and conduct of their said business respondents have made and continue to make many representations respecting the retail selling price or savings in the purchase thereof or quality or value of said wearing apparel. These representations are and have been made in advertising mats, reprints and other promotional material supplied to retailers and dealers and on the tickets affixed by respondents to such wearing apparel prior to its sale and distribution as aforesaid.

Typical and illustrative of such representations are the following:

(a) Certain of the said advertising mats and reprints read in part:

You save \$3 on each slip.
100% Nylon * * * Tricot * * *
Made for 6.95 NOW \$3.95

Certain of the said tickets read:

100% Nylon Tricot.
Made for \$6.95

(b) Certain of the said advertising mats and reprints read in part:

You save \$2 on each slip!
DACRON NYLON CREPE * * *
FORMERLY 5.95 NOW \$3.95.

Certain of the said tickets read:

Dacron and Nylon Crepe.
Formerly \$5.95.

(c) Further illustrative of such representations appearing on certain of the said advertising mats and reprints are:

SPECIAL EVENT ½ OFF.
For a limited time only, we are able to offer these magnificent values—
100% opaque nylon slips that sold last week for twice the price—
yours at these give-a-way prices if you act quickly! * * *
FORMERLY 5.95 NOW \$2.95.

(d) Further illustrative of such representations appearing on certain of the said advertising mats and reprints are:

SPECIAL EVENT ½ OFF.

For a limited time only, we are able to offer these magnificent values—
100% opaque nylon slips that sold last week for twice the price—
yours at these give-a-way prices if you act quickly! * * *
MADE FOR 5.95 NOW \$2.95.

(e) Further illustrative of such representations appearing on certain of the said tickets are:

Reg. \$5.95.

Cotton Plisse * * * Nylon Tricot Trimming.

PAR. 4. Through the use of the foregoing statements and others similar thereto not specifically set forth herein, respondents have represented and now represent, directly or by implication:

(a) That their said wearing apparel sells and has sold at retail in the usual and customary course of business at prices substantially higher than the prices at which said wearing apparel is offered for sale.

(b) That the prices at which said wearing apparel is offered for sale constitutes a substantial reduction from the usual and customary retail selling prices at which such wearing apparel is or has been offered for sale and affords to the buyer at retail substantial savings in the purchase thereof.

(c) That the said wearing apparel offered for sale and sold at the prices therein stated is of a quality or value equal to similar merchandise made by other manufacturers and offered for sale and sold in the usual and customary course of business at the higher prices represented by respondents to be the usual and customary retail selling prices of their said wearing apparel.

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

(a) Respondents' said wearing apparel does not sell and has not sold at retail, in the usual and customary course of business, at prices substantially higher than the prices at which said wearing apparel is offered for sale; but the lower advertised prices at which said wearing apparel is offered for sale constitute the usual and customary retail selling prices thereof.

(b) The prices at which respondents' said wearing apparel is offered for sale does not constitute a substantial reduction from the usual and customary retail selling prices at which said wearing apparel is and has been offered for sale and does not afford substantial savings to the purchaser thereof; but said lower prices are the usual

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and customary retail selling prices at which such merchandise is and has been offered for sale.

(c) Respondents' said wearing apparel offered for sale and sold at the aforesaid prices is not of a quality or value equal to similar merchandise made by other manufacturers and offered for sale and sold in the usual and customary course of business at the higher prices represented to be the usual and customary retail selling prices of respondents' said wearing apparel.

PAR. 6. By furnishing to retailers and dealers advertising mats, reprints, and other promotional material and preticketed wearing apparel as aforesaid, respondents furnish to such retailers and dealers the means and instrumentalities through and by which they may mislead and deceive the purchasing public as to the usual and customary retail selling prices or savings in the purchase thereof or quality or value of its said wearing apparel.

PAR. 7. In the course and conduct of their business respondents are in direct and substantial competition with other corporations, firms and individuals engaged in the sale, in commerce, of women's wearing apparel including underclothes and slips.

PAR. 8. The aforesaid acts and practices of the respondents had and now have the capacity and tendency to mislead and deceive a substantial number of retailers, dealers and members of the purchasing public with respect to the usual and customary retail selling prices or savings in the purchase thereof or quality or value of respondents' said wearing apparel. As a result thereof substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been done to competition in commerce.

PAR. 9. The aforesaid acts and practices of the respondents 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 unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that Miss Youth Form Creations Corporation, a New York Corporation, with its office and principal place of business at 38 East 30th Street, New York, New York, and Sid Kay and Irving L. Brown, its President and Treasurer, and Vice President and Secretary, respectively, at the same address, have been and are now engaged in the sale and distribution in commerce of women's wearing apparel, including underclothes and slips, and that they have violated the Federal Trade Commission Act by making false, de-

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ceptive and misleading statements and representations regarding their merchandise, for the purpose of inducing the purchase thereof by the public. After the issuance of the complaint, to which no answer was filed, respondents, their counsel, and counsel supporting the complaint, on August 22, 1955, entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the Director, Bureau of Litigation of the Commission and thereafter transmitted to the hearing examiner for consideration.

The agreement provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint and that the record herein may be taken as if findings of jurisdictional facts had been made in accordance with such allegations; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint may be used in construing the order agreed upon, which may be altered, modified, or set aside in the manner provided for other orders; 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; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon differs somewhat in form and wording from that contained in the Notice accompanying the complaint, but it fully covers all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Federal Trade Commission Act. Accordingly, the hearing examiner finds this proceeding to be in the public interest and accepts the Agreement Containing Consent Order to Cease and Desist as part of the record upon which this decision is based. Therefore,

It is ordered, That respondents, Miss Youth Form Creations Corporation, a corporation, and its officers, and Sid Kay and Irving L. Brown, individually and as officers of said corporate respondent, and said respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of women's wearing apparel, including

underclothes and slips, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, directly, indirectly, or by implication, or providing retailers, dealers, or others with advertising mats, reprints, and pre-ticketed merchandise or other material, device, or plans which represent, directly, indirectly, or by implication:

1. That the regular retail selling price of respondents' said wearing apparel is any amount greater than the prices at which such wearing apparel is usually and customarily sold at retail by retailers regularly selling such wearing apparel;

2. That any retail price of said wearing apparel is a reduced price unless such price represents a reduction from the price at which respondents' said wearing apparel is or was usually and customarily sold at retail in the regular course of business or that any savings from regular retail prices for respondents' said wearing apparel are afforded to purchasers thereof when the price designated constitutes the regular retail selling price of respondents' said wearing apparel;

3. That the retail value of respondents' said wearing apparel is equal to the retail selling price of higher-priced merchandise made by other manufacturers and regularly selling or having been sold contemporaneously in the same general trade area supplied by respondents and such other manufacturers, unless respondents' said wearing apparel is in fact of a grade and quality comparable to said higher-priced merchandise, in which case respondents may so represent.

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 25th day of October, 1955, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Miss Youth Form Creations Corporation, a corporation and Sid Kay and Irving L. Brown, 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

IN THE MATTER OF
CHESTER-KENT, INC.

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

Docket 6374. Complaint, June 27, 1955—Decision, Oct. 26, 1955

Consent order requiring a seller in St. Paul, Minn., to cease disseminating false advertising concerning the health-giving properties of its products "Yo-Zyme" and "Vinol Tonic."

Before *Mr. Abner E. Lipscomb*, hearing examiner.
Mr. Morton Nesmith 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 Chester-Kent, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Chester-Kent, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 96-102 South Wabasha Street, St. Paul, Minnesota.

PAR. 2. Respondent is now and for more than one year last past, has been engaged in the advertising and sale of food and drug products as "food" and "drugs" as defined in the Federal Trade Commission Act.

The designation used by respondent for its said products and the formulas and directions for use thereof are as follows:

Designation: Yo-Zyme

Formula:

Cheese Whey	67%
Yogurt	20%
Brewers Yeast	13%
Vanillin as flavor	

Directions for use:

2 or 3 tablets with each meal.

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Designation: Vinol Tonic

Formula:

2 fluid ounces contains:

1900 mg. Ferrous Gluconate

6 mcg. Vitamin B₁₂

1.3 mg. Vitamin B₁

with glycerophosphates of magnesium and calcium in base of Muscatel and Tokay wines providing alcohol of 16%.

Directions for use:

Adults and children over 12 years, 1 tablespoonful, 4 times daily.

Children 6-12 years, 1 tablespoonful, 3 times daily.

Respondent has caused said products, when sold, to be transported from its place of business in the State of Minnesota, to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products 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 its aforesaid business, respondent has disseminated and caused the dissemination of advertisements concerning said products by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in newspapers and magazines of general circulation and in circulars and leaflets, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products; and respondent has also disseminated and has caused the dissemination of advertisements concerning said products by various means, including but not limited to the means aforesaid, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of its said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Through the use of statements appearing in said advertisements respondent represented and now represents, directly or by implication, that the use of Yo-Zyme is effective in:

- (1) supplanting noxious bacteria in the intestines;
- (2) checking the growth of putrefying bacteria in the intestines;
- (3) promoting a healthy intestinal flora;
- (4) maintaining lactic acid producing organisms in the intestines;
- (5) aiding the digestion of other food by supplying protein-splitting enzymes;
- (6) improving digestion and intestinal health;
- (7) aiding in the absorption of alkaline minerals;
- (8) protecting vitamins;

(9) establishing body resistance to disease; and

(10) the treatment of weak kidneys, gall bladder troubles, constipation, headaches, nervousness, lack of pep, ulcers, gas, stomach upsets, diarrhea, nausea, eczema, hemorrhoids, and migraine.

Through the use of the statements appearing in said advertisements respondent also represented, and does now represent, directly or by implication, that the use of its product designated Vinol Tonic will give pep and energy to young children and older people, and that every pregnant woman will develop iron deficiency anemia unless she receives vigorous iron therapy.

PAR. 5. The said advertisements were and 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, the use of Yo-Zyme, as directed, will not be effective in:

- (1) supplanting noxious bacteria in the intestines;
- (2) checking the growth of putrefying bacteria in the intestines;
- (3) promoting a healthy intestinal flora;
- (4) maintaining lactic acid producing organisms in the intestines;
- (5) aiding the absorption of alkaline minerals;
- (6) protecting vitamins;
- (7) the treatment of constipation or headaches; for the reason that a daily intake of lactose of from 30 to 40 times that supplied by the Cheese Whey in Yo-Zyme is required to be effective in bringing about the foregoing results.

Further, the use of Yo-Zyme without regard to the amount taken will not be effective in:

- (8) aiding the digestion of other food, by supplying protein-splitting enzymes or otherwise;
- (9) improving digestion or intestinal health;
- (10) establishing body resistance to disease; and
- (11) the treatment of weak kidneys, gall bladder troubles, nervousness, lack of pep, ulcers, gas, stomach upsets, diarrhea, nausea, eczema, hemorrhoids.

In truth and in fact, respondent's product Vinol Tonic will not give young children or older people pep and energy unless those persons lack such pep and energy due solely to iron deficiency. Although many pregnant women will develop an iron deficiency anemia unless they receive vigorous iron therapy, this condition will not develop in all cases in the absence of such therapy.

PAR. 6. The use by the respondent of the foregoing false and misleading statements and representations contained in said advertisements has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the errone-

ous and mistaken belief that such statements and representations are true and into the purchase of said products because of such erroneous and mistaken belief.

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

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

On June 27, 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 a drug preparation designated "Yo-Zyme," in violation of the Federal Trade Commission Act.

Thereafter, on July 28, 1955, the Respondent filed with the Commission its answer to the complaint, and on August 24, 1955, entered into an agreement with counsel supporting the complaint, and, pursuant thereto, submitted to the hearing examiner an Agreement Containing Consent Order to Cease and Desist, disposing of all of the issues involved in this proceeding.

Respondent is identified in the agreement as a Minnesota corporation, with its principal office and place of business located at 96-102 South Wabasha Street, St. Paul, Minnesota.

Respondent admits all the jurisdictional facts alleged in the complaint, and agrees that the record herein may be taken "as if findings of jurisdictional facts had been duly met in accordance with such allegations," which is interpreted to mean that Respondent agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

Respondent waives any further procedure before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that Respondent's answer shall be considered as having been withdrawn; 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; and that this 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.

The agreement sets forth that the order to cease and desist contained therein shall have the same force and effect as if entered after a full

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hearing; that the order to cease and desist may be altered, modified or set aside in the manner provided for other orders; and that the complaint herein may be used in construing the terms of the order.

In his memorandum the Agreement Containing Consent Order to Cease and Desist, counsel in support of the complaint states that the agreement has been submitted to and approved by the Division of Scientific Opinions, and that the order contained therein covers all of the substantive charges of the complaint and provides an appropriate basis for settlement and disposition of this proceeding.

In the light of the aforesaid statement and from an examination of the order and 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 agreement. Therefore, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order to Cease and Desist and finds that the Commission has jurisdiction over the Respondent and over its acts and practices as alleged in the complaint, and that this proceeding is in the public interest. Accordingly,

It is ordered, That the Respondent, Chester-Kent, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of Yo-Zyme and Vinol Tonic, or any other products of substantially the same composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from, directly or indirectly:

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

(a) That the use of Yo-Zyme as directed:

(1) will be effective in supplanting noxious bacteria in the intestines;

(2) will be effective in checking the growth of putrefying bacteria in the intestines;

(3) will be effective in promoting healthy intestinal flora;

(4) will be effective in maintaining lactic-acid-producing organisms in the intestines;

(5) will be effective in aiding the absorption of alkaline minerals;

(6) will be effective in protecting vitamins;

(7) will be effective in the treatment of constipation or headaches;

(b) That the use of Yo-Zyme, without regard to the amount taken:

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- (1) will be effective in aiding the digestion of other food, by supplying protein-splitting enzymes or otherwise;
 - (2) will improve digestion or intestinal health;
 - (3) will establish body resistance to disease;
 - (4) will be effective in the treatment of weak kidneys, gall-bladder troubles, nervousness, lack of pep, ulcers, gas stomach upsets, diarrhea, nausea, eczema and hemorrhoids;
- (c) That the use of Vinol Tonic will give young children or older people pep and energy unless those persons lack such pep and energy due solely to iron deficiency;
- (d) That all pregnant women will develop an iron deficiency anemia unless they receive vigorous iron therapy;

2. Disseminating, or causing to be disseminated, any advertisements, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of the food and drug preparations "Yo-Zyme" and "Vinol Tonic," which advertisement contains any of the representations prohibited in paragraph 1 of this order.

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 26th day of October, 1955, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Chester-Kent, Inc., 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

GENERAL PRODUCTS CORPORATION ET AL.

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

Docket 6303. Complaint, Mar. 2, 1955—Decision, Oct. 29, 1955

Consent order requiring sellers in Los Angeles, Calif., to cease disseminating false advertisements, including powerful radio broadcasts from Mexico, concerning the therapeutic and health-giving qualities of their food supplement, "Autry's Minerals."

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

Mr. Joseph Callaway and *Mr. L. E. Creel, Jr.*, for the Commission.

Ervin, Cohen & Jessup, of Beverly Hills, Calif., 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 General Products Corporation, a corporation, and David Ormont and Alan Mann, individually and as officers of said corporation, and Dean Simmons, an individual, 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 General Products Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1016½ South Spaulding Avenue, Los Angeles, California. Respondents David Ormont and Alan Mann are the officers of the corporate respondent. These individuals control the policies, activities and practices of the corporate respondent, including the acts and practices hereinafter alleged. The addresses of these individual respondents is the same as that of the corporate respondent.

PAR. 2. Said respondents are now and have been since before the first of March, 1954, engaged in the sale and distribution of a preparation containing ingredients which come within the classification of drugs and food as the terms "drug" and "food" are defined in the Federal Trade Commission Act.

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The designation used by said respondents for said preparation, the formula and directions for use thereof, as contained on the label are as follows:

Designation: Autry's Minerals, a mineral food supplement.

Formula: Dicalcium Phosphate, Dehydrated Kelp, Magnesium Sulfate, Sodium Ferric Pyrophosphate and a natural sedimentary mineral deposit consisting essentially of oxides of silicon with lesser amounts of other mineral elements with excipients, color and sugar coating.

Each 6 Tablets Daily (The Maximum Recommended Daily Dosage) will supply:

Calcium	666 mg	<i>MDR*</i> 88%
Phosphorous	500 mg	66%
Iron	13.3 mg	†133%
Iodine	.53 mg	530%
Magnesium	3 gr.	**

*Minimum daily requirements for Adults and Children 1 to 12.

†Children 1 to 6—177%.

**Need in human nutrition not established.

Directions for use: Take 2 or 3 tablets with the morning and noon meals as a dietary supplement for adults and children 1 to 12. (For smaller children it may be desirable not to exceed 3 tablets a day). Some people may find it desirable to start by taking the minimum dosage for the first 2 weeks. This is due to variation in tolerance in iron supplements when first added to the diet.

The said respondents cause the said preparation, when sold, to be transported from their place of business in the State of California to the purchasers thereof located in various States of the United States. Said respondents maintain, and at all times mentioned herein have maintained, a course of trade in said preparation in commerce between and among the various States of the United States. The business of said respondents in said preparations in commerce is substantial.

PAR. 3. The individual respondent Dean Simmons is now and has been since before March 1, 1954, engaged in the business of conducting an advertising agency, with his office and principal place of business located at 1430 South LaBrea Avenue, Los Angeles, California. As such advertising agency he has prepared, disseminated and caused the dissemination of advertising for the preparation Autry's Minerals, including the advertising hereinafter referred to.

PAR. 4. All of the respondents herein act and have acted in conjunction and cooperation with one another in the performance of the acts and practices hereinafter alleged.

PAR. 5. In the course and conduct of their said business, respondents have disseminated and caused the dissemination of certain adver-

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tisements concerning said preparation by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to radio broadcasts transmitted from Mexico, (said broadcasts being of sufficient power to carry them into the United States and across state lines of states of the United States) for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation; and respondents have also disseminated and caused the dissemination of advertisements concerning said preparation by various means, including but not limited to the aforesaid radio broadcasts, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. Through the use of said advertisements, respondents have represented and are representing, directly and by implication:

1. That the use of said preparation, Autry's Minerals, is effective in the prevention, treatment, and relief of, and will cure aches and pains in the muscles and joints, arthritic and rheumatic pains, sinus trouble and colds.

2. That the use of said preparation, Autry's Minerals, is effective in the prevention and treatment of and will cure all nutritional anemia and in the prevention, treatment, relief and cure of tiredness and weariness.

3. That the use of said preparation, Autry's Minerals, will restore sight to the blind and is an effective treatment and cure for ulcer of the cornea, conjunctivitis and glaucoma.

4. That the use of said preparation, Autry's Minerals, is effective in the prevention and treatment of and will cure nearly all diseases due to mineral deficiencies.

5. That 99% of the people in this country are ill because of mineral deficiencies.

6. That 49% of those examined for service in the military forces of the United States during World War II failed to pass the physical examination because of mineral deficiencies.

PAR. 7. The said representations are false and deceptive in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact:

1. The use of said preparation is not effective in the prevention, treatment or relief of nor will its use cure aches or pains in the muscles or joints, arthritic or rheumatic pains, sinus trouble or colds.

2. There are several different types of nutritional anemia. Because of its iron content said preparation may be effective in the prevention of one type of nutritional anemia, known as iron deficiency anemia.

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In no other type of nutritional anemia is its use effective as a preventative. Its use is not effective as a treatment for, nor will its use cure any type of nutritional anemia due to any cause. Iron deficiency anemia may be the cause of tiredness and weariness. Said preparation may prevent only such tiredness and weariness as may be caused by iron deficiency anemia. There are many other causes. The use of said preparation is not an effective treatment or relief for, nor will its use cure tiredness or weariness.

3. The use of said preparation will not restore sight to the blind, nor is it an effective treatment or cure for ulcer of the cornea, conjunctivitis or glaucoma.

4. Said preparation is not effective in the prevention, treatment or cure of nearly all diseases due to mineral deficiency. Because of its iodine content, said preparation, may be effective in the prevention of that type of goiter caused by a deficiency of iodine. There are other types of goiter. Aside from its possible effect in the prevention of the one type of goiter, and in the prevention of iron deficiency anemia, the use of said preparation has no effect in the prevention, treatment or cure of any disease caused by mineral deficiencies.

5. No major portion of the people in this country are ill because of mineral deficiencies.

6. Mineral deficiencies were not the cause of the high percentage of people in this country who failed to pass the physical examination for military service during World War II.

PAR. 8. The use by the respondents of the said false advertisements with respect to said preparation 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 the representations contained in said advertisements are true and into the purchase of substantial quantities of said preparation by reason of such erroneous and mistaken belief.

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

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding charges the respondents General Products Corporation, a California corporation located at 1016½ South Spaulding Avenue, Los Angeles, California; David Ormont and Alan Mann, individually and as officers of said corporation; and Dean Simmons, an individual engaged in the business of conducting

an advertising agency at 1430 LaBrea Avenue, Los Angeles, California, with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act in connection with the sale and distribution of a preparation designated "Auntry's Minerals, a mineral food supplement."

After the issuance of said complaint and the filing of their answer thereto, the respondents entered into an agreement for consent order with counsel in support of complaint, disposing of all the issues in this proceeding, which agreement was duly approved by the Director of the Bureau of Litigation. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the respondents admitted all the jurisdictional allegations of the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations. By said agreement, the answer heretofore filed by respondents was withdrawn and the parties expressly waived a hearing before the hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission, the filing of exceptions and oral argument before the Commission, and all further and other procedure before the hearing examiner and the Commission to which the respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission.

By said agreement, respondents further 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 waived any and all right, power or privilege to challenge or contest the validity of such order.

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

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the

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Rules of Practice, and in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, and that this proceeding is in the interest of the public, and issues the following order :

ORDER

It is ordered, That the respondent General Products Corporation, a corporation, and its officers, and respondents David Ormont and Alan Mann, individually and as officers of said corporation, and respondent Dean Simmons, 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 Autry's Minerals, or any preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from, directly or indirectly ;

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

(a) That the use of said preparation is effective in the prevention, treatment or relief of, or will cure aches or pains in the muscles or joints, arthritic or rheumatic pains, sinus trouble, or colds ;

(b) That the use of said preparation is effective in preventing any type of nutritional anemia, other than iron deficiency anemia ;

(c) That the use of said preparation is effective in preventing tiredness and weariness, unless expressly limited to these conditions when they might result from iron deficiency anemia ;

(d) That the use of said preparation is an effective treatment for or will cure any kind of anemia, or is effective in the treatment or relief of or will cure tiredness or weariness ;

(e) That the use of said preparation will restore sight to the blind, or is an effective treatment for or will cure ulcer of the cornea, conjunctivitis or glaucoma ;

(f) That the use of said preparation is effective in the treatment for or will cure any disease caused by mineral deficiencies, or is effective in the prevention of any disease caused by mineral deficiencies, except iron deficiency anemia and that type of goiter caused by a deficiency of iodine ;

(g) That any major portion of the people in this country are ill because of mineral deficiencies, or that such deficiencies were the cause

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of the high percentage of the people in this country who failed to pass the physical examination for military service during World War II.

2. Disseminating or causing the dissemination of any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparation, which advertisement contains any of the representations prohibited in Paragraph 1 hereof.

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 29th day of October, 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

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IN THE MATTER OF

L. & I. FISHKIN, INC., ET AL.

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

Docket 6378. Complaint, June 28, 1955—Decision, Nov. 5, 1955

Consent order requiring respondents to cease labeling interlinings of children's coats and jackets falsely as "100% Wool," failing to label certain garments, and furnishing false guarantees that such products were not misbranded, all in violation of the Wool Products Labeling Act.

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

Mr. R. D. Young, Jr., for the Commission.

Mr. George M. Burgh, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that L. & I. Fishkin, Inc., a corporation, and Louis Fishkin individually and as an officer of said corporation and Irving Fishkin, individually, hereinafter referred to as respondents, have violated the provisions of said acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, starting its charges in that respect as follows:

PARAGRAPH 1. Respondent, L. & I. Fishkin, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York. Said corporation trades and does business under the name of Vogue Sportswear Company. Respondent Louis Fishkin is president and respondent Irving Fishkin is general manager of said corporation and these individuals formulate, direct and control the acts, policies and practices of said corporate respondent. The offices and principal place of business of said respondents are located at 112 West 34th Street, New York, N. Y.

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

ment 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 constituent fibers contained therein.

Among such misbranded wool products were children's coats and jackets, the interlining of which was labeled or tagged by respondents as consisting of "100% Wool"; whereas in truth and in fact said interlining was not composed of 100% wool as said term is defined by the Wool Products Labeling Act of 1939.

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

PAR. 5. The respondents falsely guaranteed that wool products manufactured by them were not misbranded, when they had reason to believe that said wool products falsely guaranteed would be introduced, sold, transported and distributed in commerce.

PAR. 6. The respondents were, at all times mentioned herein, in competition, in commerce, with other individuals and with firms and corporations likewise engaged in the sale of children's coats and jackets.

PAR. 7. 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 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 EVERETT F. HAYCRAFT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on June 28, 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 and before an answer was received, respondents L. & I. Fishkin, Inc., and Louis Fishkin

entered into an agreement with counsel supporting the complaint, dated August 11, 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 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Accompanying the agreement is an affidavit filed by respondent Irving Fishkin, supported by a separate affidavit of respondent Louis Fishkin, president of respondent corporation, to the effect that respondent Irving Fishkin is neither general manager, officer, stockholder, nor director of respondent corporation; that he is an employee in the corporation and had no knowledge whatever, nor was he in any way concerned with matters related in the complaint in this proceeding.

Respondent L. & I. Fishkin, Inc., and Louis Fishkin, 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 findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement also provides that respondent Irving Fishkin be dismissed from this proceeding for the reasons set forth in the affidavits, and that the agreement disposes of all of the proceeding as to all parties. Respondents in the agreement waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with said agreement. It was further agreed 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 said agreement; that the 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 agreement also provided that the following order may be entered in this proceeding by the Commission without further notice to respondents; that when so entered it shall have the same force and effect as if entered after a full hearing; that it may be altered, modified or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

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

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appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Section 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, L. & I. Fishkin, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 112 West 34th Street, New York, New York. Respondent Louis Fishkin is president of respondent corporation L. & I. Fishkin, Inc., and 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, which is in the public interest, 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

It is ordered, That the respondent L. & I. Fishkin, Inc., a corporation, and respondent Louis Fishkin, 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 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 children's coats and jackets or other "wool products" as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool" or "reused wool," as those terms are defined in said Act, do forthwith cease and desist from misbranding such products by:

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

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

(a) The percentage of the total fiber weight of such wool products, exclusive of ornamentation not exceeding five percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool,

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(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 products, of any non-fibrous loading, filling or adulterating matter;

(c) The name or the registered identification number of the manufacturer of such wool products or of one or more persons engaged in introducing such wool products 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

3. Furnishing false guaranties when there is reason to believe the wool products so guaranteed may be introduced, sold, transported or distributed in commerce.

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

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

It is further ordered, That the complaint be, and the same hereby is, dismissed without prejudice as to the respondent Irving Fishkin, individually.

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 5th day of November, 1955, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents L. & I. Fishkin, Inc., a corporation, and Louis Fishkin, 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.

Decision

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

Docket 6272. Complaint, Dec. 22, 1954—Decision, Nov. 8, 1955

Order requiring a distributor in New York City of Jewelry, novelties, household articles, cooking utensils, silverware, etc., to cease furnishing to members of the public and other salesmen sales circulars containing pull cards for the sale of the merchandise to purchasers by means of a game of chance, gift enterprise, or lottery scheme.

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

Mr. Leo Kotler and *Mr. Herbert Shäff*, of New York City, for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

On December 22, 1954, the Federal Trade Commission issued its complaint against Gary Sales Company, Inc., a corporation, and Sam Frank, Norman Eisner, Henry Davis, and Eli Tockar, individually and as officers of said corporation, charging them with selling and distributing jewelry, novelties, household articles and other merchandise in commerce by means of a game of chance, gift enterprise or lottery scheme, contrary to the established public policy of the United States and in violation of the provisions of the Federal Trade Commission Act.

Respondents, in their answer to the complaint, denied that their method of distributing merchandise in commerce constitutes a game of chance, gift enterprise or lottery scheme. At the conclusion of the presentation of the case-in-chief in support of the complaint, Respondents moved that the complaint herein be dismissed for want of proof. The disposition of this motion was deferred until the issuance of the initial decision herein.

The evidence presented at the hearing in this proceeding warrants the following factual findings and conclusions:

1. Gary Sales Company, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 100 Fifth Avenue, in the city of New York, State of New York. Respondents Sam Frank, Norman Eisner, Henry Davis and Eli Tockar are individuals and officers of corporate respondent Gary Sales Company,

Inc., with their office and place of business located at the same address. The individual respondents Sam Frank, Norman Eisner, Henry Davis and Eli Tockar own and have dominant control of the policies and sales activities of the corporate respondent. All of said Respondents have cooperated with each other and have acted in concert in doing the acts and things hereinafter found.

2. The Respondents are now and for more than one year last past have been engaged in the sale of jewelry, novelties, household articles, cookware, silverware, and numerous other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said merchandise, when sold, to be shipped and transported from their place of business in the State of New York to purchasers thereof at their respective points of location in various States in the United States other than New York and in the District of Columbia. There is now and has been for more than one year last past a course of trade by Respondents in such merchandise in commerce between and among the various States of the United States and in the District of Columbia.

3. In the course and conduct of their business, as herein found, Respondents cause to be distributed to members of the public, representatives and salesmen, and prospective representatives and salesmen, certain advertising literature, including a sales circular, which contains a list of various items of merchandise with the prices thereof, and, contiguous to each item, a blank space for the entry of the name of the purchaser of that particular item. Adjacent to this list of items of merchandise is a pullcard consisting of 40 tabs, under each of which is concealed the name of one of the articles of merchandise described in the circular, and the selling price thereof. The prospective purchaser is expected to pull one of these tabs from the pullcard. Until the purchaser has detached the pull-tab from the card, he has no means of knowing, and does not know, which of the various articles of merchandise he is to receive.

4. Some of the articles of merchandise included in the list have purported and represented retail values greater than the prices at which they are intended to be, and are sold to the consumer who pulls the tab designating the particular article. Other articles are priced proportionately higher. The apparent greater values of some of such articles induces members of the purchasing public to pull the tabs on the chance and in the hope that they will receive thereby an opportunity to purchase articles of merchandise of greater value than the prices designated to be paid therefor. Whether a purchaser, having pulled one of said tabs from the pullcard, receives an article

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of greater or less value than the price designated thereon, which of the listed articles of merchandise the purchaser is to purchase, and the amount of money such purchaser is required to pay, are determined wholly by chance.

5. Immediately above the pullcard on Respondents' sales circular appears the following legend:

SIMPLE AS A. B. C.

- A. Merely pull any of the tabs below.
 - B. Read the item and price printed on the back.
 - C. Pay your friend (the holder of this folder) the price printed on the tab.
- You are not obligated to buy this merchandise if you do not want to.

Immediately below the pullcard is printed the following notice:

POSTMASTER: Contains printed material.

May be opened for postal inspection.

READ: Every item is sold as represented herein or your money refunded. All merchandise sold on a money back guarantee. If, for any reason, you are dissatisfied with the article you have chosen, you need not purchase it. This sheet is given to you without cost as a sales sheet and is not, nor is it to be used as a punchboard or a gambling device.

The sales circular also contains instructions to Respondents' representative or salesman as follows:

IT'S EASY! JUST DO THIS

Simply show this folder to your friends and neighbors and let them buy one or as many of the practical bargain items listed on the back page. Behind each tear-tab, an article appears with its corresponding price. Collect the money for each purchase and write the name of the buyer next to the article bought. When all the spaces have been filled with your customers' names, you will have a total of \$27.99.

Mail your money order for this amount, together with the handy order form on Page 2. Indicate your choice of any Special Value Premium. Be sure to fill out the order form completely and mail it with your money order for \$27.99.

* * * We will give you a cash discount of 30% on any merchandise sold, should you be unable to fill a complete order. All you do is deduct 30% from the amount you send us. We will then ship you the amount of merchandise you have sold. * * *

6. Respondents contend that the fact that one is not obligated to buy the merchandise described under the tab pulled; the existence of a money-back guarantee; Respondents' promise to refund the purchaser's money if the purchaser is dissatisfied with the article purchased; and the fact that all the items need not be sold by the representative, for the purchasers to receive the items selected and for the salesman to receive compensation for his services, removes the element of chance from Respondents' selling practices and prevents such practices from violating the law as charged in the complaint.

7. The above contentions are without merit for several reasons. First, there is evidence that the notice on the circular, to the effect that one does not have to buy the article of merchandise indicated under the pull-tab, is not called to the attention of the prospective purchaser. Second, if it were, such fact would not change the character of the transaction. As stated by the court in *Wolf vs. Federal Trade Commission*, 135 F. 2d 564, such a notice " * * * is no more than a recognition of the common-law rule that a gambling transaction is unenforceable, * * *." The fact that a purchaser who pulls a tab, in every case, secures an item of merchandise and is given the privilege of returning it if dissatisfied therewith, does not eliminate the element of chance, which alone determines which item of merchandise the purchaser shall receive. In the above-cited decision, the court stated:

* * * we think there can be no serious doubt that a method of distribution which contemplates the offering to the purchaser of an opportunity to pull a chance to see which article of a list of 20 he may buy constitutes a game of chance, even though each purchaser does receive an article of value for his purchase (*Keller v. Federal Trade Commission*, 132 F. 2d 59 (35 F.T.C. 970)).

8. In view of the above facts and the principles of law and public policy applicable thereto, we must conclude that the sale of merchandise to the purchasing public in the manner and by the means employed by the Respondents as herein found involves a game of chance, and that Respondents thereby supply to and place in the hands of others the means of conducting the sale of merchandise by means of a game of chance, as hereinabove found, wherein there is sold a chance to procure an unknown selection from a number of articles of merchandise at a price less than the normal retail price therefor. This method of sale and distribution attracts prospective salesmen and purchasers by reason of the element of chance involved therein, and thereby induces the purchase and sale of Respondents' merchandise.

The aforesaid acts and practices of Respondents, as herein found, are contrary to the established public policy of the Government of the United States; are all to the prejudice and injury of the public; and constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. Therefore we conclude, and so find, that this proceeding is in the public interest; that Respondents' motion that the complaint herein be dismissed should be, and hereby is, denied; and that a cease-and-desist order should be issued in this proceeding. Accordingly,

It is ordered, That Respondent Gary Sales Company, Inc., a corporation, and its officers, Sam Frank, Norman Eisner, Henry Davis, and Eli Tockar, individually, and Respondents' agents, representa-

tives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of jewelry, novelties, household articles, cookware, silverware, or any other articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others pull cards or any other device or devices which are designed or intended to be used in the sale and distribution of Respondents' merchandise to the public by means of a game of chance, gift enterprise or lottery scheme.
2. Shipping, mailing and transporting to agents or distributors or to members of the public pull cards or any other device or devices which are designed or intended to be used in the sale and distribution of Respondents' merchandise to the public by means of a game of chance, gift enterprise or lottery scheme.
3. 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:

This matter is before us for disposition of respondents' appeal from an initial decision wherein the hearing examiner made his findings as to the facts, conclusions drawn therefrom and order to cease and desist and denied the respondents' motion that the complaint herein be dismissed. Counsel for both sides filed briefs. Oral argument was not requested.

Respondents were found by the hearing examiner to be engaged in the sale and distribution of jewelry, novelties, household articles and other merchandise in commerce in a manner involving the use of a game of chance, gift enterprise, or lottery scheme, contrary to public policy and in violation of the Federal Trade Commission Act.

The hearing examiner found that the named individual respondents, through the corporate respondent, Gary Sales Company, Inc., caused to be distributed to members of the public, representatives and salesmen, certain advertising literature, including a sales circular or catalogue. This latter contains a list of merchandise, usually forty (40) items, and the prices thereof, ranging from sixteen (16) through eighty-nine (89) cents. Immediately adjacent to this list is set up and printed a so-called "pull-card" consisting of a number of tabs, under each of which is concealed the name of one of the listed merchandise items and its price. The ultimate purchaser is expected to detach a tab and learn only then the merchandise item he is to

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receive and the price to be paid. His name thereupon is to be written on the aforesaid list of merchandise opposite the particular item named under the tab.

The hearing examiner also found that some of the items of merchandise listed have a greater value than stated on the said list but are distributed for the lesser price disclosed under the tab. This apparent greater value of some of the items, the hearing examiner concluded, induces purchasers to buy the tabs, or chances, in the hope they will receive merchandise greater in value than the price designated under the pull tab they select. The article of merchandise, its value, and the price to be paid for it are determined wholly by chance.

In his findings the hearing examiner recognized that the sales circulars, or catalogues, contain the following notice:

READ: Every item is sold as represented herein or your money refunded. All merchandise sold on a money back guarantee. If, for any reason, you are dissatisfied with the article you have chosen, you need not purchase it. This sheet is given to you without cost as a sales sheet and is not, nor is it to be used as a punchboard or a gambling device.

When all 40 items of merchandise have been sold the customer has the right to select a premium gift or a \$10.00 cash allowance. The record discloses that about a million catalogues mailed produced a return of about 10,000 orders.

The hearing examiner also found that salesmen, or representatives, are not required to sell all forty (40) items listed and that, if they are unable so to do, they receive a cash discount of 30% on merchandise "sold." Respondents made an offer of proof in this latter regard which will be discussed hereinafter.

The foregoing sets out briefly the facts found in detail by the hearing examiner. Respondents filed exceptions to the findings that some of the merchandise items have a higher proportional value than others and thereby constitute prizes distributed by chance and that such practice constitutes lottery merchandising in violation of the Federal Trade Commission Act.

On the question of proof of value of the merchandise involved, respondents contend there is no testimony in the record to show retail prices of the various items. Sam Yackow, from whom respondents purchased the merchandise in packages of forty (40) items, prepared Commission's Exhibit 3, a list of the cost of the various items to him. This evidence as to wholesale value, we find, was properly received in evidence and was correctly considered by the hearing examiner in determining variations in retail values as disclosed by wholesale costs. Proof of specific retail prices is not necessary where, as here, there is a clear showing that, under respondents' plan of merchandis-

ing, different items are distributed to the purchasing public at identical prices, some even below wholesale cost, although they vary greatly in actual value. *Keller v. F.T.C.*, 132 F. 2d 59 (C.C.A. 7, 1942); *Colon v. F.T.C.*, 193 F. 2d 179, cert. denied 344 U. S. 823 (1953). Respondents appeal in this respect is denied.

As to whether the means employed by respondents in the distribution of their merchandise involved the use of a chance, lottery, or gift enterprise and, as such was contrary to the public interest constituting an unfair act and practice in commerce within the intent and meaning of the Federal Trade Commission Act, we find respondents' contentions to be without merit and contrary to the facts as found and to the law. Respondents contend here that the fact there is notice that there is no obligation to purchase the merchandise listed under the tab pulled; the existence of a money-back guarantee; promise of a refund of the article if the purchaser is dissatisfied; and the fact that all items on the card need not be sold by the representative for the purchasers to receive items selected and for the salesman to be compensated for his services, removes the element of chance in each transaction.

Respondents here in effect argue that the notice to purchasers that they need not buy, etc., removes one of essential elements of lottery (consideration, chance, and prize), namely, the element of chance. The hearing examiner found evidence to support his finding that the notice was not called to the attention of prospective purchasers. When questioned directly in this regard all four witnesses called, who were customers of respondents in disposing of pull cards, testified that they did not call the notice to the attention of prospective purchasers. One witness stated "No, I myself read it alone."¹ Another stated, "No. We was interested in the chance."² All customer witnesses characterized the pull tabs as chances.

The hearing examiner further concluded that, even if the notice were called to the attention of prospective purchasers, such fact would not change the nature of the transaction, citing *Wolf v. Federal Trade Commission*, 135 F. 2d 564 (C.C.A. 7, 1943) where the court said that such a notice " * * * is no more than a recognition of the common law rule that a gambling transaction is unenforceable * * *." In the *Wolf* case the court stated further on this point that:

* * * we think there can be no serious doubt that a method of distribution which contemplates the offering to the purchaser of an opportunity to pull a chance to see which article of a list of twenty he may buy constitutes a game of chance, even though each purchaser does receive an article of value for his purchase. *Keller v. F.T.C.* 132 F. 2d 59.

¹ R. 49.

² R. 38.

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We find that the examiner correctly concluded, as a matter of law, that the fact that a purchaser pulling a tab in every instance receives an item of merchandise with the privilege of returning it if dissatisfied does not remove the element of chance, which alone determines the item of merchandise to be received. We further find that respondents' method of distribution of merchandise involves the use of a game of chance, gift enterprise, or lottery scheme, with respondents supplying to and placing in the hands of others the means of conducting lotteries through the said sales plan of merchandising, and that said method is contrary to public policy and constitutes an unfair act and practice in commerce within the meaning of the Federal Trade Commission Act. *Federal Trade Commission v. R. F. Keppel & Bro., Inc.*, 291 U.S. 304 (1934).

Respondent appellants also except to the failure of the hearing examiner to permit into evidence some 200 letters purporting to show partial orders received by Gary Sales Company, Inc., on which a 30% commission had been allowed. We agree with the hearing examiner that the letters tendered are immaterial and irrelevant to the issues in this proceeding and find no prejudicial error in their exclusion from evidence. Respondents' appeal in this regard is denied.

Respondents specifically except to Findings 4, 7, and 8 and to the conclusion of the hearing examiner as contained in his initial decision. They also specifically except to the failure of the hearing examiner to include a conclusion of law submitted by them to the effect that their acts and practices as described herein do not constitute unfair acts and practices. We think our rulings above adequately dispose of these exceptions without the necessity of our ruling on each separately.

On the basis of the whole record, for the reasons hereinabove stated, we conclude that the hearing examiner's initial decision and his rulings on respondents' offer of proof and motion to dismiss the complaint are correct. Accordingly, respondents' appeal from the initial decision, including their exception thereto, is hereby denied and the initial decision of the hearing examiner is affirmed. Appropriate order will be entered.

FINAL ORDER

This matter having come before the Commission upon respondents' appeal from the hearing examiner's initial decision and the matter having been heard on the whole record, including briefs (oral argument not having been requested); and the Commission having ren-

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dered its decision denying respondents' appeal and affirming the initial decision;

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

IN THE MATTER OF
THE BEST FOODS, INC.

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

Docket 6380. Complaint, June 29, 1955—Decision, Nov. 8, 1955

Consent order requiring a corporation doing a nation-wide business, with main office in New York City, to cease representing its "Nucoa" oleomargarine falsely in advertising as a dairy product and as richer in milk properties than butter, in violation of the Oleomargarine Amendment to the Federal Trade Commission Act.

Before *Mr. Everett F. Haycraft*, hearing examiner.
Mr. Morton Nesmith for the Commission.
Davis & Gilbert, of New York City, 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 The Best Foods, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent The Best Foods, Inc., is a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business located at 1 East 43rd Street, New York, New York, and factories located in Bayonne, New Jersey, Chicago, Illinois, San Francisco, California, and Dallas, Texas.

PAR. 2. Respondent The Best Foods, Inc., is now and for more than one year last past has been engaged, among other things, in the manufacture, sale, and distribution of oleomargarine, a food, using the trade name "Nucoa" for its product which it sells other distributors for resale and delivery to consumers. Respondent causes its said oleomargarine, when sold, to be transported from its factories located in the States of New Jersey, Illinois, California, and Texas to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said product in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of its aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning its said product, Nucoa oleomargarine, by the United States mails and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements in newspapers, magazines, and periodicals having a general interstate commerce circulation, for the purpose of inducing and which were and are likely to induce, directly or indirectly, the purchase of said product; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of advertisements concerning its said product, by the aforesaid means, for the purpose of inducing and which were and are likely to induce, directly or indirectly, the purchase of its said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations contained in said advertisements disseminated and caused to be disseminated, as hereinabove set forth, are the following:

Oh, those youngsters of yours will get LOTS of natural goodness out of new enriched Nucoa * * * Sweet skim milk—pasteurized not once but TWICE * * *
 Yes, Nucoa's natural goodness comes from sweet skim milk.
 Everything in Nucoa is good for you—Nucoa is rich in sweet skim milk * * *
 Nucoa contains more milk minerals than the most expensive spread.
 Richer in milk—minerals, too, than the most expensive spread * * *

PAR. 4. Such expressions as "sweet skim milk—pasteurized not once but TWICE * * *," "Its richer in milk—minerals, too, than the most expensive spread," and other expressions of the same import have long been used in connection with dairy products and have become firmly associated in the minds of many members of the purchasing public with dairy products.

Moreover, respondent in its advertisements to the effect that Nucoa is richer in milk minerals than the most expensive spread suggests that its product Nucoa is richer in milk properties than a principal dairy product, namely, butter.

PAR. 5. The advertisements containing the various expressions set out in Paragraph 3 are misleading in material respects and constitute false advertisements, as such term is defined in Section 15 (a) (2) of the Federal Trade Commission Act in that they serve as representations or suggestions that respondent's product is a dairy product, which is contrary to the fact.

PAR. 6. The use by the respondent of the foregoing practices has had and now has the capacity and tendency to mislead and deceive

a substantial portion of the purchasing and consuming public into the erroneous and mistaken belief that respondent's oleomargarine is a dairy product and into the purchase thereof in reliance upon such erroneous and mistaken belief.

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

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on June 29, 1955, charging it with having violated the Federal Trade Commission Act by the use of unfair and deceptive acts and practices in commerce in the sale of oleomargarine. In lieu of submitting answer to said complaint, respondent entered into an agreement for consent order with counsel supporting the complaint, disposing of all the issues in this proceeding, which agreement has been duly approved by the Director of the Bureau of Litigation.

Respondent, pursuant to the aforesaid agreement, has admitted all the jurisdictional allegations of the complaint and agreed that the record may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations. Respondent in the agreement waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with said agreement. It was further provided that said agreement, together with the complaint shall constitute the entire record herein; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; and 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. The agreement also provided that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing; that it may be altered, modified or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

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

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appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is 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 in consonance with the terms of said agreement the hearing examiner makes the following jurisdictional findings and order:

1. The respondent corporation, The Best Foods, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 1 East 43rd Street, in the city of New York, State of New York.

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

ORDER

It is ordered, That the respondent The Best Foods, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of oleomargarine or margarine, do forthwith cease and desist from, directly or indirectly,

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 contains any statement, word, grade designation, design, device, symbol, sound or any combination thereof which represents or suggests that said product is a dairy product;

Provided, however, That nothing contained in this order shall prevent the use in advertisements of a truthful, accurate and full statement of all of the ingredients contained in said product, or of a truthful statement that said product contains skim milk, milk-minerals or any other dairy product provided the percentage thereof contained is clearly and conspicuously set forth.

2. Disseminating or causing to be disseminated by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act of said product any advertisement which contains any of the representations prohibited in paragraph one of this order.

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52 F. T. C.

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 November, 1955, become the decision of the Commission; and, accordingly:

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

Complaint

IN THE MATTER OF

DIAMOND CAP COMPANY, INC., ET AL.

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

Docket 6377. Complaint, June 28, 1955—Decision, Nov. 9, 1955

Consent order requiring a manufacturer in Philadelphia, Pa., to cease labeling as "100% Wool" caps which contained a large percentage of reprocessed or reused wool, and to tag other wool products with the information required by the Wool Products Labeling Act.

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

Mr. R. D. Young, Jr. for the Commission.

Mr. Samuel R. Wurtman, of Philadelphia, Pa., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Diamond Cap Company, Inc., a corporation, and Crisfield Cap Company, a corporation, and Louis Goldenberg and Harry Faerman, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent Diamond Cap Company, Inc., is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, being engaged in the manufacture, sale, and distribution of men's, women's, and children's caps. The office and principal place of business of said corporate respondent is located at 3330 North 3rd Street, Philadelphia, Pennsylvania.

The respondent Crisfield Cap Company, a wholly owned subsidiary of respondent Diamond Cap Company, Inc., is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, being engaged in the manufacture of caps for respondent Diamond Cap Company, Inc. The office and principal place of business of Crisfield Cap Company is located at 116 Locust Street, Crisfield, Maryland.

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The individual respondents, Louis Goldenberg and Harry Faerman, are president and vice-president respectively of each of said corporate respondents and these individuals formulate, direct and control the acts, policies and practices of each of said corporate respondents.

The office and principal place of business of respondent Louis Goldenberg is located at 3330 North 3rd Street, Philadelphia, Pennsylvania. The office and principal place of business of respondent Harry Faerman is located at 116 Locust Street, Crisfield, Maryland.

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

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

Among such misbranded products were caps labeled or tagged as consisting of "100% wool," whereas, in truth and in fact, said caps did not consist of 100% wool as the term "wool" is defined in said Wool Products Labeling Act, but contained a large percentage of reprocessed or reused wool, as the terms "reprocessed" and "reused" wool are likewise defined therein.

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

Among such wool products were caps misbranded by said respondents in that they were not stamped, tagged or labeled so as to disclose the fiber content or the name or 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. 5. The respondents were, at all times mentioned herein, in competition, in commerce, with other individuals and with firms and corporations likewise engaged in the sale of caps.

PAR. 6. 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,

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as alleged herein, 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 EVERETT F. HAYCRAFT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on June 28, 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 the issuance of said complaint and the filing of their answer thereto, the respondents entered into an agreement with counsel supporting the complaint, dated August 22, 1955, providing for the entry of a consent order disposing of all the issues in this proceeding as to all parties, which agreement was duly approved by the Director of the Bureau of Litigation. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the said respondents admitted all the jurisdictional facts alleged in the complaint and agreed that the record herein may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

By said agreement respondents' answer to the complaint shall be considered as having been withdrawn and the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the said agreement. Respondents in the agreement expressly waive any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the said agreement. It was further agreed that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The agreement also provided that the following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents and when so entered, it shall have the same force and effect as if entered after a full hearing; that it may be altered, modified, or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

Order

52 F. T. C.

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 aforesaid agreement is hereby accepted and is 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. Respondent Diamond Cap Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at 3330 North 3rd Street, Philadelphia, Pennsylvania. Respondent Crisfield Cap Company is a corporation existing under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at Crisfield, Maryland. Individual respondents Louis Goldenberg and Harry Faerman are president and vice president, respectively, of said corporate respondents, with their office and principal place of business located at 3330 North 3rd Street, Philadelphia, Pennsylvania.

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

It is ordered, That respondent Diamond Cap Company, Inc., a corporation; and respondent Crisfield Cap Company, a corporation; and respondents Louis Goldenberg and Harry Faerman, individually and as officers of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with introduction or manufacture for introduction into commerce, or offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of caps or other "wool products" as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool" or "reused wool," as those terms

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are defined in said Act, do forthwith cease and desist from misbranding such products by:

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

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

(a) The percentage of the total fiber weight of such wool products, exclusive of ornamentation not exceeding five percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) 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 products, of any non-fibrous loading, filling, or adulterating matter;

(c) The name or the registered identification number of the manufacturer of such wool products 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 9th day of November, 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

DENNING-GOLDEN FURS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS*Docket 6337. Complaint, Apr. 26, 1955—Decision, Nov. 10, 1955*

Consent order requiring furriers in New York City to cease advertising in spurious liquidation sales, fictitious prices as the value of fur garments and sale prices as affording 40% to 80% savings off regular prices; and to disclose information in advertising, keep records as a basis for savings claims, and invoice products, all as required by the Fur Products Labeling Act.

Before *Mr. John Lewis*, hearing examiner.

Mr. John J. McNally for the Commission.

Mr. Benjamin Hauptman, of New York City, 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 Denning-Golden Furs, Inc., a corporation, Denning, Inc., a corporation, Irving Golden, individually and as President of said corporations, and Bernard Golden, an individual, 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 Denning-Golden Furs, Inc., and Denning, Inc., are corporations, organized and existing under and by virtue of the laws of the State of New York, with their office and principal place of business located at 124 West 30th Street, New York, New York. Individual respondents Irving Golden and Bernard Golden are President and Manager, respectively, of said corporate respondents, and in such capacities formulate, direct and control the policies, acts and practices of said corporate respondents. Said individual respondents have the same office and principal place of business as said corporate respondents and have as their place of residence 7281-113th Street, Forest Hills, New York. Said individual respond-

ents have, from time to time, also traded as Golden's, in the City of Bridgeport, Connecticut; as Lizabeth Furs, in the City of Poughkeepsie, New York; and by various other trade names in other cities and States of the United States.

PAR. 2. Respondents, for several years last past, have been engaged in the sale and distribution of fur garments, including coats, stoles, capes, and other fur garments, to members of the purchasing public. Respondents cause and have caused the aforesaid fur garments to be transported from their place of business located in the State of New York and sold to the purchasers thereof located in various other States of the United States. Respondents maintain, and at all times herein mentioned have maintained, a substantial course of trade in said fur garments, in commerce, as "commerce" is defined in the Federal Trade Commission Act, among and between the various States of the United States.

PAR. 3. In the course and conduct of their business, respondents caused the dissemination of certain advertisements relating to the aforesaid fur garments, by means of newspapers and by various other means. Among said advertisements, but not limited thereto, were those published in various newspapers which contained the following statements:

In the "Bridgeport Telegram," issue of June 16, 1954:

LIQUIDATION!.....Quality furs and other articles.....
 EVERYTHING MUST BE SOLD to raise immediate cash! Regardless of
 cost or loss, GOLDEN'S has slashed and smashed every price to make
 sure that EVERYTHING GOES!.....PUBLIC NOTICE.....
First come, first served. NO RESERVATIONS. CASH & CARRY
All Sales Final.....

In the "Poughkeepsie New Yorker," issue of September 8, 1954:

LIQUIDATION!.....LIZABETH FURS is opening with the most
 sensational sale Poughkeepsie has ever seen. We can't mention the name
 but a famous New York Furrier is giving up his entire stock of fine furs
 regardless of cost or loss! Everything must be sold out! The entire stock
 of this firm....furs, fixtures and equipment must be LIQUIDATED IM-
 MEDIATELY TO RAISE CASH FOR CREDITORS.....Every-
 thing goes! This is the end of every fur in the store.....PUBLIC
 NOTICE.....No reservations. Cash and carry.....
 FIXTURES FOR SALE.....ALL SALES FINAL.....

In the New York "Sunday News," issue of February 20, 1955:

.....PUBLIC NOTICE! Effective immediately, February 20, 1955, we
 must liquidate to the public all furs, fur coats, fur scarves, fur jackets,
 odds and ends to pay off our creditors!.....40% to 80% DIS-
 COUNT!.....

Complaint

52 F. T. C.

PAR. 4. By means of the aforesaid statements and through those statements set forth in Paragraph 6 hereof, incorporated herein by reference, and by means of advertisements of the same import and meaning published in other cities and States of the United States but not referred to or set forth specifically herein and by other means, respondents represented, in each of such instances, that they were conducting a bona fide liquidation of all of their stocks of fur garments.

PAR. 5. The aforesaid statements and representations were false, misleading and deceptive. In truth and in fact, in none of said instances did respondents conduct a bona fide liquidation of their stocks of fur garments. On the contrary, respondents' usual method of doing business was to conduct so-called liquidation sales. Respondents were not forced to, and did not, sell out all of their stocks of fur garments at such sales. On the contrary, such fur garments as were not sold by respondents in any particular sale were, in some instances, again reoffered in future so-called liquidation sales conducted by respondents in the same premises or, in other instances, were transported and distributed by respondents to other locations in other cities and States and were again offered in so-called liquidation sales, advertised and conducted as aforesaid by respondents, directly or through corporate or other devices.

PAR. 6. Respondents have also caused the dissemination of other advertisements, including but not limited to the following:

In the New York "Sunday News," issue of November 21, 1954:

GOING OUT OF BUSINESS!!

Sale held pursuant to New York City License No. 462000 * * * **SELLING OUT TO THE BARE WALLS!** Regardless of cost or loss! We **SLASHED AND SMASHED EVERY PRICE** so we could walk away from the store when we are finished. **WE ARE CLOSING FOREVER * * *** **SELLING OUT \$300,000 STOCK OF FURS AT 40% to 80% SAVINGS!**

(The above advertisement continues with a listing of some 80 items and depictions of six particular fur garments. Each of such items and garments has two prices; the higher price being preceded by the statement "MADE TO SELL FOR * * *" and the lower price being preceded by the statement "NOW * * *")

In the New York "Sunday News," issue of January 16, 1955:

SALE * * * By order of LIQUIDATOR!

Irving Golden of Denning-Golden Furs, Inc., 124 West 30th St. has bought up the **ENTIRE STOCK** of Denning, Inc., who has **GONE OUT OF BUSINESS!** The tremendous stock of **QUALITY FURS** formerly belonging to Denning, Inc., must be sold regardless of cost or loss! Effective immediately we must **LIQUIDATE** to the public all furs, fur coats, fur

scarves, fur jackets, odds and ends to pay off our creditors. EVERYTHING GOES! THIS IS IT! WE MUST raise CASH immediately * * *

(The above advertisement continues with depictions of six fur garments and a listing of some 50 fur items. The said depictions and many of said items are identical to those offered in the "Sunday News" advertisement of November 21, 1954, set forth above, and to those depictions and listings in various other issues of that and other publications, which advertisements contain substantially the same statements and representations.) The said advertisement continues as follows:

* * * 40% to 80% DISCOUNTS! Unbelievable bargains! Many items below m'frs. cost! * * * FIRST COME—FIRST SERVED! All sales final * * * no refunds, exchanges! * * * We reserve the right to limit quantities! * * * DENNING GOLDEN FURS * * *

PAR. 7. By means of the aforesaid statements, and by others of similar import and meaning not set forth specifically herein, respondents falsely and deceptively represented:

(a) That the higher prices stated in such advertisements were the current value of, or the usual prices charged by respondents for, such fur garments during the recent regular course of their business.

(b) That purchasers of said fur garments would effectuate savings of from 40% to 80% off the usual prices charged by respondents for such articles during the recent regular course of their business.

PAR. 8. The aforesaid statements and representations were false, misleading, and deceptive. In truth and in fact:

(a) The higher prices stated in such advertisements were not the current value of, nor were they the usual prices charged by respondents for, such fur garments during the recent regular course of their business.

(b) Purchasers of said fur garments would not effectuate savings of from 40% to 80% off the usual prices charged by respondents for such articles during the recent regular course of their business.

PAR. 9. Respondents, in the course and conduct of their business of selling fur garments, are in substantial competition in commerce with other firms, corporations, copartners and individuals also engaged in the sale of fur garments to members of the purchasing public.

PAR. 10. The use by the respondents of the aforesaid false or misleading statements and representations 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 in fact true and into the purchase of substantial quantities of respondents' fur garments 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. 11. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 12. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, the respondents have introduced, sold, advertised, offered for sale, transported and distributed fur products in commerce, and have 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.

PAR. 13. 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 of certain advertisements concerning said products, and have caused the dissemination of certain advertisements concerning fur products made in whole or in part of fur which has been shipped and received in commerce, as "commerce" is defined in said Act, 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 said 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. 14. Among and including the advertisements, as aforesaid, but not limited thereto, were advertisements of respondents which appeared in various issues of the "Bridgeport Telegram" and the Bridgeport "Sunday Herald"; publications circulated in the State of Connecticut and in other States of the United States. Other advertisements of respondents appeared in the New York "Sunday News" and in the "Poughkeepsie New Yorker"; publications circulated in the State of New York and in other States of the United States. Certain but not all of said advertisements are referred to and described in Paragraphs 3 through 8 hereof and are incorporated herein by reference.

PAR. 15. Certain of said fur products were falsely and deceptively advertised in that certain of the aforesaid advertisements failed to set forth the information required by Section 5 (a) of the Fur

Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

Certain of said advertisements falsely and deceptively failed 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, in violation of Section 5 (a) (1) of the Fur Products Labeling Act;

(b) That fur products contained or were composed of bleached, dyed, or otherwise artificially colored fur, when such was the fact, in violation of Section 5 (a) (3) of the Fur Products Labeling Act;

(c) That fur products were composed, in whole or in substantial part, of bellies, when such was the fact, in violation of Section 5 (a) (4) of the Fur Products Labeling Act;

(d) The name of the country of origin of imported furs contained in fur products, in violation of Section 5 (a) (6) of the Fur Products Labeling Act.

Certain of said advertisements also falsely and deceptively:

(e) Contained the name or names of animals other than the name set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations, in violation of Section 5 (a) (5) of the Fur Products Labeling Act;

(f) Set forth certain of the required information in abbreviated form in violation of the Fur Products Labeling Act and of Rule 4 of the Rules and Regulations promulgated thereunder;

(g) Misrepresented, by means of percentage savings claims not based on current market values, the amount of savings to be effectuated by purchasers of said fur products, in violation of the Fur Products Labeling Act and Rule 44 (b) of the Rules and Regulations promulgated thereunder;

(h) Misrepresented, by means of statements such as "made to sell for * * *" and by other statements, the value and usual price of their fur products, in violation of the Fur Products Labeling Act and of Rule 44 (c) of the Rules and Regulations promulgated thereunder;

(i) Misrepresented, in violation of the Fur Products Labeling Act and of Rule 44 (g) of the Rules and Regulations promulgated thereunder, fur products as being from the stock of a business in a state of liquidation, contrary to the fact.

Respondents, in making the claims as to value referred to in subparagraphs (g) and (h) hereof, have failed to maintain full and adequate records disclosing the facts upon which such claims and representations were purportedly based, in violation of the Fur Products

Labeling Act and of Rule 44 (e) of the Rules and Regulations promulgated thereunder.

PAR. 16. 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. 17. 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 name of the animal that produced the fur, in violation of Section 5 (b) (2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

PAR. 18. 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 the following respects:

(a) Required information was set forth in abbreviated form in violation of Rule 4 of the aforesaid Rules and Regulations;

(b) Respondents failed to set forth an item number or mark assigned to fur products in violation of Rule 40 (a) of the aforesaid Rules and Regulations.

PAR. 19. The aforesaid acts and practices of respondents, alleged in Paragraphs 12 through 18 hereof, were in violation of the Fur Products Labeling Act and of the Rules and Regulations promulgated thereunder and constituted unfair and deceptive acts and practices under the Federal Trade Commission Act.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, the Federal Trade Commission on April 26, 1955, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with having violated said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act. Said respondents failed to file answer to said complaint, but appeared by counsel at the hearing held, pursuant to notice, on June 28, 1955, at New York, New York. After the opening of said hearing, but before the taking of testimony, counsel advised the undersigned hearing examiner that agreement had been reached on a consent settlement of this proceeding, and the hearing was accordingly adjourned without date. Thereafter there was submitted to the hearing examiner, in

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accordance with Section 3.25 of the Commission's Rules of Practice, an agreement for consent order dated June 29, 1955, signed by counsel supporting the complaint and by all respondents, and approved by the Director of the Commission's Bureau of Litigation.

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 all parties expressly waive a hearing before the hearing examiner or the Commission, and all further and other procedure to which the respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission. Respondents have also agreed that the order to cease and desist issued in accordance with said 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.

This proceeding having now come on for final consideration by the undersigned hearing examiner, heretofore duly designated to act herein, upon 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 and is 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. Respondents Denning-Golden Furs, Inc., and Denning, Inc., are now and have been at all times mentioned herein corporations organized under and existing by virtue of the laws of the State of New York, with their office and principal places of business located at 124 W. 30th Street, New York, New York. Individual respondent Irving Golden is president of said corporate respondents. Individual respondent Bernard Golden is manager of said corporate respondents. Said individual respondents have the same office and principal place of business as said corporate respondents and have as their place of residence 7281 - 113th Street, Forest Hills, New York. Said individual respondents have, from time to time, also traded as Golden's in the city of Bridgeport, Connecticut; as Lizabeth Furs in the city of Pough-

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keepsie, New York, and by various other trade names in other cities and States of the United States.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named in paragraph 1 above. The complaint states a cause of action against said respondents under the Federal Trade Commission Act and the Fur Products Labeling Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondents Denning-Golden Furs, Inc., a corporation, and its officers; Denning, Inc., a corporation, and its officers; Irving Golden, individually and as an officer of said corporations; and Bernard Golden, individually; and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or the sale, advertising or offering for sale, or the transportation or distribution of any fur product in commerce; or in connection with the sale, advertising, offering 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. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices showing:

(a) The name or names of the animal 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 invoices;

(f) 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 A (1) (a) above, or setting forth thereon any form of misrepresentation or deception, directly or by implication, with respect to such fur products.

3. Setting forth required information in abbreviated form.

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4. Failing to show the item number or mark of fur products on the invoices pertaining to such products, as required by Rule 40 of the Rules and Regulations.

B. 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) That the fur products contain or are composed of bleached, dyed, or otherwise artificially colored fur when such is the fact;

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

(d) The name of the country of origin of imported furs contained in fur products.

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

3. Sets forth required information in abbreviated form.

4. Represents that any of such fur products are from the stock of a business in a state of liquidation, contrary to the fact.

5. Represents that a sales 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 by respondents 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.

6. Represents that an amount set forth, relating or referring to fur products, is the value of the usual price at which said fur products had been customarily sold by respondents in the recent regular course of their business, contrary to the fact.

7. Makes pricing claims or representations of the type referred to in Paragraph B (5) and (6) above, unless there is maintained by respondents full and adequate records disclosing the facts upon which such claims or representations are based as required by Rule 44 (e) of the Rules and Regulations.

It is further ordered, That Denning-Golden Furs, Inc., a corporation, and its officers; Denning, Inc., a corporation, and its officers; Irving Golden, individually, and as officer of said corporations; and Bernard Golden, individually; and respondents' representatives, agents and employees, directly or through any corporate or other

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device, in connection with the offering for sale, sale and distribution of fur garments 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 B (4) through (6), inclusive, of this order.

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 10th day of November, 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

EDWARD ROSEMAN ET AL. TRADING AS ROSEMAN
ENTERPRISES COMPANY, ETC.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6358. Complaint, June 6, 1955—Decision, Nov. 10, 1955*

Consent order requiring sellers in New York City to cease advertising falsely that the "Dunhall" and "Pennant" watches which they sold to jobbers and dealers for resale had "Jeweled Movement" and were "Guaranteed For One Year."

Before *Mr. James A. Purcell*, hearing examiner.
Mr. Frederick McManus 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 Edward Roseman, Arthur Roseman and Herman Roseman, as individuals and copartners trading as Roseman Enterprises Company, Dunhall Imports Company, Sorjine Continental Watch Company and Brooks Products Company, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Edward Roseman, Arthur Roseman and Herman Roseman are individuals and copartners trading as Roseman Enterprises Company, Dunhall Imports Company, Sorjine Continental Watch Company and Brooks Products Company, with their office and principal place of business located at 92 Liberty Street, New York 6, New York.

Respondents are now, and for more than two years last past have been, engaged in the sale and distribution of watches. Said watches, under the brand names of "Dunhall" and "Pennant," are sold and distributed to jobbers and dealers for resale to the purchasing public.

PAR. 2. In the course and conduct of their business, respondents now cause, and for more than two years last past have caused, their watches, when sold, to be transported from their place of business in the State of New York to jobbers and dealers, for resale to the gen-

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eral public, located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said watches in commerce between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their said watches, respondents have made false, misleading and deceptive statements and representations, relative to their said watches, in circulars, pamphlets, posters, display cards and by other means, all of which are widely circulated and distributed throughout the United States, to jobbers and dealers to be exhibited to the purchasing public. Among and typical of such false, misleading and deceptive statements and representations are the following:

Jeweled Movement

Guaranteed For One Year

PAR. 4. Through the use of the foregoing statements and representations and others of similar import and meaning, not specifically set out herein, the respondents represent and have represented, directly or by implication, that the said watches, described and sold by the respondents are jeweled watches and contain movements that are jeweled movements and that said watches are guaranteed for one year in every respect.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact, the said watches, described and sold by the respondents, 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. Respondents do not guarantee the said watches for one year in every respect; the so-called guarantee provides for the payment of a service charge; the terms, conditions and extent to which such guarantee applies and the manner in which the guarantor will perform thereunder are not disclosed in the advertising matter.

PAR. 6. By selling and distributing to jobbers and dealers said watches, as aforesaid, and furnishing to such jobbers and dealers display cards and other sales promotional material as aforesaid, respondents furnish to such wholesalers and dealers the means and instrumentalities through and by which they may mislead and deceive the purchasing public as to the quality and construction of said watches.

PAR. 7. In the course and conduct of their business, respondents are in direct and substantial competition with other individuals, firms and corporations engaged in the sale, in commerce, of watches.

PAR. 8. The use by respondents 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. 9. The aforesaid acts and practices of the respondents, 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 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

The Federal Trade Commission issued its complaint against the above-named respondents on June 6, 1955, charging them with false, misleading and deceptive practices in the sale of watches in violation of the Federal Trade Commission Act. Thereafter, on August 22, 1955, (filed herein on September 16, 1955), respondents entered into an agreement with counsel supporting the complaint providing for the entry of a consent order disposing of all of the issues in this proceeding. Said agreement has been approved by the Director of the Bureau of Litigation and has been submitted to the hearing examiner, heretofore duly designated, for his consideration pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice.

Respondents, in and by the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record herein may be taken as though the hearing examiner and the Commission had made findings of jurisdictional facts in accordance with such allegations. Said agreement provides for the waiver of 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 the respondents might otherwise, but for the execution of said agreement, 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 con-

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clusions thereon, and specifically waive any and all right, power or privilege to challenge or contest the validity of said order.

It was further agreed that the said agreement, together with the complaint, shall constitute the entire record herein; that the 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 said agreement and order issued in this Initial Decision shall not become a part of the official record of this proceeding unless and until they become a part of the decision of the Commission; and that the signing of said agreement is for purposes of settlement 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, on the basis of the record as constituted makes the following findings for jurisdictional purposes, and order:

1. Respondents Edward Roseman, Arthur Roseman and Herman Roseman are individuals and co-partners trading as Roseman Enterprises Company and Dunhall Imports Company and Sorjine Continental Watch Company and Brooks Products Company, with their office and principal place of business located at No. 92 Liberty Street, New York, New York, and are now, and have been at all times mentioned herein, engaged in the interstate sale and distribution of watches to jobbers and dealers for resale to the purchasing public.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding, as well also of the respondents hereinabove named; that the complaint herein states a valid cause of action against said respondents under the provisions of the Federal Trade Commission Act.

3. Consonant with the express agreement of the parties, as evidenced by the agreement hereinbefore described and referred to, the following order is passed:

ORDER

It is ordered, That respondents, Edward Roseman, Arthur Roseman and Herman Roseman, individually and as copartners trading under the firm names of Roseman Enterprises Company, Dunhall Imports Company, Sorjine Continental Watch Company and Brooks Products Company, or any other trade name or names, and their agents, repre-

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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:

1. Representing 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.

2. Representing that watches offered for sale or sold by respondents 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 10th day of November, 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.

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IN THE MATTER OF
THE AMERICAN CREDIT BUREAU, INC. ET AL.

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

Docket 6364. Complaint, June 13, 1955—Decision, Nov. 10, 1955

Consent order requiring a collection agency in Chicago to cease misrepresenting the cost and terms of its services to customers and with making false and misleading statements in letters in attempts to obtain by subterfuge information concerning debtors.

Before *Mr. James A. Purcell*, hearing examiner.
Mr. Michael J. Vitale for the Commission.
Loewy & Block, 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 The American Credit Bureau, Inc., a corporation, and Larry Lawrence, Eugene E. Stewart and D. B. Dolmyer, individually and as officers and directors of said corporation and Victor Dolmyer, individually and as director 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 The American Credit Bureau, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 608 South Dearborn Street, Chicago, Illinois. Respondents Larry Lawrence, Eugene E. Stewart, D. B. Dolmyer and Victor Dolmyer are President and Director, Secretary-Treasurer and Director, Vice President and Director, and Director, respectively, of this corporate respondent. These individuals formulate, direct and control the policies, acts and practices of said corporation. The address of these individuals is the same as that of the corporate respondent, The American Credit Bureau, Inc.

All of the aforesaid respondents cooperate and act together in performing the acts and engaging in the practices hereinafter set forth.

PAR. 2. Respondents now operate, and have operated for more than one year last past, a collection agency under the name of The American Credit Bureau, Inc. Business is secured through solicitors who travel in various States and solicit delinquent accounts for collection from retailers, professional men and others.

Respondents furnish the solicitors with assignment forms upon which each delinquent account is listed showing the name of the debtor, address, date of indebtedness incurred and the amount due. The creditor executes the form assigning the accounts so listed to respondent for collection on a commission basis. The assignment form having been signed, the solicitor mails it to respondents at Chicago.

In carrying on their aforesaid business respondents have engaged and are now engaged in extensive commercial intercourse in commerce among and between the various States of the United States, including the transmission and receipt of assignment forms, checks, letters, money orders and other written instruments.

PAR. 3. In the course and conduct of their aforesaid business and for the purpose of inducing the signing of the assignment forms, respondents have represented through oral statements made by their solicitors, directly or by implication, that:

1. If no collections are made on claims there will be no charges;
2. Personal collection calls will be made on debtors;
3. The maximum commission charged for their service is 25%;
4. If there is no collection on a specific account then there will be no charges against the said account;
5. That all accounts will be returned to creditors after six months if not collected;
6. That prompt reports will be made as to the status and progress of collection of accounts and remittances made within a certain period of time. In connection with such statements the solicitors frequently exhibited copies of letters addressed to respondent corporation referring to monthly statements of accounts collected.

In addition, the assignment form upon which is written the name of delinquent debtors has imprinted in large letters on the face thereof the statement "IF THERE ARE NO COLLECTIONS THERE ARE NO CHARGES."

PAR. 4. The aforesaid representations were false, misleading and deceptive. In truth and in fact:

1. A charge of 50¢ is made for each account whether or not any collection is made on a particular account. In case collection is made on any account, the amount of 50¢ for each account assigned is deducted from the proceeds due the creditor and retained by respondents.
2. Personal collection calls are not made on debtors.

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3. Twenty-five percent is not the maximum commission charged in many instances. In fact, in many instances, in addition to the 50¢ listing fee, where collection is made on the listed claims or accounts through Attorney, or by Legal Process, or by installment, or on outlawed accounts, or where accounts are withdrawn or further proceedings ordered stopped or held by client, or on traced accounts, or on the first aggregate \$100.00 or part thereof collected, or where evidence or information requested from clients is not furnished, the charge is 50%.

4. Charges are made against specific accounts when there have not been collections for said accounts.

5. Accounts will not be returned to creditors after six months if not collected except upon request in writing from creditors and providing the account is not in the process of adjustment, settlement, or legal proceedings. In many such instances respondents have refused to return accounts when requested by the creditors for the aforesaid stated reasons, but failed to demonstrate such claimed status.

6. Respondents have consistently followed a policy of never rendering reports and making remittances unless and until demand was made therefor and in some instances do not render reports after demand is made therefor. Because of such policy many creditors have been deprived of their share of collections and valuable information regarding the progress of collections for periods extending over many months.

Although the aforesaid provisions set out in paragraphs 1, 3, 4 and 5 appear on the assignment form, said provisions are in small print on the reverse side of said form. In many instances, said solicitors fail to explain the complete terms of the agreement or afford prospects the time to read, consider and comprehend said terms. Said solicitors give the creditor a copy of the assignment form only upon request. In fact, in some instances the solicitor obtains the creditors' signature in such a manner that they are unable to recollect signing any forms. As a result of said practices said creditors are unable to learn the true provisions of said assignment form and execute such form in reliance upon the oral representations made by such solicitors.

PAR. 5. The use by respondents of the foregoing false, deceptive and misleading representations and practices has had, and now has, the capacity and tendency to mislead a substantial number of creditors into the erroneous and mistaken belief that such representations were and are true, and into assignments of accounts to respondents because of such mistaken and erroneous belief.

PAR. 6. In the course and conduct of collecting the accounts, respondents frequently desire to ascertain the current address of persons

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from whom they are endeavoring to collect monies, the names and addresses of employers of such persons and other information of a pertinent nature. For this purpose, respondents use, and have used, letters which contain requests for information to be filled in by the persons to whom they are addressed and returned to respondents. Typical of the printed matter appearing on such letters sent to debtors are the following:

I am very anxious to get in touch with Fred Hickey, formerly of your company as I have information of great importance for him.

Will you please be good enough to tell me where I may contact Fred at this time?

Thank you so very much!

Yours truly

I would like to have the present address of H. J. Snider, formerly of your town, as I have important news for him.

If this party is listed in a recent directory or in your files, will you please tell me where I may write to him at this time?

Thank you for your kindness!

Yours truly.

PAR. 7. Through the use of the statements appearing on said form letters and in particular the use of the term "important news" or "information of great importance" respondents have represented, directly or by implication, that the request for information will be to the advantage of the debtors.

PAR. 8. The aforesaid representations and implications arising therefrom are false, misleading and deceptive. In truth and in fact, there is no advantage to the debtors in furnishing the information requested but the use of said letters is an attempt to obtain information concerning debtors by subterfuge. The sole purpose of the letters requesting the information is for use in the collection of accounts.

PAR. 9. The use by respondents of the aforesaid statements and forms has had, and now has, the capacity and tendency to mislead and deceive many persons to whom the form letters are sent into the erroneous and mistaken belief that the information requested concerning a particular person will be to the advantage of that person.

PAR. 10. The aforesaid acts and practices of the 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 JAMES A. PURCELL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on June 13, 1955, charging them with false, misleading and deceptive representations and practices in the conduct

of a collection agency, and securing information by subterfuge concerning debtors in furtherance of their collection schemes, all in violation of the Federal Trade Commission Act. On July 11, 1955, respondents filed answer to the complaint. Thereafter, on August 30, 1955, (filed September 20, 1955) respondents entered into an agreement with counsel supporting the complaint providing for the entry of a consent order disposing of all of the issues in this proceeding. Said agreement has been approved by the Director of the Bureau of Litigation and has been submitted to the hearing examiner, heretofore duly designated, for his consideration pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice.

Respondents, in and by the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record herein may be taken as though the hearing examiner and the Commission had made findings of jurisdictional facts in accordance with such allegations. Said agreement provides that all parties agree to the withdrawal of respondents' answer, heretofore filed, leave wherefor is hereby granted and ordered. Said agreement further provides for the waiver of 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 the respondents might otherwise, but for the execution of said agreement, 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 further agreed that the said agreement, together with the complaint, shall constitute the entire record herein; that the 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 said agreement and order issued in this Initial Decision shall not become a part of the official record of this proceeding unless and until they become a part of the decision of the Commission; and that the signing of said agreement is for purposes of settlement 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, on the basis of the record as constituted makes the following findings for jurisdictional purposes, and order:

1. The correct name of the respondent designated in the complaint as Eugene E. Stewart, is Eugene H. Stewart who, under this name as corrected, will be included in the hereinafter order.

2. Respondents, The American Credit Bureau, Inc., a corporation, Larry Lawrence, Eugene H. Stewart and D. B. Dolmyer, individually and as officers and directors of the corporate respondent, and Victor Dolmyer, individually and as a director of the corporate respondent, are now, and have been at all times mentioned herein, engaged in the conduct and operation of a collection agency under the name of the corporate respondent, The American Credit Bureau, Inc., with their principal office and place of business located at No. 608 South Dearborn Street, Chicago, Illinois.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding as well also of the respondents hereinabove named; that the complaint herein states a valid cause of action against said respondents under the provisions of the Federal Trade Commission Act, and is in the public interest.

4. Consonant with the express agreement of the parties, as evidenced by the agreement hereinbefore described and referred to, the following order is passed.

ORDER

It is ordered, That respondents The American Credit Bureau, Inc., a corporation, and its officers and directors, and Larry Lawrence, Eugene H. Stewart and D. B. Dolmyer, individually and as officers and directors of said corporation, and Victor Dolmyer, individually and as director of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the solicitation of accounts for collection, 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 no charges will be made for accounts unless they are collected;
2. That personal collection calls will be made on all debtors;

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3. That a maximum of 25%, or any other percent less than that actually charged, will be retained by respondents from accounts collected;

4. That no charge is made on any specific account unless a collection is made on said account;

5. That accounts will be returned after any specified period of time when there are conditions not clearly disclosed under which accounts will not be returned after said time;

6. That prompt, regular or periodic reports as to the status, or the progress made in the collection, of accounts will be made to creditors unless such reports are in fact rendered at or about the time respondents represent they will be made.

7. That remittances will be made within any specified period of time unless they are in fact made within the time specified.

It is further ordered, That The American Credit Bureau, Inc., a corporation, and its officers and directors and Larry Lawrence, Eugene H. Stewart and D. B. Dolmyer, individually and as officers and directors of said corporation, and Victor Dolmyer, individually and as director of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the collection of, or attempts to collect, accounts in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from using any printed forms or written matter seeking information concerning delinquent debtors, which represents, directly or by implication, that the purpose for which the information is requested is other than that of obtaining information concerning delinquent debtors.

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 10th day of November, 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

E. R. FERGUSON, JR., ET AL. TRADING AS THE
BERJON COMPANY ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6408. Complaint, Aug. 25, 1955—Decision, Nov. 10, 1955*

Consent order requiring sellers in Memphis, Tenn., and their advertising agency, to cease disseminating false advertisements in newspapers and by radio broadcasts concerning their "Pep-Ti-Kon" vitamin and mineral preparation.

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

Mr. William R. Tincher for the Commission.

Mr. Don B. Gatling, of Washington, D. C., 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 E. R. Ferguson, Jr., and John R. Pepper, individually and as copartners trading as The Berjon Company; and Brick Muller and Associates, a corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents E. R. Ferguson, Jr., and John R. Pepper are individuals trading as The Berjon Company with their principal place of business located at 2074 Union Avenue, Memphis 4, Tennessee.

PAR. 2. Respondents E. R. Ferguson, Jr., and John R. Pepper are now, and for some time last past have been engaged in the sale of preparations containing ingredients which come within the classification of food and drugs as the terms "food" and "drugs" are defined in the Federal Trade Commission Act. One preparation is in liquid and the other in tablet form.

The designation used by said respondents for said preparation and the formulas thereof are as follows:

Designation: Pep-Ti-Kon.

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The formulas as set out on the labels are as follows:

Liquid Pep-Ti-Kon Formula

Each fluid ounce provides:

Ferrous Gluconate	14.0 Gr.
(Equivalent to 105.0 Mg. of Iron.)	
Vitamin B ₁ (Thiamine Hydrochloride)	3.0 Mg.
Vitamin B ₂ (Riboflavin)	3.0 Mg.
Niacinamide	10.0 Mg.
Manganese Citrate	0.5 Gr.
Zinc Chloride	0.07 Gr.

Tablet Pep-Ti-Kon Formula

Each three tablets provide:

Vitamin A. U.S.P.	7,500 Units
Vitamin D. U.S.P.	600 Units
Vitamin C (Ascorbic Acid) U.S.P.	75.0 mg.
Vitamin B ₁ Thiamine U.S.P.	3.0 mg.
Vitamin B ₂ Riboflavin U.S.P.	3.0 mg.
Vitamin B ₁₂ U.S.P.	3.0 mcg.
Niacinamide U.S.P.	30.0 mg.
Calcium	} 3.0 mg
Pantothenate	
Iron (Ferrous Sulfate Dried) U.S.P.	210.0 mg.

The directions for use of said preparations are as follows:

For liquid Pep-Ti-Kon:

Adults and children over 12 take one tablespoon just before or with each meal and at bedtime or as directed by a physician. Children 6 to 12 one-half the adult does or as directed by a physician.

For tablet Pep-Ti-Kon:

Adults or children over 6 years take one tablet three times daily, preferably with meals, or as directed by a physician.

PAR. 3. Respondents E. R. Ferguson, Jr., and John R. Pepper in the course and conduct of their business have caused their said preparations when sold, to be transported from their place of business in the State of Tennessee to purchasers located in various States of the United States. These respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said preparations in commerce among various States of the United States.

PAR. 4. Respondent Brick Muller and Associates is a corporation incorporated under the laws of the State of Tennessee with its office and principal place of business located in the Falls Building, Memphis, Tennessee. This respondent is an advertising agency and as such prepared and caused the dissemination of advertising matter on behalf of respondents E. R. Ferguson, Jr., and John R. Pepper, trading as The Berjon Company, for their aforesaid preparations.

PAR. 5. In the course and conduct of the aforesaid business, respondents have disseminated and caused the dissemination of advertisements concerning the aforesaid preparations by the United States mails and by various means in commerce, including but not limited to advertisements inserted in newspapers, by circulars and by radio continuities broadcast by stations with sufficient power to carry such broadcasts across State lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparations; and respondents have disseminated and caused the dissemination of advertisements by various means, including but not limited to the means aforesaid, 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.

PAR. 6. By and through the statements made in said advertisements respondents represent directly and by implication:

(1) That Pep-Ti-Kon will prevent or overcome the types of physical discomfort which are caused by summer heat and the lassitude experienced by certain individuals in spring.

(2) That bad teeth and false teeth cause an iron deficiency in all instances.

(3) That Pep-Ti-Kon, in addition to iron, supplies other essential minerals in the diet.

(4) That boils and pimples are caused by iron and vitamin deficiency and that the use of Pep-Ti-Kon is an effective treatment for these conditions.

(5) That loss of youth is due to iron deficiency.

PAR. 7. The advertisements containing the aforesaid statements were misleading in material respects and constituted "false advertisements" as the term is defined in the Federal Trade Commission Act. In truth and in fact:

(1) Pep-Ti-Kon will not prevent or remedy the types of physical discomfort which are caused by summer heat or the lassitude experienced by certain individuals in spring.

(2) Bad teeth and false teeth do not in all instances lead to the consumption of a diet which is deficient in iron.

(3) Pep-Ti-Kon supplies no established essential minerals in the diet other than iron.

(4) There is no casual connection between iron and vitamin deficiencies and boils and pimples, and Pep-Ti-Kon is not an effective treatment for boils and pimples.

(5) Iron deficiency does not cause loss of youth.

PAR. 8. The use by respondents of the above false advertisements, disseminated as aforesaid, has the tendency and capacity to mislead

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and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements made therein were true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase Pep-Ti-Kon.

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

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges respondents with violation of the Federal Trade Commission Act through the making of certain misrepresentations regarding a drug preparation. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the filing of an answer to the complaint is waived, and that the record on which the initial decision and the decision of the Commission disposing of this matter shall be based shall consist solely of the complaint and the agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission to which respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if made after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified or set aside in the manner provided by statute for the orders of the Commission; and 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.

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, the following jurisdictional findings made, and the following order issued:

1. Respondents E. R. Ferguson, Jr., and John R. Pepper are copartners trading as The Berjon Company, with their office and principal place of business located at 2074 Union Avenue, Memphis, Tennessee. Respondent Brick Muller and Associates is a corporation existing and doing business under and by virtue of the laws of the

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State of Tennessee, with its office and principal place of business located in the Falls Building, Memphis, Tennessee.

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

ORDER

It is ordered, That respondents E. R. Ferguson, Jr., and John R. Pepper, individually and as copartners trading as The Berjon Company, and respondent Brick Muller and Associates, a corporation, 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 the preparation Pep-Ti-Kon, whether sold under the same or any other name, or any other preparation of substantially similar composition or possessing substantially similar properties, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. Pep-Ti-Kon will prevent or overcome the discomforts caused by weather conditions or the lassitude experienced by some individuals in spring.

2. Bad teeth or false teeth cause, in all instances or in any percentage of instances contrary to established fact, the consumption of a diet which is deficient in iron.

3. Pep-Ti-Kon supplies essential minerals in the diet other than iron.

4. Boils or pimples are caused by iron or vitamin deficiencies or that Pep-Ti-Kon is an effective treatment for these conditions.

5. Loss of youth is due to iron deficiency.

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 10th day of November, 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.

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IN THE MATTER OF
AMERICAN BRAKE SHOE COMPANY

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

Docket 6383. Complaint, June 29, 1955—Decision, Nov. 15, 1955

Consent order requiring the second largest bearing manufacturer in the industry—which, combined with the largest, accounted for more than 90% of that business—to cease violating Sec. 2(a) of the Clayton Act as amended through selling railroad car journal bearings at different prices in different trade areas from 1950 to 1954, and selling such bearings to a favored customer in the southeastern trade area (including the States of Virginia, North Carolina, Georgia, and Florida) at a lower price than that charged other customers in the same area, and which was below the cost of manufacture and sale during much of the years 1953 and 1954.

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

Mr. Peter J. Dias for the Commission.

Mr. Howard C. Buschman, Jr., of New York City, for respondent.

COMPLAINT

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

PARAGRAPH 1. Respondent, American Brake Shoe Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 230 Park Avenue, New York, N. Y.

The principal activities of the respondent are conducted through approximately ten divisions including the National Bearing Division which maintains headquarters at 4930 Manchester Avenue, St. Louis, Missouri, and manufacturing plants located in the same city; St. Paul, Minnesota; Niles, Ohio and Portsmouth, Virginia.

PAR. 2. Respondent corporation, through its divisions, is now and for many years has been engaged in the manufacture, sale and distribution of various metal products. Included among said products are railroad car journal bearings, hereinafter referred to as "bearings," manufactured by its National Bearing Division. Said bearings are manufactured according to designs and specifications set by the

Mechanical Division of the Association of American Railroads and are of like grade and quality.

The respondent, second largest of the two major bearing manufacturers in the industry who, combined, account for more than 90% of that business, is now and for many years has been competitively engaged with other corporations and firms in the sale of bearings which are also made according to the same designs and specifications.

PAR. 3. In the course and conduct of its business, respondent engages in commerce, as "commerce" is defined in the Clayton Act, in that it causes said bearings, when sold, to be transported from their places of manufacture to purchasers thereof located in Virginia, North Carolina, Georgia, Florida and various other States of the United States. Said products are sold and distributed for use and consumption within the various States of the United States.

PAR. 4. Respondent sells some bearings to new railroad car manufacturers to be used as original equipment but the bulk of its sales of bearings is made to railroads for replacement of worn out bearings, hereinafter referred to as "scrap" or "scrap bearings."

New bearings, regardless of source of manufacture, are sold by weight and typically, for a price computed on the basis of a fixed sum of money, hereinafter referred to as the "spread," plus an amount of scrap bearings, exchanged by the railroads, equivalent in weight to that of the new bearings. In some instances when a railroad either has insufficient or no scrap to exchange, the price of new bearings is computed on the basis of the spread plus an additional sum of money equivalent to the value of the metal used in the manufacture of new bearings. Hereinafter, for convenience, only the "spread" mentioned above will be referred to as the "price" and in each instance the price will be on the basis of a hundred weight. However it is to be understood that in each instance the price also includes either scrap bearings or an additional sum of money as described above.

The weight of scrap received in exchange towards the price of new bearings is computed on the basis of its gross weight less 1½ or 2% deduction for dirt and foreign matter.

Respondent has generally charged all customers the same price for new bearings and has generally afforded all customers the same terms and conditions of sale, namely, delivery f.o.b. tracks, net price 30 days.

PAR. 5. Prior to 1950, respondent competed with the other major bearing manufacturer in all areas except one, namely, the southeastern area of the United States served by respondent's Portsmouth, Virginia, plant and in that area respondent had no competition. As used in this complaint, the "southeastern area" includes the States of Virginia; North Carolina; Georgia and Florida. Prior to 1950,

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respondent charged all customers in all areas the same price for new bearings and afforded all customers the same terms and conditions of sale.

In the latter part of 1949, a new bearing manufacturer entered the field and in 1950 commenced selling bearings at a price of \$7.00 to railroads located in the southeastern area of the United States in competition with the respondent. Substantially all of said competitor's customers are located in the southeastern area and during the years 1951 through 1953 said competitor continued to sell bearings to all customers at a price of \$7.00 with the exception of one customer, the largest purchaser, which it sold at \$6.00. During 1954, the competitor again sold or offered to sell bearings to all customers in the southeastern area, including the largest purchaser, at a price of \$7.00.

Early in 1950, respondent reduced its price for bearings, from \$7.84 to \$7.00 in the southeastern area and continued that price to all customers in that area through 1951. During 1952 respondent offered to sell to the largest purchaser referred to above at \$5.94. During 1953 and 1954 respondent offered to sell and sold bearings to that customer at \$5.90 and in addition granted that customer a cash discount for payment within 10 days. During the period 1952 through 1954, respondent charged all other customers in the southeastern area \$7.00 and charged its customers in all other areas \$7.84 until November 1952 when it increased that price to \$8.65. Respondent afforded no other customer a cash discount.

The following chart, comparing respondent's prices with those of its competitor in the southeastern area shows: in column one, the respondent's prices to customers in all areas other than the southeastern area; in column two, the prices charged all customers, except the favored customer, in the southeastern area; in column three, the prices offered or charged the favored customer in the southeastern area; and in column four, the percentage of the favored customer's business obtained each year.

	(Col. 1)	(Col. 2)		(Col. 3)		(Col. 4)	
	Respondent's prices to customers in all areas except the southeastern area	Prices to all customers in southeastern area except favored customer		Prices to favored customer in southeastern area		Percentage of favored customer's business	
		Resp.	Comp.	Resp.	Comp.	Resp.	Comp.
Prior to—						<i>percent</i>	<i>percent</i>
1950.....	\$7.84	\$7.84	(1)	\$7.84	(1)	100	
1950.....	7.84	7.00	\$7.00	7.00	\$7.00	70	30
1951.....	7.84	7.00	7.00	7.00	6.00	6	94
1952.....	*7.84	7.00	7.00	‡5.94	6.00	1	99
1953.....	8.65	7.00	7.00	5.90	6.00	41	59
1954.....	8.65	7.00	7.00	5.90	7.00	58	42

1 Not in business.
 ‡ \$8.65 in November.
 † Offered.

Respondent thus sold bearings at different prices in different areas during the period 1950 to 1954 and sold bearings to the favored customer at a price which was lower than that charged other customers in the same area, which price was at or below respondent's cost of manufacture and sale, during a substantial portion of the years 1953 and 1954.

PAR. 6. As a result of respondent's practices as herein alleged, respondent's said competitor in the southeastern area has lost a substantial share of its business. The effect of respondent's discriminations in price may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which said respondent is engaged, or to injure, destroy, or prevent competition with said respondent.

PAR. 7. The foregoing acts and practices of the respondent, as above alleged, violate Section 2 (a) of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13).

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that American Brake Shoe Company, a Delaware corporation, with its office and principal place of business at 230 Park Avenue, New York, N. Y., is now, and for many years has been engaged in the manufacture, sale and distribution of various metal products, including railroad car journal bearings manufactured according to designs and specifications set by the Mechanical Division of the Association of American Railroads; that it is now and for many years has been competitively engaged with other corporations and firms in the sale of bearings made according to the same designs and specifications; and that it has violated Section 2 (a) of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13) by selling bearings at different prices in different areas, and to customers in the same area, the effect of which discriminations in price may be substantially to lessen, injure, destroy or prevent competition with said respondent. After the issuance of the complaint, to which no answer was filed, respondent, its counsel, and counsel supporting the complaint, on September 13, 1955, entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the Director, Bureau of Litigation of the Commission, and thereafter transmitted to the hearing examiner for consideration.

The agreement provides, among other things, that respondent admits all the jurisdictional facts alleged in the complaint and that the record herein may be taken as if findings of jurisdictional facts had been made in accordance with such allegations; that the record on

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which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified, or set aside in the manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by the respondent that it has violated the law as alleged in the complaint; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondent waives any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon fully covers all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Clayton Act as amended. Accordingly, the hearing examiner finds this proceeding to be in the public interest and accepts the Agreement Containing Consent Order to Cease and Desist as part of the record upon which this decision is based. Therefore,

It is ordered, That respondent, American Brake Shoe Company, a corporation, and its officers, representatives, agents and employees, directly or indirectly, through the National Bearing Division or any other division, or through any corporate or other device, in or in connection with the sale of railroad car journal bearings in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from discriminating, directly or indirectly, in the price of said product by:

Selling railroad car journal bearings of like grade and quality to a purchaser in any trade area at prices different from those charged any other purchaser in the same trade area, whether the sale is effected through respondent's plant which customarily supplies such area or through any of its other plants, where, in the sale of said bearings to any purchaser charged a lower price, respondent is in competition with any other seller.

The term "trade area" as used herein means the geographical area customarily supplied with railroad car journal bearings by each of respondent's several manufacturing plants.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Whereas, the hearing examiner on October 6, 1955, filed his initial decision in this matter, which initial decision was based upon an agreement for a consent order executed on September 13, 1955, by all parties; and

Whereas, upon its review of said initial decision the Commission has noted that the order to cease and desist contained therein, through inadvertent omission of a definition of the term "trade area," varies from the order to cease and desist agreed upon by the parties; and

In order to correct this obviously clerical omission and to conform the order in the initial decision with the form of order in the "Agreement Containing Consent Order to Cease and Desist" executed by the parties hereto:

It is ordered, That the order to cease and desist contained in said initial decision be modified so that the said order shall read in full, as follows:

"It is ordered, That respondent, American Brake Shoe Company, a corporation, and its officers, representatives, agents and employees, directly or indirectly, through the National Bearing Division or any other division, or through any corporate or other device, in or in connection with the sale of railroad car journal bearings in commerce, as 'commerce' is defined in the Clayton Act, as amended, do forthwith cease and desist from discriminating, directly or indirectly, in the price of said product by:

"Selling railroad car journal bearings of like grade and quality to a purchaser in any trade area at prices different from those charged any other purchaser in the same trade area, whether the sale is effected through respondent's plant which customarily supplies such area or through any of its other plants, where, in the sale of said bearings to any purchaser charged a lower price, respondent is in competition with any other seller.

"The term 'trade area' as used herein means the geographical area customarily supplied with railroad car journal bearings by each of respondent's several manufacturing plants."

As so modified, the initial decision of the hearing examiner shall, on the 15th day of November, 1955, become the decision of the Commission; and, accordingly

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

Complaint

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IN THE MATTER OF

E. MANUEL STOLAROFF ET AL. TRADING AS
NATONE COMPANYCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6365. Complaint, June 17, 1955—Decision, Nov. 17, 1955*

Consent order requiring copartners in Los Angeles, Calif., to cease disseminating advertisements in newspapers and periodicals and otherwise which represented falsely that their "Talika Eye Lash Creme" would make eyelashes grow longer and thicker.

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

Mr. Charles S. Cox for the Commission.

Mr. Marvin A. Freeman, of Beverly Hills, Calif., 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 E. Manuel Stolaroff, individually, and E. Manuel Stolaroff, Irving Grath and Moe A. Lesser, individually and as trustees, all trading as copartners under the name of Natone Company, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent E. Manuel Stolaroff is an individual. Respondent E. Manuel Stolaroff, Irving Grath and Moe A. Lesser are individuals and trustees for the benefit of JoAnne Cotsen and Lois Stolaroff. All of said individuals trade as copartners under the name of Natone Company. The address of respondent E. Manuel Stolaroff is 1207 West Sixth Street, Los Angeles 17, California, and the address of Irving Grath and Moe A. Lesser is 232 North Canon Drive, Suite 216, Beverly Hills, California.

PAR. 2. Respondents are now, and have been for more than one year last yast, engaged in the advertising and sale of a cosmetic product as "cosmetic" is defined in the Federal Trade Commission Act.

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The designation used by respondents for said product and the formula and directions for use, are as follows:

Designation: Talika Eye Lash Creme

Formula:

Petrolatum	63 to 80%
Castor Oil	18 to 32%
Trihydroxy 3,4,5	} 3%
Benzoic Acid (gallic acid)	
Several drops of perfume	

Directions for use: Apply to the eyelashes every night by means of cotton wool on a small wooden applicator.

PAR. 3. Said respondents cause their said product, when sold, to be transported from their place of business in the City of Los Angeles, State of California, to purchasers located in various States of the United States other than the State of California.

Respondents maintain, and at all times mentioned herein have maintained a course of trade in their said product, in commerce, among and between the various States of the United States.

PAR. 4. In the course and conduct of their aforesaid business, respondents have disseminated and caused the dissemination of advertisements concerning said product by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in newspapers and periodicals and in circular letters, pamphlets and other advertising literature, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said product; and respondents have disseminated and caused the dissemination of advertisements by various means, including but not limited to the aforesaid means, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

Who says you can't grow lashes? A new, eye-beautifying cream, fresh from Paris, is today's answer to softer, silkier, l-o-n-g-e-r lashes * * *.

* * * beauty-chemist Danielle Roches of Paris came up with the answer to that old lament "*I can't grow lashes.*"

And all because of a cream that's the beauty-talk of the European continent. It is called *Talika Eyelash Creme*. You don't have to wait weary months to see something happen. Use this "white magic" for *just two weeks* and you'll see a lot happen. Your lashes will look longer and lovier. They'll be lustrous and luxuriant. Your eyes will have IT—the look of genuine glamor that comes only

from long, thick lashes—the kind Nature bestows on the favored few. * * *
* * * Prove to yourself that you CAN have the long, lustrous lashes people rave about!

PAR. 5. Through the use of the statements and representations in the aforesaid advertisements and others of the same import but not specifically set out herein, respondents represented that their said product when applied to the eyelashes will cause them to grow longer and thicker.

PAR. 6. The said advertisements are misleading in material respects and are “false advertisements” as that term is defined in the Federal Trade Commission Act. In truth and in fact, said product when applied to the eyelashes will neither cause them to grow longer nor thicker.

PAR. 7. The use by the respondents of the foregoing false, deceptive and misleading statements and representations has had and now has the tendency and capacity to mislead the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true, and to induce a substantial portion of the purchasing public to purchase substantial quantities of respondents’ product, as a result 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 constitute unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that E. Manuel Stolaroff, Irving Graff (erroneously named in the complaint as Irving Grath) and Moe A. Lesser, individually and as trustees, all trading as copartners under the name of Natone Company, the address of the first-named respondent being 1207 West Sixth Street, Los Angeles 17, California, and that of the other two respondents being 232 North Canon Drive, Suite 216, Beverly Hills, California, are now, and have been for more than one year last past, engaged in the advertising and sale of Talika Eye Lash Creme, a cosmetic product as “cosmetic” is defined in the Federal Trade Commission Act; that they have disseminated advertisements concerning said product, which advertisements are misleading in material respects and are “false advertisements” as that term is defined in the Federal Trade Commission Act; and that respondents’ use of such false, deceptive and misleading statements and representations has had and now has the tendency and capacity to mislead the purchasing public into the erroneous and mistaken

belief that such statements and representations were and are true, and to induce a substantial portion of the purchasing public to purchase substantial quantities of respondents' product as a result of such erroneous and mistaken belief, in violation of the Federal Trade Commission Act. After the issuance of the complaint, respondents filed an answer thereto, and thereafter, on October 3, 1955, respondents, their counsel, and counsel supporting the complaint entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the Director, Bureau of Litigation of the Commission, and thereafter transmitted to the hearing examiner for consideration.

The agreement provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint and that the record herein may be taken as if findings of jurisdictional facts had been made in accordance with such allegations; that respondents' answer to the complaint shall be considered as having been withdrawn and 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; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified or set aside in the manner provided for other orders; 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; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon fully covers all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Federal Trade Commission Act. Accordingly, the hearing examiner finds this proceeding to be in the public interest and accepts the Agreement Containing Consent Order to Cease and Desist as part of the record upon which this decision is based. Therefore,

It is ordered, That respondents E. Manuel Stolaroff, individually, and E. Manuel Stolaroff, Irving Graff and Moe A. Lesser, individual-

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ly and as trustees, all trading as copartners under the name of Natone Company, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of a preparation designated as Talika Eyelash Creme, or any other cosmetic product of composition substantially similar thereto, 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 through implication:

a. That the use of said product will cause the eyelashes to grow longer or thicker;

2. Disseminating or causing to be disseminated, by any means, any advertisement for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of such product, which advertisement contains any of the representations prohibited in Paragraph 1. a. of this order.

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 November, 1955, become the decision of the Commission; and, accordingly:

It is ordered, That respondents E. Manuel Stolaroff, individually, and E. Manuel Stolaroff, Irving Graff (erroneously named in the complaint as Irving Grath) and Moe A. Lesser, individually and as trustees, all trading as copartners under the name of Natone 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.

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IN THE MATTER OF

NOVEL MFG. & DISTRIBUTING CO., INC., ET AL.

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

Docket 6384. Complaint, June 30, 1955—Decision, Nov. 23, 1955

Consent order requiring sellers in New York City to cease advertising falsely in newspapers and other publications that its "Garden Under Glass" floral centerpiece contained natural flowers, that its offer to sell the product at designated prices was for a limited time, and that the prices at which it was offered for sale were reduced.

Before *Mr. Everett F. Haycraft*, hearing examiner.
Mr. Michael J. Vitale 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 Novel Mfg. & Distributing Co., Inc., a corporation, and Sam Weitz and Richard Weitz, individually and as officers of said corporation, and Russell Weitz, individually and as General Manager 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 Novel Mfg. & Distributing Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 33 Second Avenue, New York, New York. In connection with the practices hereinafter referred to it trades as Everlast Gardens. Respondents Sam Weitz, Richard Weitz, and Russell Weitz are president, secretary-treasurer, and general manager, respectively, of this corporate respondent. The address of these individuals is the same as that of corporate respondent.

All of the aforesaid respondents cooperated and acted together in performing the acts and engaging in the practices hereinafter set forth.

PAR. 2. Respondents during the years of 1953 and 1954 engaged in the advertising and sale, among other things, of a so-called floral centerpiece designated as the "Garden Under Glass." In the course

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and conduct of their said business respondents caused said product when sold to be transported from their place of business in the State of New York to purchasers located in various other States. Respondents maintained a course of trade in said product in commerce among and between the various States of the United States. Their volume of business in said commerce was substantial.

PAR. 3. At all times mentioned herein respondents have been in direct and substantial competition in commerce with other corporations, firms, and individuals engaged in the sale and distribution of products of the same or similar nature.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the purchase of said product, respondents made certain statements and claims with respect to said product and the prices thereof in advertising matter inserted in newspapers and other publications. Among and typical of the statements and claims made in said advertising matter are the following:

BREATH TAKING—

Garden Under Glass

Centerpiece of Lush, Exotic Flowers Preserved forever.

They'll ask you where you got it,

How it can stay fresh looking through the years.

Imagine! Red roses, white gardenias, and rare, natural flowers brought in from the deep Brazilian forests are forever preserved under crystal-clear glass by a special sealing process.

Limited Time Offer at Special Introductory Price:

25" around regularly \$4.00 NOW only \$2.00 (plus .50 to cover postage and handling).

30" around Deluxe Assortment regularly \$8.00 NOW only \$3.50 (plus .50 to cover postage and handling of 5 lbs.).

25" around regularly \$5.00 NOW only \$2.50 (plus .50 to cover postage and handling).

30" around Deluxe Assortment regularly \$8.00 NOW only \$3.50 (plus .50 to cover postage and handling of 5 lbs.).

PAR. 5. By and through the use of the aforesaid statements and representations and others of similar import, but not specifically set out herein, respondents represented, directly or by implication:

1. That all of the flowers contained in said product were natural flowers.

2. That the offer to sell at the prices designated was for a limited time.

3. That the prices at which the product was offered for sale were reduced from those regularly charged.

PAR. 6. The aforesaid statements were false, deceptive, and misleading. In truth and in fact:

1. The greater portion of the flowers contained in said product were not natural but were artificial flowers made of a plastic material.

2. The offer to sell said product at the designated prices was not limited as to time but was a continuous offer.

3. The regular prices of said product were those at which the product was offered for sale. Respondents never sold the product at the prices designated as regular and such prices so designated were fictitious.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations had 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 true and to induce the purchasing public to purchase substantial quantities of respondents' said product as a result of such erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, 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 EVERETT F. HAYCRAFT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on June 30, 1955, charging them with having violated the Federal Trade Commission Act through the making of certain misrepresentations regarding a floral centerpiece designated as the "Garden Under Glass." In lieu of submitting answer to said complaint, respondents entered into an agreement for consent order with counsel supporting the complaint, disposing of all the issues in this proceeding, which agreement has been duly approved by the Director of the Bureau of Litigation.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Respondents in the agreement waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in ac-

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cordance with said agreement. It was further provided that said agreement, together with the complaint shall constitute the entire record herein; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that said agreement is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint. The agreement also provided that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing; that it may be altered, modified or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

The agreement further provided that the names Richard Weitz and Russell Weitz, appearing as individual respondents in this matter, should be corrected to read Richard Weith and Russell Weith.

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 aforesaid agreement is hereby accepted and is 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 in consonance with the terms of said agreement the hearing examiner makes the following jurisdictional findings and order:

1. The respondent corporation, Novel Mfg. & Distributing Co., Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 33 Second Avenue, New York, New York. Respondents Sam Weitz and Richard Weith are individuals and officers of said corporation and respondent Russell Weith is an individual and general manager of said corporation, with their offices and principal place of business the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents Novel Mfg. & Distributing Co., Inc., a corporation, and its officers, and Sam Weitz and Richard Weith, individually and as officers of said corporation, and Russell

Weith, individually and as general manager 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of a so-called floral centerpiece designated as the "Garden Under Glass," or by any other name or names, or any other merchandise, do forthwith cease and desist from representing, directly or by implication:

1. That any flowers which they sell or offer for sale are natural flowers unless such is the fact.
2. That offers to sell merchandise at designated prices are limited as to time when they are continuous offers.
3. That the usual and customary price of any merchandise is in excess of the price at which said merchandise is regularly and customarily sold in the normal course of business.

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 23rd day of November, 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
ATLANTIC SPONGE AND CHAMOIS CORPORATION
ET AL.

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

Docket 6162. Complaint, Feb. 5, 1954—Decision, Nov. 29, 1955

Order requiring sellers of leather products in New York City to cease labeling as "Chamois," "Supreme Oil Tanned Chamois," and "Atlantic Oil Tanned Chamois," certain leather products which, while having the same general appearance, did not possess the softness, pliability, quick moisture absorption and moisture release and other desirable qualities of genuine chamois, and were not genuine chamois in the accepted meaning of the term; making false statements of similar purport on letterheads, postal cards, and other advertising media; and representing falsely, by such statements in circulars distributed to the trade as "Buy direct from Tannery and Save," that they operated their own tannery.

Mr. Charles S. Cox, counsel supporting the complaint.

Weisman, Allan, Spett & Sheinberg, by *Mr. Herbert S. Keller* and *Mr. Richard L. Sapiro* of New York, New York, 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 February 5, 1954, 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 charges in substance that the respondents falsely represented certain of the leather products sold by them to be "chamois" leather, and falsely represented that they operate a tannery in which the leather products sold by them are tanned. Respondents appeared by counsel and filed a joint answer in which they admitted that the corporate respondent had represented its product as "chamois" but denied the falsity of such representation, and admitted that said respondent had on a single occasion made the statement set forth in the complaint concerning the operation of a tannery.

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 May

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4, 1954, and September 30, 1954, at New York, New York, Washington, D. C., and Philadelphia, Pennsylvania. At such hearing 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 said hearings proposed findings of fact and conclusions of law were filed by counsel supporting the complaint and counsel for respondents. Pursuant to leave granted, counsel also filed replies to the proposed findings filed by opposing counsel. No request for oral argument was made.

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

FINDINGS OF FACT

I. The Business of Respondents and the Interstate Commerce

Respondent Atlantic Sponge and Chamois Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its offices and principal place of business located at 49 Walker Street, New York 13, New York. Respondents Benjamin E. Bloch and Ida Bloch are President and Secretary, respectively, of the corporate respondent. The individual respondent Benjamin E. Bloch owns all of the stock of the corporate respondent and formulates, directs and controls the business, acts, policies and practices of said corporate respondent, including its advertising claims, and has his office and principal place of business at the same address as the corporate respondent. There is no evidence that the individual respondent Ida Bloch takes any active part in the conduct of the business of the corporate respondent and this proceeding will be dismissed as to said respondent. All references to "respondents" hereinafter made will be to the corporate respondent and to the individual respondent Benjamin E. Bloch, unless otherwise indicated.

Respondents for more than two years last past have been engaged in the business of offering for sale, sale and distribution of leather products, including those designated and labeled by them as "Chamois." Respondents cause said products, when sold, to be transported from their place of business in New York, New York, to purchasers thereof located in various other States of the United States and in the District of Columbia. Said respondents maintain, and at

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

II. The Alleged Illegal Practices

A. *The Representations Made and the Issues Arising Therefrom*

The primary issue in this case revolves about those of respondents' leather products which are designated and labeled by them as "Chamois." In the course and conduct of their business respondents have branded and labeled such leather products as:

Chamois

Supreme Oil Tanned Chamois

Atlantic Oil Tanned Chamois

W. E. Warner & Co., Inc. Genuine Oil Tanned Chamois¹

In addition to such labeling and branding on the leather products themselves, respondents make use of certain statements with respect to said products on letterheads, postal cards, cartons, glassine envelopes, circulars and other advertising media. Such statements include, in addition to those abovementioned, the following:

Soft, Durable, Absorbent, Oil-Tanned. Nothing Cleans like a Chamois.
Best for Automobiles, Windows, Furniture, Silverware. There Is No
Substitute For A Chamois.

100% Oil Tanned Guaranteed Washable Chamois.

This is a Genuine Chamois Skin and is Guaranteed washable.

In circulars distributed to the trade on a single occasion in 1952 respondents also made the following statement: "Buy direct from Tannery and Save."

There is no issue presented with respect to whether respondents did in fact brand, label or otherwise describe their product as above set forth, except that it is claimed that the use of the expression "oil tanned" in the above statements or branding was discontinued in 1953.² While apparently conceding that they have no right to

¹ The brand or trade names "Supreme" and "Atlantic" are used generally by respondents in the distribution of their leather products sold as chamois while the name "Warner" is a private label sold to a single distribution outlet.

² Although the respondent Bloch claimed that he discontinued using the words "oil tanned" sometime in 1953, evidence given by the firm which manufactures the transfers or decalcomanias used in branding respondents' skins indicates that it was not discontinued until sometime in 1954. Thus it appears that an order for 100,000 transfers for Supreme brand "oil tanned" skins was placed on April 20, 1953, and that the first order without the words "oil tanned" was not placed until January 15, 1954. In the case of Warner private brand, the first order without the disputed words was not placed until April 2, 1954.

describe their product as "oil tanned," respondents contend that it may truthfully be called a "chamois." On the other hand, it is the position of counsel supporting the complaint that irrespective of whether the phrase "oil tanned" is used, respondents' product cannot be called a chamois since that term can properly be applied only to the split underside of a sheepskin which has been oil tanned after splitting, whereas the bulk of the products sold as chamois by respondents are made from unsplit sheepskins which have been tanned by the application of chrome salts rather than oil. It is further claimed that while respondents' products have same general appearance as genuine chamois, they lack the essential qualities of the genuine product.

Except for some imported oil-tanned chamois skins which they sell under different brand names from those here at issue, it is conceded that the bulk of the skins sold by respondents as chamois have not been split before tanning and are tanned by the application of chrome salts rather than by oil. Respondents contend, however, that the method by which the skins sold by them are processed is one which has been recognized commercially as a method for making chamois leather, and that it results in a product possessing the essential characteristics of oil-tanned chamois.

The main issue for determination, therefore, is as to what constitutes genuine chamois leather and whether respondents' product falls within this category. To a consideration of this question the hearing examiner now turns.

Before doing so, it should be noted that the complaint also raises a subsidiary issue based on the representation that respondents operate a tannery. It is conceded that respondents do not own any tannery but it has been stipulated that the representation with respect to their operation of a tannery was made on only a single occasion in 1952, and that they have no intention of ever making it again unless they actually acquire and operate a tannery. This matter, therefore, does not present any particular problem and the disposition to be made of it will be considered after the main issue has been disposed of.

B. Background

The word "chamois" has its origin in the name of the Alpine antelope known as the "chamois," whose skin was made into a soft, pliable leather used in the manufacture of gloves, and for the polishing of silver and other metals. The chamois antelope has become practically extinct and for a great number of years the name chamois has been used commercially to designate certain leather made from

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the sheepskin. Traditionally, chamois leather has been made from the underside of the sheepskin, known as the flesher, from which the top grain layer has been removed by splitting.³ After splitting, the underside or flesher is tanned by a fish oil, usually cod oil.

The oil tannage process involves two main steps. After certain preparatory operations, the fish oil is pounded into the fleshers in special drums or kickers. Following the immersion in oil, the skins are hung in specially heated rooms where actual tannage takes place through the oxidation of the fish oils. The oxidation process causes certain chemical reactions to occur which result in the oil becoming combined with the hide substance. The immersion of the skin in oil usually takes four or five hours and the oxidation process in the heated rooms takes five days or longer. Sometimes the skins are permitted to oxidize for a period of several days and are again immersed in oil, after which they are returned for further oxidation in the heated rooms. The resultant product is a soft piece of leather with a loose fiber network and having a natural yellowish color. It is used for polishing or wiping metals, glass and other products, particularly after they have been washed, and also in the manufacture of fine gloves. Chamois leather made in this manner possesses a quick and high water absorptive capacity, a low water retention when wrung out, and when dried will retain its essential softness, pliability and absorptive qualities.

Except for a small proportion of skins which they import from England and France, the bulk of the skins sold by respondents are not oil tanned. These skins are purchased by respondents from Clifford Leather Company, hereinafter sometimes referred to as Clifford.⁴ The bulk of the skins purchased from Clifford are made from unsplit sheepskins⁵ by a process which the producer describes as "combination tannage." This involves, first, tanning of the skins by immersing them in a solution of chrome salts applied in a drum for a period of three or four hours. Then, after certain further preparatory operations, the skins are placed in another drum where

³ Most of the sheepskin used in making chamois in the United States is imported from New Zealand due to the fact that the skins must be sufficiently thick for splitting and the domestic variety is generally not thick enough for that purpose.

⁴ Clifford is the main source of supply for respondents and the latter are Clifford's primary distribution outlet. Clifford has been in business since about 1949 and, in addition to the leather sold to respondents for use as chamois, it also makes leather for use in the manufacture of gloves, garments, and shoes. Clifford, which describes itself as a "manufacturer-converter," does not actually operate a tannery. Its tanning activities are performed in the plant of another tanner with the use of the latter's employees, but subject to the supervision of Clifford's own tanner and with a few pieces of its own equipment.

⁵ About 10 percent of the skins are made from imported English fleshers and the balance of Clifford's skins are made from domestic skins, most of which are not thick enough for splitting.

a combination of vegetable and sperm oils is applied for several hours. The skins are then permitted to dry off and the bulk of them are fed through an abrading machine where a certain portion of the top grain layer is removed by buffing.⁶ Since the natural color of the skins made by this process is of a bluish or greenish cast, a small amount of dye is introduced into the oil drum during the oiling process to give the skins a color similar to that of oil-tanned chamois.

As far back as 1937, the Commission in the *Seld Leather Co.* case, 24 F.T.C. 1237, recognized that the accepted meaning of the term chamois was that it was an oil-tanned flesher or under-split of a sheepskin which had been tanned after splitting, such meaning having come to be accepted by the trade and the public after the skin of the original chamois of Alpine antelope had become exhausted for commercial purposes over forty years prior thereto.⁷ While the order in that case prohibited the word chamois from being used to describe a leather product not made from the skin of the Alpine antelope or from oil-tanned sheepskin fleshers, it did permit sheep-skin fleshers tanned by a formaldehyde and alum process to be designated as "white chamois." This latter designation was apparently permitted on the basis of the definition of chamois leather contained in the dictionary of leather terminology published by the Tanners Council of America which, after defining "Chamois Leather" as meaning an oil-tanned sheepskin flesher, provided a special definition for "White Chamois." However, in another decision handed down later in the same year, *Pigro Chamois Company*, 25 F.T.C. 929, the Commission's order restricted the use of the term "chamois" to the skin of the Alpine antelope, or to sheepskin fleshers tanned in oil "without the use of alum, chrome, or formaldehyde," and dropped all reference to "White Chamois." In a subsequent decision in 1939, *Canadian Chamois and Leather Corporation*, 28 F.T.C. 1457, the Commission again restricted the use of the word chamois to the skin of the Alpine antelope and to oil-tanned sheepskin fleshers.

Respondents' contention that their skins may properly be called chamois is based mainly on developments which have taken place subsequent to the Commission's decisions in the above cases. Re-

⁶ It was estimated by one of respondents' witnesses that about 25 percent of the skins are sufficiently thick to permit removal of the top grain by splitting after processing was otherwise completed.

⁷ In the proposed findings filed by counsel for respondents, reference is made to the fact that the decision in the *Seld* case in several places uses the expression "oil-dressed," rather than "oil-tanned." Counsel apparently takes the position that the term "oil-dressed," as used in the decision, refers to something different from "oil-tanned." However, it is clear from a reading of the decision as a whole that both terms were used synonymously in the findings and order of the Commission and that the reference intended was to sheepskin fleshers tanned in oil.

spondents rely particularly on the fact that in December 1949, the specification governing the purchase of chamois leather by United States Government agencies was changed so as to recognize "combination-tanned" sheepskin fleshers as a type of chamois leather, and quantities of respondents' skins were purchased under this specification and a later one which superseded it in 1951. However, in December 1953 this specification was withdrawn and a new one was issued which limited Government purchases of chamois leather to oil-tanned sheepskin fleshers.

So far as appears from the record, the specification of December 1, 1949, referred to by respondents, is the first Government specification recognizing as chamois any leather produced other than by traditional oil tanning. The earliest Federal specification in the record governing the purchase of chamois, which is dated November 19, 1935, specifically provided as to tannage:

"The leather shall be prepared by the process known as 'straight oil' tannage. No alum or *chrome* shall be used in the tannage process."
[Emphasis supplied]

Subsequent specifications similarly provided for "straight oil" tannage, as being the only skins which would be purchased as chamois by the Government until the specification of December 1, 1949.

The latter specification, which was issued as an interim specification, was based on the recommendation of the Federal Technical Committee on Leather and Leather Products, a Committee consisting of Everett L. Wallace, Chief of the Leather Section of the National Bureau of Standards, U. S. Department of Commerce, and representatives of other Government purchasing agencies. The specification recognized two types of chamois leather as suitable for purchase by Federal Government agencies, one of which is described as "Type I.—Oil-tanned" and the other as "Type II.—Combination-tanned." With respect to the Type II leather, the specification does not define the term "combination-tanned" but merely states that the leather "shall be tanned by a process known commercially as 'combination-tanned.'" The term is, however, specifically defined in the general Federal specification on leather and methods of testing leather, dated January 19, 1953, which defines combination tannage as follows:

"Formerly tanned with a blend of vegetable fats. Today, tanned with two or more types of tanning materials, such as chromium compounds and vegetable extracts, or chromium compounds and synthetic tannings."

The interim specification was superseded on June 1, 1951, by a so-called permanent type of specification which likewise provided for the same two types of chamois as the interim specification. This was

revised in November 1951 but continued to recognize two types of tannage. It should be noted, however, that all of the specifications recognizing two types of tannage for chamois leather, specifically required that the leather be made from "sheepskin fleshers" or "flesh splits of sheepskin."

The reason for the change in specifications giving recognition to "combination-tanned" leather as a type of chamois was, according to the testimony of Everett L. Wallace, Chairman of the Committee which approved the new specification, that the Government had experienced some difficulty in obtaining a sufficient supply of acceptable chamois skins made by the traditional oil-tanned method and that being aware there was on the market a so-called "chamois-type material" made of sheepskin fleshers but tanned by another method, it was felt the Federal Specifications should be modified to permit the purchase of such leather by Government agencies as a type of chamois.

Purchases of "Type II chamois" under the revised specification were made by various Government agencies from time to time, including some purchases from respondents. The 1951 specification continued in general use until December 9, 1953, when it was superseded by an interim specification which dropped all reference to "Type II" or "combination-tanned" chamois, and limited the purchase of chamois by Government agencies to the traditional oil-tanned flesh splits of sheepskin. So far as appears from the record, the interim specification of December 1953 is still in effect and purchases are being made under it.⁸

According to Everett L. Wallace of the leather technical committee, the reason for the change in the specification was that the Type II leather was not meeting the requirements of the agencies and they had requested the committee to revise the regulations. It may be noted, in this connection, that in a letter written in July 1953 by Wallace to the President of Clifford Leather Company in response to a letter of inquiry from the latter concerning a projected change

⁸ Counsel for respondents place some reliance on the fact that the latest specification is designated an "interim" specification, and point out that as late as September 1954 a Navy Department invitation to bid requested bids on Type II as well as Type I chamois. It is argued that as an "interim" specification its use by Government agencies was optional. It may be noted, however, that the procurement of chamois for civilian agencies is all handled centrally through the General Services Administration, which is the agency that issued the December 1953 specification and upon which use of the specification is mandatory. While the military agencies also purchase chamois to meet their own requirements, they have, as a matter of practice, conformed to the December 1953 specification. Insofar as the Navy invitation of September 1954 is concerned, the examiner is satisfied that the reference to Type II leather was due to an administrative error which was later rectified. There is no evidence in the record of any purchases of Type II leather by Federal Government agencies since December 1953.

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with respect to Type II chamois, Wallace gave as the reason why a change in the specifications was being considered, the fact that some of the chamois purchased by Government agencies was used on orthopedic devices and for similar purposes where it came in close contact with the skin, and that chrome-tanned leather might cause dermatitis in some individuals. However, in his testimony Wallace indicated that, apart from such reasons, the Type II chamois had not proved to be satisfactory because of its lack of water absorption.

Although the change in the Government specification which limited Government purchases of chamois leather to oil-tanned sheepskin fleshers did not occur until December 1, 1953, the change was foreshadowed in the general specification covering leather products and the methods of testing same, which was issued January 19, 1953. This specification adopted a definition of chamois leather, based on that used by the Tanners Council of America, as follows:

"A soft pliable absorbent leather which is recognized in this country and abroad as being made from the innerside of a sheepskin, known technically as a flesher, from which the outer or grain side has been split prior to tanning. While chamois leather is now tanned by the classic straight fish oil tannage, it is not the intent of this definition to exclude other tannages which may be developed, that will commercially produce leather from sheepskin fleshers meeting all the recognized performance characteristics common to commercial oil tanned chamois leather."

It may be noted that while this definition recognizes that other tannages "may be developed" which "will" produce leather from sheepskin fleshers meeting the performance characteristics of oil-tanned chamois, it makes no mention of the combination-tanned or chrome-tanned leathers then in use as falling within this category.

C. Contentions and Conclusions

Respondents' position in this proceeding is, in essence, as follows: (1) That the skins sold by them are produced by the method known commercially as combination tannage; (2) that combination-tanned skins have come to be accepted by the trade and by Government purchasing agencies as chamois; and (3) that leather produced by combination tannage has all the essential performance characteristics of oil-tanned chamois. To this, counsel supporting the complaint makes the following counterargument: (1) the fact that the Federal specifications for a period of several years permitted the purchase by Government agencies of combination-tanned leather as a type of chamois, cannot have the effect of changing the accepted meaning of the term chamois; (2) that respondents' skins did not meet the

Government specifications even during the brief period when combination-tanned skins were purchased as chamois; and (3) that respondents' skins do not possess the performance characteristics of traditional oil-tanned chamois leather. The respective contentions of the parties are considered below in the light of the evidence and of the applicable legal principles.

1. The effect of the Federal specifications

There is no question in the mind of the hearing examiner that until the issuance of the Federal specification of December 1, 1949, recognizing combination-tanned fleshers as a type of chamois, for purposes of Government purchasing, the commonly accepted meaning of the term chamois was, as it had been for a period of fifty years since the chamois antelope had become extinct, that it referred to the oil-tanned flesher of a sheepskin. While there is some indication that skins made by the so-called combination-tannage method had been on the market for a period of time prior to the issuance of the 1949 specification, the record is lacking in substantial evidence that skins produced by this method had received any widespread acceptance as chamois leather up until that time. The question presented, therefore, is what effect the Federal specification, which was in effect for about four years, had in modifying the existing understanding of what constitutes chamois leather. Placing respondents' position in its proper legal perspective, the basic question is whether the action of the General Services Administration, which issued the specification, in permitting the purchase of combination-tanned leather as chamois had the effect of establishing a new, secondary meaning of the term "chamois."

This question must be resolved in the light of the governing legal criteria. The law is now well settled that in order to justify labeling a product in accordance with an alleged secondary meaning, it must appear that the secondary meaning has become "so thoroughly established that the description which the label carries has ceased to deceive the public * * *." *FTC v. Winsted Hosiery Co.*, 258 U. S. 483, 493. It is not enough to show merely that a secondary meaning exists but it must appear that the secondary meaning has become "as firmly anchored as the first one." *FTC v. Algoma Lumber Co.*, 291 U. S. 67, 80. The high degree of proof necessary to establish the defense of secondary meaning has been emphasized in a recent decision of the Court of Appeals for the Third Circuit, based on the holding in the *Algoma Lumber* case, where the Court stated:

A high degree of proof was essential in establishing the defense of secondary meaning before the Commission. The very wording of petitioner's answer recog-

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nizes that, in the words of Mr. Justice Cardozo, it had to show that “* * * by common acceptance the description, once misused, has acquired a secondary meaning as firmly anchored as the first one.” *Federal Trade Commission v. Algoma Co.*, 291 U. S. 67, 80. It could not prevail if its evidence was of a quality “* * * short of establishing two meanings with equal titles to legitimacy by force of common acceptance.” *Ibid.* We think that petitioner failed to establish the fact of secondary meaning under those governing principles.” (*C. Howard Hunt Pen Company v. FTC*, 197 F. 2d 273, 280.)

Applying these principles to the facts in the instant case, it is the opinion of the hearing examiner that respondents have failed to sustain the defense of secondary meaning. While the fact that Government purchasing agencies did for a period of several years recognize so-called combination tanned chamois as a type of chamois, is a fact to be taken into consideration in determining whether respondents have fulfilled the burden of proof with respect to establishing the defense of secondary meaning, it is by no means conclusive, but is merely a piece of evidence to be weighed alongside the other evidence in the record. *FTC v. Algoma Lumber Co.*, *supra* at 75. The overwhelming weight of the evidence in the record is to the effect that the established meaning of the term chamois had been and continues to be that it is made from the fleshier of a sheepskin which has been tanned in fish oil after splitting. That this has been and continues to remain the accepted meaning of the term was established by counsel in support of the complaint through the testimony of a number of reliable witnesses, including several tanners of chamois leather, the Chief of the Leather Section of the National Bureau of Standards, a number of distributors of chamois leather, and an outstanding representative in the field of leather chemistry whose firm is engaged in the manufacture of various chemicals and oils used by tanners of various kinds of leather. The only witnesses to testify to the contrary were the individual respondent, Bloch, and two representatives of Clifford Leather Company, which produces the skins sold by Bloch. Considering the qualifications, knowledge and experience of the various witnesses, and the nature and quality of their testimony, it is the opinion of the examiner that the evidence adduced by respondents falls far short of counterbalancing the evidence offered in support of the complaint.⁹

⁹ The respondent Bloch has been in the business for a great many years as a distributor of chamois leather, but has had no experience in chamois tanning. Under his definition a chamois would have to be yellow (otherwise it would meet consumer resistance) and be able to absorb water; otherwise, it would make no difference how it was tanned or what part of the skin it was made from—underside or grain side. The witness Clifford Bleeth of Clifford Leather Company has been in the business only since 1949 and has very limited experience in chamois tanning. The other witness, Eugene Spritzer, who is Clifford's tanner, has been in the leather business since about 1936 but a large part of his experience has been in dyeing operations and in the making of leathers for use in garments.

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In support of their position with respect to the meaning of the term chamois, respondents place reliance upon the fact that it has been stipulated that "the average consumer does not know how a chamois is made or of what material it is" and that when purchasing a chamois he "seeks a product which may be used for polishing silver and other metals and woods, for washing and cleaning windows, to remove water from his gasoline and for other purposes." It is apparently the position of respondents, based on these stipulated facts, that while there may be an understanding of the term chamois as being limited to an oil-tanned sheepskin flesher which exists in the mind of certain tanners and distributors of the product, it is one which does not exist in the minds of the average consumer.

In the opinion of the examiner, this argument is lacking in merit. While it may be that the average consumer knows little or nothing of the technicalities with respect to the leather which he purchases as chamois, he relies upon the knowledge and understanding of those through whom the product is distributed to the public that he will be purchasing a product which is in essence the product that has traditionally been sold to the public under the name of chamois and has been accepted by it as such. Moreover, because of the physical similarity of respondents' product to the genuine article (due largely to the dyeing) even experts have difficulty in distinguishing the two without a chemical examination or analysis. The stipulated facts concerning the public's alleged lack of knowledge are no different here from those in the *Seld Leather Co.* case, *supra*, where it was found that "the general public does not know what a chamois skin as now known is made from." Such a situation will exist generally where a technical name is being used. Nevertheless, persons to whom such product is being distributed and competitors are entitled to protection against mislabeling, as well as the general public. *Hunt Pen Co. v. FTC*, *supra* at 280; *FTC v. Algoma Lumber Co.*, *supra* at 78; *Koch Laboratories, Inc.*, 48 F.T.C. 234, 251.

In view of the above findings as to the accepted meaning and understanding of the term "chamois," and the lack of substantial evidence of a commonly accepted secondary meaning, it is actually unnecessary to consider the other subsidiary questions raised above, *viz.*, (1) whether, even assuming the Government specifications created an additional type of chamois leather, respondents' skins met the requirements of the specifications; and (2) whether respondents' skins possess the essential characteristics of chamois leather. However, since the evidence on these issues is already in the record, and to the

extent that the Commission may consider it material, the examiner will consider below the other contentions which have been raised.

2. Compliance with the Government specifications for
"Type II chamois"

Counsel supporting the complaint has presented two main arguments why, even under the specifications which were in effect between 1949 and 1953, respondents' skins cannot qualify as chamois, *viz.*, (1) the bulk of the skins are not made from fleshers and (2) the skins are not combination tanned, as that term is used in the specifications and understood in the industry.

It is not disputed that the bulk of the skins which respondents purchase from Clifford Leather Company are not sheepskin fleshers but are made from unsplit sheepskin from which portions of the top grain have been removed by a buffing or abrading process. Since even during the period when "Type II chamois" was recognized for Government purchase, the specifications required that it be made from sheepskin fleshers, respondents' skins would clearly appear not to qualify.

However, respondents make the argument that the purpose of splitting is largely to obtain the top grain layer of the skin as a commercial by-product of the splitting. The evidence in the record does not sustain respondents' position in this respect since it appears that one of the important reasons for splitting the skin is to remove the imperious grain layer so as to make the underside more receptive to tanning. While it may be possible to remove the grain layer by other methods than splitting, respondents' methods of abrading or buffing does not remove all or even substantially all of the grain layer.¹⁰ Since the grain and flesh layers do not stretch at the same rate, if any appreciable amount of the grain is not removed, the skin will not stretch uniformly and will eventually rip and crumble. In any event, irrespective of the relative merits of the splitting method versus the buffing method for removal of the grain layer, the fact remains that the specifications called for sheepskin fleshers, and even though another type of tannage may have been temporarily given an aura of legitimacy, it was nevertheless limited to skins made from sheepskin fleshers. This requirement, respondents' skins did not fulfill.

¹⁰ A test made in October 1952 by Everett L. Wallace of the National Bureau of Standards, on some of respondents' skins, which had been purchased by a Government agency, showed that significant portions of the grain had not been removed. The respondent Bloch admitted in his testimony that the buffing removes only "[p]art of the grain." In a letter addressed to Wallace by Clifford L. Bleeth, President of Clifford Leather Company, under date of August 30, 1949, the following statement indicative of the possible amounts of unremoved grain layer, appears: "We have perfected a process of removing 50-75% of the grain * * *."

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Counsel supporting the complaint also makes the additional argument that respondents' skins were not even "combination tanned," aside from the fact that they were not fleshers. It may be noted in this connection that the specifications for the purchase of chamois leather did not specifically define combination tannage but merely required that the skins should be "tanned by a process known commercially as 'combination-tanned.'" However, the general leather specification of January 19, 1953, defines combination tannage as the tanning of leather with "two or more types of tanning materials, such as chromium compounds or vegetable extracts, or chromium compounds and synthetic tannings." In addition, Wallace's testimony indicates that at the time the December 1949 specification was issued, the Committee had in mind a sheepskin flesher then on the market which was tanned with a combination of chromium and a sulphyanyl chloride synthetic tanning agent.

According to the answer filed by respondents in this processing, the combination tannage used in the processing of their skins is one in which "both oils and chrome and other chemical agents are used." The President of Clifford Leather Company, Clifford Bleeth, described combination tannage, in his testimony, as a process by which "either a vegetable or a mineral tanning agent is combined with another product, usually oil, in such a way as to prevent putrefaction of the skin * * *." It would thus appear that the combination tannage purportedly used by respondents' supplier is primarily one in which chromium is combined with certain oils. However, it is clear from the record as a whole that respondents' skins are completely tanned in the chromium compounds in which they are first immersed, and that while a combination of sperm and vegetable oils is thereafter applied, this is in the nature of a dressing or lubricating operation and is not a part of the tanning process.¹¹ While the witness Spritzer, Clifford's tanner, did refer to a synthetic tanning agent being used before the oils are applied, it seems evident that this is applied primarily to make the skins receptive to absorption of the oils rather than to tan them. It may be noted, in this connection, that the witness Bleeth referred to this process of making the skins receptive to the oils as "mordanting." However, the term mordant generally refers to a substance which couples with a dyestuff so as to produce a fixed color in fiber or leather, and is not a tanning agent. Since a dye is

¹¹ Clifford's tanner, Spritzer, conceded that the skins were completely converted into leather by the chromium tanning and that neither the vegetable nor the sperm oils used thereafter is a tanning agent. Bleeth also conceded that the tanning took place by the use of the mineral (chromium) tanning agent and that the oils were supplied as part of a "dressing" operation.

actually introduced into the lubricating oils, it may be that this is the purpose of the so-called synthetic tanning.

From the evidence as a whole, the examiner is of the opinion that respondents' skins are essentially tanned by the application of chromium rather than by combination tannage. In any event, the evidence offered on behalf of respondents is so confusing that no affirmative finding can be made that their skins are combination tanned.

3. The performance qualities of respondents' skins

In addition to their argument based on the new, additional or secondary meaning acquired by the term chamois, respondents have also sought to justify the designation of their product as chamois on the ground that it possesses all the essential performance characteristics of chamois leather. In the opinion of the hearing examiner, the fact that respondents' product is as good or almost as good as chamois produced from oil-tanned fleshers is of no legal significance. If, as has already been found, a genuine chamois is the oil-tanned flesher of a sheepskin tanned after splitting, the fact that respondents' product will serve the same or a substantially similar purpose is wholly immaterial. A similar argument was made by respondents in the *Hunt Pen Company* case, *supra*, based on the fact that the tipping materials used in their pens is as good as "iridium," that being the name respondents were charged with improperly using on their pen points. The Court disposed of this argument, citing a similar holding by the Supreme Court in the *Algoma* case *supra*, as follows: (p. 280)

It is of no moment, in this proceeding in the public interest, that what the purchaser gets in the tipping material used on petitioner's pen points may be as serviceable as or almost as serviceable as iridium. "The consumer is prejudiced if upon giving an order for one thing, he is supplied with something else. * * * In such matters, the public is entitled to get what it chooses, though the choice may be dictated by caprice or by fashion or perhaps by ignorance." *Federal Trade Commission v. Algoma Co.*, *Supra*, page 78. There is prejudice also to other manufacturers of pen points who, as this record shows, purchase the same tipping material as does petitioner but who do not mark their points with the word "iridium."

To the same effect see *Benton Announcements, Inc. v. FTC*, 130 F. 2d 254.

In the light of the above authorities there would appear to be no reason to determine whether respondents' product possesses all or most of the attributes of genuine chamois leather. However, since the complaint alleges that respondents' skins do not possess the same characteristics as chamois and since considerable evidence was offered

on this issue by both sides, and to the extent that the Commission may possibly regard these facts as material, the hearing examiner has undertaken to discuss this issue below.

There is no substantial dispute with respect to what are the recognized performance characteristics of chamois leather. The more important of these characteristics are set forth in the definition of chamois leather by the Tanners Council of America, which was adopted by the General Services Administration in its general specification on leather testing dated January 19, 1953, as follows:

“* * * High water absorption, low water retention after wringing, rapid rate of wetting, speed and efficiency of filtering water from gasoline, ease with which the leather may be cleaned without materially changing the above characteristics, and nonirritating effect when in contact with the skin.”

The above definition also provides that these performance characteristics will not be “changed appreciably by repeated washing of the leather.”

While there are certain recognized performance characteristics of chamois leather, the record does not disclose that there are any precise standards in the industry for determining whether particular skins claimed to be chamois fulfill these requirements. Thus, for example, while one of the paramount requirements of chamois leather is that it shall possess “high water absorption,” it does not appear that there is any recognized standard in the industry with respect to the amount of water a skin must absorb before it can be said to possess “high water absorption.” However, the Federal specifications on chamois leather have laid down certain definite norms for determining whether leather meets the required performance characteristics, and it was on the basis of these standards that much of the evidence in support of and in opposition to the complaint was based.

During the period from December 1949 to December 1953 when the specifications recognized the so-called “Type II—combination-tanned chamois” the specifications provided the following definitive standards for determining some of the more important performance characteristics of chamois leather:

1. Water absorption—the ability to absorb water to the extent of not less than 200% of the original weight of the leather.
2. Rate of wetting—the ability to absorb water rapidly enough to sink to the bottom of a container in not less than 60 seconds.
3. Removal of water from gasoline—the ability to remove 100% of the water added to gasoline.

These specifications also contained a test for determining flexibility after wetting, but established no quantitative standard of measure-

ments, the specifications merely providing that the leather should be "soft and pliable when tactually examined" after treatment in water.

The current specification of December 9, 1953, which restricts Government purchases of chamois to oil-tanned fleshers, contains similar tests for determining compliance with the specification, except that higher performance requirements have been established in the following respects: (1) The water absorption capacity requirement has been increased from 200% to 450%; (2) a new test called "water removal after wringing" has been established, with a requirement that the amount of water wrung out should be 250% of the original weight of the leather; (3) the rate of wetting test has been made stricter by requiring the specimen to sink in not less than 30 seconds instead of 60 seconds; and (4) the requirement for removal of water from gasoline provides that all of the water has to be removed within 60 seconds, unlike the old specification which set no time limit on the requirement for removal of all water from gasoline.

A considerable amount of evidence was offered by both counsel supporting the complaint and respondents with regard to the conduct of certain scientific tests to determine the ability of respondents' skins to meet the performance requirements of chamois leather. Except for several tests conducted by the National Bureau of Standards, the other tests were conducted by private testing companies. For the most part the tests were conducted in accordance with the testing procedures provided for in the Federal specifications and were for the purpose of determining whether the skins tested met the requirements of the specifications.

Despite certain differences with respect to items where the element of subjective analysis was involved, the tests are strikingly similar in their results insofar as they involve matters which are subject to measurement in quantitative terms. This is particularly true in the case of the water absorption and rate of wetting tests. Thus, a test conducted by the United States Testing Company, which was offered by counsel supporting the complaint, shows a water absorption for three of respondents' skins tested of 235%, 321% and 288%, respectively, while two tests made for respondents by Foster D. Snell, Inc., disclose results of 284%, 272% and 318% on one occasion, and 265% and 315% on a second testing. With respect to the rate of wetting test, the United States Testing Company tests disclosed that respondents' skins would sink in 17.5, 27, and 19 seconds, respectively, while the Snell tests showed a rate of wetting of 18, 13 and 24 seconds on one occasion, and 20 and 18 seconds on a second occasion.

The argument of counsel supporting the complaint based on these tests, that respondents' skins do not meet the performance standards

of oil-tanned chamois, rests largely on the ground that respondents' skins do not meet most of the requirements of the latest Federal specification issued in December 1953, while most of the oil-tanned skins tested do meet these requirements. Thus, the tests disclose that all of respondents' skins failed to meet the latest requirement for water absorption of 450% and the requirement for filtering gasoline within 60 seconds, and that all but one of the skins failed to meet the requirement for water expulsion of 250%.¹² It further appears that of nine oil-tanned skins tested in one of the tests, all but two met the requirements of the latest specification.¹³

It should be noted, however, in fairness to respondents, that the specification against which counsel supporting the complaint has sought to measure respondents' skins is one which went into effect subsequent to the time when respondents sold to the Government and reflects a stricter set of requirements than were previously applicable. It may be noted, in this connection, that the tests disclose that respondents' skins did meet most of the quantitative requirements of the specifications which were applicable at the time they were selling to the Government, with two exceptions,¹⁴ in that they had a water absorption rate in excess of 200%, a rate of wetting of less than 60 seconds and they filtered all of the water out of gasoline within an unspecified time, as provided in the specifications.

However, it is not necessary to determine the merits of the controversy with respect to the performance characteristics of respondents' skins on the basis of whether they meet the requirements of the Federal specifications which were in effect between 1949 and 1953, or the stricter requirements of the specification which went into effect in December 1953. There is other evidence in the record which is dispositive of this issue without having to determine the precise metes and bounds of the criteria for testing the performance characteristics of chamois leather. This evidence relates to the question of whether the oils with which respondents' skins are treated after tanning will or will not wash out as a result of the normal use of the skins, thereby materially affecting their ability to act in a manner characteristic of chamois leather.

¹² One of the samples tested by the Bureau of Standards showed a water expulsion capacity of 265%.

¹³ These two skins show a water absorption of 352% and 371%, and a water expulsion of 156% and 195%.

¹⁴ In one of the tests conducted by the United States Testing Company, the skins were subjected to repeated washing and drying to determine their water absorptive capacity and were found after such test to have a water absorption of only 156%. In one of the tests conducted by the National Bureau of Standards, the samples showed a rate of wetting of 118 seconds as against a requirement of 60 seconds. However, it should be noted that a later test conducted by the Bureau showed a rate of wetting of 38 seconds and 31 seconds on two skins tested.

There is no dispute in the record that it is the oil with which chamois leather is tanned or dressed which gives it the ability to act like a chamois. It is the oil which gives it its soft, suede-like quality and its capacity to absorb, expel and filter water rapidly. In the case of traditional oil-tanned chamois, the oil is the instrumentality by which the skin is tanned and which imparts to it the qualities which make it a chamois. By the process of oxidation certain chemical changes take place in the oil which cause it to combine with the hide substance. Through this medium the skin is not only tanned but it receives the soft, absorbent qualities of chamois leather. In the case of respondents' skins, the tanning of the skins in chrome merely prevents putrefaction of the skin and changes it into leather but does not give it any of the characteristics of chamois. It is not until the skin has been treated or dressed in the combination of sperm and vegetable oils that it takes on any of the characteristics of chamois leather.¹⁵

It is the position of counsel in support of the complaint that the method used by respondents' supplier in dressing or treating the skin in oils after it has been tanned does not cause the oil to effectively combine with the skin, as in the case of oil-tanned chamois, and that after a relatively brief period of normal use the oil will wash out, thereby causing the skin to lose whatever chamois characteristics it may have had. On the other hand, it was the testimony of the tanner employed by respondents' supplier that the method used by his company in treating the skins with oils causes the oils to "penetrate fully into the skin, and it locks itself right in with the skin." According to this witness, while a certain amount of the oil will wash out with use, enough of it will be retained to give the skin suppleness and the ability to perform like a chamois. The basic question, therefore, is whether the oils will or will not wash out of respondents' skins.

From his evaluation of the testimony and other evidence in the record, the hearing examiner is convinced that the position taken by counsel supporting the complaint on this issue is the more tenable one. In reaching this conclusion the examiner relies particularly on the testimony of Clarence M. Morrison, which was corroborated to a considerable extent by the testimony of Everett L. Wallace of the Bureau of Standards, and by other reliable testimony and evidence in the

¹⁵ Clifford Bleeth, President of Clifford Leather Company, testified in this respect as follows:

"It [the skin] is not complete at the point of tannage * * *. It is nothing at that state other than just being a skin that will not rot or putrefy * * *. The purpose of the last process [putting the oils into the skin] is to accomplish, or to make the chamois skin. Without that process, quite frankly, without the finishing process, the skin is really nothing at that state." (R. 536-537.)

record. Morrison is President of the company which manufactures all kinds of chemically-treated oils for industrial processing, including oils used in the manufacture of leather. He has been in business for 34 years, holds a B.S. degree in chemistry, has served as Director of the American Leather Chemists Association, and has lectured on leather chemistry. His company was the first to manufacture so-called non-ionic oils, such as those used in the treatment of respondents' skins. It was Morrison's view that the dressing of leather with oils, as performed by respondents' supplier, is essentially a fat-liquoring operation similar to that used in the making of garment leather, the principal function of which operation is to coat the fiber of the skin on top of another tannage so as to give it a certain softness and stretch. However, it was his opinion that the oils would not become fixed to the hide substance to any great extent and would wash out after a relatively short period of use, unlike oil-tanned chamois where the oil combines chemically with the skin and will not wash out.¹⁶ Morrison's views in this respect were supported by certain tests which he made on respondents' skins and on oil-tanned skins, and which showed that the oils in respondents' skins are soluble in water while those in oil-tanned skins are not.

While it is true that a number of the tests in the record show that respondents' skins have the ability to absorb a considerable amount of water, it must be noted that these tests were conducted mainly on new pieces of leather which had not been subjected to continuous soiling and washing. There is, however, one test in the record which gives support to Morrison's testimony. This is a "comparative washing test" conducted by the United States Testing Company on several of respondents' skins and on several oil-tanned skins. The specimens tested were subjected to a process of soiling and washing which was repeated nine times. At the end of the test the oil-tanned skins showed a water absorption of 500%, while respondents' skins were only 156%. Likewise, the oil-tanned skins were found to be "relatively soft and supple" while respondents' skins were "stiff and boardy." The samples tested, which were received in evidence, bear out the qualitative descriptions given to them by the tester.¹⁷

¹⁶ The witness Wallace corroborated Morrison's testimony that it is not possible for the oils applied to respondents' skins to become locked into the skins, as claimed by respondents' supplier.

¹⁷ Counsel for respondents suggests that the tests conducted by this laboratory should not be accepted because they were performed for Drueding Brothers, Inc., a competitor of respondents. However, the undersigned does not regard this as a reason for rejecting tests which otherwise appear to be valid. Significantly, the results of the other tests conducted by this laboratory comport substantially with similar tests which were conducted by the laboratory which made respondents' own tests.

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According to the witness Morrison, there is nothing new or unusual about the process used by respondents' supplier. It is essentially the same as that used in the making of leather for gloves, garments, slippers and ladies' handbags in which the skins are tanned in chrome and then go through a fat-liquoring process to make the leather soft and supple. The only difference in the operations is that respondents' skins receive a greater application of oil.¹⁸ Eugene Spritzer, the tanner for respondents' supplier, also conceded that the oiling operation used by them had basically the same purpose as fat liquoring, namely, to put back the oils which had been removed by tanning, but denied that it could be called fat liquoring "because we use an excess amount of oil in there." However, according to Morrison, the excess amount used would have no lasting effect since the oil is water soluble and will wash out. As pointed out by Morrison, many of the soft leathers used in the making of gloves, garments and slippers will also absorb water, filter gasoline and otherwise act like a chamois for a time, but after a period of cleaning and washing the oils will wash out and they will cease to perform effectively.

Counsel for respondents urges that Morrison's testimony should not be accepted because his firm sells oils to respondents' competitor, Drueding Brothers, and that presumably he is not an unbiased witness. The examiner cannot accept this as a reason for rejecting Morrison's testimony. In the first place, Drueding Brothers is only one of many customers of Morrison's firm and is not even among its larger customers. Aside from this, however, he demonstrated both in his demeanor and in his testimony a high degree of integrity and familiarity with the field about which he spoke.

The only witness called by respondents with any degree of technical knowledge was the witness Spritzer, who is in charge of tanning for respondents' principal supplier, and who is also an interested witness. While holding a certificate from Pratt Institute, School of Leather Technology, his technical training and experience, particularly in the field of leather chemistry, do not compare with that of Morrison. Spritzer appeared to be a highly nervous witness and impressed the undersigned as being somewhat uncertain of himself. To a considerable extent his testimony concerning the nature and properties of the oils used by him in the processing of the skins was based on information which he received from third persons from whom he purchased such oils. Morrison, on the other hand, as the manufacturer of such oils, was certainly in a position to know what such oils will do.

¹⁸ Morrison's testimony was corroborated to a large extent by Andrew Van Derslice, a tanner of leather for shoes and hatbands.

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Morrison's testimony was corroborated in important respects by that of other witnesses, by one of the tests conducted by United States Testing Company mentioned above, and, as will hereafter appear, by some of the practical tests which were conducted by various users of respondents' skins.

Counsel for respondents place considerable emphasis on the fact that large numbers of respondents' skins have been sold to various users with a minimum of complaint. While this fact may be entitled to some weight,¹⁹ it cannot counterbalance the more direct and persuasive testimony in the record. Significantly, aside from the testimony regarding a lack of complaints, respondents offered no testimony by actual users of their skins.²⁰

On the other hand, considerable testimony was offered by counsel supporting the complaint from persons who had actually used respondents' skins and found them wanting. These included window cleaners who use chamois skins in washing windows, and employees of garages and auto laundries who use chamois in the washing of automobiles. These witnesses had received some of respondents' skins for the purpose of testing them and actually used them in their work for a period of days or weeks. Although some of these witnesses found respondents' skins to be satisfactory to a greater or lesser degree, most of them testified that respondents' skins did not work satisfactorily because they wouldn't absorb water or couldn't be wrung out sufficiently to get the window or automobile dry. Several of the witnesses corroborated Morrison's testimony to the effect that while respondents' skins did appear to absorb water for a while, after several days they began to lose their effectiveness.²¹

Counsel for respondents apparently accept as valid what they refer to in their reply to proposed findings as "the unrehearsed testimony" of certain of these witnesses who were called to testify in Wash-

¹⁹ See however, *Independent Directory Corp. v. FTC*, 181 F. 2d 468, 471 holding that: "The fact that petitioners had satisfied customers was entirely irrelevant."

²⁰ Aside from the testimony of respondent Bloch that he received only a small number of complaints, the only testimony along these lines was that of two retailers in Philadelphia who handled respondents' product and who testified that they received very few complaints from their customers. One of these retailers sells between \$1,000 and \$1,500 worth of respondents' skins a year out of a total business of \$1,000,000 and the other sells a similar amount of respondents' skins.

²¹ One of these witnesses, a car washer, testified in this respect as follows:

"This particular chamois [respondents'], for the first day, maybe first two days was fine, but after a period of being immersed in water quite a bit the chamois seems to harden, I mean, it was not as soft as that particular skin there [an oil-tanned skin] and it also pushed the water around, it did not absorb water as rapidly or as fully as that particular chamois" (R. 878).

Another witness who used the skin for washing windows and found that it was unsatisfactory because you couldn't wring the water out of it, testified:

"Up to the third day, I thought I could do something with it, but I have not" (R. 1120).

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ington, D. C. and who had received skins for testing from counsel supporting the complaint, but question the testimony of a number of such witnesses who testified in Philadelphia and received skins for testing through an employee of Drueding Brothers. The undersigned cannot discern any material difference in the tenor of the testimony of these two groups, and both groups impressed the examiner as equally unbiased and sincere.²² Counsel for respondents also argue that the testimony of these witnesses indicates a preference for imported chamois as against domestic chamois and not any criticism of respondents' skins. However, while in a few instances witnesses did indicate a preference for imported chamois, the evidence does not establish any general preference in the trade such as that indicated by counsel.²³ Moreover, the examiner is satisfied that in most instances the criticism of respondents' skins was not based on any preference for imported chamois over the domestic variety but on the ground that respondents' skins just did not act like a chamois.

In the opinion of the examiner, the evidence above discussed sufficiently establishes that respondents' skins do not, after normal use, possess the essential characteristics of genuine chamois leather.

D. Summary and Concluding Findings

On the record as a whole, including the evidence discussed above, it is concluded and found as follows:

1. By branding, labeling, or otherwise describing certain of the leather products sold by them as "chamois" or "oil tanned chamois," respondents have represented, directly or by implication, that said product is genuine chamois leather.

2. Genuine chamois, as the term is now understood and used, and as understood and used for a great many years since the Alpine

²² It is significant that one of the Philadelphia witnesses was one of the few who seemed to think respondents' skins were satisfactory, although he indicated that he preferred the oil-tanned Drueding skin which he customarily used (R. 861). Another Philadelphia witness also testified that respondents' skins appeared to work fine for a day or two, except that thereafter it began to harden and wouldn't absorb water (R. 878). On the other hand, most of the Washington witnesses complained that you couldn't wring the water out of respondents' skins. One of them testified that respondents' skins were "more like leather" and that it left "more water [on the window] than there was in the first place" (R. 1153).

²³ One of the witnesses who indicated a preference for imported chamois, conceded that he had had very little experience with the domestic variety and that his preference was based on the durability of the imported chamois rather than on the inability of domestic chamois to absorb water and clean (R. 824). On the other hand, another witness indicated his preference for domestic chamois precisely because of its greater durability (R. 1059). The preference of one witness for imported chamois was based on an unsatisfactory experience during the war (R. 1027). However, others indicated there was no general preference for imported skins (R. 1070) or that domestic skins compare favorably with imported ones (R. 1058, 1109).

antelope from which the name "chamois" derives became practically extinct, is a product made from the underside, commonly called "flesher," of a split sheepskin, which has been tanned in oil after splitting. Said product is soft and pliable, has a natural yellowish color, and is used in the manufacture of fine gloves and certain articles of clothing, for polishing silver and other metals and woods, for washing and cleaning windows and automobiles, to remove water from gasoline and for other purposes. It has a quick, high water absorption and low water retention when wrung out, and will return to its original soft and pliable state when dried.

3. The aforesaid branding, labeling or otherwise describing of their said leather products by respondents as chamois is false, misleading and deceptive. In truth and in fact, respondents' said product is not genuine chamois but is made from sheepskin from which portions of the grain side have been removed by buffing or abrading rather than by splitting and which has been chrome tanned rather than oil tanned. Said product has the same general appearance as genuine chamois by virtue of being treated, after tanning, with certain vegetable and sperm oils and by the addition of a yellowish dye to said oils. However, while respondents' said product will for a period of time absorb and release moisture and perform in other respects similar to genuine oil-tanned chamois, although not to the same degree, said product will, after a relatively short period of use, particularly when used or washed in water, lose a substantial part of the oils with which it has been treated and will lose much of its capacity to absorb and release water and to otherwise perform in a manner similar to genuine chamois, and will lose much of its soft and pliable qualities.

4. Through the use of the statement, "Buy direct from Tannery and Save," respondents have represented, directly or by implication, that they operate their own tannery in which the products sold by them are tanned. Said statement was, however, only made on a single occasion in 1952, and respondents have indicated that they do not intend to make such statement again unless they actually acquire and operate a tannery.

5. The aforesaid statement is false, misleading and deceptive in that respondents do not own, control or operate a tannery, but buy and have bought their said leather products from others.

6. Some dealers and others prefer to buy direct from the tannery, believing that in doing so they may be afforded better prices, services, and other advantages.

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III. Effect of the Unfair Practices

Respondents are now, and at all times mentioned herein have been, in substantial competition in commerce with other corporations and individuals and others engaged in the sale and distribution of leather products, including chamois skins. It is found that the use by respondents of the false, misleading and deceptive statements hereinabove has had, and, except for the use of the above statement concerning the operation of a tannery, now has, the tendency and capacity to mislead and deceive dealers and the purchasing public into the erroneous and mistaken belief that such statements were and are true and into the purchase of substantial quantities of respondents' products. As a result thereof, substantial trade in commerce has been, and except for the above statement concerning the operation of a tannery, is now being, diverted to respondents from their competitors and substantial injury has thereby been done and is being done by respondents to competition in commerce. It is further found that by branding, labeling or otherwise describing certain of their leather products as chamois or as oil-tanned chamois, respondents have placed in the hands of dealers a means and instrumentality by and through which such dealers may mislead and deceive members of the purchasing public into purchasing respondents' said products in the mistaken belief that they were purchasing genuine chamois skins.

CONCLUSION OF LAW

It is concluded that the acts and practices of respondents, as hereinabove found, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition and unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

THE REMEDY

Respondents have urged that no order should issue which would restrict the use of the word "chamois" to oil-tanned sheepskin fleshers since this will tend to increase the price of chamois leather and foster a monopoly in a small number of firms who produce chamois leather in accordance with the traditional method. The undersigned cannot accept this argument. In the first place, while there is some evidence in the record concerning the operations of other chamois tanners, the record does not establish that these are the only chamois tanners in the United States or that they have a monopoly in the industry. Secondly, and more important, respondents' argument is wholly

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irrelevant. The public is entitled to get the article it pays for even though a substitute article may be cheaper.²⁴ If there is any monopoly or tendency to monopoly among the suppliers of the bona fide article, there are remedies provided by law for reaching such practices, other than by allowing the public to be duped.

Respondents also urge that no order be entered with respect to the representation made concerning their operation of a tannery. In determining whether the order to issue herein should include a provision with respect to this practice, the undersigned has taken into consideration the fact that the practice was discontinued long prior to the issuance of the complaint, that it was used on only a single occasion, and that respondents have indicated they have no intention of resuming it. In addition to the above, the examiner has taken into consideration the apparent lack of intent to deceive or wilfulness with respect to the main violation charged, and the part played by agencies of the Federal Government in recognizing for several years, as a type of chamois, skins produced by a method other than classic fish-oil tanning. While the examiner is aware that intent to deceive and wilfulness are not necessary elements of the offense,²⁵ the absence of such evidence with respect to the main violation charged may appropriately be taken into consideration in determining whether the order to be issued herein should include a provision with respect to the discontinued practice. Under all the circumstances, the examiner is of the opinion that the public interest does not require such a provision in the order.

However, in view of the findings above made with respect to the improper branding, labeling and describing of certain of respondents' skins as chamois, and respondents' continued insistence that such skins may properly be so branded, labeled or described, it is the opinion of the hearing examiner that this proceeding is in the public interest and that an order to cease and desist from such practices should issue.

It has been urged that no order should issue against the respondent Benjamin E. Bloch. However, in view of the fact that this individual wholly owns and dominates the corporate respondent, it is the opinion of the examiner that effective enforcement of the order to be issued

²⁴ As stated by the Supreme Court in the *Algoma Lumber* case, *supra*, at page 78:

"But saving to the consumer, though it be made out, does not obliterate the prejudice. Fair competition is not attained by balancing a gain in money against a misrepresentation of the thing supplied. The courts must set their faces against a conception of business standards so corrupting in its tendency. The consumer is prejudiced if upon giving an order for one thing, he is supplied with something else."

See also *Benton Announcements, Inc. v. FTC*, 130 F. 2d 254.

²⁵ *Koch v. FTC*, 206 F. 2d 311; *Gimbel Bros. v. FTC*, 116 F. 2d 579.

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herein requires that it shall run against the individual respondent as well.²⁶

Accordingly, it will be ordered that the corporate respondent and the individual respondent Benjamin E. Bloch cease and desist from engaging in the practice of misbranding or otherwise describing certain of the leather products sold by them under the name chamois, as hereinabove found. However, the complaint will be dismissed as to the individual respondent Ida Bloch, concerning whom the record fails to establish any connection with the illegal practices found.

ORDER

It is ordered, That respondent Atlantic Sponge and Chamois Corporation, a corporation, and its officers, and respondent Benjamin E. Bloch, individually, and said respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of leather products, do forthwith cease and desist from branding or labeling such products as "Chamois," or in any other manner representing that such products are "Chamois" or are made from "Chamois" unless such products are made (1) from the skin of the Alpine Antelope, commonly known and referred to as Chamois, or (2) from the fleshers or undersplits of sheepskin which have been tanned in oil after splitting.

It is further ordered, That the allegations of the complaint alleging that respondents have violated the Federal Trade Commission Act by representing that they own or operate a tannery be, and the same hereby are, dismissed without prejudice.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to respondent Ida Bloch, individually.

OPINION OF THE COMMISSION

By GWYNNE, Chairman:

Complaint under Section 5 of the Federal Trade Commission Act was issued February 5, 1954 charging respondents with unfair methods of competition and unfair and deceptive acts and practices in the following particulars: (1) in representing that certain products sold by respondents were "chamois" leather; and (2) representing that respondents operated a tannery in which said products were tanned.

After hearing, the second charge was dismissed as to all respondents, and both charges were dismissed as to Ida Bloch. An order was

²⁶ See *Standard Distributors, Inc. v. FTC*, 211 F. 2d 7; *Consumer Sales Corp. v. FTC*, 198 F. 2d 404; *Steelco Stainless Steel, Inc. v. FTC*, 187 F. 2d 693.

entered prohibiting any representation that the products in question are "chamois" or made from "chamois" unless such products are made (1) from the skins of the Alpine antelope, commonly known and referred to as chamois, or (2) from the fleshers or under-splits of sheepskins which have been tanned in oil after splitting.

Respondents' products are both domestic and imported. The inquiry here has to do with domestic products, purchased from Clifford Leather Company. It is not disputed that respondents did represent such products as "chamois" and as "oil tanned chamois." Respondents claim that the use of the phrase oil tanned was discontinued in 1953, although the initial decision points out that the evidence indicates that the date of discontinuance was in the early part of 1954. The principal question in the case is may the respondents lawfully represent the product in question to be "chamois" as that term is presently understood.

Chamois was originally produced from the skin of the Alpine antelope which animal was also known as chamois. When this animal became practically extinct, a product known commercially for many years as chamois was produced from sheepskins. To establish the meaning of the word "chamois," counsel supporting the complaint presented the testimony of tanners and distributors of leather and others qualified by training and experience to speak upon the subject. Respondents also presented testimony, some of which differed materially from that of the evidence presented in behalf of the complaint.

It was also stipulated that the average customer does not know how a chamois is made or of what material it is and that when purchasing a chamois, he seeks a product which may be used for polishing silver and other metals and woods, for washing and cleaning windows, to remove water from gasoline and for other purposes.

It is true that the ordinary customer often does not know the composition and method of manufacture of many things he buys. Nevertheless, he does know that over the years many products have acquired a well-known name and, in buying under that name, he usually assumes that it is the traditional and accepted product he is buying and not something else.

On the question of the meaning of "chamois," the hearing examiner made the following finding:

Genuine chamois, as the term is now understood and used, and as understood and used for a great many years since the Alpine antelope from which the name "chamois" derives became practically extinct, is a product made from the underside, commonly called "flesher" of a split sheepskin, which has been tanned in oil after splitting. Said product is soft and pliable, has a natural yellowish color, and is used in the manufacture of fine gloves and certain

articles of clothing, for polishing silver and other metals and woods, for washing and cleaning windows and automobiles, to remove water from gasoline and for other purposes. It has a quick, high water absorption and low water retention when wrung out, and will return to its original soft and pliable state when dried.

This finding has abundant support in the evidence and is in accord with the previous holdings of the Commission, the latest one being in the matter of *Canadian Chamois and Leather Corporation*, 28 F.T.C. 1457. In an earlier decision, in the matter of *Seld Leather Company*, 24 F.T.C. 1237, the Commission, while recognizing the standard definition, did permit sheepskin fleshers tanned by a formaldehyde and alum process to be designated as "white chamois." Nevertheless, in the matter of *Pigro Chamois Company*, 25 F.T.C. 929, the term "chamois" was restricted to the skin of the Alpine antelope or to sheepskin fleshers tanned in oil without the use of alum, chrome or formaldehyde.

It appears from the evidence that the respondents' products which are in question here are not made by the traditional process above described. They are made from unsplit sheepskins by a process sometimes known as combination-tannage. The skins are first immersed in a solution of chromium salts for three or four hours. Thereafter, there is an application for several hours of a combination of vegetable and sperm oils. After the skins are dry, a portion at least of the top grain layer is removed by buffing. This process produces a product of a bluish or greenish cast and a small amount of dye is added to the oil to give the yellow color of the oil tanned chamois.

The traditional method of producing chamois differs from the process above described in several respects. Instead of removing the top grain layer by buffing after tanning, the outer part is removed by splitting prior to tanning. This process requires a thicker skin to begin with and most of such skins are imported from New Zealand.

After the splitting process, the fleshers are treated with fish oil and hung in heated rooms for five or more days where the tanning process takes place through the oxidation of the fish oil.

It will thus be seen that respondents' process is substantially different from the traditional method and does not bring the product in question under the definition of chamois as found by the hearing examiner.

Respondents, however, claim that "chamois" has acquired a secondary meaning under which their product can qualify. This claim is based on specifications that had been adopted in recent years by the U. S. General Services Administration to govern certain government purchases. About December 1, 1949, the previous specifications gov-

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erning the subject of chamois leather by certain U. S. government agencies were changed. These specifications, for example one dated November 19, 1935, provided "the leather shall be prepared by the process known as 'straight oil' tannage, no alum or chrome shall be used in the tannage process."

None of the various specifications departed from the requirement that the leather be made from "sheepskin fleshers" or "flesh splits of sheepskin." The December 1, 1949 specification recognized two types of chamois leather; "Type I, Oil-Tanned," and "Type II, Combination-Tanned." In Type II, the leather "shall be tanned by a process known commercially as combination-tanned." In the specification of January 19, 1953, combination-tannage was defined as follows:

"Formerly tanned with a blend of vegetable fats. Today, tanned with two or more types of tanning materials, such as chromium compounds and vegetable extracts, or chromium compounds and synthetic tannings."

On December 9, 1953, another specification was adopted which did not refer to "Type II" or "combination-tanned" chamois and limited purchases to oil-tanned flesh splits of sheepskin. According to the chairman of the committee which promulgated these various specifications, the original change of December 1, 1949 was made because the government was having difficulty in obtaining sufficient chamois skins made by the oil-tanned method. According to a letter written by the chairman, one reason for the change back to the original specification was that some of the chamois purchased by government agencies was used on orthopedic devices and for similar purposes where it came in close contact with the skin, and that chrome-tanned leather might cause dermatitis in some individuals. He also testified that Type II chamois had not proved to be satisfactory because of its lack of water absorption.

The law is well settled that under some circumstances a term used to label a product may acquire a secondary meaning. However, it must appear that the secondary meaning has become so thoroughly established that the description which the label carries has ceased to deceive the public. Furthermore, a high degree of proof is required to establish a secondary meaning. This is well expressed by an excerpt from the case of *C. Howard Hunt Pen Company v. FTC*, 197 F. 2d 273, quoted in the initial decision:

A high degree of proof was essential in establishing the defense of secondary meaning before the Commission. The very wording of petitioner's answer recognizes that, in the words of Mr. Justice Cardozo, it had to show that "* * * by common acceptation the description, once misused, has acquired a secondary meaning as firmly anchored as the first one." *Federal Trade Commission v.*

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Algoma Co., 291 U. S. 67, 80. It could not prevail if its evidence was of a quality " * * short of establishing two meanings with equal titles to legitimacy by force of common acceptance." *Ibid.* We think that petitioner failed to establish the fact of secondary meaning under those governing principles.

We agree with the findings of the hearing examiner that the evidence is not sufficient to establish a secondary meaning.

Even though it might be assumed that the government specifications would establish a secondary meaning, it appears that the products in question do not qualify thereunder. The findings of the hearing examiner on that point are that: (1) respondents' products were not made from "fleshers," or "flesh splits of sheepskins," and (2) said products are essentially tanned by the application of chromium rather than combination-tannage.

The complaint alleges that respondents' products in question here do not possess the same characteristics as chamois qualifying under the definition found by the hearing examiner to be the correct one. Evidence was introduced pro and con on this subject and the initial decision contains conclusions of law and findings of fact based thereon.

As to the conclusions of law, reference is again made to the opinion in *C. Howard Hunt Pen Company v. FTC*, where the court said:

It is of no moment, in this proceeding in the public interest, that what the purchaser gets in the tipping material used on petitioner's pen points may be as serviceable as or almost as serviceable as iridium. "The consumer is prejudiced if upon giving an order for one thing, he is supplied with something else. * * * In such matters, the public is entitled to get what it chooses, though the choice may be dictated, by caprice or by fashion or perhaps by ignorance." *Federal Trade Commission v. Algoma Co.*, supra, page 78. There is prejudice also to other manufacturers of pen points who, as this record shows, purchase the same tipping material as does petitioner but who do not mark their points with the word "iridium."

As to the ultimate fact on this subject, the hearing examiner found that the evidence sufficiently establishes that respondents' skins do not after normal use possess the essential characteristics of genuine chamois.

Respondents also point out that the production of oil tanned chamois in the United States is confined to four tanners. Therefore they claim that "rejection of respondents' products will create a monopoly in the production and marketing of chamois in the United States."

There is not sufficient evidence in the record from which it can be concluded that a monopoly in oil tanned chamois either exists or is reasonably probable. The order does not reject respondents' products. They may still sell their products so long as they do not sell under the name "chamois."

Finally, respondents argue that the order goes further than is necessary to protect the public interest. They suggest that respondents should be allowed to sell their product under the name "combination-tanned chamois," with the additional words, "split before tanning" or "split after tanning," or "buffed not split" where appropriate.

It is true that corporate names or trade names upon whose promotion time and money has been spent should not be destroyed if qualifying language can be found which will adequately prevent deception. For example, in the matter of *Manhattan Brewing Company*, 42 F.T.C. 226, cited by respondents, the words "Canadian Ace" had been used for seven years to describe a certain brand of beer which was, in fact, made in the United States. Final decision was that the words "Canadian Ace" could be retained if accompanied by words in immediate conjunction therewith which adequately informed the public that the product was in fact brewed in the United States. There are other similar decisions.

In the *Manhattan Brewing Company* case, it was concluded that the words "Canadian Ace" did have a tendency and capacity to mislead the public into believing that the beer was made in Canada. If so, that result was adequately offset by the direct and easily understood statement that the product was in fact made in the United States. The truth could be ascertained by a reading of the label and the qualifying words without the aid of specialized knowledge or expert opinion.

In the case at bar, such would not be the situation. The use of the word "chamois" is a representation that the product is that which has traditionally been sold under the name "chamois" and which has been so accepted by the public after years of buying experience. Although the ordinary buyer does not know how chamois is made, he is entitled to believe that the particular product sold under that name is in fact "chamois" as that term is understood by manufacturers and distributors. If such be the implication of the label "chamois," it is not offset by the qualifying words suggested. After reading both, the ordinary consumer would still not know the truth about the product without resort to specialized information which he does not possess. In other words, the capacity and tendency to deceive which the hearing examiner has found to exist in the wrongful use of the word "chamois" would still be there.

Respondents object to the failure of the hearing examiner to accept and adopt certain proposed findings set out in their brief. They also except to the adoption of proposed findings submitted by counsel supporting the complaint.

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We conclude that the action of the hearing examiner in these respects is not error. The findings, conclusions and order of the hearing examiner are adopted as the findings, conclusions and order of the Commission.

Respondents' appeal is denied and it is directed that an order issue accordingly.

Commissioner Kern did not participate herein.

FINAL ORDER

This matter having been heard by the Commission upon the appeal of respondents, Atlantic Sponge and Chamois Corporation and Benjamin E. Bloch, from the hearing examiner's initial decision, and briefs and oral argument of counsel in support thereof and in opposition thereto; and

The Commission having rendered its decision denying the appeal and adopting the findings, conclusions, and order contained in the initial decision:

It is ordered, That respondents, Atlantic Sponge and Chamois Corporation and Benjamin E. Bloch, shall, within sixty (60) days after service upon them of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order contained in said initial decision.

Commissioner Kern not participating.