

Decision

IN THE MATTER OF
MAWSON DeMANY FORBES, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS*Docket 7269. Complaint, Oct. 1, 1958—Decision, Feb. 3, 1959*

Consent order requiring furriers in Philadelphia, Pa., to cease violating the Fur Products Labeling Act by deceptive pricing and savings claims for fur products, including false representations in advertising in newspapers that prices were "Below original cost" and "Below wholesale"; that purchasers could "Save one-third and more," could save money because of "tremendous buying power" and "a half-million dollars' worth of * * * inventory * * * being liquidated"; and that fur products offered were from the stock of a liquidating business.

Mr. John T. Walker for the Commission.

Mr. Isadore S. Wachs, of Philadelphia, Pa., for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with the violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and the Federal Trade Commission Act. 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 record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and 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; 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 entered 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 for other orders of the Commission; that the complaint may be used in construing the terms of the order; 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.

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

1. Respondent Mawson DeMany Forbes, Inc., is a corporation organized, existing and doing business under the laws of the Commonwealth of Pennsylvania. Individual respondents Morris B. Marks, Barrie A. Marks, and David Marks are president and treasurer, vice president and secretary, and assistant treasurer, respectively, of said corporation. The office and principal place of business of all of said respondents is located at 1133 Chestnut Street, Philadelphia, Pa.

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 Mawson DeMany Forbes, Inc., a corporation, and its officers, and Morris B. Marks, Barrie A. Marks, and David Marks, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, offering for sale, transportation or distribution in commerce, of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. 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:

A. Represents, directly or by implication, that fur products are offered for sale at prices which are below the cost to respondents, when such is not the fact.

B. Represents, directly or by implication, that fur products are offered for sale at prices which are below wholesale prices, when such is not the fact.

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C. Represents, directly or by implication, that price concessions of fur products have been obtained due to buying power, or for any other reason, when such is not the fact.

D. Represents, directly or by implication, that respondents' inventory of fur products advertised and offered for sale is in excess of the actual inventory.

E. Represents, directly or by implication, through percentage savings claims, that the regular or usual retail prices charged by respondents for fur products in the recent regular course of business were reduced in direct proportion to the amount of savings stated, when contrary to fact.

F. Represents, directly or by implication, that any such products are the stock of a business in a state of liquidation, when contrary to fact.

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 3d day of February 1959, become the decision of the Commission; and, accordingly:

It is ordered, That 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
KELLER FUR COMPANY

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

Docket 7196. Complaint, July 18, 1958—Decision, Feb. 4, 1959

Consent order requiring a furrier in Kansas City, Mo., to cease violating the Fur Products Labeling Act by tagging certain fur products with the name of an animal in addition to that of the animal producing the fur; by failing to conform to the labeling and invoicing requirements of the Act; and by advertising in newspapers which failed to disclose the names of animals producing the fur in certain products, the country of origin of imported furs, and the fact that fur products contained artificially colored or cheap or waste fur, and which represented falsely that his regular prices were higher than the advertised sale prices.

Mr. Thomas A. Ziebarth for the Commission.
Respondent, for himself.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondent with misbranding and with falsely and deceptively invoicing and advertising certain of his fur products, and with failing to maintain full and adequate records disclosing the facts upon which were based pricing and savings claims and representations as to such products, in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and of the Federal Trade Commission Act.

After the issuance of the complaint, respondent and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the director and an assistant director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that respondent is an individual trading as Keller Fur Company, and has his office and principal place of business located at 218 East 11th Street, Kansas City, Mo.

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

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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 respondent that he 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 he 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 disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and 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 the respondent Abe Keller, an individual trading as Keller Fur Company, or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of fur products, 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 has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:
 - (a) Failing to affix labels to fur products showing:
 - (1) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the

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Fur Products Name Guide and as prescribed under the Rules and Regulations;

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

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

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

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

(6) The name of the country of origin of any imported furs used in the fur product;

(7) The item number or mark assigned to a fur product;

(b) Setting forth on labels the name of an animal in addition to the name of the animal that produced the fur;

(c) Setting forth on labels attached to fur products:

(1) Information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form;

(2) Information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder which is intermingled with non-required information;

(3) Information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in handwriting;

(4) Information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in improper sequence;

(d) Affixing to fur products labels that are inconspicuous;

2. Falsely or deceptively invoicing fur products by:

(a) Failing to furnish invoices to purchasers of fur products showing:

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

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

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

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

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

(6) The name of the country of origin of any imported furs contained in the fur product;

(7) The item number or mark assigned to the fur product;

3. 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:

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

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

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

(d) Fails to disclose the name of the country of origin of the imported furs contained in fur products;

(e) Represents, directly or by implication, through the use of percentage savings claims or any other means, that any savings are afforded from respondent's regular prices unless the amount for which they are offered constitutes a reduction from the price at which said fur product had been sold by respondent in his recent regular course of business;

4. Making use in advertisements of price reduction or percentage savings claims unless respondent maintains full and adequate records disclosing the facts upon which such claims are based.

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

4th day of February 1959, become the decision of the Commission; and, accordingly:

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

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IN THE MATTER OF
LOUIS PIZITZ DRY GOODS CO., INC.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS*Docket 7263. Complaint, Sept. 23, 1958—Decision, Feb. 4, 1959*

Consent order requiring a retailer in Birmingham, Ala., to cease violating the Fur Products Labeling Act by failing to comply with the invoicing requirements, and by advertising in newspapers which represented prices of fur products falsely as "Below wholesale prices," and represented falsely that price concessions were obtainable due to its "tremendous buying power."

Mr. John T. Walker for the Commission.

Pritchard, McCall & Jones, by *Mr. William S. Pritchard*, of Birmingham, Ala., for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondent with falsely and deceptively invoicing and advertising certain of its fur products, in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and of the Federal Trade Commission Act.

After the issuance of the complaint, respondent, its counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the director and an assistant director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that respondent Louis Pizitz Dry Goods Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alabama, with its office and principal place of business located at 1821 Second Avenue North, Birmingham, Ala.

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

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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 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 disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and 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 respondent Louis Pizitz Dry Goods Co., Inc., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, offering for sale, transportation or distribution, in commerce, of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Falsely or deceptively invoicing fur products by:
 - A. Failing to furnish invoices to purchasers of fur products showing:
 - (1) The name or names of the animal or animals producing the fur or furs contained in the fur products as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations;

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

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

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

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

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

(7) The item number or mark assigned to a fur product;

B. Setting forth information required under §5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form;

C. Failing to set forth the term "Dyed Mouton processed Lamb" in the manner required;

2. 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:

A. Represents, directly or by implication, that fur products are offered for sale at prices which are below wholesale, when such is not the fact;

B. Represents, directly or by implication, that price concessions for fur products purchased have been obtained due to buying power, or for any other reason, when such is not the fact.

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 4th day of February 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Louis Pizitz Dry Goods Co., 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.

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IN THE MATTER OF
FEDERAL LIFE AND CASUALTY COMPANY

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

Docket 6312. Complaint, Mar. 11, 1955—Order, Feb. 4, 1959

Order dismissing for lack of jurisdiction, following the per curiam decision of the Supreme Court in the combined cases of *Federal Trade Commission v. National Casualty Company* and *Federal Trade Commission v. The American Hospital and Life Insurance Company* (357 U.S. 560), complaint charging a Battle Creek, Mich., insurance company with falsely advertising its accident and health insurance policies.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Donald K. King and *Mr. J. W. Brookfield, Jr.* for the Commission.

Beaumont, Smith & Harris, of Detroit, Mich., for respondent.

FINAL ORDER

This matter having come before the Commission upon the appeal of respondent from the hearing examiner's initial decision and upon briefs and oral argument in support of and in opposition thereto; and

The Commission having considered the record and the ruling of the Supreme Court of the United States in its *per curiam* opinion of June 30, 1958, in the combined cases of *Federal Trade Commission v. National Casualty Company* and *The American Hospital and Life Insurance Company*, 357 U.S. 560 (1958), entered subsequent to the filing of the instant appeal, and having concluded that the complaint herein should be dismissed:

It is ordered, That the initial decision herein, filed December 31, 1956, be, and it hereby is, vacated and set aside.

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

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IN THE MATTER OF
PROJANSKY, INC., ET AL.

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

Docket 7276. Complaint, Oct. 10, 1958—Decision, Feb. 7, 1959

Consent order requiring a furrier in Rochester, N.Y., to cease violating the Fur Products Labeling Act by labeling fur products with excessive fictitious prices represented as regular selling prices; by identifying them falsely in labeling and advertising with respect to the names of animals which produced the fur; by failing to comply with other labeling requirements of the Act; and by advertising in newspapers which failed to disclose the names of animals producing certain furs or that some products contained cheap or waste fur, or to set forth the term "Dyed Mouton processed Lamb" in the manner required, and represented prices as reduced from purported regular prices which were in fact fictitious.

Mr. S. F. House for the Commission.

Baker & Carver, by *Mr. Barton Baker*, of Rochester, N.Y., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on October 10, 1958, charging respondents with misbranding and falsely and deceptively advertising certain of their fur products, in violation of the Federal Trade Commission Act and of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder:

Thereafter, on November 20, 1958, respondents, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the director and an assistant director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies respondent Projansky, Inc. as a New York corporation, with its office and principal place of business located at 39 East Avenue, Rochester, N.Y., and respondent Henri P. Projansky as president of said corporate respondent, in which capacity he formulates, directs, and controls the acts, policies and practices thereof, his address being the same as that of the said corporate respondent.

Respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings

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of jurisdictional facts had been duly made in accordance with such allegations.

Respondents waive 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 they 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 the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the 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.

Having considered the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order to Cease and Desist; finds that the Commission has jurisdiction over the respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That Projansky, Inc., a corporation, and its officers, and Henri P. Projansky, 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 into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of any fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

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1. Misbranding fur products by:

A. Failing to affix labels to fur products showing:

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

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

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

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

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

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

B. Falsely or deceptively labeling or otherwise identifying any such product as to the name or names of the animal or animals that produced the fur from which such product was manufactured;

C. Representing on labels affixed to the fur products, or in any other manner, that certain amounts are their regular and usual prices, when such amounts are in excess of the prices at which respondents have usually and customarily sold such products in the recent, regular course of business;

D. Setting forth on labels affixed to fur products information required under §4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in abbreviated form;

2. 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:

A. Fails to disclose:

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

(2) That the fur product is composed in whole or in substan-

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tial part of paws, tails, bellies, or waste fur, when such is the fact;

B. Fails to set forth the term "Dyed Mouton Processed Lamb" in the manner required;

C. Fails to set forth the information required under §5(a) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder, in type of equal size and conspicuousness, and in close proximity with each other;

D. Represents, directly or by implication, that the regular or usual price of any fur product is any amount which is in excess of the price at which respondents have usually and customarily sold such products in the recent, regular course of business;

3. Falsely or deceptively advertising or otherwise identifying any such product as to the name or names of the animal or animals that produced the fur from which such product was manufactured.

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 7th day of February 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Projansky, Inc., a corporation, and Henri P. Projansky, 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.

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IN THE MATTER OF
GEORGE M. VOSS TRADING AS
VOSS HAIR EXPERTS OF GEORGIAORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 6498. Complaint, Jan. 27, 1956¹—Decision, Feb. 9, 1959*

Order requiring an individual in Atlanta to cease representing falsely, particularly in newspaper advertising, that through use of his hair and scalp preparations, methods, and treatments, in his place of business and by purchasers of the preparations in their homes, baldness would be prevented and overcome, growth of new and thicker hair would be promoted and lost hair restored, dandruff cured, etc.; and to cease representing himself falsely as a "Trichologist" and the "Nation's leading hair expert."

Mr. Harold A. Kennedy and *Mr. Thomas F. Howder* supporting the complaint.

Gettleman & Gettleman of Chicago, Ill., by *Mr. Frank E. Gettleman* and *Mr. Franklin M. Lazarus* for respondent.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

PRELIMINARY STATEMENT

The complaint issued herein and duly served, as subsequently amended, charges respondent with the dissemination through the mails and in commerce of false advertisements for certain cosmetic and medicinal preparations, advertised for external use in the treatment of conditions of the hair and scalp. Misrepresentation by respondent is also alleged in referring to himself in said advertisements as a "Trichologist" and as the "Nation's Leading Hair Expert." The answer to the complaint, as amended, denies all the material allegations thereof, except the name and address of respondent.

Hearings were held in Atlanta, Ga. and New Orleans, La., for the taking of evidence in support of the allegations of the complaint. Motion by the respondent to dismiss the complaint at the end of the testimony in support of the allegations of the complaint was denied and interlocutory appeal to the Commission from the denial of the motion by the hearing examiner was denied. Thereupon, respondent elected not to introduce any evi-

¹ Amended Oct. 16, 1957.

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dence. The case is therefore before the hearing examiner for an initial decision upon the pleadings, evidence in the record and proposed findings, conclusions, and orders and the reasons therefor filed by both sides.

Both sides were represented by counsel and given full opportunity to introduce evidence pertinent to the issues, examine witnesses and argue points of law and evidence. The proposed findings, conclusions and orders and the reasons therefor and respondent's motion to dismiss, and the answer thereto, were given careful consideration by the hearing examiner. All such proposed findings, conclusions and orders not hereafter adopted, found or concluded are hereby specifically rejected.

Upon the entire record of the proceeding and from the observation of the witnesses while testifying, the hearing examiner makes the following findings as to the facts, conclusions and orders.

FINDINGS AS TO THE FACTS AND CONCLUSIONS

1. Respondent George M. Voss is an individual trading and doing business as Voss Hair Experts of Georgia with his office and place of business located at 703 Grand Theater Building in the city of Atlanta, Ga. He had conducted this business for about five and one-half years at the time of the hearing there on February 18, 1958. It consists of giving local treatments for conditions of the hair and scalp. He has been in this type of business for thirty three years, having worked for others prior to owning this business in Atlanta. The only education he has is two years in high school. Those coming to him for treatment are usually afflicted with dandruff, itching, irritation of the scalp and what they think is excessive loss of hair.

2. When one having any or all of these conditions comes to him for treatment he first attempts to determine whether or not he can do them any good. In reaching a decision on this he examines their scalp, takes a history of their scalp troubles and inquires about their teeth and tonsils. The examination of the scalp consists of the use of an orange wood stick to part the hair, looking at the scalp with the aid of a lens having a light attached to get a better view, and manipulation of the scalp to determine how tight it is. If accepted for treatment, the treatment as described by respondent consists of the application of certain formulas to the scalp together with ultra-violet light, massage, heat, vibration and the use of what is called a high frequency

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machine. The formulas used will depend on what the man is complaining of. For instance, if he is complaining of dandruff, one set of formulas will be used first. If he is complaining of hair loss, the formulas used will depend on the oiliness or dryness of the hair and scalp. The amount of each formula applied each time will vary from one to one and one-half ounces, depending on the amount of hair on the scalp. A shampoo, a solvent and an antiseptic hair dressing called Triseptol are supplied the client, as he is called, for use at home between treatments.

3. A charge of \$5.00 is made for a single office treatment. If a client can come in twice a week for treatment, a course of forty treatments is offered for \$170. If a client lives too far away to come in regularly, a home treatment kit for use at home in conjunction with the office treatment is available, but the home treatment kit is never supplied to one who has not been first examined and treated at the office by respondent. One furnished a home treatment kit must come in for office treatment at least once a month. The home treatment kits have in them the same formulae that are applied during office treatments. The shampoo, solvent, and Triseptol are also included in the kit together with a hair brush and a booklet of instructions. Refills of the shampoo, solvent and Triseptol are charged for extra to both those taking office treatments only and also those receiving the home treatment kit.

4. Respondent's gross business was \$31,000 during the year 1957 and about \$41,000, two years before that. He was unable to give any percentage of the business that applied to those who used home treatment kits, that is to those who might be classified as home and office clients. He has given office treatments to people from out of the state, but has always refused to ship anything into another state. He doesn't ship anything through the mail to anybody even in Georgia unless that person has first presented himself at the office for an examination. He has sent kits to a relative of a client, the relative living in the State of Georgia, for transshipment or delivery to a client out of the State.

5. There was no evidence as to how frequently this has been done. One home treatment kit contains enough of the formulas for 32 home treatments. For \$80.00 a client gets this home treatment kit and as many office treatments as he can take. The home treatment kits are not sold separately.

6. All of the respondent's preparations used in the office treatments and contained in the home treatment kits, including the

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shampoo, solvent and Triseptol, are composed of the following ingredients in various combinations:

- Ammoniated mercury (white precipitate)
- Boric acid
- Betanaphthol
- Castor oil
- Carborwax 4000: Carbide & Carbon Chemicals Co., (a solid polyethylene glycol)
- Detergent 77: Peck's Products Co. (a nonionic general household and industrial cleaner)
- Dyes
- Hyamine 1622: Rohm & Haas Co., (di-isobutyl phenoxy ethoxy ethyl dimethyl benzyl ammonium chloride)
- Isopropyl alcohol
- Isopropyl alcohol bay rum
- Liquid soap
- Methol
- Mineral oil
- Nopco 1034: Nopco Chem. Co. (a sulfonated oil)
- Oil of bay, terpeneless
- Oil of tar, rectified
- Oxyquinoline sulfate
- Perfume
- Phenol
- Polyethylene Glycol 400: Carbide & Carbon Chemicals Co., (a liquid polyethylene glycol)
- Propylene glycol
- Resorcin
- Salicylic acid
- Sulfonated castor oil
- Tegasept M: Goldschmidt Chem. Corp. (methyl paraben)
- Tincture capsicum
- Tween 60: Atlas Powder Co., (Polyoxyethylene sorbitan monostearate)
- Veegum: R. T. Vanderbilt Co., (colloidal magnesium aluminum silicate)
- Water

7. Respondent advertises and has advertised in the Atlanta Journal, the Atlanta Constitution and the joint paper put out by these two on Sunday. There are in evidence copies of advertisements in these papers as follows:

- Atlanta Journal, January 31, 1955 (Com. Ex. 4)
- Atlanta Journal, August 29, 1955 (Com. Ex. 5)
- Atlanta Journal, August 22, 1955 (Com. Ex. 6)
- Atlanta Journal, January 24, 1955 (Com. Ex. 7)
- Atlanta Journal, February 7, 1955 (Com. Ex. 8)
- Atlanta Journal, April 11, 1955 (Com. Ex. 9)
- Atlanta Journal, May 2, 1955 (Com. Ex. 10)
- Atlanta Journal and Constitution Magazine, April 17, 1955 (Com. Ex. 11)

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Atlanta Journal and Constitution Magazine, January 9, 1955 (Com. Ex. 12)
Atlanta Constitution, February 17, 1953 (Com. Ex. 13)
Atlanta Journal and Constitution Magazine, March 6, 1955 (Com. Ex. 14)
Atlanta Journal, April 25, 1955 (Com. Ex. 15)
Atlanta Constitution, January 7, 1958 (Com. Ex. 16)
Atlanta Constitution, January 14, 1958 (Com. Ex. 17)
Atlanta Journal and Constitution, September 15, 1957 (Com. Ex. 18)
Atlanta Journal, October 21, 1957 (Com. Ex. 19)
Atlanta Journal, November 18, 1957 (Com. Ex. 20)

8. Since there is no question of discontinuance of the alleged offensive advertising involved here, Commission Exhibits 16 through 20 are disregarded in determining whether respondent's advertising is false advertising as alleged in the complaint. These were published after the issuance of the complaint. Commission Exhibit 13 is also disregarded because there was no proof of dissemination by mail or in commerce of the Atlanta Constitution for the year 1953.

9. It was stipulated that the average paid daily circulation of the Atlanta Journal going by mail to people inside and outside of Georgia during the year 1955 was 12,077 and the average paid Sunday circulation during 1955 of the combined paper going by mail to people inside and outside of Georgia was approximately 6,340; that the average number of copies of the daily Atlanta Journal going outside of the State by any means (mail, bus, airline, etc.) during the year 1955 was 7,427 and that the average Sunday circulation of the combined paper during 1955 going outside the State by any means was approximately 45,041. The average daily circulation of the Journal during 1955 was 253,992 and the average Sunday circulation of the combined paper during 1955 was 492,890.

10. Following are some quotations from the advertisements mentioned above:

DANDRUFF, the commonest hair problem, is also the commonest cause of baldness!

Not dandruff as you *see* it, but imbedded dandruff . . . the kind that lodges down in your hair tubes to choke off hair growth . . . the kind that plays a "perfect host" to hair-killing bacteria. (Com. Ex. 4)

You can't get rid of it with "tonics," shampoos, or other ordinary methods.

But you can get rid of it with Voss treatment.

THINK TWICE before you adopt and follow the old "do nothing" method of preserving your hair.

Time was when nothing could be done to prevent baldness, and it didn't matter a bit if you believed that baldness was due to heredity, age, or what have you.

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Not now. This is the mid-20th-century. Going bald now, in this city where the nation's most famous scalp specialist *guarantees* to stop excess hair loss, just doesn't make sense.

If you have hair now, you can keep it—with the help of Voss Hair Experts.

Even "fuzz" can be replaced with long and strong hairs—with the professional help of Voss Hair Experts.

Excessive hair loss, dandruff, itching, dryness or oiliness can be corrected in short order—with the help of Voss Hair Experts. (Com. Ex. 5)

When you're losing hair—no matter how gradually—something is wrong. It's not normal. And you're going bald unless you take steps to prevent it. (Com. Ex. 6)

Specialized Treatment

First thing to remember, Voss pointed out, is that hair loss may start from any one of 18 common causes. Dandruff in its various forms is one of the most frequent causes. Others are tight scalp, itching and infection, dry or oily hair.

Now ask yourself this question: Is it likely that any kind of bottled "cure-all" could do much to correct so many conditions and stop hair loss?

"But any and all of these disorders," Voss said, "can be easily and completely corrected by our specialized treatment. You see the results at once: Dandruff goes, itching stops, your hair and scalp feel better and look better. Soon, hair fall decreases as much as 90 per cent."

Examination Free

"Best of all, your invigorated hair follicles start to replace lost hair with healthy new hair."

As the treatment progresses, you'll witness the re-growth of stronger, more virile hair.

And best of all, probably you'll acquire sound new habits of hair-care to keep your hair healthy and growing after treatment is over. (Com. Ex. 7)

If you do need treatment, and enroll for it, you'll see quick improvement. Dandruff, itching clear up at once. Excess oiliness or dryness are soon corrected. Hair fall slows down to normal. New hair grows stronger—and *thicker!* (Com. Ex. 9)

The healthy scalp grows healthy hair—naturally!

"It seems so obvious," says Director George M. Voss, of Voss Hair Experts, "you might think no intelligent person would deny its truth. But when you accept it, you must rule out practically all the common beliefs about baldness."

For instance, most people are convinced that baldness is hereditary—"runs in families," so to speak. Yet I've never heard any body argue that you can inherit an unhealthy scalp. So you can't very well inherit baldness, can you? (Com. Ex. 11)

How it Works

You mail in regular reports to the Voss Hair Experts, to keep them informed of your progress. This enables them to change your treatment if necessary to get best results.

Voss home treatment has saved the hair of hundreds of men who were unable to take regular office treatment. Men and women from all the towns and cities around Atlanta—Sewanee, Rome, Marietta, Toccoa, Cairo, Griffin, Brinson—have been lavish in their praise of the home method.

True, some few men do inherit a scalp structure that may predispose to early baldness. But any such tendency can be overcome by proper hair care. (Com. Ex. 12)

The expert talking was George M. Voss, head of Voss Hair Experts here. He is a trichologist of 30 years experience—More experience in fighting baldness than any other man in the United States. (Com. Ex. 14)

11. Respondent argues that he is in no way responsible for the dissemination of his advertising by United States mails and in commerce since all he did was to place the advertisements in the newspapers. Such argument is rejected. If respondent had not placed his advertisements in these newspapers they would not have been disseminated by United States mails or in commerce through this medium. Respondent's acts were the moving cause, or the proximate cause of the dissemination by United States mails and in commerce of the advertisements. The advertisements so disseminated resulted in people coming in for consultation and treatment.

12. Through the advertisements, so disseminated, respondent represented directly and by implication that excessive hair loss and baldness in the great majority of cases are caused by local disorders of the scalp such as dandruff, tight scalp, itching and infection, dry or oily scalp; that the use of his treatment will permanently eliminate and cure these disorders,¹ and result in (1) fuzz being replaced with long and strong hairs, (2) excessive hair loss and baldness being prevented and overcome (3) the growth of new and thicker hair and (4) lost hair being replaced with healthy new hair. The advertisements also refer to respondent as the Nation's leading hair expert and as a trichologist.

13. The complaint alleges that the said advertisements are false advertisements within the meaning of the Federal Trade Commission Act, that is that they are misleading in the following material respects:

14. The great majority of cases of baldness and excessive hair loss is the common type known as male pattern baldness. Regardless of the exact formula or combination of the preparations used and regardless of the method of treatment in respondent's office or the method of application in home treatments, respondent's preparations will not in such cases prevent or overcome baldness; will not cause hair to grow thicker and will not grow new hair or restore old hair. Moreover the ingredients contained

¹ See finding on similar advertising in regard to dandruff and itching in *Bishop Hair Experts*, Docket No. 6554, adopted by the Commission on May 12, 1958.

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in respondent's preparations will not permanently eliminate dandruff, itching, dryness or oiliness of the scalp and will not cause fuzz to be replaced by long and strong hair. Neither the respondent nor his employees have undergone competent professional training in dermatology or any other branch of medicine pertaining to treatment of scalp disorders affecting the hair.

15. To support these allegations, the testimony of two expert dermatologists was offered, Dr. Hiram M. Sturm of Atlanta, Ga., and Dr. James W. Burks, Jr., of New Orleans, La. Their qualifications as experts are in the record.

16. There was complete unanimity of opinion by Dr. Sturm and Dr. Burks, Jr. on the following points:

17. The most common type of baldness is the type known as male pattern baldness, which comprises 95% of all cases of baldness. Fuzz on the head of an adult is never replaced by mature hair or what is called terminal hair. The hearing examiner understands this to be the same as "long and strong hair" referred to in one of respondent's advertisements. No combination of the ingredients in respondent's preparations applied to the scalp, with or without the physical therapy, employed by respondent or any other kind of therapy will permanently eliminate or cure dandruff, itching, oiliness or dryness of the scalp, or cause fuzz to be replaced by long or strong hair. No combination of the ingredients in respondent's preparations applied to the scalp with or without the physical therapy employed by respondent or any other kind of therapy will prevent or overcome male pattern baldness, or in cases of male pattern baldness, cause hair to grow thicker, or longer or stronger, or cause new hair to grow, or cause lost hair to be replaced with new hair.

18. Dr. Sturm further testified that one may have fuzz on the scalp and still have male pattern baldness. In such cases the hair follicles gradually atrophy and cease to produce hair. The hearing examiner understands this to mean that one does not have to be completely bald to have male pattern baldness. It is a gradual process, that may be going on long before it is apparent.

19. Doctor Sturm thought the terms "scalp specialist" and "trichologist" used in the advertisements implied a degree of learning in the field of the hair and scalp that could only be possessed by a dermatologist. Dr. Burks testified that while a dermatologist is an expert in the field of the skin and its appendages, including the hair and scalp, the terms "scalp specialist"

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and "trichologist" imply a degree of learning in the field of the hair and scalp greater than that possessed by the average dermatologist. It should only be applied to a dermatologist who had gone further and made a special study of the hair and scalp.

20. There was some disagreement between the two doctors as to the cause of male pattern baldness. Dr. Sturm said that the causes were heredity, involving the endocrine glands, and ageing. Dr. Burks thought these two things were a part of the background of male pattern baldness, but he would not go so far as to say they were the cause. In fact he did not think the cause had been definitely established.

21. Each doctor was cross examined at length as to the endocrine system and genetics and each stated that they were not specialists in these fields. Respondent urges that for this reason the testimony of both of these physicians should be stricken or disregarded.

22. In Commission cases, opinion evidence based on the general medical and pharmacological knowledge of qualified experts has been held to constitute substantial evidence even where witnesses who had personally observed the effect of the product testified to the contrary.² Furthermore the questions about the endocrine system and genetics asked on cross-examination were on the point of the cause of male pattern baldness, which is not an issue in the case. Both of the experts who testified were familiar with the ingredients in respondent's preparations and with the methods of physical treatment employed by respondent. Their answers were based upon that and their experience as dermatologists. Their testimony is not disputed by anything else in the record. Respondent asks the hearing examiner to take "judicial notice" of the writings of Doctors McCarthy and Savill. This request is rejected, nor will the hearing examiner take official notice of their writings. Even if such writings had been offered in evidence, to accept them would establish a precedent for flooding the record with scientific writings without the authors being presented for cross-examination.³ Furthermore scientific writings are usually in technical language and the help of an expert is needed in many instances for the hearing examiner to clearly

² *Bristol-Myers Co. v. F.T.C.*, 185 F.2d 58 and cases therein cited; *Irwin v. F.T.C.*, 143 F.2d 316; See also article in *Indiana Law Journal*, Spring 1957 entitled "Proving the Falsity of Advertising: The McAnnulty Rule and Expert Evidence."

³ See Opinion of Commission in *Wybrant System Products Corporation, et al.*, issued May 29, 1958.

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understand them. In addition to that, without the author being present for cross-examination, there is no way of knowing whether such writings express the current opinions of the authors. Because of new experiments, or for other reasons the writers may have changed their opinions since the articles were written.

23. It is therefore found that respondent's said advertisements were false in representing that his treatments will permanently eliminate or cure dandruff, itching and dryness or oiliness of the scalp and result in fuzz being replaced with long and strong hair. The advertising claims that respondent's treatments will result in excessive hair loss and baldness being prevented and overcome; will result in the growth of new and thicker hair and in lost hair being replaced with new hair are also false because such claims are not limited to cases other than those coming within the classification of male pattern baldness. Respondent's said advertising is also false in representing him as a trichologist and as a scalp specialist.

24. Respondent's said advertisements were also false advertisements as alleged in the complaint for another reason. Section 15 of the Federal Trade Commission Act provides that in determining whether any advertisement is misleading there shall be taken into account the extent to which the advertisement fails to reveal facts material in the light of the representations made. Respondent's advertisements imply that his treatments will prevent or overcome baldness in all cases, or at least the great majority of cases, whereas under the evidence they will be totally ineffective for these purposes in 95% of all cases of baldness. Failure of respondent to reveal this last mentioned fact in his advertisements is itself misleading. It is so found. As alleged in the complaint:

In advertising that his preparations (i.e., treatments) will cause hair to grow and will overcome baldness, respondent suggests that there is a reasonable probability that hair loss or baldness in any particular case may be due to a cause for which his preparations (i.e., treatments) will be of benefit and constitute an effective treatment. In truth and in fact the instances in which loss of hair or baldness is due to a cause or condition for which respondent's preparations (i.e., treatments) will be of benefit and will constitute an effective treatment are rare.

25. The hearing examiner finds himself entirely in accord with this quotation, and with the statement that "there is no reasonable probability that any particular case of baldness is caused

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by a condition for which respondent's preparations may be beneficial."⁴

26. Section 12(a) (1) of the Federal Trade Commission Act reads as follows:

It shall be unlawful for any person, partnership or corporation to disseminate or cause to be disseminated any false advertisement—

By United States mails or in commerce by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of food, drugs, devices and cosmetics.

27. It has been found that respondent's advertisements were false and that they were disseminated by the United States mails and in commerce. The evidence shows the preparations to be cosmetics. They were to be applied to the hair and scalp and were intended for cleansing and promoting attractiveness.

28. There only remains to be considered whether the dissemination of the advertising was for the purpose of inducing or likely to induce the purchase of the preparations. The advertising does not mention the preparations but advertises the Voss Hair treatments. In the matter of *Bishop Hair Experts, et al.*, Docket No. 6554, the Commission said that the presence of the word "treatment" or the absence of the mention of a commodity or a description of its qualities in the advertising is not conclusive.

29. The hearing examiner refuses to hold that a sale of the preparations was involved when they were used in giving a treatment as described in the record by respondent. In the opinion of the Commission in the *Wybrant* case, Docket No. 6472 there is a statement as to the factors to be included in considering whether such use of preparations in giving treatments constitutes a sale. Here, as there, the record is insufficient to support such holding.

30. The record fully supports conclusions that the furnishing of cosmetic and medicinal preparations in the form of a treatment kit to some clients for use at home constitutes sales of such preparations. The evidence further shows that both those taking office treatments solely and those receiving home treatment kits in addition to office treatments were charged for refills of the shampoo, solvent and Triseptol, in addition to the cost of the treatments and to the cost of the kits. These were also sales. It is not controlling that there is no showing as to the amount of

⁴ For precedents on this point see *Initial Decision in the Matter of William T. Loesch, et al.* Docket No. 6305, adopted by the Commission, (with modification on another point) November 14, 1957; *Bishop Hair Experts, et al.*, Docket No. 6554, adopted by the Commission May 12, 1958.

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home treatment kits or refills that were sold during any year or any other particular period of time. There evidently were sufficient sales of the latter item to justify respondent's sending out a printed card showing the price thereof. All purchases of the kits and refills were by those who had taken treatments and who presumably originally presented themselves for diagnosis and treatment as a result of the said advertisements. This satisfies the requirements of the statute as to advertising "for the purpose of inducing or which is likely to induce, directly or indirectly the purchase of * * * cosmetics." Sales in "commerce" are not necessary for a violation of Section 12(a) (1).

31. Consideration has been given to the question as to whether there is sufficient public interest to justify an order to cease and desist. The dissemination of the said advertising, through the United States mails and in commerce was substantial. The fact that such advertising was substantial and was false and the circumstance that such advertising has served to induce the purchase of the aforementioned items supply the necessary public interest.

32. The use by the respondent of the false advertisements, disseminated as aforesaid, has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations in said advertisements were true and to induce a substantial portion of the purchasing public to visit respondent's office for the purpose of consultation and treatment and to purchase respondent's preparations because of such erroneous and mistaken belief.

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

ORDER

It is ordered, That the respondent George M. Voss trading as Voss Hair Experts of Georgia or under any other name or names, and respondent's agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of the various cosmetic or other preparations set out in the findings herein, or of any other preparations for use in the treatment of hair and scalp conditions, 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 such preparations alone or in conjunction with any method of treatment will:

(1) Permanently eliminate or cure dandruff, itching, dryness or oiliness of the scalp,

(2) Cause fuzz to be replaced with long or strong hair,

(3) Prevent or overcome excessive hair loss or baldness, unless such representation be expressly limited to cases other than those known as male pattern baldness and unless the advertisement clearly and conspicuously reveals that in the great majority of cases of baldness and excessive hair loss, respondent's said preparations and treatments are of no value whatever.

(4) Cause new hair to grow, cause hair to grow thicker, cause lost hair to be replaced with new hair, or otherwise grow hair, unless such representation be expressly limited to cases other than those known as male pattern baldness, and unless the advertisement clearly and conspicuously reveals that the use of said preparations and treatment will be of no value whatever in the great majority of cases,

(b) That respondent, his agents, representatives or employees have had competent training in dermatology or other branches of medicine having to do with the diagnosis and treatment of scalp disorders affecting the hair, or are trichologists or scalp specialists.

OPINION OF THE COMMISSION

By SECREST, Commissioner:

The complaint, as amended, charges respondent with violation of the Federal Trade Commission Act through the dissemination in commerce and by the United States mail of false advertisements for various cosmetic and medicinal preparations, advertised for external use in the treatment of conditions of the hair and scalp. The hearing examiner in his initial decision held that the allegations of the complaint were sustained by the evidence and ordered respondent to cease and desist the advertising found to be unlawful. Respondent has appealed from the initial decision and from certain rulings by the hearing examiner.

Taking first the issues raised by the appeal from the findings

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and order, respondent contends that his business is not subject to the jurisdiction of the Commission under Section 12(a)(1) of the Federal Trade Commission Act in that he did not disseminate or cause to be disseminated advertisements by mail or in commerce. The argument that an advertiser has no control over the methods of circulation of newspapers in which his advertising appears and cannot be held responsible for the dissemination of such advertising lacks sound legal basis. *Shafe, et al. v. Federal Trade Commission* (C.A. 6, 1958); *Sidney J. Mueller v. United States* (C.A. 5, 1958); and *Johnson Hair & Scalp Clinic*, Docket No. 6497 (Decided June 10, 1958). The hearing examiner, therefore, properly concluded that by placing advertisements in newspapers which are distributed by the United States mail and in commerce, respondent had caused the dissemination by mail and in commerce of such advertisements.

The appeal also excepts to the hearing examiner's holding that through use of the word "trichologist" and by other means in his advertising, respondent has falsely represented that he has had competent training in dermatology and other branches of medicine having to do with the treatment of scalp disorders affecting the hair. Respondent has described himself in his advertising as a "trichologist," a "hair expert" and a "scalp specialist." According to the uncontradicted testimony of the expert witnesses, the term "trichologist" denotes a dermatologist specializing in the branch of medicine having to do with the hair and diseases affecting the hair and scalp. They also testified that the terms "hair expert" and "scalp specialist" imply a degree of learning in the field of hair and scalp that could only be possessed by a dermatologist. The evidence is also clear that respondent has not undergone competent professional training in dermatology or any other branch of medicine pertaining to treatment of disorders affecting the hair. We therefore concur in the hearing examiner's findings on this point.

Respondent also contends that the prohibition in the order against use of the term "scalp specialist" goes beyond the issues raised by the complaint. The advertising's designation of respondent as a "scalp specialist" is merely a variation or expansion of the basic theme whereby, as charged in the complaint, respondent has misrepresented his qualifications and scientific training in treating hair disorders. Hence, there is sound legal basis for including in the order a specific prohibition against use of

this term. *Consumer Sales Corporation v. Federal Trade Commission*, 198 F.2d 404 (1952).

Respondent also contends that the hearing examiner erred in finding that respondent had represented through his advertising that his treatments will permanently eliminate dandruff, itching, dryness or oiliness of the scalp.

The advertising contains the following claims:

Excessive hair loss, dandruff, itchiness, dryness or oiliness can be corrected in short order—with the help of Voss Hair Experts.

When you're losing hair—no matter how gradually—something is wrong. It's not normal. And you're going bald unless you take steps to prevent it.

Specialized Treatment

First thing to remember, Voss pointed out, is that hair loss may start from any one of 18 common causes. Dandruff in its various forms is one of the most frequent causes. Others are tight scalp, itching and infection, dry or oily hair.

Now ask yourself this question: Is it likely that any kind of bottled "cure-all" could do much to correct so many conditions and stop hair loss?

"But any and all of these disorders," Voss said, "can be easily and completely corrected by our specialized treatment. You see the results at once: Dandruff goes, itching stops, your hair and scalp feel better and look better. Soon, hair fall decreases as much as 90 percent."

Examination Free

"Best of all, your invigorated hair follicles start to replace lost hair with healthy new hair."

Through use of the foregoing statements, respondent is representing that dandruff, itchiness, dryness and oiliness are causes of excessive hair loss and that by correcting these conditions he can prevent baldness and cause hair to grow. He is, therefore, promising something more than temporary alleviation of dandruff, itching, dryness and oiliness; he is representing that he can cure or correct these disorders of the scalp and thereby restore hair and prevent baldness. His claims are made with respect to corrections of a permanent nature and not merely to a temporary benefit limited to the period during which the treatments are received or during which the preparations are used.

Respondent also contends that the hearing examiner erred in finding that respondent has represented that his services and treatments would stop excessive hair fall in the type of baldness known to dermatologists as male pattern baldness, that he could prevent or overcome male pattern baldness, or induce new hair to grow in male pattern baldness. The hearing examiner specifically found in this connection that respondent's advertisements imply that his treatments will prevent or overcome baldness in all cases,

or at least the great majority of cases. The respondent's advertising includes the following statements and claims:

DANDRUFF, the commonest hair problem, is also the commonest cause of baldness!

Not dandruff as you *see* it, but imbedded dandruff . . . the kind that lodges down in your hair tubes to choke off hair growth . . . the kind that plays a "perfect host" to hair-killing bacteria.

You can't get rid of it with "tonics," shampoos, or other ordinary methods.

But you can get rid of it with Voss treatment.

THINK TWICE before you adopt and follow the old "do nothing" method of preserving your hair.

Time was when nothing could be done to prevent baldness, and it didn't matter a bit if you believed that baldness was due to heredity, age, or what have you.

Not now. This is the mid-20th-century. Going bald now, in this city where the nation's most famous scalp specialist *guarantees* to stop excess hair loss, just doesn't make sense.

If you have hair now, you can keep it—with the help of Voss Hair Experts.

Even "fuzz" can be replaced with long and strong hairs—with the professional help of Voss Hair Experts.

In view of these claims, we hold that the finding by the hearing examiner on this point was correct.

There is undisputed evidence in the record that the type of baldness known as male pattern baldness comprises 95% of all cases of baldness. By representing that his treatments can prevent or overcome baldness in all cases, or in the great majority of cases, respondent has, of course, represented that he can effectively treat baldness of the male pattern type. The hearing examiner's conclusions as to the falsity of respondent's advertising representations have full support in the record.

Respondent points out that the order of the hearing examiner would prohibit him from disseminating certain advertising claims "in connection with the offering for sale, sale or distribution of the various cosmetics or other preparations set out in the findings herein, or of any other preparations for use in the treatment of hair and scalp conditions." He contends that the order is at variance with the complaint since the complaint does not charge the dissemination of false advertising of preparations other than those sold by respondent. He also argues that the order is not supported by the findings of the hearing examiner since the findings relate to respondent's treatments and do not include "any other preparations."

It is well settled that a Commission order need not be limited to enjoining specific acts which are charged and found to be

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unlawful. *Hershey Chocolate Corporation v. Federal Trade Commission*, 121 F.2d 968 (1941); *Consumer Sales Corporation v. Federal Trade Commission, supra*. The uncontradicted testimony of the two expert witnesses clearly establishes that there are no preparations or treatments which will permanently eliminate or cure dandruff, itching, dryness or oiliness of the scalp, cause fuzz to be replaced by long or strong hair, prevent or overcome male pattern baldness, or in cases of male pattern baldness cause hair to grow thicker, or longer or stronger, or cause new hair to grow, or cause lost hair to be replaced with new hair. We construe the findings set forth in paragraph 17 of the initial decision as in substance expressing these same conclusions. In view thereof, we are of the opinion that the order is not too broad and that the prohibitions thereof should extend to respondent's use of advertising in connection with the offering for sale, sale or distribution "of any other preparations for use in the treatment of hair and scalp conditions."

Respondent also argues that Section 12 of the Act applies to the advertising of products and not to the advertising of treatments. It is his contention, therefore, that the order is invalid since it does not contain a reservation to the effect that it will apply only to the dissemination of false advertisements which induce or are likely to induce the purchase of his products. The hearing examiner correctly found that although respondent's advertising does not mention preparations, the dissemination thereof in commerce comes within the scope of Section 12(a) (1) of the Act. As we stated in *Bishop Hair Experts, et al.*, Docket No. 6554 (Decided May 12, 1958) :

We do not think that the presence of the word "treatment" or the absence of mention of a commodity or a description of its qualities is necessarily conclusive. The question is whether the net effect of the advertisement was likely to induce directly or indirectly the purchase of cosmetics.

The hearing examiner properly found that although respondent's advertising referred to his treatments, the dissemination thereof was for the purpose of inducing or likely to induce the purchase of the preparations. Inasmuch as the order is expressly limited in its application to practices promoting the sale of preparations, no further restriction thereof is necessary.

Respondent contends that the hearing examiner committed prejudicial error in denying respondent's motion to exclude from the hearing room an expert witness who had not as yet testified.

He contends that the expert, having heard respondent testify, was "briefed" on what the nature of respondent's testimony was and that this tended to destroy his objectivity when he did testify.

It would appear from a review of the record that the only portion of respondent's testimony which had any bearing on the testimony given by the expert witness concerned respondent's method of treating hair and scalp conditions. There can be no objection to this information being imparted to the expert in some form so that he might express an opinion as to the effectiveness of respondent's treatments. We can think of no sound reason, and none has been suggested by respondent, why the expert's objectivity would be affected because the information came from respondent himself rather than from some other source. The purpose of the rule of exclusion or sequestration is merely to prevent one prospective witness from being taught by hearing another's testimony. (*Wigmore on Evidence*, 3d ed. (1940), Sec. 1838.) An order of exclusion is not demandable as a matter of right but is rather a matter within the discretion of the trial judge. (*Jones, The Law of Evidence in Civil Cases*, 3d ed. (1924), pp. 1257-1259; *Wigmore, supra*, Sec. 1839.) Although an expert witness may be placed under the rule if there is any reason to believe he may be influenced by the testimony of other witnesses, we are of the opinion that no such reason existed here and that there was no abuse of the hearing examiner's discretion in denying respondent's motion to exclude the witness.

Respondent also appeals from the hearing examiner's ruling denying a motion to strike, for lack of competence, the testimony of the two doctors who testified in behalf of the complaint. He argues that although neither of the doctors was qualified as an expert geneticist or an expert endocrinologist, they discussed the cause of male pattern baldness in terms of heredity, endocrine balance and aging to explain why they felt that the condition would be untreatable. The record discloses, however, that the opinion expressed by each of the doctors with respect to the futility of attempting to treat baldness of the male pattern type was based upon his experience as a dermatologist and not upon any knowledge he may have had with respect to the cause of the condition. The two doctors merely advanced theories as to the cause of male pattern baldness and the information elicited on cross-examination with respect thereto was not relevant to any of the issues in the case. The hearing examiner, therefore, prop-

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erly denied the motion to strike the testimony of the two witnesses.

No question has been raised on appeal with respect to the hearing examiner's ruling that sales of preparations were made by respondent only when those persons taking office treatments and those receiving home treatment kits were charged for refills of shampoo, solvent and Triseptol. The evidence shows that respondent's clients who receive home and office treatment are furnished a home treatment kit containing the same preparations which are applied during office treatments, the shampoo, solvent and Triseptol, a booklet of instructions and a hair brush. This kit contains enough of the formulas for 32 home treatments, a four-months' supply. During this period, the client is required to come in for office treatment once a month although he may get as many office treatments as he can take.

Despite the fact that the client must be examined and treated by respondent before receiving the kit and must come in at least once a month for an office treatment, it is believed that the transaction is something other than the sale of a series of treatments by respondent. As we stated in *Wybrant System Products Corporation, et al.*, Docket No. 6472, the important question to be determined with respect to such a transaction is "* * * does it consist mainly of a transfer of goods or is it basically the rendering of a service in which the use of preparations is purely incidental thereto?" Insofar as the arrangement between respondent and the home and office client is concerned, the office treatments furnished by respondent appear to be merely incidental to the sale of the home treatment kit. Respondent himself has so indicated by testifying that in addition to the kit, the client receives as many office treatments as he can take "without any extra charge." Furthermore, the difference in the amount charged clients taking office treatments exclusively, \$170 for 40 treatments, and that charged clients receiving the home treatment kit, \$80 for 32 home treatments plus an indefinite number of office treatments, would indicate that the latter class of clients is purchasing the product rather than the service.

We are of the opinion, therefore, that in addition to the sales of refills of the various preparations, as found by the hearing examiner, the transactions involving the furnishing of home treatment kits to certain clients constitute sales by respondent of the preparations contained in such kits.

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Respondent's appeal is denied and the initial decision, modified to conform with this opinion, will be adopted as the decision of the Commission.

FINAL ORDER

This matter having been heard by the Commission upon respondent's appeal from the hearing examiner's initial decision, and upon briefs and oral argument in support thereof and in opposition thereto; and the Commission having rendered its decision denying the appeal and directing modification of the initial decision:

It is ordered, That paragraphs 30 and 31 of the initial decision be modified to read as follows:

30. The record fully supports conclusions that the furnishing of cosmetic and medicinal preparations in the form of a treatment kit to some clients for use at home constitutes sales of such preparations. The evidence further shows that both those taking office treatments solely and those receiving home treatment kits in addition to office treatments were charged for refills of the shampoo, solvent and Triseptol, in addition to the cost of the treatments and to the cost of the kits. These were also sales. It is not controlling that there is no showing as to the amount of home treatment kits or refills that were sold during any year or any other particular period of time. There evidently were sufficient sales of the latter item to justify respondent's sending out a printed card showing the price thereof. All purchases of the kits and refills were by those who had taken treatments and who presumably originally presented themselves for diagnosis and treatment as a result of the said advertisements. This satisfies the requirements of the statute as to advertising "for the purpose of inducing or which is likely to induce, directly or indirectly the purchase of * * * cosmetics." Sales in "commerce" are not necessary for a violation of Section 12(a) (1).

31. Consideration has been given to the question as to whether there is sufficient public interest to justify an order to cease and desist. The dissemination of the said advertising, through the United States mails and in commerce was substantial. The fact that such advertising was substantial and was false and the circumstance that such advertising has served to induce the purchase of the aforementioned items supply the necessary public interest.

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Order

It is further ordered, That the initial decision of the hearing examiner, as so modified, be, and it hereby is, adopted as the decision of the Commission.

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

Complaint

55 F.T.C.

IN THE MATTER OF
WARD BAKING COMPANY

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

Docket 6833. Complaint, July 8, 1957—Decision, Feb. 10, 1959

Consent order requiring a baking corporation in New York City, with net sales in 1956 exceeding \$100,000,000, to cease discriminating in price in violation of Section 2(d) of the Clayton Act by granting promotional allowances to some customers but not to their competitors and not on proportionally equal terms, such as payment of 5% of the wholesale price on purchases in excess of \$50 a week to retailers in the New Haven, Conn., and Philadelphia, Pa., trading areas.

COMPLAINT

The Federal Trade Commission, having reason to believe that Ward Baking Company, hereinafter designated as respondent, has violated and is now violating the provisions of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Ward Baking Company 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 475 Fifth Avenue, New York City, N.Y.

PAR. 2. Respondent is now and for several years last past has been engaged in the business of baking and selling bakery products including bread, cakes, rolls and pies. Said products are sold to customers with places of business located in the several States of the United States and in the District of Columbia, for resale to the purchasing public. Respondent is an interstate enterprise conducting its business from 23 baking facilities located throughout the United States. Its net sales in 1956 exceeded \$100,000,000.

PAR. 3. In the course and conduct of its business, respondent has engaged in commerce, as "commerce" is defined in the Clayton Act, as amended, having shipped its products from the place where such products are manufactured in various States of the United States to its customers having places of business located in other States of the United States and in the District of Colum-

bia. There is and has been a constant stream of trade in commerce in respondent's products among the various States and the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, as aforesaid, respondent has paid or contracted to pay, money, goods, or other things of value to or for the benefit of some of its customers as compensation in consideration for services and facilities furnished, or contracted to be furnished, by or through such customers in connection with the processing, handling, sale, or offering for sale of the products which respondent bakes, sells, or offers for sale; and respondent has not made or contracted to make such payments or considerations available on proportionally equal terms to all its other customers competing in the sale and distribution of such products.

PAR. 5. Specifically, respondent during the past two years:

1. Paid allowances to some customers, but did not do so or offer to do so in any amount, to other competing customers.

2. When paying such allowances to competing customers, required some of them to comply with certain terms and to furnish reciprocal services, but did not require others to do so in any manner or required them to do so in a less burdensome manner or in lesser amounts, and not proportionally equal by any test.

3. In determining allowances to be paid competing customers, did so on the basis of promotional agreements with each such customer, allowing a 5% allowance of the regular wholesale price to customers who purchased in excess of \$50 weekly of respondent's products, which resulted in proportionally unequal, different and arbitrary terms.

PAR. 6. Allowances, paid by respondent as aforescribed, include those offered and granted to certain favored customers, but not to other competing customers, in consideration for newspaper and handbill advertising and placement in such favored customers' retail outlets of posters, signs, window and counter displays and other like items advertising respondent's various products. Said allowances have been granted and are being granted by respondent in several trading areas, including the trading areas of New Haven, Conn. and Philadelphia, Pa.

A great majority of respondent's customers, located in these same trade areas and in competition with the favored customers, do not receive and have not received any such allowances from respondent.

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PAR. 7. The acts and practices of respondent, as above alleged, violate subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act. (U.S.C. Title 15, Sec. 13.)

Mr. William W. Rogal and Mr. Franklin A. Snyder for the Commission.

Sullivan & Cromwell, by Mr. John F. Dooling, Jr., of New York, N.Y., for respondent.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on July 8, 1957, charging respondent with making payments, during the two preceding years, to certain favored customers, which payments were not made available on proportionally equal terms to other competing customers, in violation of §2(d) of the Clayton Act as amended by the Robinson-Patman Act (U.S.C. Title 15, §13).

Thereafter, on December 1, 1958, respondent, its counsel, and counsel supporting the complaint entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the director and an assistant director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies respondent Ward Baking Company as a New York corporation, with its office and principal place of business located at 475 Fifth Avenue, New York, N.Y.

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

Respondent waives any further procedure before the hearing examiner and the Commission; the making of findings of fact and 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 the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said

order; and that the 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.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order to Cease and Desist; finds that the Commission has jurisdiction over the respondent and over its acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That respondent Ward Baking Company, a corporation, directly or through any corporate or other device, in or in connection with the sale of bread and bakery products in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from:

Paying or contracting for the payment of anything of value to, or for the benefit of, any customer of respondent as compensation or in consideration for any service or facilities furnished by or through such customer in connection with the offering for sale, sale, or distribution of any of respondent's products, unless such payment or consideration is made available on proportionally equal terms to all other customers competing in the distribution of such products.

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 February 1959, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF
H. S. STUTTMAN CO., ET AL.

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

Docket 7244. Complaint, Aug. 28, 1958—Decision, Feb. 10, 1959

Consent order requiring New York City sellers of the one-volume "Webster's Unified Dictionary and Encyclopedia" which drew its basic material from two older works, to cease representing falsely in advertising and on the title page that said "Dictionary" was a new publication, that all information therein was complete and up-to-date, and that it contained all the facts, features, and material of a giant dictionary and a multivolumed encyclopedia set; and requiring them to disclose clearly on the title page and in advertising the fact that the books were reprints or contained reprinted material when such was the case.

Mr. Charles W. O'Connell for the Commission.

Coudert Brothers by *Mr. Percy A. Shay*, of Washington, D.C., for respondents.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 28, 1958, issued and subsequently served its complaint in this proceeding against respondents H. S. Stuttman Co., a corporation existing and doing business under and by virtue of the laws of the State of New York, Harry S. Stuttman, Burton Stuttman and Martin Stuttman, individually and as president, secretary and vice president-treasurer, respectively, of the corporate respondent.

On December 16, 1958, there was submitted to the undersigned hearing examiner an agreement between respondents H. S. Stuttman Co. and Harry S. Stuttman and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. By such agreement, respondents waive any further procedural steps before the hearing examiner and the Commission; waive the making of findings of fact and conclusions of law; and waive all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

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Such agreement further provides that it disposes of all of this proceeding as to all parties. Attached to and made of part of said agreement is an affidavit attesting to the fact that Burton Stuttman and Martin Stuttman, named as respondents in the complaint, do not now and never have directed or controlled the policies and practices of the corporate respondent. The record on which this initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement, and the latter shall not become a part of the official record unless and until it becomes a part of the decision of the Commission. This 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 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, and 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 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 this proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued.

1. Respondent H. S. Stuttman Co. 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 404 Fourth Avenue, New York, N.Y. Respondent Harry S. Stuttman is president of said corporation and his office and principal place of business is the same as that of the corporate respondent.

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 respondent H. S. Stuttman Co., a corporation, and its officers, and respondent Harry S. Stuttman, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined

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in the Federal Trade Commission Act of Webster's Unified Dictionary and Encyclopedia, or any other book or publication of the same general character whether sold under the same or any other title, do forthwith cease and desist from:

1. Representing, directly or by implication, that Webster's Unified Dictionary and Encyclopedia is a new publication, provided that this shall not be construed to forbid respondents from representing that the manner of presentation of the information in such book is new.

2. Representing, directly or by implication, that the information in Webster's Unified Dictionary and Encyclopedia is complete or up-to-date.

3. Representing, directly or by implication, that Webster's Unified Dictionary and Encyclopedia contains all of the facts, features and materials of a giant dictionary and a multivolumed encyclopedia set.

4. Offering for sale, selling or distributing books or other publications consisting wholly or substantially of reprints of previously published books or other publications, unless:

(a) The fact that they are reprints or contain reprinted material and the titles of the previously published books or other publications is clearly disclosed on the title page in immediate conjunction with the title or in another position adapted readily to attract the attention of a prospective purchaser; and

(b) The fact that they are reprints or contain reprinted material is clearly disclosed in all advertising.

It is further ordered, That the complaint herein be dismissed as to respondents Burton Stuttman and Martin Stuttman.

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 February 1959, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents H. S. Stuttman Co., a corporation, and Harry S. Stuttman, individually and as an officer of the corporate respondent, 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
CARSON PIRIE SCOTT & COMPANY

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

Docket 7270. Complaint, Oct. 1, 1958—Decision, Feb. 11, 1959

Consent order requiring a Chicago department store to cease violating the Fur Products Labeling Act by advertising in letters and otherwise which represented prices of fur products falsely as "Below original cost," and by failing to maintain adequate records as a basis for such claims.

Mr. John T. Walker for the Commission.

Sidley, Austin, Burgess & Smith, of Chicago, Ill., by *Mr. James E. S. Baker*, for respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondent with certain violations of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act. An agreement has now been entered into by respondent and counsel supporting the complaint which provides, among other things, that respondent admits all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and 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; 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 entered after a full hearing, respondent 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 for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the 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 hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for appropriate disposition of the proceeding, the

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agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Carson Pirie Scott & Company is a corporation organized, existing and doing business under the laws of the State of Illinois, with its office and principal place of business located at One South State Street, Chicago, Ill.

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

ORDER

It is ordered, That respondent Carson Pirie Scott & Company, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, offering for sale, transportation or distribution, in commerce, of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. 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:

A. Represents, directly or by implication, that prices of fur products are "Below original cost," or words of similar import, when such is not the fact.

2. Making price claims or representations in advertisements respecting reduced prices of fur products or that prices of fur products are below original cost, unless respondent maintains full and adequate records disclosing the facts upon which such claims or representations are based.

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 11th day of February 1959, become the decision of the Commission; and, accordingly:

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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.

IN THE MATTER OF
DERRY FIBRE MILLS, INC., ET AL.

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

Docket 7275. Complaint, Oct. 8, 1958—Decision, Feb. 11, 1959

Consent order requiring a manufacturer in Derry, N.H., to cease violating the Wool Products Labeling Act by failing to label woolen stocks as required by the Act, and by invoicing the stocks falsely as "all wool," "100% wool," and "100% all wool stock."

Mr. Garland S. Ferguson for the Commission.
Respondents, for themselves.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on October 8, 1958, charging respondents with misbranding and falsely and deceptively invoicing certain of their wool products, in violation of the Federal Trade Commission Act and of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder.

Thereafter, on December 12, 1958, respondents and counsel supporting the complaint herein entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the acting director and an assistant director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies respondent Derry Fibre Mills, Inc. as a New Hampshire corporation, with its office and principal place of business located at Derry, N.H., and individual respondent Harry Flagler as an officer of said corporation, in which capacity he formulates, directs, and controls the policies and practices of the corporate respondent, his address being the same as that of the corporate respondent.

Respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

Respondents waive 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 they may have to chal-

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lenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the 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.

Having considered the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order to Cease and Desist; finds that the Commission has jurisdiction over the respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That Respondents Derry Fibre Mills, Inc., a corporation, and its officers, and Harry Flagler, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of woolen stocks or other "wool products" as such products are defined in and subject to said Wool Products Labeling Act, do forthwith cease and desist from:

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

(a) The percentage of the total fiber weight of such wool product exclusive of ornamentation not exceeding five per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percent-

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age by weight of such fiber is five per centum or more, and (5) the aggregate of all other fibers;

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

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

It is further ordered, That respondents Derry Fibre Mills, Inc., a corporation, and its officers, and Harry Flagler, 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 sale or distribution of woolen stocks or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

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

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 11th day of February 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Derry Fibre Mills, Inc., a corporation, and Harry Flagler, 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.

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IN THE MATTER OF
RUTH ELENOWITZ, ET AL.
DOING BUSINESS AS MARK TRADING

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

Docket 7281. Complaint, Oct. 17, 1958—Decision, Feb. 11, 1959

Consent order requiring a concern in Maspeth, N.Y., to cease misrepresenting domestic perfumes as French imports through use of the brand name "LaVie En Rose" and advertising them as "The favorite of fashionable Paris," etc.; and to cease advertising that fictitious prices ranging from \$10 to \$27.50 were regular retail prices of the perfumes, that they were nationally advertised at such prices, and were sold in well-known department stores.

Mr. S. F. House for the Commission.

Mr. Martin J. Forgang, of New York, N.Y., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

On October 17, 1958, the complaint herein was issued, charging respondents with the use of false, misleading and deceptive representations in connection with the advertising, sale and distribution in commerce of perfume products, which are "cosmetics" as that term is defined in the Federal Trade Commission Act; which representations constitute unfair and deceptive acts and practices in commerce, in violation of said Act.

Thereafter, on December 5, 1958, respondents, their counsel, and counsel supporting the complaint entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the acting director and an assistant director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

Respondents Ruth Elenowitz and Irving Elenowitz are identified in the agreement as individuals doing business under the trade name of Mark Trading, with their office and principal place of business located at 62-15 Fifty Third Avenue, Maspeth 78, N.Y. It is stated in the agreement that Ruth Elenowitz is also known as Ruth Weidenbaum.

Respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if find-

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ings of jurisdictional fact had been duly made in accordance with such allegations.

Respondents, in the agreement, waive 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 they 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 the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; 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.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order to Cease and Desist; finds that the Commission has jurisdiction over the respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That respondents Ruth Elenowitz, also known as Ruth Weidenbaum, and Irving Elenowitz, individuals doing business under the trade name Mark Trading, or trading under any other name, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of perfumes or any other related product, 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, for the purpose of inducing, or which is likely to

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induce, directly or indirectly, the purchase of said products, which advertisement:

(a) Represents, directly or by implication, that any amount is the retail price of a product when said amount is in excess of the price at which said product is usually and customarily sold at retail;

(b) Represents, directly or by implication, that any of their products are nationally advertised or sold in well-known department stores, unless such is the fact;

(c) Uses the words "La Vie En Rose" or any other French name, word, term, or depiction, in connection with any such product not manufactured or compounded in France, or otherwise representing, directly or by implication, that such products are manufactured or compounded in France;

2. Disseminating, or causing to be disseminated, any advertisement, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of such product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, 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 11th day of February 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Ruth Elenowitz, and Irving Elenowitz, doing business under the name of Mark Trading, 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
REGENT-SHEFFIELD, LTD., ET AL.

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

Docket 7282. Complaint, Oct. 17, 1958—Decision, Feb. 11, 1959

Consent order requiring distributors of cutlery in New York City to cease selling without disclosure of foreign origin, carving forks assembled from heads manufactured in Japan and stamped on the shank with the word "Japan" which was concealed in the process of assembling with domestic handles, and packaged with carving knives, the blades of which were made in England and so marked and attached to domestic handles; to cease preticketing their merchandise, and furnishing their customers, with tags bearing fictitious and greatly exaggerated prices represented thereby as regular retail prices; and to cease representing certain kinds of merchandise falsely as "24 karat gold plated" by catalog sheets, carton imprints, and attached stickers.

Ames W. Williams, Esq., for the Commission.
Respondents, *pro se*.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on October 17, 1958, charging them with having violated the Federal Trade Commission Act, by misrepresenting the quality, price and origin of their products. Respondents appeared and entered into an agreement dated December 12, 1958, containing a consent order to cease and desist, disposing of all the issues in this proceeding without further hearings, which agreement has been duly approved by the acting director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with §3.25 of the Rules of Practice of the Commission.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of

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the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said 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 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, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and 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 on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part of the Commission's decision pursuant to §§3.21 and 3.25 of the Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondent Regent-Sheffield 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 3545 Webster Avenue, Bronx, New York, N.Y.

2. Individual respondents Jerome S. Hahn and Bernard Fuller are officers of the corporate respondent. They dominate, direct and control the policies, acts and practices of the corporate respondent and their address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That the respondent Regent-Sheffield, Ltd., a corporation, and its officers, and Jerome S. Hahn and Bernard Fuller, individually and as officers of said 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 cutlery, or other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly:

1. Offering for sale or selling cutlery or any other product containing parts made in Japan, or in any other foreign country except England, combined with components made in England and bearing a legend asserting or indicating English origin, without affirmatively disclosing the country of origin of such other parts;

2. Offering for sale or selling any product, made in Japan or in any foreign country, without clearly disclosing the foreign origin of such product;

3. Representing by words or symbols on the containers in which cutlery or other products, made in part in Japan, or any other foreign country other than England, are shipped, or in any other manner, that such products are of English origin;

4. Representing through the use of the words "Plant-Upper Allen Street-Sheffield, England" on price lists, advertisements and invoices, or in any other manner, that respondents own, operate, or control a factory in England or any other foreign country in which their products are made;

5. Representing, by preticketing, or in any other manner, that a certain amount is the customary or usual retail price of merchandise when said amount is in excess of the price at which said merchandise is customarily and usually sold at retail;

6. Representing that merchandise is gold plated unless it has a surface plating of gold or gold alloy applied by a mechanical process provided, however, that a product or a part thereof on which there has been affixed by an electrolytic process a coating of gold, or a gold alloy of not less than 10 karat fineness, the minimum thickness of which is equivalent to seven one-millionths of an inch of fine gold may be marked or described as gold electroplate or gold electroplated.

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 11th day of February 1959, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF
ST. REGIS PAPER COMPANY, ET AL.

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

Docket 6476. Complaint, Dec. 7, 1955—Decision, Feb. 12, 1959

Consent order requiring 17 of the nation's leading paper bag manufacturers—alleged, along with the four other manufacturers cited, to account for substantially all the more than two billion annual production of multi-wall paper shipping sacks, and charged with using the same pricing formula to quote identical delivered prices to customers, regardless of location or freight costs—to cease entering into and carrying out any planned common course of action among themselves or with others to fix prices of said products.

In 1956 the examiner dismissed charges as to Raymond Bag Co. and Thomas Phillips Co., who no longer made and sold the sacks.

On April 11, 1959 (p. 1672 herein), charges were dismissed without prejudice as to the remaining two respondents, Fulton Bag and Cotton Mills and Equitable Paper Bag Co.

INITIAL DECISION AS TO ALL REMAINING RESPONDENTS
EXCEPT FULTON BAG AND COTTON MILLS
AND EQUITABLE PAPER BAG COMPANY

Mr. Andrew C. Goodhope, Mr. Ross D. Young, Jr., and Mr. John Perechinsky supporting complaint.

LeBoeuf, Lamb & Leiby, by *Mr. Horace R. Lamb* and *Mr. Craigh Leonard*, of New York, N.Y., for St. Regis Paper Company;

Hale and Dorr, by *Mr. Joseph N. Welch*, of Boston, Mass., for Bemis Brothers Bag Company;

Mr. George Gruber, of New York, N.Y., for Arkell & Smiths;

Battle, Fowler, Neaman, Stokes & Kheel, by *Mr. Ludlow S. Fowler*, of New York, N.Y., for Chase Bag Company;

Katzenbach and Salvatore, by *Mr. Frank S. Katzenbach, III*, and *Mr. Arthur A. Salvatore*, of Trenton, N.J., for Universal Paper Bag Company;

Mr. Israel B. Oseas, of New York, N.Y., for Hudson Pulp & Paper Corporation;

Gallop, Climenko & Gould, by *Mr. Jesse Climenko*, of New York, N.Y., for National Container Corporation;

Davis, Polk, Wardwell, Sunderland & Kiendl, by *Mr. Ralph M. Carson*, of New York, N.Y., for International Paper Company;

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Hunton, Williams, Gay, Moore & Powell, by *Mr. Joseph C. Carter, Jr.*, of Richmond, Va., for Albemarle Paper Manufacturing Corporation, Seaboard Bag Corporation and Virginia-Carolina Chemical Corporation;

Heller, Ehrman, White & McAuliffe, by *Mr. Robert C. Harris*, of San Francisco, Calif., for Ames Harris Neville Company;

Mr. Philip S. Ehrlich, of San Francisco, Calif., for Crown Zellerbach Corporation;

Dorff and Levy, by *Mr. I. Alfred Levy*, of New York, N.Y., for Gilman Paper Company;

Vinson, Elkins, Weems & Searls, by *Mr. W. Buck Arnold*, of Houston, Tex., for Lone Star Bag & Bagging Company;

Mr. Carney W. Mimms, of New York, N.Y., for Union Bag-Camp Paper Corporation;

Stephens and Gignilliat, by *Mr. W. Hugh Stephens*, of Savannah, Ga., for Chemical Packaging Corporation.

Before *Mr. John Lewis*, hearing examiner.

The Federal Trade Commission issued its complaint against the above-named respondents on December 7, 1955, charging them with the use of unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by entering into a combination or conspiracy to hinder, lessen, restrict and restrain competition in price in the sale and distribution of multi-wall paper shipping sacks. After being served with said complaint, respondents appeared by counsel and filed their separate answers thereto. Thereafter, by orders dated respectively, February 20, 1956, and November 9, 1956, the complaint herein was dismissed as to respondents Raymond Bag Company and Thomas Phillips Company on the ground, substantially, that said respondents had ceased engaging in the manufacture and sale of multi-wall paper shipping sacks. Subsequently the remaining respondents, except Fulton Bag and Cotton Mills and Equitable Bag Co., entered into separate but identical agreements, dated December 8, 1958, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all remaining respondents, except Fulton Bag and Cotton Mills and Equitable Bag Co. Said agreements, which have been signed by all respondents who are parties thereto, by counsel for said respondents, and by counsel supporting the complaint, and approved by the director and assistant director of the Commission's Bureau of Litigation, have been submitted to the above-named hearing examiner for his

consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

The signatory respondents, pursuant to the aforesaid agreements, 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. Said agreements further provide that such 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 such agreement. It has been agreed that the order to cease and desist issued in accordance with said agreements shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreements, and that said agreements are for settlement purposes only and do 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 on the complaint and the aforesaid agreements containing consent order, and it appearing that the order provided for in said agreements covers all the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties signatory thereto, said agreements are hereby accepted and are ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent St. Regis Paper Company 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 150 East 42d Street, New York, N.Y.

Respondent Bemis Brothers Bag Company is a corporation organized and existing under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 40 Central Street, Boston, Mass.

Respondent Arkell & Smiths is a corporation organized and existing under and by virtue of the laws of the State of New

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York, with its office and principal place of business located at Canajoharie, N.Y.

Respondent Chase Bag Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 155 East 44th Street, New York, N.Y.

Respondent Universal Paper Bag Company is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at New Hope, Pa.

Respondent Hudson Pulp & Paper Corp. is a corporation organized and existing under and by virtue of the laws of the State of Maine, with its office and principal place of business located at 477 Madison Avenue, New York, N.Y.

Respondent National Container Corporation is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 7 Central Park West, New York, N.Y.

Respondent International Paper Company 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 220 East 42nd Street, New York, N.Y.

Respondent Albemarle Paper Manufacturing Company is a corporation organized and existing under and by virtue of the laws of the State of Virginia, with its office and principal place of business located at Tredegar Street, Richmond, Va.

Respondent Ames Harris Neville Company is a corporation organized and existing under and by virtue of the laws of the State of California, with its office and principal place of business located at 2800 17th Street, San Francisco, Calif.

Respondent Seaboard Bag Corporation, hereinafter referred to as respondent Seaboard, is a corporation, organized and existing under and by virtue of the laws of the State of Virginia with its office and principal place of business located at 3405 Moore Street, Richmond, Va. It is engaged in the manufacture, sale and distribution of paper products including multiwall paper shipping sacks.

Respondent Lone Star Bag & Bagging Company, hereinafter referred to as respondent Lone Star, is a corporation organized and existing under and by virtue of the laws of the State of Texas with its office and principal place of business located at 2215 Dumble Road, Houston, Tex. It is engaged in the manu-

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facture, sale and distribution of paper products including multi-wall paper shipping sacks.

Respondent Union Bag & Paper Corporation, hereinafter referred to as respondent Union, 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 233 Broadway, New York, N.Y. It is engaged in the manufacture, sale and distribution of paper products including multiwall paper shipping sacks.

Respondent Virginia-Carolina Chemical Corporation, hereinafter referred to as respondent Virginia-Carolina, is a corporation organized and existing under and by virtue of the laws of the State of Virginia with its office and principal place of business located at 401 East Main Street, Richmond, Va. It is engaged in the manufacture, sale and distribution of paper products including multiwall paper shipping sacks.

Respondent Chemical Packaging Corporation, hereinafter referred to as respondent Chemical, is a corporation organized and existing under and by virtue of the laws of the State of Georgia with its office and principal place of business located at Atlantic Coastline Wharves, Savannah, Ga. It is engaged in the manufacture, sale and distribution of paper products including multi-wall paper shipping sacks.

Respondent Equitable Paper Bag Company, hereinafter referred to as respondent Equitable, is a corporation with its office and principal place of business located at 45-48 Van Dam Street, Long Island City, N.Y. It is engaged in the manufacture, sale and distribution of paper products including multiwall paper shipping sacks. Respondent's state of incorporation is unknown.

ORDER

It is ordered, That respondent corporations St. Regis Paper Company, Bemis Brothers Bag Company, Arkell & Smiths, Chase Bag Company, Universal Paper Bag Company, Hudson Pulp & Paper Corporation, National Container Corporation, International Paper Company, Albemarle Paper Manufacturing Company, Ames Harris Neville Company, Crown Zellerbach Corporation, Gilman Paper Company, Seaboard Bag Corporation, Lone Star Bag & Bagging Company, Union Bag-Camp Paper Corporation, Virginia-Carolina Chemical Corporation, and Chemical Packaging Corporation, and their respective officers, agents, and employees, in or in connection with the offering for sale, sale

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and distribution of multiwall paper shipping sacks in interstate commerce, do cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, agreement, understanding, combination or conspiracy between and among any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following things:

1. Establishing, fixing or maintaining prices, terms, or conditions of sale for multiwall paper shipping sacks, or adhering to any prices, terms or conditions of sale so established or fixed.

2. Quoting or selling multiwall paper shipping sacks at prices calculated or determined pursuant to or in accordance with a formula zone delivered price system or any other plan or system which prevents purchasers from securing any advantage in price in dealing with one or more of the respondents as against any of the other respondents or any others not parties hereto.

3. Circulating or exchanging between or among respondents, or any of them, a formula for pricing of multiwall paper shipping sacks, or price factors, or terms or conditions of sale for the pricing of multiwall paper shipping sacks, or a list or lists of zone delivered prices or of prices by any other designation for multiwall paper shipping sacks, or zone differentials or changes of zone differentials.

4. Using, directly or indirectly, in computing price quotations, or in making, quoting or in charging prices, any such formula or price factor or zone differential obtained from another respondent by means of such circulation or exchange.

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

(1) The Federal Trade Commission is not acting to prohibit, or interfere with, any respondent from entering into a bona fide offer, agreement or transaction with any other manufacturer, wholesaler, jobber or agent for the sale of multiwall paper shipping sacks, whether or not such other manufacturer, wholesaler, jobber or agent is a respondent, to buy from, to sell to, or to manufacture for the account of any such other manufacturer, wholesaler, jobber, or agent multiwall paper shipping sacks at any price or on any terms and conditions of sale independently determined and offered and independently accepted in any bona fide agreement or transaction.

(2) Nothing contained in this order shall be construed as prohibiting any of the respondents from taking such action relating

to its export sales as would be lawful under the provisions of the Webb-Pomerene Export Trade Act.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 12th day of February 1959, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents St. Regis Paper Company, Bemis Brothers Bag Company, Arkell & Smiths, Chase Bag Company, Universal Paper Bag Company, Hudson Pulp & Paper Corporation, National Container Corporation, International Paper Company, Albemarle Paper Manufacturing Company, Ames Harris Neville Company, Crown Zellerbach Corporation, Gilman Paper Company, Seaboard Bag Corporation, Lone Star Bag & Bagging Company, Union Bag-Camp Paper Corporation, Virginia-Carolina Chemical Corporation, and Chemical Packaging 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.

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IN THE MATTER OF
RENAIRE CORPORATION (PENNSYLVANIA) ET AL.

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

Docket 6555. Complaint, May 17, 1956—Decision, Feb. 12, 1959

Order requiring an eleven-company corporate family engaged in the sale of home freezers and foods under its "Renaire Plan," to cease representing falsely in advertising in newspapers, by radio and television, etc., that participants in its said "Plan" could buy a freezer and food for the same amount as would be required to buy the same quantity of food in regular retail channels and save enough to pay for a television set, vacation, or freezer, remodel a home, or buy an auto; to cease describing sales personnel as "expert food analysts," "accredited food budget analysts," or "trained qualified food consultants"; and to cease representing falsely that other food sellers did not sell Government inspected meats, that each carton of food they sold carried a United States Department of Agriculture seal, and that they could control the cost of food because it was inspected by U.S. inspection officials.

Mr. Floyd O. Collins supporting the complaint.

Mr. Edwin P. Rome of the firm of *Blank, Rudenko & Klaus*, of Philadelphia, Pa., for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

STATEMENT

The Federal Trade Commission issued its complaint May 17, 1956, charging respondents with unfair methods of competition and unfair and deceptive acts and practices in commerce in connection with the sale of freezers and food. Such unfair methods and unfair and deceptive acts were alleged to consist of false advertising of their products and of their food plan. The complaint further alleged in part that the individual respondents directed and controlled the policies and practices of the corporate respondents; that all of the corporate respondents were operated as a joint enterprise; that they were all engaged in interstate commerce in the sale of freezers and food and were in substantial competition in commerce with others engaged in the sale and distribution of freezers and food.

Joint answer was filed by all respondents, which admitted the corporate set up; that the various corporate respondents were operated as a joint enterprise; that they were engaged in the sale

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and distribution of freezers and food; that they were engaged in interstate commerce (later changed to denial in amendment to answer) and that they were in substantial competition with others engaged in the sale of freezers and food in commerce. Dissemination of some of the advertising alleged to be false and deceptive was admitted, some denied. It was denied that any of the advertising was false or deceptive or that respondents had otherwise violated the law as alleged in the complaint.

Hearings were held in Philadelphia, Pennsylvania and Washington, D.C. for the taking of evidence in support of and in opposition to the allegations of the complaint. Some delay was caused by court appeal of denial of motion to dismiss as to all respondents at the end of the evidence in chief in support of the complaint. Motion to dismiss as to respondent Renaire Corporation (Pennsylvania) was granted by the hearing examiner, the ruling being entered on the record in accordance with Rule 3.8(e) of the Commission's Rules of Practice.

Proposed findings, conclusions and orders were submitted by both sides and have been considered. All such findings, conclusions and orders not herein adopted, found or concluded are hereby specifically rejected.

Upon the entire record of the proceeding and from the observation of the witnesses while testifying, the hearing examiner makes the following findings as to the facts, conclusions and order:

FINDINGS AS TO THE FACTS AND CONCLUSIONS

1. (a) Respondent Renaire Corporation (Pennsylvania) is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania. Respondents Bertram P. Schrank, Harold B. Saler, Leonard S. Cohen, William Speckman, Morton Saler, Joseph Sherwood are president, executive vice president and assistant treasurer, vice president, vice president, secretary and treasurer, respectively, of said corporate respondent.

(b) Respondent Renaire Corporation (Washington, D.C.) is a corporation organized and existing under and by virtue of the laws of the State of Delaware. Respondents Bertram Schrank, Joseph Sherwood and Jules Hecht are president, secretary-treasurer and vice president, respectively, of said corporate respondent. Respondent Harold B. Saler is also an officer of said corporate respondent.

(c) Respondent Renaire of South Delaware, Inc., is a corpora-

tion organized and existing under and by virtue of the laws of the State of Delaware. Respondents William Speckman, Leonard S. Cohen, Harold B. Saler, and Morton Saler are president, vice president, secretary-treasurer, and assistant treasurer, respectively, of said corporate respondent.

(d) Respondent Renaire Corp. of Wilmington is a corporation organized and existing under and by virtue of the laws of the State of Delaware. Respondents Morton Saler, Bertram P. Schrank, Leonard S. Cohen, Harold B. Saler and William Speckman are president, vice president, treasurer, secretary, and assistant treasurer, respectively, of said corporate respondent.

(e) Respondent Renaire of Maryland, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Maryland. Respondents William Speckman, Leonard S. Cohen, Harold B. Saler and Morton Saler are president, vice president, secretary-treasurer, and assistant treasurer, respectively of said corporate respondent.

(f) Respondent Renaire of New Jersey, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey. Respondents Samuel Saler, Leonard S. Cohen, Harold B. Saler, William Speckman and Morton Saler are president, vice president, secretary-treasurer, assistant secretary and assistant treasurer, respectively, of said corporate respondent.

(g) Respondent Renaire Corp. of Delmont is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania. Respondents Joseph Sherwood, Leonard S. Cohen, Harold B. Saler, William Speckman and Morton Saler are president, vice president, secretary-treasurer, assistant secretary and assistant treasurer, respectively, of said corporate respondent.

(h) Respondent Renaire of Allentown, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania. Respondents Bertram P. Schrank, Leonard S. Cohen, Harold B. Saler, William Speckman and Morton Saler are president, vice president, secretary-treasurer, assistant secretary and assistant treasurer, respectively, of said corporate respondent.

(i) Respondent Renaire of Philadelphia, Inc., is a corporation organized and existing under and by virtue of the laws of the

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State of Pennsylvania. Respondents Morton Saler, Leonard S. Cohen, Harold B. Saler and William Speckman are president, vice president, secretary-treasurer, and assistant treasurer, respectively, of said respondent corporation.

(j) Respondent Renaire Corp. of Lancaster is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania. Respondents Leonard S. Cohen, William Speckman, Harold B. Saler and Morton Saler are president, vice president, secretary-treasurer, and assistant treasurer, respectively, of said respondent corporation.

(k) Respondent Renaire of South Jersey, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania. Respondents Leonard S. Cohen, Bertram P. Schrank, Harold B. Saler, William Speckman and Morton Saler are president, vice president, secretary-treasurer, assistant secretary and assistant treasurer, respectively, of said corporate respondent.

The home office and principal place of business of all respondents is located at 770 Baltimore Pike, Springfield, Pennsylvania.

Jurisdiction

2. Each of the corporate respondents is now and has been for more than two years last past engaged in a separate trade area in the sale and distribution of home freezers and food under a food purchase plan, but they are all operated as a joint enterprise. The respondents Leonard S. Cohen, Joseph Sherwood, Samuel Saler, Harold B. Saler, Morton Saler, William Speckman and Bertram P. Schrank own all the stock of all the corporate respondents, with the exception of Renaire Corporation (Washington, D.C.) and direct and control their management, policies and operations. The individual respondents above named together with the respondent Jules Hecht own all the stock of Renaire Corporation (Washington, D.C.) and direct and control the management, policies and operation of that corporate respondent.

3. The specific territories in which each of the corporate respondents solicit the sale of and sell freezers and food are as follows:

Renaire Corporation (Pennsylvania) in the general Philadelphia, Pa., area; Renaire Corporation (Washington, D.C.) in the general trading area of Washington, D.C. including the outlying suburban districts in Maryland, and Virginia; Renaire of South

Delaware, Inc., in an area south of Dover, Del. to the Maryland State border; Renaire Corporation of Wilmington, in the general trading area of Wilmington, Del. which comprises that area between the northern boundary of Wilmington and up to the Dover area; Renaire of Maryland, Inc., operates in Eastern Shore Maryland and in the Salisbury area; Renaire of New Jersey Inc., in the immediate vicinity of Trenton, N.J., the Trenton trading area; Renaire Corporation of Delmont in Delaware County and Montgomery County of Pennsylvania; Renaire of Allentown, Inc., operates in the general trading area of Allentown, Pa., which runs from Allentown to the general area of Lansdale, Pa.; Renaire of Philadelphia, Inc., operates in the northeastern section of Philadelphia over to the Delaware River at Norristown, Pa.; Renaire Corporation of Lancaster in the general area of Lancaster, N.Y. and Harrisburg, Pa.; Renaire of South Jersey, Inc., operates between Camden, N.J. and the South Jersey seaboard area of Atlantic City to Cape May.

4. In all, respondent corporations operate in five states and the District of Columbia. To show the specific area of operations of each corporate respondent see map which is Respondents' exhibit 6.

5. The food offered for sale and sold by respondents consists of what may be called perishables, excluding milk and eggs. They do not sell items known as staples, for instance, sugar, flour, bread or cereal. The record shows that from 30% to 55% of the average family food budget is spent for staples, milk and eggs. Respondents do sell frozen fruits, juices, vegetables, meat, fish and poultry. In such business respondents are now and have been in substantial competition with other corporations, firms and individuals engaged in the sale and distribution of freezers and food in commerce.

6. It is admitted that Renaire Corporation (Pennsylvania) sells in commerce and that the sales of Renaire Corporation (Washington, D.C.) are in commerce by statute, so far as the Federal Trade Commission is concerned.

7. The first contested issue to decide is whether the other nine corporate respondents are engaged in commerce. On this point the facts as to respondents' methods of doing business, as shown in the record, are as follows:

(a) None of the corporate respondents own or carry on hand any stock of freezers. They are all owned by the Gilbert Distributing Company, another corporation, not a respondent. The

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stock ownership and control of the Gilbert Distributing Company is vested in the individual respondents. Occasionally one of the corporate respondents will sell one of the freezers in its display room, which has been loaned to it for display purposes by the Gilbert Distributing Company. The Gilbert Distributing Company maintains a stock of freezers at the food processing plant of the Renaire Corporation (Pennsylvania) at Springfield, Pa.

(b) The Renaire Corporation (Pennsylvania) is the only respondent that owns or operates a food processing plant. It also sells freezers. In its plant at Springfield, Pa., foods including meats and meat products are processed, prepared for sale, frozen and kept until sold by one of the corporate respondents.

(c) The initial contract of sale of a freezer and supply of food by each of the corporate respondents is taken in the name of Renaire Corporation. A sort of clearing house for processing all such orders by all corporate respondents is maintained at the Springfield, Pa. plant of Renaire Corporation (Pennsylvania). A copy of the contract of sale is sent to the Gilbert Distributing Company and a copy is sent to the Renaire Corporation, (Pennsylvania), unless that concern is the corporate respondent making the sale to consumer. The particular corporate respondent that makes the sale makes the necessary financing arrangement for a credit sale with its own bank, indorsing the contract of sale to the bank. After these financial arrangements are made, the freezer is invoiced to the corporate respondent making the sale and that respondent pays the Gilbert Distributing Company for the freezer. The Gilbert Distributing Company ships the freezer direct to the consumer-purchaser. Except in the case of the Renaire Corporation (Washington, D.C.) the food in the purchase order is shipped direct by the Renaire Corporation (Pennsylvania) from its plant at Springfield, Pa. to the consumer-purchaser and is paid the full price in the sale contract for the food including meat and meat products by the corporate respondent making the sale. The corporate respondents, other than the Renaire Corporation (Pennsylvania) make no profit on the sale of foods, but rely for their profit on the difference between what they pay the Gilbert Distributing Company for the freezer and the price for which they sell the freezer to the retail purchaser.

(d) The Renaire Corporation (Washington, D.C.) maintains its own storage warehouse for food in Washington, D.C. The food stored there, including meat and meat products, is prepared

and processed at the plant at Springfield, Pa., and shipped to the Washington, D.C. storage plant. Sales of food by the Renaire Corporation (Washington, D.C.), both original sales and repeat orders for food are shipped from the Washington, D.C. storage warehouse to the retail customers. Other than as above mentioned all sales by Renaire Corporation (Washington, D.C.) are handled in the same manner as sales by the other corporate respondents. Repeat orders for food, other than in the territory of the corporate respondent, Renaire corporation (Washington, D.C.) are direct sales by and are shipped direct by the Renaire Corporation (Pennsylvania) to the retail purchaser. When they occur in the territory of the other corporate respondents, the corporate respondent in whose territory the sale is made merely acts as a conduit for funneling the repeat order for food to Renaire Corporation (Pennsylvania).

(e) Each corporate respondent files separate income tax return and pays its own tax. There is central bookkeeping for all corporate respondents maintained at the Springfield plant, and the cost is charged proportionately to each corporate respondent, as are costs of other central services. They advertise jointly, a proportionate part of the cost of each advertisement being charged to each corporate respondent participating therein.

8. When sales of freezers and food are made by the corporate respondents Renaire of South Delaware, Inc., Renaire Corporation of Wilmington, Renaire of Maryland, Inc., Renaire of New Jersey, Inc., and Renaire of South Jersey, Inc., they do literally in the words of the complaint cause the freezers and food sold to be transported from the State of Pennsylvania to the state in which the sale is made.

9. As to the corporate respondents who limit their sales to the State of Pennsylvania, Renaire Corporation of Delmont, Renaire of Allentown, Inc., Renaire of Philadelphia, Inc., and Renaire Corporation of Lancaster, they are all part of the family of corporations, admittedly operated as a unit with a common purpose and seeking a common goal by joint means, the goal being to sell freezers and food and the means being advertising over the radio, in the newspapers and by pamphlets, letters, booklets and leaflets, the cost of which is borne by all the corporate respondents. To illustrate, Commission's exhibit 206 is an advertisement appearing in the Philadelphia Evening Bulletin, dated May 15, 1955. It is a joint advertisement of Renaire of Philadelphia, Inc., Renaire of New Jersey, Inc., Renaire Corporation of Wilming-

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ton, Renaire Corporation of Lancaster, and Renaire of Allentown, Inc. Thus, Renaire Corporation of Lancaster was by this advertising helping Renaire Corporation of Wilmington to sell freezers and food in commerce. This advertisement looks like the advertisement of one concern with branch offices in the various places in Pennsylvania, New Jersey and Delaware. In fact all of the advertising in evidence appears to be that of one concern. By thus joining in the common undertaking the respondent corporations who limit their sales to Pennsylvania become jointly liable under the Federal Trade Commission Act with the respondents who do sell in commerce.¹

10. Thus it is found that all respondents were engaged in commerce in the sale of freezers and food, and with the exception of Renaire Corporation (Pennsylvania) subject to Commission jurisdiction.

11. We hold here that the processing activities performed by persons not members of the slaughtering and meat packing industry which are similar to those customarily engaged in in furtherance of the retail merchandising of meat do not constitute the manufacture or preparation of meat or meat food products within the intent and meaning of the Packers and Stockyards Act. [Refer to opinion for further discussion.]²

The Representations

12. Among the representations found in the advertising in evidence are the following:

Our main purpose is to provide you with more food, better food . . . delivered to your home . . . plus a specially designed Renarie Freezer . . . for no more than you now spend for just food. Amazing as it may seem—impossible as it may appear—Renaire is now doing this for thousands and thousands of families.

* * * * *

No waste fat with meats. From many "food plans" or department stores, you get up to 25% waste fat with meats (Com. ex. 5).

Proof of Renaire claims in impartial survey tabulated by Remington Rand. Over 85% of Renaire members reported that joining Renaire was a wise decision. Thousands of Renaire members get food plus freezer for less than they formerly spent just for food. Savings of these families average 18.02 monthly (\$216.24 per year) less than their former food budgets. 92.7% save time; 95% save work through Renaire membership (Com. ex. 6).

Renaire processes food in its own huge government inspected plant . . .

¹ *F.T.C. v. Cement Institute, et al*, 333 U.S. 683.

² See Commission Opinion *In the Matter of Food Fair Stores, Inc.*, Docket No. 6457, issued September 27, 1957.

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assuring quality control and prices far below average retail prices! (Com. ex. 7).

Only Renaire Can Bring You All of These Advantages! Don't Settle for Less: You own a specially designed freezer and your payments for freezer AND food are no more than you now spend for food alone. After freezer is all paid for your savings are vastly increased. (Com. ex. 8).

Government Inspected Meats . . . U.S. Department of Agriculture inspector on our premises at all times assures you protected quality . . . A Renaire exclusive.

* * * * *

Lowest Food Prices . . . Because we actually process and manufacture under U.S. Government inspection, we control costs. You buy direct from our plant. . . with no in-between handling costs or profits! Our tremendous volume, largest in the industry, means added savings!

* * * * *

Each package bears Department of Agriculture seal of inspection and approval.

* * * * *

Trained Food Consultants. Not just freezer salesmen but trained qualified food consultants . . . assuring you proper planning for long term satisfaction. A Renaire exclusive! (Com. ex. 10).

Trained food consultants, not just "freezer salesmen" plan your food budget for greatest saving. (Com. ex. 11)

Your initial food order was carefully worked out for you by one of our accredited food budget analysts, (Com. ex. 2)

For only Renaire has its own Government-Inspected Food Processing Plant where all our foods are prepared under the protective scrutiny of a U.S. Department of Agriculture Inspector. (Com. ex. 13)

Learn how we deliver food to your home at prices far below retail. (Com. ex. 15)

"Renaire saved us enough on food to make our new car possible" says Mr. and Mrs. P. Scarpa, 114 Rhode Island Avenue, Collingsdale, Pa.

* * * * *

Mrs. Marcus Cullen, No. 9 highway "We've recently moved into our new home and the money saved with Renaire freezer helped to pay the cost." (Com. ex. 20)

Renaire even has a \$1,000 food bond with Century Indemnity Company to further protect you. (Com. ex. 2)

13. Through these representations and others similar in evidence it is alleged in the complaint that respondents have falsely represented directly and by implication:

(1) That the participants in their "Renaire Plan" can obtain a well balanced food order at prices below prices they would pay for food if purchased in usual retail channels.

(2) That a participant is able to obtain a freezer and a supply of food for the same amount of money as would be required to

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obtain the same quantity of food if purchased in regular retail channels.

- (3) That a participant is able to buy food at wholesale prices.
- (4) That a participant is able to save the difference between the wholesale prices and the prices at which the retailer sells food.
- (5) That the overall cost of frozen food to the customer is less than the overall cost of corresponding food in other forms.
- (6) That a participant is able to save enough to:
 - (a) Pay for a TV set;
 - (b) Remodel a home;
 - (c) Pay for a vacation;
 - (d) Buy an automobile;
 - (e) Pay for a freezer.
- (7) That the initial food order of a participant is worked out by an expert food analyst.
- (8) That participant will have the services of a trained and qualified food consultant in planning food purchases.
- (9) That Government inspected meats is an exclusive with Renaire.
- (10) That each carton of food purchased from respondent carries a United States Department of Agriculture inspection label.
- (11) That by having their food inspected by United States inspection officials respondents are enabled to control production cost.
- (12) That a participant is fully protected in the purchase of food from respondents by the Century Indemnity Company.

14. It is found that the alleged representations have been made by the advertising in evidence.

15. It is apparent that charges of false advertising represented by subparagraph 1, 2 and 6 of paragraph 6 of the complaint must stand or fall on a comparison of respondents' food prices with those of their competitors in the retail sale of food. In this connection attention should be called to the representation in subparagraph 2, alleged to be false and deceptive, which reads as follows:

That a participant is able to obtain a freezer and a supply of food for the same amount of money as would be required to obtain the same quantity of food if purchased in regular retail channels.

16. As thus stated, the charge in the complaint is indefinite because no time is given. The case was tried on the theory,

justified by the advertising, that the representations in this subparagraph and subparagraph 6 related to a credit sale of 24 months which was respondents' plan at the time the advertisements in evidence were disseminated. The record shows that the credit was later extended for a longer period of time but all comparisons and all arguments by counsel supporting the complaint are based on a 24-month credit sale. In such sales eight percent per year of the deferred balance on the freezer was added as a finance or interest charge and the total was divided into 24 equal monthly payments. The first order of food was sold on an estimated four months supply on a credit with a finance charge of \$8.00 added, with the total divided into four equal monthly payments. On subsequent credit food purchases \$7.00 was added as a finance charge for each estimated four months supply.

17. Counsel supporting the complaint has taken the initial contract of 33 participants in respondents' plan in evidence showing monthly payments on the freezer and the monthly payments on the estimated first four months supply of food and has made a chart, attached to the proposed findings, in which the cost of the food and total cost of food and freezer and finance charges over a period of 24 months for each of the 33 participants are estimated. The chart further purports to show the required savings on food purchases necessary to pay for freezer and finance charges over a 24-month period. The percentage of the required savings to the total 2 years cost is also shown.

Comparison of Respondents' Food Prices With Prices of Competing Retail Stores

18. Counsel supporting the complaint seeking to sustain the burden of proof as to the falsity of the representations set forth in subparagraphs 1, 2 and 6 of paragraph 6, picked out the Acme grocery chain and the A & P grocery chain as competitors of respondents in the selling of food in the area in which respondents do business in Pennsylvania, Delaware, New Jersey and Maryland (excluding that part of Maryland within the Washington metropolitan area) and the Safeway grocery chain as competitors of respondents in the Washington metropolitan area. He then introduced the price list of respondents' food products for the period April 20, 1955 to May 21, 1955 and price lists of the competing Acme stores, (of which there were 268 supermarkets in the area) for the same period of time. (The price list of the A & P chain was not complete. Hence it drops out of

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the picture.) He also introduced into evidence the price list of respondents for the period April 2, 1956 through April 30, 1956 and the price list at which the competing Safeway stores (of which there were 178 or 179) in the Washington metropolitan area sold the same foods during the same period of time. Comparisons of such prices have been made in charts attached to the proposed findings.

19. In the comparison between Renaire and Acme prices it is shown that considering the whole list of compared prices Renaire's price was $\frac{1}{3}$ of 1% cheaper than Acme's. In this comparison there was no attempt to compare brand named products. This would have been impossible all the way through the list. For instance Renaire sold only Snow Crop brand frozen fruits, juices and vegetables. Acme sold various brands, Ideal, P.L., Birdseye and others. Renaire had only one price for the period April 20, 1955 to May 21, 1955. Acme had four different price lists on frozen juices, fruits and vegetables during the period and more than twenty-five different price lists during the period that included meat, fish and poultry. When Acme's prices changed on anything a new bulletin would be gotten out to the different store managers. In making the comparison of Acme's prices with Renaire's, Acme's cheapest price during any part of the period for the cheapest brand of frozen fruits, juices and vegetables was taken.

20. The comparison between Renaire and Safeway prices in the Washington metropolitan area for the period of April 2, 1956 to April 30, 1956 was on a different basis. Respondents have four different suggested food plans. Each plan sets forth the amount of frozen fruits, juices, vegetables, meats, fish and poultry that is expected to give a family of a certain size a well balanced diet of these items over a four months period. Respondents' food plan No. 1 for a small family offers the items there listed for approximately \$130. Plans No. 2, 3 and 4 are suggested for larger families and cost more according to the size of the family. Each of the suggested food plans are subject to variance according to the family's eating habits.

21. In the comparison between Renaire and Safeway prices, the cost of the various items from Renaire and from Safeway making up each of the suggested food plans are compared. This is not a comparison of the price per pound or per item although those are shown in some instances, but a comparison of total

cost of the same items if bought from each source. According to the comparison made Safeway was cheaper on each suggested food plan. Here again Renaire had one price list for the whole period, while Safeway's prices varied during the period and Safeway had various brands of frozen fruits, juices and vegetables, the cheapest of which for the lowest price during the period is compared with Renaire's Snow Crop brand.

22. All of these charts have been checked by the hearing examiner against the figures in evidence on which they were based and no error has been found. Furthermore these same charts were attached to answer of counsel supporting the complaint to respondents' motion to dismiss. Respondents' evidence has gone into the record since that time. Respondents have therefore had an opportunity to point out any errors in the calculations and none have been shown.

23. With respondents' advertising and the evidence in the record from which the above mentioned charts were compiled, counsel supporting the complaint rested his case on the charges in the complaint that the representations set forth in subparagraphs 1, 2 and 6 of paragraph 6 were false.

24. Among other defenses, respondents contend that it is manifestly unfair to permit counsel supporting the complaint to choose the competitors with which their prices are to be compared; to choose the date for the comparison; the period of time for which the comparison is to be made; to pick out the lowest price of the competitor on each separate item on any day during the 30-day comparison period and to compare this with respondents' constant price for the 30 days.

25. Respondents have also challenged the accuracy and sufficiency of the comparison between their prices and those of these two competitors on several additional grounds.

26. One ground of challenge is that the goods sold by them other than the meats, were Snow Crop brand which is claimed to be a superior brand, because of national recognition, whereas the brands of these competitors were not nationally recognized. This ground of challenge is disregarded, for the reason that in the advertising better foods were offered as a bonus in addition to cheaper price, which is attacked by the allegations of the complaint.

27. Another ground of challenge is that the comparison of respondents' meat prices with the prices of these two competitors is unfair. In selling primal units of meat, both Acme and Safe-

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way charge for the weight of the meat as a primal unit and then cut it up into steaks, roasts, etc. for the use of the purchaser. Thus the purchaser pays for any waste of bone and fat. Respondents also sell their meat in primal units but when preparing it into cuts for table use remove all excess bone and fat from some of the cuts or all bone and excess fat, depending on the type of cut. The customer is charged only for the net weight of the meat furnished plus any bones delivered for use in preparing soups or other dishes. The record further shows that the amount of bone and excess fat will vary widely with the contour of the animal, its age and other factors. Also testimony was introduced to show that respondents have to strictly comply with Department of Agriculture standards in naming their various cuts of meat while Acme and Safeway do not; that comparing prices by name only is unfair because cuts of meat bearing the same name may not actually be comparable.

28. Counsel supporting the complaint seeks to meet this last mentioned challenge by showing that, based upon the figures for the two 30-day periods mentioned and projecting them over 24 months, if the participants in respondents' plan paid nothing for their meats, still the savings would not be sufficient to enable the participants to save enough to pay for the freezer and the financing cost. This could bear on the charges in regard to the representations in subparagraph 2 and 6, but not on the charges in subparagraph 1.

29. Respondents in their defense also have shown that during other recent periods of time, within a 24-month period, beginning with the two 30-day periods of comparison, their then current prices compared with Acme's and Safeways, in the respective areas, showed respondents' prices to be lower than either of these competitors on a majority of items advertised by Acme and Safeway. They have also shown that other comparisons more favorable to them, pricewise may be made from the figures for the two 30-day periods.

30. Respondents also placed in the record the testimony of a number of participants in their plan who said that after making the payments on freezer, food and financing charges to respondents and buying their staples, they still had saved varying amounts of money over what they had previously paid for food

alone. This testimony was based on estimates of previous expenditure and cannot stand up against actual records of food prices, and comparisons of these food prices, if fair and accurate.

31. There is nothing unfair in counsel supporting the complaint picking out one competitor of respondents in each competitive area for a comparison of prices. If respondents' food prices by comparison with those of any general competitor in the area for a 24 month's period show the representations here being considered to be false, no comparison with any other competitors' prices is necessary on the representations in subparagraphs 2 and 6. By picking out only Acme and Safeway for comparison, counsel supporting the complaint narrowed the proof respondents were required to meet.

32. The hearing examiner is of the opinion that the comparisons in the charts presented by counsel supporting the complaint are made on an erroneous basis, although the calculations are correct. For instance in the comparison with Acme's prices for the period April 21, 1955 to May 20, 1955 the chart shows respondents offered six 6-oz. packages of Snow Crop orange juice for \$0.83 (Comm. ex. 26). As against that it is shown that Acme offered six 6-oz. P.L. orange juice for \$0.75 during the same period of time. The four price lists of Acme's frozen juices, fruits and vegetables in evidence show varying prices of orange juice during the 30-day period. The price list of Acme for six 6-oz. P.L. orange juice from April 25, 1955 through April 30, 1955 was \$0.85 (Com. ex. 29) as compared with respondents' constant price of \$0.83 during the 30-day period for six 6-oz. Snow Crop orange juice. On Acme's price list for May 9, 1955 through May 14, 1955 (Com. ex. 31) the price had dropped to six 6-oz P.L. orange juice for \$0.75. The \$0.75 figure is taken for comparison with respondents' constant price of \$0.83 in counsel's chart. The same method is followed in all of the comparisons in the charts. No customer on any particular day could have bought all of the things from Acme for the prices shown in the charts.

33. If any further proof is needed that the comparisons in the charts of counsel supporting the complaint are made on an erroneous basis a comparison between respondents' prices on frozen vegetables with those of Acme for the period May 9, 1955 to May 20, 1955 has been worked out. It is as follows:

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Respondents' prices, Snow Crop, April 21, 1955 to May 20, 1955 vegetables				Acme's prices, Ideal, May 9, 1955 to May 20, 1955 vegetables			
Ounces		Packages	Cost	Ounces		Packages	Cost
10	Asparagus, cut.	6	\$2.03	10	Asparagus, cut.	6	\$2.22
10	Asparagus, spears	6	2.43	10	Asparagus, spears	6	2.43
10	Beans, cut green	6	1.10	10	Beans, cut green	6	1.29
10	Beans, French cut.	6	1.10	10	Beans, French cut.	6	1.29
10	Broccoli, chopped	6	1.13	10	Broccoli, chopped	6	1.17
10	Broccoli, spears	6	1.37	10	Broccoli, spears	6	1.41
10	Brussel sprouts.	6	1.53	10	Brussel sprouts.	6	1.74
10	Cauliflower	6	1.43	10	Cauliflower	6	1.47
2 (per pkg.)	Corn, cob.	6	1.35	2 (per pkg.)	Corn, cob.	6	1.47
10	Corn, cut.	6	.85	10	Corn, cut.	6	.99
10	Limas, baby	6	1.43	10	Limas, baby	6	1.47
10	Limas, Fordhook	6	1.43	10	Limas, Fordhook	6	1.41
10	Mixed Vegetables	6	1.13	10	Mixed Vegetables	6	1.17
10	Peas	6	.89	10	Peas	6	.99
9	Potatoes, French fried.	6	.90	9	Potatoes, French fried.	6	1.05
*11	Spinach, chopped.	6	.95	*12	Spinach, chopped.	6	.99
*11	Spinach, leaf	6	.95	*12	Spinach, leaf	6	.99
10	Succotash	6	1.36	10	Succotash	6	1.41
10	Peas and carrots	6	.95	10	Peas and carrots	6	.99
16	Squash	6	.95	16	Squash	6	1.14
	Total		25.26		Total		27.09

34. Thus, while the chart of counsel supporting the complaint shows the whole order of vegetables from respondents costing \$25.26 as against \$25.76 from Acme a difference of fifty cents, this chart shows the order of vegetables from respondents costing \$25.26 as against \$27.09 from Acme, a difference of \$1.83. Prices on peas and carrots and squash were not obtainable from Acme's price list of May 9, 1955 to May 20, 1955 and it was necessary to go to the price list of May 25, 1955 to May 30, 1955 to obtain these prices. The point is however that the relationship between respondents' prices and Acme's during the 30-day period of comparison did not remain steady.

35. The comparison of respondents' food prices with Acme's was for the period April 20, 1955 to May 31, 1955 and in the area in Pennsylvania, New Jersey, Delaware and Maryland in which respondents did business, except that portion of Maryland in the Washington metropolitan area. The comparison of respondents' food prices with Safeway's was for the period April 2, 1956 to April 30, 1956, in another area in which respondents did business, the Washington metropolitan area. The comparison with Safeway's prices in the Washington metropolitan area from April 2, 1956 to April 30, 1956 cannot be taken as proof that Acme's prices in the other geographical area were the same as Safeway's in the Washington metropolitan area for that period of time. The

case was tried on the theory on these two charges, correct in the hearing examiner's view, that respondents' representations related to a credit sale of 24 months, which was respondents' plan at the time the representations, here considered, were made. [Refer to opinion.]

36. The hearing examiner has given consideration to reopening the proceeding for further evidence on these issues as has been done by the Commission in some cases. The conclusion is that the public interest would not warrant a reopening for the following reasons: (1) there is no jurisdictional question involved; (2) these charges are only three out of a total of twelve charges; (3) there is no indication that additional evidence for a proper comparison of prices is available and (4) there has been no request for reopening.

Wholesale Prices

37. It has been found that respondents have made the representations set forth in subparagraphs 3 and 4 of paragraph 6 of the complaint. These representations were:

That a participant is able to buy food at wholesale prices;

That a participant is able to save the difference between the wholesale prices and the prices at which the retailers sell food.

38. These representations are alleged to be false.

39. The applicable dictionary definitions of wholesale are as follows:

Sale of goods by the piece or in large quantity; distinguished from retail; selling to retailers or jobbers rather than consumers; as wholesale price.

The applicable dictionary definitions of retail are as follows:

the sale of commodities in small quantities or parcels;—opposed to wholesale; to sell directly to the consumer.

40. The business of respondents for the most part consist of selling directly to the consumers and under the above definition they are retailers although the record shows they do make some sales of their foods to retail stores, at the same prices they sell to the participants of their plan. The record further shows that wholesale prices vary in accordance with the quantities bought; that the quantity of meat sold to participants in a four months supply is equal to the quantity of meat bought at one time by some small retailers; that at least one wholesaler and one packer have complained to respondents that the prices at which their products were sold to participants were so low that small retail-

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ers could not compete; that respondents do sell some frozen foods to their participants at the same price or less than some wholesalers sell in small quantities.

41. Thus, while respondents are retailers according to the dictionary definition, in selling to the participants of their plan their prices to them are the same or less than wholesale prices are to some retailers. These two charges in the complaint must be dismissed.

That the Overall Cost of Frozen Food to the Customer
is Less than the Overall Cost of Corresponding
Food in Other Forms

42. There was no evidence on this charge of false representation, counsel supporting the complaint does not propose any finding on it. This charge must therefore be dismissed.

That the Initial Food Order of a Participant is
Worked out by an Expert Food Analyst

That Participant Will Have the Services of a Trained
and Qualified Food Consultant in Planning Food Purchases

43. The record shows that the "trained qualified food consultants" and the "accredited food budget analysts" were in reality salesmen for respondents who, when they started out, had been given one week of schooling by respondents. After that they were assigned to a more experienced salesman for the observation of one or two sales until they could make the presentation to the older salesman's satisfaction. It is evident that the essential part of the work was to sell freezers. One of the meanings of "consultant" is one who gives professional advice or services as a consulting physician. Also the phrase "accredited food budget analyst" has a professional ring to it as if the salesman had a degree from some accredited institution. Respondents required no educational qualifications for their salesmen nor was any knowledge of food an initial requirement. Respondents did employ some trained dietitians, but these persons did not call on prospects. It is clear that the advertising had reference to respondents' freezer salesmen. These representations were definitely false and misleading and it is so found.

That Government Inspected Meats is an Exclusive
with Renaire

44. Some of the advertising indicates that this claim is made in comparing Renaire with other sellers of freezers and food plans. Respondents contend that the claim was only made during

a period when none of their competitors in sale of freezers and food plans had a government inspector on their premises. Some advertising however (Com. ex. 10 among others) does not limit the claim to such comparison. The record shows that some competitors of respondents in the sale of food sold government inspected meat that had been bought from packers who had government inspectors on the premises. This representation was false and deceptive and it is so found.

That Each Carton of Food Purchased from Respondents
Carries a United States Department of
Agriculture Inspection Label

45. The record shows the United States Department of Agriculture inspection label only went on respondents' meat and meat products. The advertising indicates that all food carried such inspection labels. This representation was false and deceptive and it is so found.

That by Having Their Food Inspected by United States
Inspection Officials Respondents are Able to
Control Production Costs

46. Upon examination by counsel supporting the complaint, Mr. Harold B. Saler, an official, of the corporate respondents and an individual respondent himself stated that the United States Department of Agriculture Inspector on the premises has nothing to do with the prices at which respondents sold their merchandise; that he had nothing to do with the pricing structure at all. On later examination by his own counsel he stated that due to the inspector's examination of incoming products "we are able by uniformity of conformation, proper identification of the wholesale units (presumably of meat) which we purchase, we can therefore put these products on our assembly line production system, so that we in turn can process in uniformity and rapidity and with speed." He further said that respondents were benefited by the inspector's ability to reject any products shipped to them on the basis that they did not meet Federal requirements. This prevented respondents from having to argue with the suppliers. He also gave other instances of benefit to respondents from having a Federal inspector on the premises.

47. Taking all of these claimed benefits at their face value, they fall far short of enabling respondents to control the cost of their products to their participants, or to themselves. It is therefore found that this representation is false and deceptive.

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That a Participant is Fully Protected in the Purchase of
Food from Respondents by the Century Indemnity Company

48. There is some talk in the record in regard to the protection furnished participants by insurance policies of various kinds and also by respondents' warranties. At one time Mr. Harold B. Saler, above mentioned was requested to furnish counsel supporting the complaint with copies of all insurance policies given to participants, but they are not in the record. The name of the Century Indemnity Company was not connected with any insurance policy except in the advertising nor is there any proof that such policy was not outstanding. Counsel supporting the complaint does not propose any finding on this charge. Under this state of the record the charge must be dismissed.

FINAL CONCLUSIONS

49. The record shows that since this proceeding began respondents have changed their method of operation to some extent. According to this testimony the selling and advertising are now done by what are called franchise distributors. Respondents retain some control over what is said in the advertising of the franchise distributors. Also at the time the testimony was given such arrangement did not apply to the Renaire Corporation of Washington, D.C. The hearing examiner is unable to see how such new arrangement has any bearing on the issues in the present proceeding.

50. The use by the respondents of the representations herein found to be false and deceptive had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations were true and to induce the purchase of substantial quantities of respondents' freezers and foods by reason of such erroneous and mistaken belief and as a result thereof trade has been unfairly diverted from respondents' competitors.

51. The aforesaid acts and practices of respondents as herein found are all to the prejudice and injury of the public and 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.

ORDER

It is ordered, That respondents, Renaire Corporation (Pennsyl-

vania), a corporation, Renaire of South Delaware, Inc., a corporation, Renaire Corp. of Wilmington, a corporation, Renaire of Maryland, Inc., a corporation, Renaire of New Jersey, Inc., a corporation, Renaire Corp. of Delmont, a corporation, Renaire of Allentown, Inc., a corporation, Renaire of Philadelphia, Inc., a corporation, Renaire Corp. of Lancaster, a corporation, Renaire of South Jersey, Inc., a corporation, and their officers, and respondents, Leonard S. Cohen, Joseph Sherwood, Samuel Saler, Morton Saler, Harold B. Saler, William Speckman and Bertram B. Schrank, individually and as officers of said corporations as set forth in the findings herein, and Renaire Corporation (Washington, D.C.), a corporation, and its officers, and respondents, Bertram Schrank, Joseph Sherwood, and Harold B. Saler, as officers of said corporation, and respondent, Jules Hecht, individually and as an officer of said 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 foods and freezers in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the terms "expert food analyst," "accredited food budget analyst," "trained qualified food consultant" or any other term or terms denoting expertness in referring to their salesmen or saleswomen;
2. Representing directly or by implication:
 - (a) That their customers or participants in their plan will have the services of an expert in planning their food purchases;
 - (b) That other sellers of food do not sell government inspected meat;
 - (c) That each carton or package of food sold by them or any of them carries a United States Department of Agriculture inspection label;
 - (d) That having their food inspected by United States inspection officials enables them to control the cost of food.
 - (e) That a participant is able to obtain a freezer and a supply of food for the same amount of money as would be required to obtain the same quantity of food if purchased in regular retail channels.
 - (f) That a participant is able to save enough to (1) pay for a television set, (2) remodel a home, (3) pay for a vacation, (4) buy an automobile, or (5) pay for a freezer.

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3. Misrepresenting in any manner the savings afforded to respondents' purchasers.

OPINION ON CROSS APPEALS FROM HEARING
EXAMINER'S INITIAL DECISION

By SECREST, Commissioner :

The complaint charges that the respondents, in violation of the Federal Trade Commission Act, have misrepresented the benefits and advantages afforded by the freezers and frozen foods distributed and sold by them in commerce under a food purchase plan. In the initial decision filed after hearings were concluded, the hearing examiner held that the complaint should be dismissed as to one of the corporate respondents for lack of jurisdiction, that certain of the charges were sustained by the evidence as to the remaining respondents and that others were not so supported. Counsel supporting the complaint has appealed from various of the rulings including the jurisdictional ruling. The respondents who are appealing are those named in the initial decision's order to cease and desist and they request dismissal of the charges against them for lack of jurisdiction and on their merits.

The respondents named in the complaint are eleven corporations and eight individuals who are their stockholders and officers and direct their activities and practices. The hearing examiner held that one member of the Renaire corporate family, namely, respondent Renaire Corporation (Pennsylvania), was a packer within the intent and meaning of the Packers and Stockyards Act of 1921¹ and that its participation in the deceptive practices found to have been engaged in were matters committed to the exclusive jurisdiction of the Secretary of Agriculture and accordingly not within the Commission's jurisdiction. Respondents do not purchase any livestock for purposes of slaughter and do no slaughtering. The above corporation does, however, purchase carcasses of meat from packing houses and further processes such products in its plant at Springfield, Pa., under regulations governing meat inspection which are promulgated by the United States Department of Agriculture. These processing activities include cutting, boning, grinding and freezing of the meat food products for retail sale and delivery to buyers of respondents' freezers and participants in their food purchase plan; and it appears from the advertising exhibits that competition of those operations, including the products' wrapping

¹ 42 Stat. 160; 7 U.S.C. 181 et seq.

and freezing, requires 27 minutes. Such promotional material additionally states that the foods offered are limited to national and local leading brands and includes representations that the meats are "Armour's Star Grade" and the smoked meats are Oscar Mayer's.

Of the definitions appearing in Section 201 of the Packers and Stockyards Act, those here relevant define "packer" as any person engaged in the business (a) of buying livestock in commerce for purposes of slaughter, or (b) of manufacturing or preparing meats or meat food products for sale or shipment in commerce. When previously considering this statutory language, we held in the matter of *Giant Food Shopping Center, Inc.*, D. 6459 (decision on appeal December 19 1957), that the grinding and seasoning of meatloaf and country sausage incident to over-the-counter sale of meat purchased from packer suppliers by a retailer operating a chain of grocery supermarkets in the District of Columbia and elsewhere did not confer packer status on that processor. As we stated there, Congress' purpose was to regulate the business concerns which compose the slaughtering and meat packing industry. The legislative target was the packer as Congress knew him, namely, the concern engaged in purchasing animals, slaughtering them, selling food products and processing the by-products to a greater or lesser degree. In the matter of *Crosse & Blackwell Company*, D. 6463 (decided November 13, 1957), we held that the granting of discriminatory promotional allowances in violation of Section 2(d) of the Clayton Act, as amended, by a canner of table foods, some of which contained meats purchased by that food processor from packers, were activities subject to the jurisdiction of the Commission. That holding was affirmed on January 5, 1959, by the United States Court of Appeals for the Fourth Circuit.

We hold here that the processing activities performed by persons not members of the slaughtering and meat packing industry which are similar to those customarily engaged in in furtherance of the retail merchandising of meat do not constitute the manufacture or preparation of meat or meat food products within the intent and meaning of the Packers and Stockyards Act. The circumstance that the respondents' meat products are not merely refrigerated at the plant but also initially frozen there instead of in the consumer's own home freezer does not render their activities essentially different in character from that engaged in by retailers of meat. That the business role of respondent Renaire

Corporation (Pennsylvania) is essentially restricted to the retail marketing of meats in commerce also is corroborated by the fact that respondents have elected in the advertising to feature packer products having an established public acceptance. The hearing examiner's conclusions that respondent Renaire Corporation (Pennsylvania) should be deemed to be a packer within the meaning of the original Packers and Stockyards Act are erroneous.

On September 2, 1958, which date was subsequent to the time when the parties filed their appeals herein, Public Law 85-909 became effective. This enactment amends both the Packers and Stockyards Act and the Federal Trade Commission Act. Its effect, among others, is to confer on the Commission jurisdiction over unfair practices in commerce, in connection with all transactions by packers involving (1) commodities other than livestock, meats, meat food products, livestock products in unmanufactured form, poultry or poultry products and (2) with exceptions not here material, retail sales by packers of all products. For reasons hereinafter stated, we construe the amendment to be retrospective in operation, and, accordingly, applicable to proceedings pending before the Commission at the time of its enactment. Hence, even though the hearing examiner's interpretation of the Packers and Stockyards Act as effective prior to its amendment by Public Law 85-909 were adopted, it follows that the Commission now has jurisdiction over all practices charged in the complaint which are violative of the public policy expressed in the Federal Trade Commission Act if engaged in in commerce by the corporate respondent retailers.

A statute or amendment will be regarded as solely prospective in its operation if in derogation of common law rights or if the effect of giving it retroactive operation will be to interfere with an existing contract, destroy a vested right, or create a new liability in connection with a past transaction. *Lewellyn v. Frick*, 268 U.S. 238, 252 (1925); *Valleytown Tp. v. Women's Catholic Order of Foresters*, 115 F.2d 459, 562 (C.A. 4, 1940); 50 A.J. p. 500. On the other hand, when not excluded by the terms or implications of the language of the act, statutes and amendments which do not have the foregoing effects and are directed to changing remedies or modes of procedure for enforcing existing obligations have retrospective effect. *Beatty v. U.S.*, 191 F.2d 317 (C.A. 8, 1951); *U.S. v. National City Lines*, 80 F. Supp. 734 (D.C. S.D. Cal., 1948), cert. den. 337 U.S. 78; *Bowles v. Strickland*, 151 F.2d 419 (C.A. 5, 1945); *Bowles v. Miller*, 151 F.2d

992 (C.A. 10, 1945); *Federal Broadcasting System v. F.C.C.*, 239 F.2d 941 (C.A.D.C. 1956); 50 A.J. p. 506.

The bill which was enacted by Congress as Public Law 85-909 was introduced as H.R. 9020. Although it was the subject of a committee report in the first session of the 85th Congress, none was made on it in the second session where it was enacted in a revised form. In the latter session, however, the Committee on Interstate and Foreign Commerce did report on a companion bill which adopted the same general legislative approach and had many provisions similar to H.R. 9020 as ultimately enacted. Such report described that bill to deal "with a reassignment of jurisdiction over unfair trade practices, but leaves unchanged the present substantive provisions of law regarding such practices." (Rep. No. 1507 (p. 3), 85th Cong., 2d Sess.)

The original Packers and Stockyards Act conferring exclusive jurisdiction on the Secretary of Agriculture respecting certain proceedings involving packers did not repeal any of the statutes administered by the Commission as to packers. As to them, it had merely tolled or suspended the Commission's power and jurisdiction to enforce the organic Act and other acts imposing statutory responsibilities similar in vein to those provided in the original Packers and Stockyards Act. Congress' disclaimer respecting changes in substantive law when redistributing enforcement responsibilities between the two enforcement agencies concerned is to be accorded great weight. It follows, therefore, that the purpose of the amendment restoring Commission jurisdiction was limited to changing the forum for adjudicating complaints with respect to certain categories of statutory violations by packers. An amendment which merely provides additional machinery for enforcing preexisting statutory responsibilities does not affect substantive rights and will be accorded retrospective effect. *Mattox v. U.S.*, 187 F.2d 406 (C.A. 9, 1951), cert. den. 342 U.S. 820. The same holds true for acts effecting changes in jurisdiction and venue. *Larkin v. Saffarans*, 15 Fed. 147 (Cir. Ct. W.D. Tenn., 1883); *Hadlick v. American Mail Line*, 82 F. Supp. 562 (D.C. N.D. Cal., 1949). Hence, we construe the amendment as essentially procedural in character and hold it retrospective in its effect as to violations of substantive law by packers. As previously noted, this conclusion likewise requires reversal of the initial decision's holding of lack of jurisdiction by the Commission as to respondent Renaire Corporation (Pennsylvania).

We also have considered respondents' contentions that the hearing examiner erred in failing to hold that all corporate members of the Renaire family of corporations were within the original Act's definitions of packers. This contention is rejected.

Respondents appeal further contends that there is no record showing that 9 of the 11 corporate respondents are engaged in interstate commerce. It is not controlling, however, that each of such corporations may restrict its freezer sales and solicitations for food orders to a trading area located within the confines of the state issuing its corporate charter. The freezers and foods are shipped from the plant at Springfield, Pa., to purchasers located in other states and Renaire of South Delaware, Inc., Renaire Corp. of Wilmington, Renaire of Maryland, Inc., Renaire of New Jersey, Inc., and Renaire of South Jersey, Inc., have made contracts of sale contemplating the shipment of freezers and foods across state lines and thus directly cause their movement in interstate commerce. Furthermore, the foregoing respondents and the correspondent corporations chartered under the laws of Pennsylvania, in instances, advertise jointly and have at all times been operated as a joint and closely integrated enterprise. The hearing examiner's conclusion that the respondents' acts and practices were in commerce has sound legal basis.

Respondents additionally except to the initial decision's findings of misrepresentation in connection with the sales representatives being designated by respondents variously as expert food analysts, trained qualified food consultants and accredited food budget analysts. The fact that suggested basic food orders prepared by persons with long experience in the food field are furnished to sales personnel for use in sales presentations does not, however, support conclusions that the latter, in view of the brief training accorded them, have the qualifications and expertise claimed for them in the advertising. We think that the hearing examiner's findings on this aspect had sound basis in the record. We also have considered the exceptions additionally interposed by respondents to other findings of fact by the hearing examiner. Inasmuch as the reasons cited by the hearing examiner in support of these findings appear fully controlling to decision here and have appropriate record basis, these exceptions are denied.

The hearing examiner held that there was a failure of proof respecting the matters charged in subparagraphs 1 through 6 of paragraph 6 of the complaint and the appeal of counsel supporting

the complaint also asserts error as to those rulings except as to subparagraph 5. Subparagraph 1 charges that the respondents have falsely represented that participants in their program can obtain food at prices below those they would pay for food if purchased in usual retail channels. The second subparagraph alleges that the respondents have represented that a participant is able to obtain a freezer and his supply of food for the same amount as would be required to obtain the same quantity in regular retail channels; and subparagraph 6 alleges that the respondents have represented contrary to the true facts that a participant is able to save enough to pay for a TV set, remodel his home, pay for a vacation, buy an automobile, or pay for a freezer. Though finding that there was sound record basis for conclusions that the respondents had used the challenged representations in promoting the resale of their freezers and foods, the hearing examiner stated that the charges as to their falsity were not supported by the preponderance of the evidence.

Renaire plan No. 1 affords a quantity of freezables comprising meats, fish, poultry, vegetables, juices and fruits which is offered as a four-month supply for a small family priced at \$130. Alternative plans at other prices are suggested for larger families but all programs are subject to variation depending on the families' eating habits. Relevant to these charges, counsel supporting the complaint introduced in evidence price lists effective in Acme Stores in a territory which included the Philadelphia area for the period between April 25, 1955, and May 21, 1955, together with Renaire's listings for that period. Also received were price lists effective for Safeway Stores in the Washington metropolitan area during April, 1956, together with the Renaire price list then effective. The tabulations or charts prepared and appended to counsel's appeal brief are directed to comparing Renaire and Acme prices on individual items appearing on the Renaire price list for the above period in 1955; and the tabulated comparisons for Safeway and Renaire prices for the selected 1956 period primarily pertain to freezables included in the various Renaire food plans, and thus purport to compare total costs of the various items making up each plan if bought from those competitive sources at that time in areas where the prices were effective.

Unlike Renaire's prices, those of the two chains were subject to fluctuations on certain articles during the selected periods. The price lists and tabulations are relied on by counsel supporting the complaint as showing that the prices of the supermarket

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concerns were equivalent to or lower than respondents' prices provided the meats were bought in like quantities at the prices for primal units available in various of the chain stores. The hearing examiner expressed views that certain of counsel's tabulations purporting to show that a certain quantity of vegetables would cost \$25.26 if purchased from respondents as against \$25.76 if bought at Acme, while mathematically correct, represented an improper or erroneous comparison by reason of their being based on the latter's lowest price levels for each food item.

In the tabulation prepared by him and set forth in the initial decision, the hearing examiner instead adopted as a basis for comparison certain higher levels resulting from the price variations during the period under consideration. This indicated that the above frozen vegetables would have cost \$1.83 less if purchased from Renaire. Because of the price changes, the hearing examiner further concluded that an evaluation of future price relationships and differences and of whether consumer savings would be afforded by dealing with Renaire over other retailers over the twenty-four months' period of time customarily involved in respondents' credit or deferred payment sales was not possible.²

We agree that the foregoing evidentiary material and other record matters do not support informed determinations that savings may not be afforded in instances on purchases from respondents over prices prevailing in regular retail channels. Hence, insofar as his ruling relates to qualitative claims for savings which might be realized from purchases through respondents we believe the hearing examiner correctly held that the charges of subparagraph 1 of paragraph 6 of the complaint lack sound record support. However, notwithstanding this conclusion, we are also of the view that respondents' claims for average savings amounting to \$18.02 monthly (or \$432.48 for the period covered by respondents' contracts), claimed savings enabling a participant

² In this connection the hearing examiner related that:

"It may be argued that any possible comparison of respondents' food prices with those of Acme's and Safeway's during either period of time for which the figures are given will show that the prices are so close that if extended over a 24-months period, there would not be sufficient savings by purchasing food from respondents to pay for the freezer and the finance charges. The point is that the relationship between respondents' prices and their competitors fluctuated and the fluctuation during the two 30-day periods of time, demonstrate, if any demonstration is necessary, that no inference is possible to the effect that the relationship between respondents' prices and those of the two competitors remain approximately the same for 24 months.

"The evidence of record does not affirmatively show the truth or the untruth of the representations embodied in subparagraphs 1, 2 and 6 of paragraph 6. Therefore, the holding is that the charges as to the representations in these three subparagraphs being false, deceptive and misleading are not supported by a preponderance of the evidence, and must be dismissed." (Italic supplied.) Paragraphs 39 and 40 of the Initial Decision.

in their plans to obtain a freezer and food supply for the amounts required to obtain a like food supply in regular channels and claims for savings sufficient to enable participants to buy an automobile, television or other items mentioned in subparagraph 6, are completely refuted by this record.

To hold otherwise would be to fail to view the pricing information in its proper perspective. The prices of supermarket organizations are subject to changes in marketing conditions, including price changes adopted by competitors. The prices effective for the two chain retailers were available to consumers in a substantial segment of the territory in which the respondents conducted their operations. Furthermore, the periods selected for investigation and price comparisons were of reasonable duration; and the price levels effective in the chain stores and those adopted by respondents appear reasonably representative of the pricing policies of those concerns. It is true that the price changes effective on many articles sold by the supermarket retailers presented various alternative bases for price comparisons. Appended to the brief are additional charts apparently prepared by counsel for purposes of his appeal. These set forth price comparisons taking cognizance of a very substantial number though not all of the price changes made effective by the supermarket retailers in the periods covered by the pricing studies. The pricing pattern indicated by the record tends to similar overall price levels between respondents and their competitors with substantial price disparities in some product categories.

Also pertinent to the respondents' quantitative savings' claims is the large outlay required to pay for a freezer. For purchasers selecting the freezer listed at \$459 exclusive of finance charges and a two-year supply of food costing \$780, the price of food, freezer and finance charges for the period of twenty-four months under respondents' then customary deferred payment plan, together with finance charges on the food, totaled \$1,352.16. On a freezer priced at \$799 and a like two-year food supply, the aggregate cost of food, freezer and finance charges was \$1,745.24. The savings on food which would be required in those cases to pay for the freezers and all financing charges, respectively, amount to \$572.16 and \$965.24, or 42.31% and 55.31% of the amounts paid by those buyers. An analysis of 33 of respondents' contracts with purchasers indicates that the percentage of total costs required by way of food savings to pay the obligations

there incurred amount to 41.32%. The cost of the freezers and finance charges have exceeded the cost of the two-year supply of meats called for under some of the food plans. Hence, even if the meats were furnished by respondents without charge in those cases, it would not necessarily result that savings equivalent to the cost of the freezers would be realized by purchasers.

In considering the competitive price data, the hearing examiner noted, among other things, testimony to the effect that when primal units of meat, including beef, were cut by respondents into steaks and other cuts for table use, their purchasers received the meats free of bone and excess fat. This nowise detracts from the conclusiveness of other evidence refuting the quantitative savings' claims. Evidence pertaining to beef orders filled by respondents shows they regularly included packages of bones. These were billed at the price per pound charged for the particular primal unit of beef sold. The tabulations introduced by respondents in support of their claimed savings included those comparing Renaire prices on a half chuck and a forequarter of beef with those charged by a competitor for like finished cuts sold over the counter. While purporting lower prices by Renaire of 15.8% and 17.3%, respectively, such levels of savings would fall far short of those promised in the advertising. Moreover, trimmed primal units of beef were available at many stores of that particular chain at prices below or equivalent to respondents' prices.

In these circumstances, we conclude, and so find, that it is not true as represented by the respondents that participants in Renaire's plans are able to buy freezers and supplies of food for the same amounts of money as would be required to obtain the same quantity of food if purchased in regular retail channels. The hearing examiner found that 30% to 55% of the average family food budget is spent for staples, milk and eggs. While freezables are a broad food category, any savings realized on their purchase would not extend to other articles of the family diet. It thus is clear that such advantages as are afforded to purchasers of respondents' freezers and freezables would not normally include savings approaching the amounts required for buying an automobile or the other things designated in the advertising, or afford the specified savings otherwise promised in the advertisements.

We hold that the charges of subparagraphs 2 and 6 of paragraph 6 of the complaint have sound record support. The record also supports informed determinations that respondents have mis-

represented the monetary savings to be realized by the average of the participants in their food program. The initial decision's findings and conclusions which are in conflict herewith are modified accordingly. The contentions of counsel supporting the complaint, insofar as they relate to the rulings of the hearing examiner's dismissal of subparagraphs 3 and 4 of paragraph 6 of the complaint, are rejected for failure of proof.

The respondents' appeal is being denied and the appeal of counsel supporting the complaint granted in part and denied in part. The record clearly shows that respondent Renaire Corporation (Pennsylvania) participated in the unlawful acts and practices which the initial decision found were engaged in and such respondent accordingly is being included as a party to the order to cease and desist. The initial decision, as modified by our accompanying order, is being adopted as the decision of the Commission.

FINAL ORDER

Counsel in support of the complaint and the respondents having filed cross-appeals from the hearing examiner's initial decision dated December 6, 1957, and the Commission having considered the same and having granted in part and denied in part the appeal of counsel in support of the complaint and denied the appeal of the respondents, and having directed modification of the initial decision and the adoption of said initial decision, as so modified:

It is ordered, That the hearing examiner's initial decision be, and it hereby is, modified as follows:

1. By striking therefrom, and particularly from paragraph 11 thereof, all findings and conclusions to the effect that the respondent, Renaire Corporation (Pennsylvania), is a packer within the intent and meaning of the Packers and Stockyards Act of 1921, and that said corporation is not subject to the jurisdiction of the Commission, and by substituting for said findings and conclusions the pertinent portions of the Commission's opinion, of even date herewith, on this subject;

2. By striking the fourth and fifth sentences of paragraph 27 and substituting therefor the following:

"Respondents also sell their meat in primal units but when preparing it into cuts for table use remove all excess bone and fat from some of the cuts or all bone and excess fat, depending on the type of cut. The customer is charged only for the net weight

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of the meat furnished plus any bones delivered for use in preparing soups or other dishes."

3. By striking the fourth sentence contained in paragraph 35 and all of paragraphs 36 to 40 inclusive, and by substituting for said findings and conclusions the portions of the Commission's opinion relevant thereto.

4. By striking therefrom the order to cease and desist and substituting therefor the following:

It is ordered, That respondents, Renaire Corporation (Pennsylvania), a corporation, Renaire of South Delaware, Inc., a corporation, Renaire Corp. of Wilmington, a corporation, Renaire of Maryland, Inc., a corporation, Renaire of New Jersey, Inc., a corporation, Renaire Corp. of Delmont, a corporation, Renaire of Allentown, Inc., a corporation, Renaire of Philadelphia, Inc., a corporation, Renaire Corp. of Lancaster, a corporation, Renaire of South Jersey, Inc., a corporation, and their officers, and respondents, Leonard S. Cohen, Joseph Sherwood, Samuel Saler, Morton Saler, Harold B. Saler, William Speckman and Bertram B. Schrank, individually and as officers of said corporations as set forth in the findings herein, and Renaire Corporation (Washington, D.C.), a corporation, and its officers, and respondents, Bertram Schrank, Joseph Sherwood, and Harold B. Saler, as officers of said corporation, and respondent, Jules Hecht, individually and as an officer of said 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 foods and freezers in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the terms "expert food analyst," "accredited food budget analyst," "trained qualified food consultant" or any other term or terms denoting expertness in referring to their salesmen or saleswomen;

2. Representing directly or by implication:

(a) That their customers or participants in their plan will have the services of an expert in planning their food purchases;

(b) That other sellers of food do not sell government-inspected meat;

(c) That each carton or package or food sold by them or any of them carries a United States Department of Agriculture inspection label;

(d) That having their food inspected by United States inspection officials enables them to control the cost of food.

(e) That a participant is able to obtain a freezer and a supply of food for the same amount of money as would be required to obtain the same quantity of food if purchased in regular retail channels.

(f) That a participant is able to save enough to (1) pay for a television set, (2) remodel a home, (3) pay for a vacation, (4) buy an automobile, or (5) pay for a freezer.

3. Misrepresenting in any manner the savings afforded to respondents' purchasers.

It is further ordered, That the initial decision, as so modified, be, and it hereby is, adopted as the decision of the Commission.

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

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IN THE MATTER OF
PARKS CANNING COMPANY, INC., ET AL.

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

Docket 7200. Complaint, July 18, 1958—Decision, Feb. 12, 1959

Consent order requiring three associated corporate packers of seafood products and their exclusive sales agent in Seattle, Wash., to cease violating the brokerage section of the Clayton Act (Sec. 2(c)) by making sales to certain chains at reduced prices arrived at by giving up all or a large part of the brokerage earned by said sales agent on the sales; and—in cases where said sales agent acted as a primary broker for outside packers—by passing on brokerage to certain buyers or their agents.

COMPLAINT

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

PARAGRAPH 1. Respondents Parks Canning Company, Inc., H. M. Parks Company, Inc., and Western Fisheries Company, hereinafter sometimes referred to as corporate respondents, are corporations organized, existing and doing business under and by virtue of the laws of the State of Washington, with their principal office and place of business located at 309 Colman Building, Seattle, Wash.

Respondent North Pacific Seafoods, hereinafter sometimes referred to as partnership respondent, is a copartnership composed of corporate respondents H. M. Parks Company, Inc. and Western Fisheries Company under the laws of the State of Washington, with its office and principal place of business located at 312 Colman Building, Seattle, Wash. Said partnership was formed in 1946 to act as a primary broker or exclusive sales agent for the corporate respondents named herein in connection with the sale and distribution of their seafood products. In addition to acting as a primary broker or exclusive sales agent for the corporate respondents named herein this respondent also acts to some

extent as a primary broker for other seafood packers in connection with the sale and distribution of their seafood products.

PAR. 2. The above-named corporate respondents have been for the past several years and are now engaged in canning, packing, selling and distributing canned salmon, tuna, crab meat and clams, all of which are hereinafter referred to as seafood products. The canning operations are now being carried on as a joint venture by the corporate respondents named herein. The partnership respondent has been for the past several years and is now engaged in selling and distributing seafood products both as exclusive sales agents for the corporate respondents and as a primary broker for other seafood packers. Respondents are substantial factors in the seafood industry.

PAR. 3. In the course and conduct of their business, respondents for the past several years have sold and distributed and are now selling and distributing their seafood products in commerce, as "commerce" is defined in the aforesaid Clayton Act, to buyers located in the several States of the United States, other than the State in which respondents are located. Said respondents transport, or cause such seafood products, when sold, to be transported, from their place of business in the State of Washington or elsewhere, to buyers, or to the buyers' customers, located in various other States of the United States. There has been at all times mentioned herein a continuous course of trade in commerce in said seafood products across state lines between respondents and the respective buyers thereof.

PAR. 4. In the course and conduct of their business in commerce in the sale and distribution of their seafood products, the corporate respondents usually pay their primary broker or exclusive sales agent, respondent North Pacific Seafoods, a brokerage or commission usually at the rate of 5 percent of the net selling price of the merchandise sold. Respondent North Pacific Seafoods is likewise usually paid a 5 percent brokerage or commission when it represents outside packers as a primary broker, in the sale and distribution of their seafood products.

Respondent North Pacific Seafoods also employs field brokers located in the various parts of the United States where the buyers are located to negotiate sales for it, which field brokers are usually paid for their service in connection therewith at the rate of 2½ percent of the net selling price of the merchandise.

PAR. 5. In the course and conduct of their business, the cor-

porate respondents named herein, acting on their own or by or through their partnership, North Pacific Seafoods, have made sales to certain chains at reduced prices which reflect brokerage or have granted discounts or allowances in lieu of brokerage to said buyers. On these particular sales the partnership respondent North Pacific Seafoods acting in coordination and with the knowledge of the corporate respondents named herein gave up all or a large part of its brokerage or commission earned in connection with said sales.

In other instances where respondent North Pacific Seafoods was acting as primary broker for outside packers in connection with the sale of their seafood products it granted or passed on brokerage to certain buyers, or the buyers' agents, as follows:

(a) Selling to certain buyers at net prices which were less than those accounted for to its packer-principals.

(b) Granting to certain buyers deductions from price by way of allowances or rebates, a part or all of which were not charged back to its packer-principals.

(c) Taking reduced brokerage or commissions on sales to certain buyers.

PAR. 6. The acts and practices of respondents, and each of them, as above alleged and described are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13).

Mr. Cecil G. Miles for the Commission.

Mr. Dale E. Sherrow of *Medley and Haugland*, of Seattle, Wash., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding involves alleged violations of §2(c) of the Clayton Act, as amended (U.S.C. Title 15, §13), it being charged in the complaint, in substance, that the corporate respondents named therein, acting on their own or by or through their partnership, North Pacific Seafoods, have made sales to certain chains at reduced prices which reflect brokerage, or have granted discounts or allowances in lieu of brokerage to said buyers by giving up all or a large part of the brokerage or commission earned by respondent North Pacific Seafoods in connection with said sales; and in other instances respondent North Pacific Seafoods, acting as primary broker for outside packers in connection with the sale of their seafood products, has granted or passed on

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brokerage to certain buyers, or the buyers' agents, by selling to them at net prices which were less than those accounted for to its packer-principals; granting deductions from price, as allowances or rebates, a part or all of which were not charged back to its packer-principals; and by taking reduced brokerage or commissions on sales.

On December 12, 1958, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order to Cease and Desist," which had been entered into by and between respondents and the attorneys for both parties, under date of November 23, 1958, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondents Parks Canning Company, Inc., H. M. Parks Company, Inc., and Western Fisheries Company are corporations existing and doing business under and by virtue of the laws of the State of Washington, with their office and principal place of business located at 309 Colman Building in the city of Seattle, State of Washington.

Respondent North Pacific Seafoods is a copartnership existing and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 312 Colman Building, in the city of Seattle, State of Washington.

2. Pursuant to the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, §13), the Federal Trade Commission, on July 18, 1958, issued its complaint in this proceeding against respondents, and a true copy was thereafter duly served on respondents.

3. Respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

4. This agreement disposes of all of this proceeding as to all parties.

Order

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5. Respondents waive:
- (a) Any further procedural steps before the hearing examiner and the Commission;
 - (b) The making of findings of fact or conclusions of law; and
 - (c) All of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.
6. 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.
7. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.
8. This 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.
9. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order to Cease and Desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, however, unless and until it becomes part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order to Cease and Desist" that the Commission has jurisdiction of the subject matter of this proceeding and of each of the respondents herein; that the complaint states a legal cause for complaint under the provisions of §2(c) of the Clayton Act, as amended (U.S.C. Title 15, §13), against each of the respondents both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

ORDER

It is ordered, That Parks Canning Company, Inc., a corpora-

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tion, H. M. Parks Company, Inc., a corporation and as a copartner doing business as North Pacific Seafoods, Western Fisheries Company, a corporation and as a copartner doing business as North Pacific Seafoods, North Pacific Seafoods, a copartnership and respondents' officers, agents, representatives, or employees, directly or through any corporate, partnership, or other device, in connection with the sale of seafood products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

1. Paying, granting, or allowing, directly or indirectly, to any buyer, or to anyone acting for or in behalf of, or who is subject to the direct or indirect control of such buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any sale of seafood products to such buyer for his own account;

2. Paying, granting or passing on, either directly or indirectly to any buyer, or to anyone acting for or in behalf of or who is subject to the direct or indirect control of such buyer, brokerage earned or received by respondents on sales made for their packer-principals, by allowing to buyers lower prices which reflect all or any part of such brokerage, or by granting them allowances or rebates which are in lieu of brokerage, or by any other method or means.

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 12th day of February 1959, become the decision of the Commission; and, accordingly:

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