usually and customarily sold such products in the recent regular course of his business;

(b) That any of respondent's fur products can be purchased at a substantial discount or saving, off regular prices, when such regular prices do not represent the prices at which respondent has usually and customarily sold such products in the recent regular course of his business.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 25th day of March, 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

NICHOLS & COMPANY, INC., ET AL.

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

Docket 7659. Complaint, Nov. 17, 1959—Decision, Mar. 25, 1960

Consent order requiring Boston manufacturers to cease violating the Wool Products Labeling Act by labeling as "80% Camel Hair, 20% Wool," wool stocks composed in part of reprocessed woolen fibers, and by failing to comply in other respects with labeling requirements.

The complaint remains pending as to the individual respondent who performed garnetting of the woolen stocks in question.

Before *Mr. Harry R. Hinkes*, hearing examiner.

Mr. Garland S. Ferguson supporting complaint.

Mr. Edward C. Park, of *Withington, Cross, Park & McCann*, of Boston, Mass., for respondents.

INITIAL DECISION AS TO ALL RESPONDENTS EXCEPT HARRY CARR

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, the Federal Trade Commission issued and subsequently served its complaint in this proceeding against the above-named respondents, charging them

with violation of the Federal Trade Commission Act, the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder in connection with their sale, offering for sale, delivery and introduction into commerce of certain wool products.

On February 1, 1960 there was submitted to the undersigned hearing examiner an agreement between certain respondents, their counsel and counsel supporting the complaint, providing for the entry of a consent order.

Under the foregoing agreement, Nichols & Company, Inc., a corporation, and Arthur O. Wellman, Arthur O. Wellman, Jr., and John H. Nichols, Jr., erroneously named in the complaint as John N. Nichols, Jr., individually and as officers of said corporation, and Sumner E. Burdette, individually, admitted all of the jurisdictional allegations in the complaint. The agreement provides 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, the signatory respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered 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 such respondents that they have violated the law as alleged in the complaint.

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

1. Nichols & Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Massachusetts with its office and principal place of business located at 140 Federal Street, Boston, Massachusetts. Individual respondents Arthur O. Wellman, Arthur O. Wellman, Jr., and John H. Nichols, Jr., are officers of said corporation, and Sumner E. Burdette is manager of the Waste Department of said corporation.

The address of the aforesaid individual respondents is the same as that of the corporate respondent.

2. The agreement does not dispose of this proceeding as to Harry Carr, who is subject to further proceedings.

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

ORDER

It is ordered, That respondents Nichols & Company, Inc., a corporation, and its officers, and Arthur O. Wellman, Arthur O. Wellman, Jr., and John H. Nichols, Jr., individually and as officers of said corporation, Sumner E. Burdette, individually, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of woolen stocks or other wool products, do forthwith cease and desist from misbranding such products by:

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

2. Failing to affix labels to such products showing each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondents Nichols & Company, Inc., a corporation, and its officers, and Arthur O. Wellman, Arthur O. Wellman, Jr., and John H. Nichols, Jr., individually and as officers of said corporation, and Sumner E. Burdette, individually, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the sale or distribution of woolen, or part woolen stocks, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly, misrepresenting the generic names of the fibers of which their products are composed, as such names are defined in the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, 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 25th

day of March, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Nichols & Company, Inc., a corporation, and Arthur O. Wellman, Arthur O. Wellman, Jr., and John H. Nichols, Jr., erroneously named in the complaint as John N. Nichols, Jr., individually and as officers of said corporation, Sumner E. Burdette, individually, 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

A. G. SPALDING & BROS., INC.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7 OF THE CLAYTON ACT

Docket 6478. Complaint, Dec. 8, 1955—Decision, Mar. 30, 1960

Order of divestiture requiring the nation's second largest seller of athletic goods to sell a principal competitor—the fourth largest seller prior to the acquisition—which it purchased in 1955 for about $5.8 million, in violation of Sec. 7 of the Clayton Act.

Mr. James S. Kelaher and *Mr. Thomas P. Luscher* for the Commission.

Cravath, Swaine & Moore, by *Mr. Albert R. Connelly* and *Mr. John D. Calhoun*, and *Spalding, Shiland & Marangelo*, by *Mr. H. Boardman Spalding*, all of New York, N.Y., for respondent.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

PRELIMINARY PROCEEDINGS

The Complaint

The complaint in this proceeding was issued on December 8, 1955, charging the Respondent, A. G. Spalding & Bros., Inc. (hereinafter referred to as the Respondent or as Spalding) with violating §7 of the Clayton Act (15 U.S.C., §18) by its acquisition on or about December 6, 1955, of Rawlings Manufacturing Company (hereinafter referred to as Rawlings). The pertinent part of §7 of the Clayton Act which the respondent is charged with violating is as follows:

SEC. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

The Answer

On March 12, 1955, respondent submitted its answer, admitting certain descriptive allegations of the complaint, but denied that it had violated the Clayton Act as alleged, and moved for the dismissal of the complaint.

Stipulation to Preserve the Status Quo

Thereafter, on December 14, 1955, counsel for the Commission applied for an injunction in the United States Court of Appeals for the First Circuit to preserve the status quo of the acquired company, pending final determination by the Commission of the legality of the merger. A stipulation was thereupon executed by counsel supporting the complaint and counsel for the respondent, whereby the respondent agreed, in substance, to maintain the status of Rawlings as at the time of acquisition, and to make no changes therein without advance notice to the Commission. Upon the basis of that stipulation, the injunction proceeding was withdrawn.

Litigation With Respect To Subpoenas *Duces Tecum* Issued to Persons Not Parties to This Proceeding:

Extended litigation contesting the legality of two subpoenas duces tecum materially delayed the holding of hearings on the merits of this proceeding. The first of those subpoenas was issued on February 24, 1956, to W. W. Tuttle of the firm of Ernst & Ernst, certified public accountants, directing him to produce certain books and records prepared by his firm for the Athletic Manufacturers Association. The second subpoena was issued on June 25, 1956, to Fred J. Bowman, president, Wilson Athletic Goods Manufacturing Company, Chicago, Illinois, directing him to produce certain records of his company which were deemed relevant to this proceeding. Both persons subpoenaed appeared at a hearing, but respectfully refused to produce the records requested in the subpoenas. Litigation upon the issues thus raised was finally resolved in favor of the Commission in two separate proceedings in the United States Courts of Appeals for the Second and Seventh Circuits. Thereafter both subpoenas *duces tecum* were duly complied with.

Hearings on the Merits

Hearings were held on the merits of this proceeding in Chicago, Illinois; Cincinnati, Ohio; and Washington, D.C. A great number of documents, many of which have been placed in camera, were produced through the cooperation of counsel, and were received in evidence. Upon the completion of the hearings in Washington, D.C., counsel supporting the complaint rested their case, and counsel for the respondent, without offering any evidence, also rested and renewed his motion for the dismissal of the complaint.

Rulings on Proposed Findings

Consideration has now been given to the entire record herein, including numerous proposed findings as to the facts and conclusions presented by both counsel supporting the complaint and counsel for the respondent, and the lengthy briefs and oral argument in support thereof. Each of those proposals which has been accepted is, in substance, incorporated into this initial decision. All proposals not so incorporated are hereby rejected.

The Issue

The broad, controlling issue in this proceeding is whether "in any line of commerce in any section of the country" the effect of the acquisition of Rawlings by Spalding "may be substantially to lessen competition or tend to create a monopoly."

In view of the scope of this issue, we are confronted with a multiplicity of relevant facts. Thus, we must consider the history of the acquiring company and its economic and competitive status; the history of the acquired company and its economic and competitive status; the circumstances surrounding the actual acquisition; the general economic and competitive conditions existing in the athletic-goods industry as a whole; the section of the country in which such conditions obtain; and, most important of all, an analytical survey must be made, defining the specific line of commerce and determining the particular competitive conditions therein between the two principals involved, as well as between the two principals and other competitors; the number of competitors engaged; the ease or difficulty of entry into that line of commerce and survival therein; and any other relevant factors which may show or tend to show the probable effect of the acquisition in question upon competition, both general and specific, within the defined line of commerce.

The Acquiring Company (Spalding) and its Economic and Competitive Status

History

In 1876, two brothers, Albert G. Spalding and J. Walter Spalding, formed a partnership called A. G. Spalding & Bros., for the purpose of selling baseball equipment at wholesale and retail. Two years later a brother-in-law, William T. Brown, joined the firm, and, about the same time, they opened a factory for the manufacture of baseball bats at Hastings, Michigan. In 1885, the Spalding partnership was incorporated in Illinois under the name "A. G. Spalding & Bros." In 1892, A. G. Spalding & Bros. was incorporated in New Jersey, to which corporation was transferred all the capital stock of the following corporations:

1. A. G. Spalding & Bros., the Illinois corporation;
2. Wright & Ditson, a New Jersey corporation engaged in the manufacture of athletic goods, with emphasis on tennis rackets;
3. A. J. Reach Company, originally a partnership incorporated in about 1885, engaged principally in the manufacture of baseballs and baseball mitts and gloves;
4. George Bernard & Company, a New Jersey corporation engaged in the manufacture of uniforms and knit goods;
5. Spalding Manufacturing Company, an Illinois corporation formed to operate the A. G. Spalding & Bros. baseball-bat factory; and
6. Peck & Snyder, a retail store in New York City dealing in sporting equipment.

This reorganized corporation continued its activities, with minor changes, from 1892 until 1934, when it entered upon another period of reorganization which was designed to solve problems resulting from a sharp decrease in sales during the depression years of the 1930s, when the national market for athletic goods declined more than 60%. On May 5, 1939, the present corporate respondent was organized as a Delaware corporation, under its present name of A. G. Spalding & Bros., Inc., with all the assets of the former New Jersey corporation.

As of December 8, 1955, the date of the acquisition of Rawlings, and after a long period of growth and expansion, Spalding had its main factory and executive offices in Chicopee, Massachusetts; one minor manufacturing establishment located in Easley, South Carolina; a wholly owned selling subsidiary, Spalding Sales Corporation, operating sales offices and wholesale distributing offices located

in Chicopee, Massachusetts, and in the principal cities throughout the United States; one operating division, the Toy Tinkers; one wholly owned foreign subsidiary, A. G. Spalding Products of Canada, Ltd.; and business relations with British and Australian companies operating independently under the Spalding name.

Financial Status

From an original investment of $800.00 in 1876, the business of Spalding has grown so that immediately prior to its acquisition of Rawlings, its total assets amounted to $16,665,299.00. Its plant at Chicopee, Massachusetts, is the largest and most complete athletic-goods manufacturing plant in the United States. At the time of its acquisition of Rawlings, Spalding was in sound financial condition.

Athletic Goods Manufactured

Spalding has manufactured and sold a general line of athletic goods since its early history. Its full line consists of more than 1,100 different articles. Particularly, it sells golf, baseball, football, basketball, volley ball, soccer, tennis, badminton and boxing equipment, athletic clothing and related products.

Channels of Distribution

Spalding distributes its products through wholesale distributing depots and sales offices located throughout the United States. Prior to 1952, such facilities were located in Chicopee, Massachusetts; Boston, Massachusetts; New York, N.Y.; Philadelphia, Pennsylvania; Washington, D.C.; Chicago, Illinois; and Los Angeles, California. Subsequent to 1952 Spalding has had distribution offices in Seattle, Washington, Dallas, Texas; Miami, Florida; and Atlanta, Georgia. The comparative importance of Spalding's sales, by customer classes, prior to its acquisition of Rawlings is shown by the following analysis of its total sales of athletic goods for the year 1954:

Dealers	53.9%
Professional golf	30.8%
Professional, others	.5%
Retail stores (discontinued subsequent to 1955)	3.2%
Private brand, export, baseball leagues, employee commissaries, Government	7.7%
Other manufacturers	3.9%
	100.0%

Advertising and Promotional Programs

Well-known trade names and trademarks are recognized as valuable assets in the athletic-goods industry. This is particularly true of those trade names and trademarks which are nationally advertised. Spalding is one of the principal advertisers in the athletic-goods field. In fact, in 1955 Spalding conducted what it termed "the largest advertising campaign ever run in the sporting-goods industry."

Some of the more important selling factors available to Spalding for advertising major-sport products are the following:

Baseball

The Spalding and Spalding-Reach baseballs, "The twins of the Majors," have been the official baseballs for the National League (Spalding) and the American League (Reach) since the Leagues began. Spalding's present contract with the major leagues extends through 1966.

Tennis

In 1885 Spalding made the first tennis rackets and tennis balls made in America. The Spalding-made Wright & Ditson tennis ball has been the official ball for the United States Lawn Tennis Association National Championship tournaments since the 1880s, for every Davis Cup and Wightman Cup match in America, and has been chosen for almost every major tournament here and abroad.

Golf

In 1894 Spalding made the first golf club and golf ball "ever seen in America. Nearly every major development in golf since then has been pioneered by Spalding."

Football

Spalding was the first to introduce the game of football to colleges and universities in America. "Today Spalding footballs are No. 1 on college gridirons around the country."

Basketball

Spalding, in its 1953 Annual Report, claims that in 1892 it made the first basketball ever made in the world. Today basketball is one of the most popular team sports in America, and "Spalding-made basketballs are the No. 1 choice on professional and college courts throughout the country."

Position in the Industry

The position of Spalding in the athletic-goods industry at the time of its acquisition of Rawlings, as shown by Spalding's 1953 and 1955 Annual Reports, was as follows:

1. Throughout the world the Spalding name is recognized as a leader in athletic goods.

2. Spalding was the first to introduce equipment to the sports world in baseball, basketball, football, golf and tennis, and has been consistently the leader in each one of these fields. Truly, for over 75 years Spalding has set the pace in the sports.

3. On this, Spalding's 80th anniversary, we are proud of our position as the world's leading manufacturer of athletic equipment.

4. In 1885 Spalding acquired the A. J. Reach Company, and in 1892, Wright & Ditson. Two years later Spalding moved to Chicopee, Massachusetts, where it set up the first manufacture of golf balls and clubs in America. From that time on A. G. Spalding & Bros. has been the undisputed leader in the athletic-goods industry.

5. Spalding's salesmen cover the nation, bringing to millions of Americans the finest athletic equipment ever made. And this great sales staff is backed up by the biggest advertising and promotional campaigns in the sport industry. It's a history that gives pride to anyone connected with the great name of Spalding. In short, it's the greatest success story in the history of American sports.

The Acquired Company (Rawlings) and its Economic and Competitive Status

History

The Rawlings Manufacturing Company, which was acquired by the respondent herein on December 8, 1955, was originally founded in St. Louis, Missouri, by George H. Rawlings and Charles W. Scudder for the purpose of manufacturing and selling athletic equipment and sporting goods, primarily clothing, at wholesale and retail. After a period of acquisition and internal expansion over a period of almost 58 years, Rawlings was, at the time of its acquisition by Spalding, a Missouri corporation engaged in the manufacture and sale of a general line of athletic goods, with its main office and principal place of business located in St. Louis, Missouri. It had three plants there; a second plant located at Licking, Missouri; and a third plant located at Newburg, Missouri. Rawlings also had a wholly owned subsidiary, called "Rawlings Sporting Goods Company," and sales offices and wholesale distribution depots in St. Louis, Missouri; Chicago, Illinois; and Los Angeles, California.

Financial Status

At the time of its acquisition Rawlings was in sound financial condition. For example, from 1953 to 1955 the total assets of the company increased by 22%, to approximately $6,500,000.00. During the same period the net worth of the company increased 25%, to approximately $4,288,000.00. During 1953, 1954 and 1955, Rawlings paid cash dividends at the rate of $4.00 per share on preferred stock and an increasing rate of $6.00, $7.00, $7.40 and $8.00 per share on common stock. The total amount of cash dividends paid during this period was $8,000.00 on 500 shares of preferred stock outstanding, and in excess of $425,000.00 on the $15,000 shares of common stock outstanding. Approximately 90% of the outstanding common stock and 20% of the outstanding preferred stock was owned by six shareholders.

From 1953 to 1955, the total earnings invested in the business by Rawlings, after payment of taxes and cash dividends, exceeded one million dollars, resulting in a 67% increase in the earnings invested in the business during this period. During the same period, the annual net earnings of the business increased 148%, from $222,524.00 in 1953 to $551,824.00 in 1955.

Athletic Goods Manufactured

Throughout its history Rawlings manufactured and sold a general line of sporting goods, including baseball, football, basketball and softball equipment and accessories. Its St. Louis plant was primarily engaged in the manufacture of baseball gloves, mitts, athletic clothing, protective equipment, footballs, basketballs and other inflated balls. At Licking, Missouri, it made baseballs, baseball gloves, striking-bag gloves, and the principal functions performed there were baseball center windings and stitching baseball covers. Its Newburg, Missouri, plant was devoted primarily to making athletic clothing, baseball protectors, bases, masks, softball centers and footballs.

In addition to its own manufactured products, Rawlings had for many years purchased and resold, under its own trade name and trademark, a wide range of products, amounting, in the year 1955, to $2,252,371.00. Its purchases from other manufacturers in that year represented a 74% increase over such purchases during 1954.

Channels of Distribution

Rawlings distributed its products nationally for many years prior to the date of its acquisition by Spalding. It maintained branch

offices in Los Angeles, California, and Chicago, Illinois. The strength of its distribution system is revealed by a statement of its President in 1952, as follows:

> Rawlings now maintains a national sales force and has also developed outlets for its brands in foreign markets. This sales force not only handles the products of Rawlings Manufacturing Company, but it is also becoming increasingly useful in the sale of products manufactured by others. During the last twelve years sales in that category have increased from $120,000.00 to $950,000.00 annually, and the company's office thinks a substantial volume of additional business is available in this direction.

Rawlings sold a substantial quantity of its goods to other manufacturers for resale by them under their various trade names and trademarks. The comparative importance of Rawlings' sales, by customer classes, prior to its acquisition by Spalding is shown by the following analysis of the total sales of athletic goods for the year 1954:

Dealers	90.0%
National contract accounts	5.4%
Other manufacturers	4.6%
	100%

Advertising and Promotional Programs

At the time of its acquisition by Spalding, Rawlings' trade name and trademark were nationally known and advertised. The extent of its program of national advertising is shown by the fact that in 1948 it expended $88,651.00 for that purpose; in 1952, $207,684.00; and in 1955, $351,484.00, an increase of 134% from 1948 to 1952, and 69% from 1952 to 1955.

Position in the Industry

At the time of its acquisition by Spalding, Rawlings was the fourth-largest manufacturer in the athletic-goods industry in point of production of a general line of athletic equipment and clothing.

The Actual Acquisition

Early in 1955 Spalding's Board of Directors authorized negotiation for the acquisition of Rawlings. Thereafter, negotiations were begun between the executives of the two companies, and investigation, examination and analysis of relevant data were made. On December 8, 1955, Spalding acquired all the capital stock of Rawlings for approximately $5,698,063.00. On December 9, 1955, Rawlings Manufacturing Company was liquidated and dissolved. At the time of the acquisition, Rawlings ceased to do business as a

going concern, and Spalding immediately took over the business and has since operated it as the Rawlings Division of Spalding, using the name "Rawlings Manufacturing Company."

As previously stated, the integration of Rawlings' facilities with Spalding's facilities during the pendency of the present proceeding has been controlled by the above-mentioned stipulation between counsel, dated December 29, 1955. At the time of acquisition the president of Rawlings was elected a vice-president and director of Spalding, and certain other executives of Rawlings were appointed officers of Spalding. Since the acquisition, Spalding has operated the former wholly owned subsidiary of Rawlings, the Rawlings Sporting Goods Company, as a sales company for merchandise bearing the Rawlings trademark. As such, it is maintained as a sales organization separate from Spalding's sales organization.

In addition to acquiring Rawlings' manufacturing facilities and other assets, tangible and intangible, Spalding also acquired the increasingly important national sales organization and the well-known, nationally advertised trade name of Rawlings, which it has continued to use.

AGMA Census

The principal companies engaged in the manufacture and sale of athletic equipment are all members of an organization called the "Athletic Goods Manufacturers Association," hereinafter referred to as AGMA. The declared primary purpose of that organization is "the protection and advancement of the athletic-goods industry."

AGMA has, over the period from 1944 through 1954, gathered together and published statistics of the industry's production. This activity was begun originally in the post-war era in order to supply the Government with information for the allotment of scarce commodities, such as yarn, leather and other raw materials. The practice was continued, however, after such commodities became plentiful, because the information so gathered together was deemed highly valuable by members of the industry and by the industry as a whole. Questionnaires were prepared and sent to all known manufacturers of all products listed by the Association. The 1954 mailing-list included the names of 184 firms, and the 1955 mailing-list included the names of 197 firms. These lists showed that the number of manufacturers in the industry has averaged under 200 companies.

Firms Participating in AGMA Census

In 1954, 74 firms participated in the Association's census, out of a total of 184 firms to whom the questionnaire was sent; in 1955,

75 out of 197 firms participated. The number of firms participating amounted to about 40% of the total number of firms in the athletic-goods industry. This 40%, however, included the largest and most important producers in the industry, and accounted for approximately 90% of the total volume of athletic goods produced in the industry for those years. The questionnaire requested a listing of the articles manufactured, and also "the manufacturer's low selling price" thereof. For example, the baseballs included in the 1954 report are classified by price ranges, as follows:

1. Balls selling to jobbers, distributors and dealers at up to $9.00 per dozen;
2. Balls similarly selling at from $9.01 to $16.75 per dozen;
3. Balls similarly selling at more than $16.75 per dozen.

All information was furnished on a confidential basis, and delivered for tabulation and accounting purposes to the accountant firm of Ernst & Ernst. The tabulations produced by that firm are known and will hereafter be referred to as "AGMA's Census Report."

Respondent has criticized the use of AGMA's Census Report for purposes of the present proceeding on the theory that it does not include all the industry, and does not include or mention foreign importations of athletic products. Although it is true that the AGMA's Census Report does not cover every phase of the industry and does not give a complete report of existing figures of production, it nevertheless offers an approximately 90% correct picture of the industry's production. It appears that the Respondent clearly regarded the AGMA's Census Report as reflecting a sufficient portion of the total products of the industry to serve as a basis for its own industrial computations. For example, on May 20, 1955, respondent's comptroller presented to the Board of Directors certain reports, one of which was an "industry report comparing Spalding's sales against total industry sales for the years 1951-1954 inclusive." The industry totals quoted in that report were the AGMA's Census totals. Another report compares Spalding's and Rawlings' sales to "total industry sales" for 1954, using the AGMA's Census totals as representative of the industry's production. These reports probably were a factor in the ultimate decision of Spalding to acquire Rawlings; therefore it is reasonable to conclude that since the AGMA's Census Report was regarded as trustworthy by the respondent and by the other members of the industry in the conduct of their business, and by the United States Government in allotting scarce materials, it may be regarded as trustworthy, within its limits, for the purposes of this proceeding.

United States Census of Manufacturers

The United States Department of Commerce, Bureau of the Census, conducted a census of manufacturers of sporting and athletic goods in 1954. Manufacturers were required, by an Act of Congress, to comply with requests for census data. The census of manufacturers represents the total United States production and related sales value of those athletic goods for which statistics were compiled. Although it does not include data on all the products listed in the AGMA's Census Report, and does not segregate the data included categorically by price, nevertheless it substantiates, in a large measure, the figures presented in that report.

Leading Athletic Goods Manufacturers

The 1954 AGMA's Census Report reveals that 83% of the industry's total production was manufactured by 19 leading manufacturers, including Spalding and Rawlings, the remaining 17% being produced by 55 firms, each with less than 1% of the industry's total. Foremost among these 19 leaders was the firm of Wilson Athletic Goods Manufacturing Company, Inc., which was the largest in point of production in the industry.

Wilson Athletic Goods Manufacturing Company, Inc.

Wilson was originally organized in 1910 as the Ashland Manufacturing Company, a subsidiary of Wilson & Company, meat packers of Chicago, Illinois. The name of the firm was subsequently changed, in 1917, to Thomas E. Wilson & Company, and after various other changes in name, Wilson emerged in its present form in 1941, with Wilson Sporting Goods Company remaining in existence as a wholly owned sales subsidiary of Wilson. From its inception in 1910 to 1950, Wilson acquired at least seven smaller firms. Wilson now operates thirteen manufacturing plants located in eleven towns or cities in various parts of the United States. Like respondent, Wilson sells a general line of athletic goods, which are either manufactured by it or purchased from other manufacturers for resale. Wilson distributes its products nationally through 29 branches located in 28 states throughout the United States, and for a number of years has been recognized as the leading producer of athletic goods in the industry.

MacGregor Sporting Products, Inc.

Another leading manufacturer of athletic goods and competitor of Spalding and Rawlings at the time of the acquisition was Mac-

Gregor Sporting Products, Inc. This organization originated in 1875 as a partnership. In 1922 it was incorporated in Ohio under the name of P. Goldsmith Sons. After a period of transition, the corporation emerged in 1952 in its present form. In about March of 1958, 98% of its outstanding stock was acquired by Brunswick-Balke-Collender Company of Chicago, Illinois. From its inception in 1875 to 1958, MacGregor acquired at least five other smaller manufacturers, and is recognized as the third largest in the industry in point of total sales, Respondent Spalding being second and Rawlings fourth.

Other Leading Manufacturers

The remaining fifteen of the nineteen leaders, while some manufacture more than one line of athletic goods, are not general-line companies in the same sense as the four largest firms.

Concentration of Production and Sales

Prior to the acquisition of Rawlings by Spalding, those two companies, together with Wilson and MacGregor, constituted the group which counsel supporting the complaint referred to as the "Big Four," which have consistently accounted for approximately 50% of the total industry production and sales, as shown by the following tabulation based upon the AGMA Census Reports for the years 1952 through 1955:

Percentage of total industry business, based on dollar value, done by the leading general-line companies

	Spalding	Rawlings	Wilson	MacGregor	Total
1952	14%	6%	19%	12%	51%
1953	15%	6%	19%	11%	51%
1954	14%	7%	18%	11%	50%
1955	13%	6%	18%	11%	48%

The competitive importance of what counsel supporting the complaint calls the "Big Four" is not to be denied. We think, however, that in his proposed findings and in his analysis of the various lines of commerce he has placed too great an emphasis on the so-called "Big Four," for the reason that the manufacturers constituting the "Big Four," in relationship to the particular line of commerce being considered, are not always the same. The leadership in production and sales in various lines is often found in other companies. We think, therefore, that a fairer approach for an analysis of the problems of this case requires consideration of all producers of each line of commerce, avoiding any undue emphasis upon the

four largest general-line manufacturers, and thus obviating the danger of trial by shibboleth.

Relevant "Section of the Country"

An analysis of competition, for the purposes of this proceeding, requires not only an examination of the competing lines of commerce within a geographical area, but a determination of the extent of that geographical area, in order to ascertain whether it may justly be regarded as encompassing a "section of the country" within the meaning of §7 of the Clayton Act.

As we have previously observed, the record herein shows that Rawlings, Spalding and a number of their competitors distribute their goods in all sections of the country. Counsel for the Respondent contends, however, that counsel supporting the complaint has not identified any "section of the country" as one of "effective competition." Although it is true that the respective proportions of Rawlings' and Spalding's sales in certain areas vary considerably, this fact does not necessitate a separate area analysis. In fact, a fair estimate of the total effect of competition in any market must necessarily embrace the total area into which that competition extends. The industry concerned in the present proceeding is nation-wide in scope, and so is competition therein. Therefore, the area of the market embraces, in varying degree, all sections of the country, and, for the purposes of this proceeding, the "section of the country" to be considered is the entire United States. The demarcation of competition into particular sections of the country is therefore not necessary herein, because the total effect of competition must be determined on the basis of the industry as a whole and not upon certain small segments thereof.

Lines of Commerce in Which Both Rawlings and Spalding are engaged

Prior to the acquisition, Spalding and Rawlings were what are termed in their industry as "general line sellers" of athletic goods. The AGMA Census lists approximately 30 major products in that industry. Of those thirty-odd products, counsel supporting the complaint has selected nineteen as "illustrative of the area in which the acquisition of Rawlings will have a substantial economic impact." The products selected by him include both those that are manufactured and sold by both Rawlings and Spalding, and also those that are sold by both, but are not manufactured by both. His list is as follows:

1. Golf clubs (irons),
2. Golf clubs (woods),
3. Golf balls,
4. Baseballs,
5. Softballs,
6. Baseball gloves,
7. Basemen's mitts,
8. Catchers' mitts,
9. Soccer balls,
10. Volley balls,
11. Footballs,
12. Football helmets,
13. Football shoulder pads,
14. Football hip and kidney pads,
15. Basketballs,
16. Tennis balls,
17. Tennis racket frames,
18. Strung tennis rackets, and
19. Badminton rackets (frames and strung rackets).

Although counsel for the Respondent suggests that the nineteen selected products should probably be considered as only sixteen products, he presents no other objection to the list selected, and agrees with counsel supporting the complaint that, for the purposes of this proceeding, "each of the product lines in the athletic-goods industry is a separate line of commerce under §7 of the Clayton Act."

The nineteen selected products are each usable only within the particular sport for which they are designed, and for a particular use within that sport. It is also true that none of these nineteen products are interchangeable with products used in other sports or for other uses within a single sport, as, for example, footballs can be used only in the game of football, and football helmets may only be used as protective headgear in that game. Similarly, each of the nineteen articles listed is inherently limited in its manner of use. It is clear, therefore, that each of the nineteen articles selected has "sufficient peculiar characteristics and uses to constitute them products sufficiently distinct from all other [products] to make them 'a line of commerce' within the meaning of the Clayton Act," as explained by the Supreme Court of the United States in the case of *United States v. E. I. du Pont de Nemours & Company*, 353 U.S. 586 (1957).

Price-Line Categories

In addition to the delineation of lines of commerce by products, as explained above, counsel supporting the complaint contends that

each product-line is further divided by the industry into separate lines of commerce, based on quality and peculiarities of use which are reflected in their price categories. He contends that each product-line is divided by the AGMA Census into classes based on quality. Witness Goldsmith, Chairman of the Board of MacGregor, in explaining the significance of the AGMA Census price classification, testified as follows:

The industry as a whole felt that it was necessary to break it down for quality's sake and you cannot take every item that is made in the athletic goods industry and examine it to find out what category it goes in so the best thing you can do is by price route. Probably the best illustration I can give would be that of baseballs * * * For example, we have baseballs broken down into three price categories. Baseballs up to $9.00 a dozen is Category 1. $9.00 a dozen was just picked out at random because it was a known fact that it would be necessary, that any ball that sold for under $9.00 a dozen couldn't be a yarn-wound ball. Nobody in this country could make one for less than $9.00 and have it to be a serviceable ball. So when we look at that figure there we know that there were in that particular year over 5,000 dozen baseballs sold that were not of a yarn-wound construction, that were of an inferior nature that would not be used in league games or in regular competition games.

Then the next category was from $9.01 to $16.80. That took in all the playable balls that the kids would use, the amateurs, the small leagues, and so forth, up to that price bracket and we did know from experience that no one could turn out the top ball for less than $16.80 so * * * some manufacturers might sell their top ball at $16.80, others at $18.00, others at $19.00, others at $20.00. Anything above that we knew was the official [i.e., serving the major and top minor leagues] top ball.

Counsel for the Respondent criticizes the separation of lines of commerce based upon price categories, contending that the courts have consistently held that lines of commerce cannot be "determined solely by reference to price differences." Counsel supporting the complaint admitted in his oral argument that

* * * price differences alone do not necessarily separate lines of commerce. Nowhere have we contended that they do. What we do contend is that these price categories represent different types of products which go to different types of consumers, constituting different markets within the meaning of the Farm Journal decision. It is not the difference in price which causes this, but the difference in quality, in the quality of the raw material and in the quality of the labor going into the manufacture of those products which render these products incapable of being used interchangeably. To contend that a $1.25 ball would even be considered by a major league team in league play is to border upon the ridiculous.

We believe no AGMA price category for any item of athletic goods can be analyzed independently of all other price categories of the same product. For example, counsel for the Respondent explains that low-priced boxing gloves are lower in price and quality

than medium-priced gloves, which in turn are medium because they are higher in price and quality than low-priced gloves, but lower in price and quality than high-priced gloves. The confusion attendant upon breaking down a single product into price categories for analysis is immediately apparent from that statement. Furthermore, it is clear that AGMA's price categories oversimplify the true price relationships and create the false impression that there are only three grades of products corresponding to the three price ranges shown. Actually, the catalogs and price lists reveal a much wider range of price and quality, Rawlings, for instance, offering baseballs at twelve different prices. Also, there is no sharp demarcation between one price range and another, or one quality and another, both price and quality overlapping from one range to another to a considerable extent. Furthermore, it appears that a change in one price range of a commodity is generally reflected in changes in price and quality throughout the entire line of commerce concerned. We believe, therefore, that to subdivide a line of commerce into arbitrary sublines, depending upon the price classifications used in the AGMA Census, is unrealistic and ignores the true competitive relationships existing between the types and variations of a given product. We cannot, therefore, find as a fact that lines of commerce can be determined on the basis of the price differentials presented in the AGMA Census.

Analysis of the Effect of the Acquisition Upon Competing Lines of Commerce

Of the nineteen lines of commerce listed by counsel supporting the complaint as representing those lines in which the competitive effect of the merger of Spalding and Rawlings may be most clearly discerned, we are first considering six of those lines in which the evidence shows that the product was both manufactured and sold by both Spalding and Rawlings. Those six lines are as follows:

1. Baseballs;
2. Softballs;
3. Footballs;
4. Basketballs;
5. Volley balls; and
6. Soccer balls.

We believe that if the effect of the acquisition "be substantially to lessen competition or tend to create a monopoly," such tendency should be revealed by a study of these lines.

Counsel supporting the complaint, in his proposed findings as to the facts, has made a proposed analysis based upon the AGMA

Census survey for 1954, which he states "* * * is representative of other years and also is the last complete year preceding the acquisition of Rawlings by Spalding." This statement is not completely accurate. Since the acquisition occurred on December 8, 1955; since each of the two companies made complete and separate reports for that year; and since the data for 1955 shows a decline in many phases of Rawlings' and Spalding's business, we think that fairness requires a consideration of the data as to both years. In fact, any attempt to determine the future from the past should certainly include the latest evidence available. Accordingly, the data for 1955 has been included for consideration along with the data for 1954, as both relate to the discrete lines of commerce, as follows:

1. Baseballs

The AGMA Reports of 1954–1955 contained data from eleven baseball manufacturers. The competitive relationships, from the standpoint of quantity production and total sales, of these eleven manufacturers to Rawlings and Spalding and to each other are as follows:

	Quantity (dozens)	Percent of total	Value	Percent of total
1954				
Total reported for the industry (AGMA)	603, 928	100. 0	$7, 003, 330	100. 0
Market share:				
Spalding	99, 467	16. 5	1, 589, 086	22. 7
Rawlings	63, 640	10. 5	909, 547	13. 0
1955				
Total reported for the industry (AGMA)	689, 349	100. 0	7, 425, 906	100. 0
Market share:				
Spalding	105, 393	15. 3	1, 621, 258	21. 8
Rawlings	64, 654	9. 4	841, 028	11. 3

Percentagewise, the share of all baseballs produced by each of the eleven manufacturers was as follows:

	1954	*1955*
Lannom	18. 8%	19. 2%
Spalding	16. 5%	15. 3%
de Beer	16. 2%	17. 9%
Wilson	16. 1%	17. 5%
MacGregor	10. 9%	10. 2%
Rawlings	10. 5%	9. 4%
Tober	3. 9%	4. 8%
Hofran	3. 8%	3. 1%
Sealand	1. 7%	1. 4%
Harwood	1. 5%	1. 2%
Kennedy	[1] 1%	[1] 1%

[1] Less than.

The above tabulation shows that in 1954 Spalding was the second-largest producer of baseballs, with a total by value of 22.7% of the industry's production and a total by quantity of 16.5% thereof. Rawlings was the sixth-largest producer, with a total by value of 13% and by quantity of 10.5% of the total production of the industry. In 1955 Spalding's share of the market declined approximately 1%, and Rawlings' declined somewhat more, from a total by value of 13% to 11.3%, and from a total production of 10.5% to 9.4% Their combined total immediately preceding the merger amounted to 33.1% by value and 24.7% by quantity of the industry's total production. Thus the merger had the effect of increasing Spalding's share of the market 11.3% by value and 9.4% by quantity, so as to make the combined firms the largest producer of baseballs in the athletic-goods industry. Obviously, this increase in Spalding's share of the market, although less than 10% by quantity and only 11.3% by value, nevertheless is substantial. Whether this substantial increase warrants the conclusion that it is attended by a reasonable probability of a substantial lessening of competition in the baseball market depends, however, in part on other factors.

The Commission, in its recent opinion in the matter of *Brillo Manufacturing Company, Inc.*, Docket 6557, stated:

> We do not concur in the holding that a significant increase in a producer's already substantial share of the market necessarily demonstrates likelihood of statutorily forbidden effects in every distributional situation. * * *
>
> In addition to the facts concerning market shares, likewise important is * * * the general competitive situation, the number of competitors and degree of concentration prevailing in the industry.

In compliance with the above opinion, we must consider a number of factors other than the increase in Spalding's share of the baseball market. Spalding is and has been for many years a leader in the manufacture and sale of sport goods in general and baseballs in particular. Spalding baseballs have been the official ball for the two major leagues in professional baseball from their inception, and Spalding is now under contract to supply those leagues with their entire requirements of baseballs until 1966. In addition, in 1954 Spalding had adoption contracts with nine minor leagues. On the other hand, Rawlings had no such major-league contracts, but in 1954 it did have contracts with ten minor leagues. Wilson had seven such contracts, and MacGregor had five.

Although the circumstance of Spalding's leadership in high-priced baseballs has given it a considerable competitive advantage in that line of commerce, this advantage is not, however, an effect of the recent acquisition, but existed many years before that event. Furthermore, it must be observed that while in 1954 Spalding and

Rawlings together had 21 adoption contracts, in 1955 they had only 14, and in 1956, 16.

It must also be observed that, despite Spalding's venerable age and prestige in the industry, eleven companies are competing with it in the manufacture and sale of baseballs, and in 1955 three of these companies—Lannom, de Beer and Wilson—all surpassed Spalding in point of production, producing, respectively, 19.2%, 17.9% and 17.5% of all baseballs manufactured in that year, against Spalding's 15.3%.

It appears that the manufacture of baseballs is relatively simple, involving mainly cutting, stitching and molding of leather, rubber and cloth material, and, in the higher-quality baseballs, the winding of yarn around a core. The record contains no clear evidence as to the number of new companies recently entering into the field of baseball manufacture, but it is clear that in 1955 at least one new manufacturer entered that business. It further appears that companies specializing in the manufacture of baseballs have found no great difficulty in surviving and competing with Spalding, since two such companies, Lannon and de Beer, were the largest baseball producers in the industry in both 1954 and 1955.

The record shows that only three acquisitions of baseball manufacturers have occurred in the athletic-goods industry since 1876. One of these was the acquisition of Reach by Spalding as long ago as 1885. Another was by MacGregor in 1937, and the third by Rawlings in 1946. There is no evidence as to the competitive significance or effect of any of these acquisitions. Certainly mergers occurring at intervals of 52 and 18 years cannot reasonably be said to establish a trend of mergers in the baseball-manufacturing business.

The record contains no evidence of actual competitive injury to either large or small manufacturers which can in any way be considered an effect of the merger in question. On the other hand, the record does contains the testimony of Witness Goldsmith, Chairman of the Board of Directors of MacGregor, who testified as follows:

Q. Directing your attention to these products which I have just mentioned, that is to say, baseballs, softballs, footballs, basketballs, soccer balls, and volley balls, has the acquisition by Spalding had any effect upon MacGregor in its sale or ability to compete in those several items?

A. No.

Since the various non-quantitative factors which we have considered do not indicate the probability of a substantial lessening of competition, it seems appropriate to compare the quantitative increase of Spalding's production, resulting from its acquisition of Rawlings, with the quantitative increase resulting from the acqui-

sition in the *Brillo* case, *supra*, which the Commission regarded as insufficient alone to justify the issuance of an order of divestiture. The acquisition in the *Brillo* case combined with the largest producer of industrial steel wool (29.1%) with the fourth-largest producer (18.2%). In the present proceeding, Spalding, the second-largest producer of baseballs in 1954, declined in 1955 to the position of fourth-largest, and Rawlings declined, during that same period, from sixth place with 10.5%, to sixth place with 9.4%. In the *Brillo* case, after the acquisition, Brillo had a production share of 47.7%, and the next-largest producer had a production share of only 19.1%. On the basis of our 1955 figures, Spalding and Rawlings combined had a production of 24.1%, with the next-largest producer having a production of 19.2%. After the *Brillo* acquisition, there remained only seven competing manufacturers of industrial steel wool; while, after the Spalding acquisition of Rawlings, there remained at least twelve strongly-competing manufacturers of baseballs. Thus it appears that any inference as to competitive effect which can be drawn from quantitative data is more favorable to Spalding in the instant case than it was to Brillo in that proceeding.

All factors considered, we believe that the substantial, reliable and probative evidence in the record does not indicate that the effect of the acquisition of Rawlings by Spalding may be substantially to lessen competition or tend to create a monopoly in the manufacture and sale of baseballs.

2. Basketballs

The AGMA Reports of 1954 and 1955 contain data from eighteen basketball-manufacturing companies. The competitive relationships, from the standpoint of quantity produced, of these eighteen manufacturers to Rawlings and Spalding and to each other are as follows:

	Quantity (dozens)	Percent of total	Value	Percent of total
1954				
Total reported for the industry (AGMA)	158,958	100.0	$6,801,889	100.0
Market share:				
Spalding	9,767	6.1	709,175	10.4
Rawlings	2,972	1.9	418,987	6.2
1955				
Total reported for the industry (AGMA)	236,105	100.0	8,022,886	100.0
Market share:				
Spalding	10,585	4.5	772,411	9.6
Rawlings	3,120	1.3	429,902	5.4

Percentagewise, the share of all basketballs produced by each of the eighteen manufacturers was as follows:

	1954	1955
Voit	35. 1%	24. 2%
Sun Rubber	21. 4%	15. 6%
Seamless Rubber	11. 9%	10. 3%
General Tire & Rubber	9. 0%	6. 1%
Spalding	6. 1%	4. 5%
Dubow	6. 1%	4. 7%
MacGregor	4. 5%	2. 8%
Wilson and Ohio-Kentucky combined	3. 3%	2. 4%
Rawlings	1. 9%	1. 3%
Hutchinson Bros	. 6%	. 2%
Reach	. 1%	[1] . 1%
Kennedy	. 1%	[1] . 1%
Nocona	--------	[1] . 1%
Barr Rubber	--------	18. 4%
Collette Mfg	--------	8. 1%
Everlast	--------	. 1%
Eagle	--------	. 9%

[1] Less than.

The above tabulation shows that the four largest producers of basketballs in 1954 were Voit, Sun Rubber, Seamless Rubber and General Tire & Rubber, and in 1955, Voit, Barr Rubber, Sun Rubber and Seamless Rubber, with Collette Mfg. and General Tire & Rubber in the fifth and sixth places. Obviously none of the group referred to by counsel supporting the complaint as the "Big Four" are included. In 1954 the four largest manufacturers in point of production manufactured 77.4% of the reported production of basketballs in the industry, while in 1955 it took the five largest producers, a group which included neither Spalding nor Rawlings, to manufacture 76.6% of the reported production. It should be noted that in 1955 Barr Rubber and Collette Mfg., two companies not reporting for the 1954 Census, accounted for 26.5% of the reported production of basketballs. After the acquisition in question, the combined Spalding-Rawlings production of 5.8% was seventh, while Wilson and MacGregor, the other two members of the so-called "Big Four," produced only 2.4% and 2.8%, respectively. Spalding's and Rawlings' combined value share of the market was, however, larger, amounting to 15%.

The general competitive data, considering merger history, patents, trademarks, and contracts with professional leagues and athletes, reveals a healthy active, competitive market in the production and sale of basketballs. These facts indicate that there will probably be no substantial effect on competition in this line of commerce as a result of the merger of Spalding and Rawlings. Accordingly, we must conclude that the substantial, reliable and probative evidence

in the record does not indicate that the effect of the acquisition of Rawlings by Spalding may be substantially to lessen competition or tend to create a monopoly in the manufacture and sale of basketballs.

3. Footballs

The AGMA Reports of 1954 and 1955 contain data from nineteen football manufacturers. The competitive relationships, from the standpoint of quantity produced, of these nineteen manufacturers to Rawlings and Spalding and to each other are as follows:

	Quantity (dozens)	Percent of total	Value	Percent of total
1954				
Total reported for the Industry (AGMA)	149,753	100.0	$4,213,466	100.0
Market share:				
Spalding	11,856	7.9	645,449	15.3
Rawlings	6,193	4.1	273,870	6.5
1955				
Total reported for the Industry (AGMA)	306,812	100.0	5,322,125	100.0
Market share:				
Spalding	10,810	3.5	616,777	11.5
Rawlings	6,595	2.1	278,867	5.2

Percentagewise, the share of the reported production of footballs produced by each of the nineteen manufacturers was as follows:

	1954	*1955*
Wilson (combined with Ohio-Kentucky Mfg. Co.)	20.1%	13.4%
Voit Rubber	16.0%	8.1%
Sun Rubber	14.5%	6.1%
Dubow	10.8%	5.1%
Hutchinson Bros.	9.5%	5.0%
Spalding	7.9%	3.5%
MacGregor	5.7%	2.5%
Rawlings	4.1%	2.1%
Trio	5.3%	
General Tire & Rubber	3.5%	1.1%
Seamless Rubber	1.9%	.9%
Kennedy	.5%	.3%
Reach	.2%	.1%
Nocona		.1%
Collette		13.7%
Everlast		0.4%
Barr Rubber		36.8%
Eagle		.6%

The above tabulation shows that in 1954 Spalding was the sixth-largest producer of footballs, with a total by value of 15.3% of the industry's production, and a total by quantity of 7.9% thereof.

Rawlings was the eighth-largest producer, with a total by value of 6.5% and by quantity of 4.1% of the total reported football production of the indusrty. In 1955, Spalding was the eighth-largest producer of footballs, with a total by value of 11.5% of the industry's reported total, and a total by quantity of 3.5% thereof. Rawlings was the tenth-largest producer, with a total by value of 5.2% and by quantity of 2.1% of the total reported football production of the industry. In 1955 Spalding's share of the market declined in quantity by 4.4%, and in value by 3.8%. Their combined total immediately preceding the merger amounted in value to 16.7%, and in quantity to 5.6%. Thus the merger had the effect of increasing Spalding's share of the football market by 5.2% in value and by 2.1% in quantity, which made the combined firms the sixth-largest in the industry in point of quantity produced. Barr Rubber was first, with a total production of 36.8%; Collette was second with a total of 13.7%; Wilson, combined with Ohio-Kentucky Mfg. Co., which it acquired in January of 1955, was third with 13.4%; Voit Rubber, fourth with 8.1%; and Sun Rubber, fifth with 6.1%. Dubow followed in seventh place with 5.1%.

It should be observed that the increase in Spalding's share of the football market resulting from the merger, which was 5.2% by value and 2.1% by quantity, effected no overall change in its relative place in competition therein, the combined companies occupying the sixth place—the position previously occupied in 1954 by Spalding alone.

The record shows that in 1955 at least five manufacturers, namely, Barr Rubber, Eagle, Elliott-Morris, Midwestern and Moneco, appeared as new entries in the football-manufacturing field. It is also interesting to note that Barr Rubber became, within the year, the leading producer in point of quantity in the manufacture of footballs.

Concerning prior acquisitions, it seems that only one other acquisition of a football manufacturer has occurred since 1876; Wilson acquired Ohio-Kentucky Mfg. Co. in 1955. It should also be observed that there is no indication that patents, trademarks, use of athletes' names, or contracts with athletic leagues, have had any substantial effect on competition. Accordingly, we must conclude, all factors considered, that the substantial, reliable and probative evidence in the record does not show that the acquisition of Rawlings by Spalding had any appreciable effect on competition, since Spalding remained substantially in the same competitive position after the acquisition as before.

4. Softballs:

The AGMA Reports of 1954 and 1955 contain data from thirteen softball manufacturers. The competitive relationships, from the standpoint of quantity produced, of these thirteen manufacturers to Rawlings and Spalding and to each other are as follows:

	Quantity (dozens)	Percent of total	Value	Percent of total
1954				
Total reported for the Industry (AGMA)	323,765	100.0	$3,618,900	100.0
Market share:				
Spalding	33,570	10.4	410,737	11.3
Rawlings	22,617	7.0	314,597	8.7
1955				
Total reported for the Industry (AGMA)	338,694	100.0	3,716,042	100.0
Market share:				
Spalding	32,003	9.4	387,810	10.4
Rawlings	19,613	5.8	255,607	6.9

Percentagewise, the share of the reported production of softballs produced by each of the thirteen manufacturers was as follows:

	1954	*1955*
de Beer	17.9%	18.4%
Lannom	15.9%	14.7%
Voit	12.2%	11.8%
Spalding	10.4%	9.4%
Wilson	10.3%	11.7%
MacGregor	9.3%	9.2%
Rawlings	7.0%	5.8%
Tober	5.8%	6.6%
Harwood	4.8%	5.1%
Sealand	2.4%	1.8%
Hofran	2.1%	2.6%
General Tire & Rubber	1.9%	2.8%
Kennedy	[1].1%	[1].1%

[1] Less than.

The above tabulation shows that both Spalding's and Rawlings' share of the market in softballs declined substantially from 1954 to 1955 in terms of both value and quantity. During the same period five companies—de Beer, Tober, Harwood, Hofran and General Tire & Rubber—substantially increased their respective shares of the market in softballs. In 1954 Spalding was fourth in production of softballs, and in 1955, fifth. In 1955 the combined firms of Spalding and Rawlings produced 15.2% of all softball production reported, which placed the combination in third place, barely ahead of Lannom with 14.7%, and with at least ten and probably fourteen other active competitors.

There is no evidence of the number of companies who abandoned the manufacture of softballs during these years. It appears from the fact that in this line of commerce the small companies are the leading producers, that small companies have had no great difficulty in surviving, in continuing to compete, and even in exceeding Spalding's production in the softball market.

Only one acquisition of a softball manufacturer has occurred since 1876, the acquisition of Grady by Rawlings in 1946, and we believe that one transaction does not constitute a trend.

There are no patents relating to softballs owned or licensed by Spalding, Rawlings, Wilson or MacGregor. The competitive significance of trademarks and trade names appears to be as favorable to the smaller companies as to the large general-line manufacturers. Spalding, Rawlings, Wilson and MacGregor have no contracts with players for the use of their names on softballs, and no adoption contracts with any softball leagues. In fact, evidence on this phase of softball competition is lacking.

In view of all the evidence, we must conclude that there is no substantial, reliable, probative evidence in the record showing that the acquisition of Rawlings by Spalding may lessen competition or tend to create a monopoly in the manufacture and sale of softballs.

5. Volley Balls:

The AGMA Reports of 1954 and 1955 contain data from fifteen volley-ball manufacturers. The competitive relationships, from the standpoint of quantity produced, of these fifteen manufacturers to Rawlings and Spalding and to each other are as follows:

	Quantity (dozens)	Percent of total	Value	Percent of total
1954				
Total reported for the Industry (AGMA)	19,383	100.0	$1,014,576	100.0
Market share:				
Spalding	1,601	8.3	99,018	9.7
Rawlings	554	2.8	38,338	3.8
1955				
Total reported for the Industry (AGMA)	23,012	100.0	1,131,319	100.0
Market share:				
Spalding	1,431	6.2	88,193	7.8
Rawlings	524	2.3	36,206	3.2

Percentagewise, the share of the reported production of volley balls produced by each of the fourteen manufacturers was as follows:

	1954	1955
Voit Rubber	43. 1%	41. 6%
Seamless Rubber	12. 6%	12. 9%
Wilson and Ohio-Kentucky	12. 1%	11. 0%
General Tire & Rubber	8. 7%	7. 8%
Spalding	8. 3%	6. 2%
MacGregor	6. 1%	4. 7%
Rawlings	2. 8%	2. 3%
Sun Rubber	2. 7%	4. 1%
Dubow	2. 0%	1. 3%
Reach	. 7%	. 6%
Kennedy	. 6%	1. 0%
Hutchinson Bros	. 2%	. 8%
Nocona	--------	. 5%
Collette	--------	5. 2%

The above tabulation shows that in both 1954 and 1955 the four largest producers of volley balls were Voit, Seamless Rubber, Wilson and General Tire & Rubber. Voit led in 1954 with a production of 43.1% and in 1955 with 41.6%. In 1954 Spalding, with 8.3% of production, was in fifth place, and in 1955, with only 6.2% Spalding was still in fifth place, while Rawlings was in seventh place with 2.3%. The combined production of Spalding and Rawlings in 1955 gave them a proportion or market share of 8.5%, a total of only two-tenths of a percent above Spalding's production for 1954.

The above facts, when considered in the light of the evidence concerning entry and survival in the market, merger history, patents, trademarks, contracts and other related factors, indicate active competition in the manufacture and sale of volley balls. Accordingly, we must conclude that the acquisition of Rawlings by Spalding had no appreciable effect upon competition in this line of commerce.

6. Soccer Balls:

The AGMA Reports of 1954 and 1955 contain data from fourteen soccer-ball manufacturers. The competitive relationships, from the standpoint of quantity produced, of these thirteen manufacturers to Rawlings and Spalding and to each other are as follows:

	Quantity (dozens)	Percent of total	Value	Percent of total
1954				
Total reported for the Industry (AGMA)	11, 297	100. 0	$681, 018	100. 0
Market share:				
Spalding	675	6. 0	48, 002	7. 0
Rawlings	117	1. 0	9, 734	1. 4
1955				
Total reported for the Industry (AGMA)	13, 104	100. 0	760, 419	100. 0
Market share:				
Spalding	853	6. 5	56, 756	7. 5
Rawlings	168	1. 3	14, 107	1. 9

Percentagewise, the share of the reported production of soccer balls produced by each of the thirteen manufacturers was as follows:

	1954	1955
Voit Rubber	51.7%	50.7%
Seamless Rubber	11.1%	11.6%
General Tire & Rubber	9.9%	8.4%
Wilson and Ohio-Kentucky	7.5%	4.8%
Spalding	6.0%	6.5%
MacGregor	4.7%	3.0%
Sun Rubber	4.1%	5.7%
Dubow	2.0%	.9%
Kennedy	1.3%	1.8%
Rawlings	1.0%	1.3%
Hutchinson Bros	.8%	1.4%
Nocona	--------	.1%
Collette	--------	3.8%

The above tabulation shows that the combined production of the fourteen manufacturers of soccer balls reporting to AGMA amounted to only $681,018 in 1954 and only $760,419 in 1955. In terms of quantity, the four largest producers in 1954 were, in order of production, Voit, Seamless Rubber, General Tire & Rubber, and Wilson. In 1955 Wilson's place was taken by Spalding. In both of these years, however, Voit led the market production with 51.7% and 50.7%, respectively. Ten manufacturers, including both Spalding and Rawlings, accounted for only 29.3% of the reported 1955 production. Thus the acquisition of Rawlings by Spalding had no effect upon the lead held by the first three producers in 1955, who accounted for 70.7% of that year's production. The combined production of Spalding and Rawlings in 1955 was only 7.8%, leaving them in fourth place. There appears to be no evidence in the record to show that the slight quantitative gain accruing to Spalding as a result of its acquisition of Rawlings indicates a trend by Spalding toward a monopoly, or a substantial lessening of competition in the sale of soccer balls.

Lines of Commerce Sold By Both Spalding and Rawlings, But Not Manufactured By Both

In addition to the six lines of commerce analyzed in the preceding section, which are manufactured and sold by both Spalding and Rawlings, counsel supporting the complaint lists thirteen additional lines of commerce as relevant to this proceeding, which are sold by both Spalding and Rawlings, but which are not manufactured by both. These lines are as follows:

1. Golf clubs (iron);
2. Golf clubs (wood);

3. Golf balls;
4. Baseball gloves;
5. Basemen's mitts;
6. Catchers' mitts;
7. Football helmets;
8. Football shoulder pads;
9. Football hip and kidney pads;
10. Tennis balls;
11. Tennis-racket frames;
12. Strung tennis rackets; and
13. Badminton rackets.

We believe that a detailed analysis of each of these lines of commerce would unduly lengthen this opinion without contributing substantially to the ultimate adjudication of this proceeding. This appears to be true because the record presents, as to these lines, no evidence which could reasonably be interpreted as indicating that the merger has affected competition, with the possible exception of two lines, namely, gloves and mitts. We are, therefore, confining our discussion to baseball gloves and mitts, the only lines concerning which counsel supporting the complaint has sought to show a specific post-acquisition effect on competition. As to these two lines, he argues that "* * * by the acquisition of Rawlings respondent has been virtually eliminated as a purchaser of gloves and mitts from other manufacturers for resale under respondent's trade names and trademarks."

In order to substantiate the above statement, counsel supporting the complaint points to three factors, as follows:

1. That Spalding's purchases of gloves and mitts from Wilson and MacGregor declined substantially after the acquisition;

2. That Spalding's purchases of gloves and mitts from three small manufacturers, namely, Kennedy, Stall & Dean Mfg. Co., and Franklin Mfg. Co., declined substantially after the acquisition; and

3. That Spalding's purchases from Rawlings increased substantially from 1954 to 1955.

First, counsel supporting the complaint, in what appears to be an effort to show competitive injury to Wilson and MacGregor, requests factual findings based upon the purchase records of Spalding from those companies from 1954 to 1956 and beyond. Counsel for the respondent states, without questioning their accuracy, that the 1954 figures relied upon by counsel supporting the complaint are based upon Respondent's reply to a Commission questionnaire which is not in evidence. Since, however, the accuracy of the 1954 figures cited is in effect admitted by counsel for the Respondent and

quoted by him, no serious problem arises concerning them. Figures recognized as correct by both counsel show that Wilson was Spalding's largest supplier of gloves and mitts in 1954; the second-largest in 1955 and 1956. Furthermore, Witness Bowman, president of Wilson, testified that Spalding ceased its purchases of gloves and mitts from his company following 1956. Respondent's purchases of gloves and mitts from MacGregor is shown to have fluctuated from year to year. A representative of each of those two large general-line companies testified in this proceeding at length, and neither suggested that his company had been adversely affected by the acquisition in question. In fact, the representative of MacGregor, the Chairman of its Board, testified that as to the six lines of commerce manufactured by both Spalding and Rawlings, his company had not been affected by the acquisition. His testimony in no wise indicates that his company had been adversely affected as to any other line of commerce, and it is reasonable to assume, therefore, that no such effect existed. Thus, we must conclude that these two companies, the first and fourth in point of general production in the industry, were not substantially affected by Spalding's acquisition of Rawlings.

Second, concerning the small companies referred to above by counsel, it is clear that Spalding's purchases from them have substantially declined. At the same time, it must be observed that Spalding's purchases from Royal in 1955, the first year Spalding bought from that company, totaled $74,184.00, and in 1956 such purchases rose to $220,730.09. It must be further observed that in 1954 Spalding's total purchases of gloves and mitts were $732,-812.35, and in 1955, $1,144,703.00. These latter figures decreased in 1956 to $675,879.05. Thus, in the year subsequent to the acquisition, Spalding's purchases of gloves and mitts declined by only $56,933.00. What changes in Spalding's purchases may have occurred in subsequent years is not shown by any evidence in the record.

Third, while it is a fact that Spalding purchased more from Rawlings in 1955 than in 1954, this increase cannot reasonably be attributed to Spalding's acquisition of Rawlings, since that acquisition did not take place until in December of 1955.

When we consider that Spalding had the right to hunt and choose its own suppliers; that the two principal companies whose sales to Spalding in these lines of commerce declined were Wilson and MacGregor, who are the largest companies in the industry and whose representatives were not questioned as to whether their companies had been adversely affected by the acquisition; and the

further fact that Spalding's overall decrease in the purchase of gloves and mitts from 1955, preceding the merger, to 1956, following the merger, was very slight, amounting to only $56,933.00, we must conclude that the merger in question has not had the effect of lessening competition nor tending to create a monopoly in the lines of commerce here under consideration.

CONCLUSIONS

Because of all the facts and reasons stated herein, we are of the opinion that the evidence fails to establish that the effect of the acquisition of Rawlings by Spalding may be substantially to lessen competition, or to tend to create a monopoly, in violation of §7 of the Clayton Act. Accordingly,

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

OPINION OF THE COMMISSION

By SECREST, *Commissioner:*

The complaint in this matter charges respondent, A. G. Spalding & Bros., Inc., with violating Section 7 of the Clayton Act (15 U.S.C. §18), as amended, by acquiring Rawlings Manufacturing Company, a corporation. The hearing examiner held in his initial decision that the evidence failed to establish that Section 7 had been violated and ordered that the complaint be dismissed. The matter is now before the Commission on the appeal of counsel supporting the complaint from this decision. The primary issues raised by the appeal relate to the hearing examiner's rulings concerning "lines of commerce" and to his holding with respect to the competitive effects of the merger.

Respondent, A. G. Spalding & Bros., Inc., a corporation (hereinafter referred to as Spalding or as respondent), is engaged in the manufacture and sale of a general line of athletic goods. Its full line of products consists of some 1,100 different articles, the most important being equipment used in major spectator sports such as baseball, football, basketball, boxing and golf. Spalding manufactures many of these products but also purchases a substantial number from other producers. It ranks as one of the largest firms in the athletic goods industry, and prior to the merger its sales were second only to those of Wilson Athletic Goods Manufacturing Co., Inc. In 1955 its total assets were $16,665,299, and its sales of finished athletic products amounted to $23,200,737.

Prior to December 8, 1955, Rawlings Manufacturing Company

(sometimes hereinafter referred to as Rawlings) was a Missouri corporation with its office and principal place of business in St. Louis, Missouri. It was also engaged in the manufacture and sale of a general line of athletic products, manufacturing the majority of them and purchasing the remainder from other producers. It was one of the leading firms in the athletic goods industry, selling nationally through sales offices and wholesale distribution depots in Los Angeles, California, Chicago, Illinois, and St. Louis, Missouri. In 1955 its total assets were approximately $6,500,000 and its net sales were $11,209,825.

On December 8, 1955, Spalding acquired all of the capital stock of Rawlings for approximately $5,698,000. On December 9, 1955, the corporation, Rawlings Manufacturing Company, was liquidated and dissolved, and Spalding succeeded to all of its assets including all of the capital stock of Rawlings' wholly owned subsidiary, Rawlings Sporting Goods Company. Spalding has since operated the acquired company as the Rawlings Division of Spalding, using the name "Rawlings Manufacturing Company." It did not dissolve Rawlings Sporting Goods Company and has operated this corporation as the sales company for merchandise bearing the Rawlings' trade-mark. The integration of Rawlings' facilities with those of Spalding is controlled by stipulation between counsel supporting the complaint and counsel for respondent. Respondent has agreed, in substance, to maintain the pre-merger status of Rawlings and to make no changes therein without advance notice to the Commission.

Prior to the merger, Wilson Athletic Goods Manufacturing Co., Inc., Spalding, MacGregor Sport Products, Inc., and Rawlings, in that order, were the principal producers of athletic products in the United States and were the only members of the industry which sold a general line of these products. A few firms, such as Kennedy Sporting Goods Manufacturing Company, Hutchinson Brothers Leather Co., Dubow Manufacturing Company, Inc., George A. Reach Company, and Stall and Dean Manufacturing Company, produce and sell a partial line of athletic goods, but the great majority of companies in this industry manufacture and sell only a single product or a single line of products. The total number of firms engaged in the production of athletic goods is approximately 200. The trade association for this industry, The Athletic Goods Manufacturing Association (hereinafter referred to as AGMA), was organized prior to 1925 and its membership includes the principal manufacturers of the aforementioned products.

Line of Commerce

The hearing examiner found that each of nineteen major products of the athletic goods industry constitutes a separate line of commerce within the meaning of Section 7 of the Clayton Act,[1] and his findings with respect to the competitive effects of the acquisition of Rawlings by Spalding were based solely on a study of certain of these product lines. It is the position of counsel supporting the complaint, however, that there are separate and distinct lines of commerce within many of the product lines and that the hearing examiner erred in failing to consider the impact of the merger on competition in these more narrow lines.

After World War II the AGMA, in order to assist industry members in obtaining raw material allocations in times of war or national emergency, initiated a census program to determine the total volume of athletic goods produced by the industry. Beginning with the year 1949 and continuing through 1954, all known manufacturers of athletic products were requested to report their annual sales of some 43 specified items, on both a quantity and value basis. The compilations of these individual reports, showing total annual production of each item, were prepared by the accounting firm of Ernst and Ernst and were published and disseminated by the AGMA. They are known as the AGMA Census Reports or Census Surveys. Individual company reports were also prepared for the year 1955 but were not tabulated by Ernst and Ernst. Although only about 40 percent of the members of the industry filed production reports in 1954 and 1955, these participating firms accounted for approximately 90 percent of the total volume of athletic goods produced in the industry for those years.

The AGMA Census Reports show, by units and dollars, industry sales of athletic goods produced by reporting manufacturers by products, with breakdowns by price categories for many of such products. For example, manufacturers participating in the 1955 Census reported the quantity and value of leather covered softballs sold in the following price ranges: Up to $9.00 per dozen, $9.01 to $16.75 per dozen, and over $16.75 per dozen; leather footballs in price ranges of up to $48 per dozen, $48.01 to $89.99 per dozen, and $90.00 and over per dozen; boxing gloves in price ranges of up

[1] Golf clubs (irons); Golf clubs (wood); Golf balls; Baseballs; Softballs; Baseball gloves; Basemen's mitts; Catchers' mitts; Soccer balls; Volley balls; Footballs; Football helmets; Football shoulder pads; Football hip and kidney pads; Basketballs; Tennis balls; Tennis racket frames; Strung tennis rackets; and Badminton rackets (frames and strung rackets).

to $60 per dozen (sets of 4), $60.01 to $102.00 per dozen, and $102.01 and up per dozen.

It is the contention of counsel supporting the complaint that the AGMA Census Report price categories were designed by the manufacturers themselves through the AGMA Census Report Committee to delineate differing physical characteristics, markets, prices, and end-uses with respect to all of the athletic products for which such price categories had been established. He argues in this connection that the products in each of the price categories are sufficiently different and distinct from those in any other price category within the same product line to constitute each group of products so classified a separate line of commerce for the purpose of this proceeding. To support this position, he relies primarily on the testimony of two former members of the AGMA Census Report Committee and the testimony of the Executive Secretary of the AGMA.

According to the testimony of Mr. George J. Herrmann, Executive Secretary of the AGMA, the price categories in question were designed "to particularly find out the market for various types of equipment, the volume that would be in various price classifications." He further stated that "the price would govern whether it was the better quality or whether it might have been in the toy classification, or whether it would be high quality equipment."

Mr. Fred J. Bowman, President of Wilson, testified to the effect that price categories reflect the quality of raw materials and workmanship that go into the manufacture of a product and that these categories or classifications have been utilized by the AGMA in place of specifications for different grades within a product line.

Mr. Philip H. Goldsmith, Chairman of the Board of MacGregor, stated that the best method of classifying industry products on the basis of quality is by price categories. Using baseballs as an illustration and referring to the 1950 AGMA Census, Mr. Goldsmith testified that the price category of "Up to $9.00" was selected because it was a known fact that any baseball that sold for under $9.00 a dozen could not be a yarn-wound ball, and that baseballs in this category "were of an inferior nature that would not be used in league games or in regular competition games." The next price category, "$9.01 to $16.80," according to Mr. Goldsmith, "took in all the playable balls that the kids would use, the amateurs, the small leagues, and so forth." He further testified that the "$16.80 and up" bracket included the official top ball since such a ball could not be made for less than $16.80 per dozen.

Mr. Bowman described the Wilson American Player line of prod-

ucts as "juvenile line of equipment sold for Christmas selling, including lower priced footballs, basketballs, shoulder pads, basketball goals, bat and ball sets, youth boxing gloves and striking bags, equipment of that type sold mostly to the toy departments." He also stated that this line of products "goes to the younger children who are not yet old enough * * * to participate in the games and use regular equipment."

Mr. Herrmann also testified that "the reason for the classification particularly as to rubber athletic goods was so designed as I understand it so that anything that may be in the toy classification would not be confused with that which was in the regular official size of equipment."

We think it clear from this testimony that in each of the various product lines for which AGMA price categories were established there is a separate line of low priced items which is not sold in competition with other items in the same product line. These low priced items may properly be classified as toys or as products not suitable for use in organized competitive games. Other items within the same product line are of higher quality, more durable and are designed for use in regular competition by both professional and amateur teams and players. The products in each of these categories are physically distinct from those in the other; they are different in quality and price, as well as in the purpose for which they are made and used. There can be no doubt that these two categories within the various product lines can be distinguished competitively from each other and that they constitute separate and distinct lines of commerce within the meaning of Section 7.

Using baseballs as an example, the uncontradicted testimony of the witness Goldsmith establishes that there are sufficient differences between baseballs selling for under $9.00 a dozen and those selling for more than $9.00 a dozen to constitute them separate lines of commerce. One is yarn-wound; the other is not. One is suitable for use in organized competitive play; the other is not. They are of different quality, are sold at different prices, and have different end-uses and different markets. The market for the higher priced baseballs consists of major and minor league teams, semi-professional and amateur teams, colleges and high schools, and all others who use baseballs in organized games. The low priced baseballs are not suitable for use by customers who make up this market and for that reason cannot be considered to be competitive with the higher priced baseballs.

Counsel supporting the complaint contends that there are three separate lines of commerce within the baseball product line. The

first, or low priced line, includes baseballs selling for under $9.00 a dozen. The second, or medium priced line, includes baseballs in the $9.01 to $16.80 category. This line consists of baseballs used primarily by juveniles in organized competition. The third, or high priced line, includes baseballs selling for more than $16.80 a dozen. This line is used primarily by professional leagues, colleges, and others who require a top quality baseball.

He has also proposed similar lines for other products such as footballs, basketballs and boxing gloves. While we agree that the record supports his contention that there are separate and distinct markets for low, medium and high priced items within each of several product lines, we are of the opinion that for the purpose of this proceeding it will be necessary to consider only the lower priced and higher priced lines as indicated above.

Counsel supporting the complaint also contends that the athletic goods industry as a whole constitutes a line of commerce within the meaning of Section 7 of the Clayton Act. We believe the record fully supports this contention. The testimony of AGMA officials establishes that the principal products of this industry are those listed in the AGMA Census Reports. These products are manufactured and sold by Spalding and formerly had been manufactured and sold by Rawlings. They are products which are required to be used in established and well-recognized athletic games. They have peculiar characteristics and end-uses for which there are no substitutes; they are distinct from the products of other industries; and are sold in a recognized market with its own competitive standards. See *United States* v. *Bethlehem Steel Corporation*, 168 F. Supp. 576 (1958). Moreover, the athletic goods industry is recognized by its members and by its trade association as a separate and distinct industry. It is our opinion, therefore, that the industry itself is a relevant market within which to measure the impact of the merger.

Section of the Country

The hearing examiner held that the relevant geographical area to be considered for the purpose of determining the effects of the acquisition on competition is the entire United States. We agree with this conclusion. The record establishes that both Spalding and Rawlings distributed their products throughout the United States and that purchasers of such products are located in all sections of the country. Moreover, competing manufacturers and sellers of athletic goods are located throughout the United States.

The adoption of the United States as the appropriate geographical market does not implicitly assume that Spalding and Rawlings directly competed for every sale they made, as contended by respondent, nor does it assume that these two firms were equally strong factors in competition in every section of the country. Under Section 7, "section of the country" may include any market area in which the acquired and acquiring firms do business and may cover potential, as well as actual, competition. *Pillsbury Mills, Inc.*, 50 F.T.C. 555 (1953). As stated by the Court in *United States* v. *Bethlehem Steel Corporation*, *supra*:

> * * * section 7 is intended to protect buyers as well as competing sellers. Therefore, section of the country must be determined with respect to both buyers and sellers. The determination must be made on the basis of not only where the companies have in the past made sales, but also on the basis of where potentially they could make sales and where buyers could reasonably turn to them as alternative substantial sources of supply.

Competitive Effect of the Acquisition

The final question presented in this appeal is whether the effect of the acquisition of Rawlings by respondent may substantially lessen competition or tend to create a monopoly in any of the relevant lines of commerce in the relevant section of the country. In making this determination, we are not required to find an actual lessening of competition resulting from the acquisition. The test is whether there is a reasonable probability that the merger will substantially lessen competition or tend to create a monopoly. *Reynolds Metals Company*, Docket 7009 (1960); *United States* v. *Bethlehem Steel Corporation*, *supra*; *Crown Zellerbach Corporation*, Docket 6810 (1957); *United States* v. *E. I. du Pont de Nemours*, 353 U.S. 586 (1957).

The hearing examiner's findings with respect to the competitive effect of the merger were based primarily on an analysis of the following product lines: baseballs, basketballs, footballs, softballs, volley balls, soccer balls, and baseball gloves and mitts. He concluded from this analysis that the evidence failed to establish that the effect of the acquisition may be substantially to lessen competition or tend to create a monopoly in violation of Section 7.

We will consider first the discussion in the initial decision of the competitive effect of the merger on the manufacture and sale of baseballs. Using the quantity of baseballs produced as the basis for his computation, the hearing examiner found the market shares of all manufacturers participating in the 1954–1955 AGMA Census Survey to be as follows:

	1954	1955
Lannom	18.8%	19.2%
Spalding	16.5%	15.3%
de Beer	16.2%	17.9%
Wilson	16.1%	17.5%
MacGregor	10.9%	10.2%
Rawlings	10.5%	9.4%
Tober	3.9%	4.8%
Hofran	3.8%	3.1%
Sealand	1.7%	1.4%
Harwood	1.5%	1.2%
Kennedy	[1] 1%	[1] 1%

[1] Less than.

Relying solely on the data relating to the number of items produced, he found that in 1955 three firms, Lannom, de Beer and Wilson, surpassed Spalding in point of production by producing, respectively, 19.2%, 17.9% and 17.5% of all baseballs manufactured against Spalding 15.3%. This finding is somewhat misleading, however, since it ignores completely the value of the respective market shares. On a value basis, Spalding's share of the market was 21.8% as opposed to 11.6% for de Beer and 10.7% for Lannom. Nor does the above finding support the hearing examiner's conclusion that manufacturers of baseballs have found no difficulty in competing with Spalding. In this connection, the great majority of the baseballs produced by Lannom and de Beer were in the low priced category, while the total value of their combined production of higher priced baseballs was less than half the value of Spalding's production in that category.

A comparison of the market shares of the companies reporting in the 1954–1955 AGMA Census Survey, based on the value of all baseballs produced, is shown in the following table:

	1954	1955
Wilson	21.3%	22.9%
Spalding	22.7%	21.8%
MacGregor	14.0%	13.8%
de Beer	10.6%	11.6%
Rawlings	13.0%	11.3%
Lannom	10.4%	10.7%
Tober	2.1%	2.6%
Hofran	2.6%	2.2%
Harwood	1.8%	1.6%
Sealand	1.4%	1.4%
Kennedy	.1%	--------

Prior to the acquisition, six firms accounted for over 90% of the production of all baseballs on a value basis. The merger

brought together the second and fifth ranking producers to make Spalding the largest producer in the industry with a market share of 24.7% on a quantity basis and 33.1% on a value basis. The hearing examiner recognized that Spalding's share of the market was increased substantially by the acquisition. He also noted that prior to the merger Spalding had been a leader in the manufacture and sale of baseballs. He failed to attach any significance, however, to the substantial increase in Spalding's market share in this line of commerce or to the fact that Spalding had eliminated a major competitor. Nor did he comment on the high degree of concentration in this line of commerce.

Although it is not entirely clear from the initial decision, the hearing examiner apparently concluded that a new entrant in this field would have no difficulty competing with respondent. This conclusion, however, is not supported by the record, nor is the specific finding that the manufacture of higher quality baseballs is relatively simple. Moreover, in reaching the conclusion that there was no reasonable probability of a substantial lessening of competition in this line of commerce, the hearing examiner was unduly influenced by the statement of the witness Goldsmith that MacGregor had not been injured by the merger. Even assuming MacGregor was not injured, there are many other competitors in this field and we find that there is probability of injury as to competition generally. Nor does his comparison of the quantitative increase of Spalding's production with that resulting from the merger in the *Brillo* case [2] support his conclusion with respect to the competitive effect of the acquisition.

A somewhat similar but less comprehensive study has been made by the hearing examiner with respect to the effect of the acquisition on other product lines. Each of these products, except volley balls and soccer balls, was also broken down by price categories in the AGMA Survey. As in the case of baseballs, the hearing examiner in evaluating the effect of the merger on competition failed to recognize that there are separate and distinct markets for different lines of products within each of these product lines. He also compounded this error by emphasizing the number of items produced rather than the value of such items in comparing the competitive positions of Spalding and Rawlings with other manufacturers in the industry. As a result, his comparisons, in many instances, do not reflect the true competitive relationship existing among these companies.

[2] *Brillo Manufacturing Company, Inc.*, Docket 6557 (1958).

One of the most significant points in the entire record is that Spalding and Rawlings were engaged primarily in the production and sale of athletic goods in the higher priced, higher quality line. It is, therefore, within this higher quality line of the various product lines that an appraisal of the competitive effect of the merger should properly be made. The manufacture and sale of the low price line of athletic products involves an entirely different market and may be completely disregarded in making this appraisal.

Prior to the acquisition, Spalding, Rawlings, Wilson, and MacGregor were the only firms engaged in the production and sale of a general line of athletic products. On the basis of the AGMA Census Reports, these four firms accounted for approximately 50 percent of the total industry production and sales in 1954 and 46.4 percent in 1955. The next fifteen firms, ranging fifth through nineteenth, accounted for 34.7 percent of the total production and the remaining fifty-six companies participating in the survey accounted for only 18.9 percent of the total.

The merger brought together the second and fourth largest companies with market shares of 12.5 percent and 6 percent, respectively, and placed Spalding in a leading position in the industry. Almost 50 percent of the total industry production was then concentrated in three firms, Spalding, Wilson, and MacGregor. After the merger, Spalding's sales were more than four times that of the fifth ranking firm, W. J. Voit Rubber Corporation, and five times that of the sixth ranking firm, Acushnet Process Sales Co. None of the other firms accounted for as much as 4 percent of the total industry sales.

Although a comparison of the production and sales of athletic products by members of the industry reveals the dominant positions held by Spalding-Rawlings, Wilson and MacGregor, it nevertheless tends to magnify the degree of real competition existing between these firms and other members of the industry. Spalding-Rawlings, Wilson and MacGregor are engaged primarily in the production and sale of higher quality items in each of the product lines. Many of the smaller firms, on the other hand, are engaged almost exclusively in the manufacture and sale of goods in the lower quality line and consequently are not significant factors in that area of competition where Spalding and the other general line firms are predominant.

As stated above, Rawlings was one of four general line firms in the athletic goods industry. It sold 29 of the major products in competition with Spalding, 18 of which it manufactured. In addi-

tion to being able to compete with Spalding on a general line basis, Rawlings also had comparable distribution facilities, a well-known trade name, and the financial resources to compete successfully with Spalding in national advertising, research and development, exclusive adoption contracts with professional leagues and teams, endorsement contracts with established athletes, and in all other respects. Of particular significance in this connection is that immediately prior to the merger, Rawlings was experiencing a period of rapid growth and expansion. From 1953 to 1955, its total assets increased by 22% and its net worth increased 25%.

The immediate effect of the acquisition, therefore, was the elimination of a substantial competitive factor in the production and sale of athletic goods, leaving the general line concerns, Wilson and MacGregor, as the only firms having the capacity to compete on equal terms with Spalding. The absorption of Rawlings' share of the market greatly increased the concentration in the hands of these three firms, particularly in the higher priced, higher quality line of merchandise. Three firms instead of four now control approximately 50% of the market for all athletic goods and considerably more than 50% of the market for higher quality products.

The possibility of another firm replacing Rawlings as a strong competitive factor in the industry is exceedingly remote. The record shows that it is not only difficult for smaller firms to grow in this industry, it is also difficult for them to survive. According to the uncontradicted testimony of the witness Goldsmith, the industry's mortality rate is high. A number of companies handling a partial line of athletic products have gone out of business but the highest mortality has been among the smaller, single line firms. Not since 1910, when Wilson was organized, has any firm risen to the status held by Rawlings at the time of the merger. It is noted in this connection that in reaching the competitive level of the older general line firms, Wilson acquired six manufacturers and five distributors of athletic equipment.

As previously stated, separate and distinct markets are involved in the manufacture and sale of lower quality athletic products and in the manufacture and sale of the higher quality products. It is in the latter market that an analysis of the competitive impact of the merger should properly be made. Computed on both a value and quantity basis, the market shares of the various AGMA reporting companies in the production and sale of higher quality baseballs (selling for more than $9.00 a dozen) for the year 1955 was as follows:

	Dollar value 1955	*Quantity 1955*
Wilson	26. 9	26. 0
Spalding	26. 5	24. 0
MacGregor	16. 1	14. 7
Rawlings	13. 9	15. 3
J. deBeer	7. 1	8. 5
Lannom	5. 4	6. 6
Harwood	1. 9	2. 1
Sealand	1. 6	2. 1
Tober	0. 6	0. 7
Kennedy	(1)	(1)

[1] Less than 1 percent.

In 1955 baseballs selling for more than $9.00 a dozen comprised 76.8 percent of the total sales value of all baseballs produced. Four firms, Spalding, Wilson, MacGregor and Rawlings, accounted for 83.4 percent of the industry total in this line. Wilson was the largest producer with a market share of 26.9 percent, Spalding was second with 26.5 percent, MacGregor was third with 16.1 percent and Rawlings was fourth with 13.9 percent. The high degree of concentration already existing in this product market was further increased by the merger. Spalding's market share increased to 40.4 percent of the industry total and one of its three major competitors was eliminated.

In considering the various competitive factors involved in the manufacture and distribution of higher quality baseballs, it appears extremely doubtful that Spalding's leadership in this line of commerce will be seriously challenged in the foreseeable future or that any change can be anticipated in the oligopolistic situation existing in this market. In addition to the competitive advantage of being general line distributors, Spalding, Rawlings, Wilson and MacGregor, over a period of many years have established reputations for quality resulting in consumer acceptance of their baseballs far surpassing that of any competitor. As found by the hearing examiner, Spalding's baseballs have been the official baseball for the two major leagues from their inception, and Spalding is now under contract to supply both leagues with their entire requirements of baseballs until 1966. That Spalding recognizes that the exclusive use of its baseballs by the major leagues greatly enhances the prestige and consumer acceptability of the trade names "Reach" and "Spalding" is attested to by the fact that these baseballs which are ordinarily sold to dealers at $21.60 a dozen are sold for $3.74 a dozen to the American League and $4.48 to the National League. Similar adoption contracts with the minor leagues are also important factors from the standpoint of advertising and promotion

of baseballs. In 1954 Spalding, Rawlings, Wilson and MacGregor had exclusive contracts to supply baseballs to 32 of the 36 minor leagues then in existence. In 1955 Spalding and Rawlings together had 14 such contracts and in 1956 they had 16.

Other factors which have contributed greatly to the lead enjoyed by the general line firms are endorsement contracts with star athletes, national advertising, patents, and facilities and resources for research and development. These advantages, together with the exclusive adoption contracts, have created formidable barriers to effective competition from new entrants in the field or from firms now in existence.

Similar barriers also exist in the manufacture and sale of the higher priced lines in other major product lines. In these lines, as in the higher quality baseball line, a relatively few firms, including Spalding and Rawlings, have accounted for most of the industry's production and sales. The following illustrations are based on the AGMA Census Reports:

Basketballs: In 1955 the sales value of higher priced basketballs (leather and rubber covered selling for more than $48.00 per dozen) was approximately $3,800,000 or about 47 percent of the total sales value of all basketballs produced. In that year, five firms, Voit, Spalding, Wilson, MacGregor, and Rawlings, accounted for 83 percent of the total sales of this higher priced line. As a result of the acquisition, Spalding's market share, computed on a value basis, increased from 19.8 percent to 31.2 percent, making Spalding the leader in this line.

Footballs: In 1955 the sales value of higher priced footballs (leather and rubber covered selling for more than $45.00 per dozen) was approximately $1,600,000 or about 33 percent of the total sales value of all footballs produced. In that year, Spalding, Voit, Wilson, MacGregor, and Rawlings had a combined market share of 86.4 percent in this line. Spalding had been the largest producer, on the basis of dollar sales, prior to the merger and by the acquisition of Rawlings increased its lead from 24.9 percent to over 33 percent of the industry total.

Softballs: In 1955 the sales value of higher priced softballs (leather and rubber covered selling for more than $9.00 per dozen) was approximately $3,000,000 or 79 percent of the total sales value of all softballs produced. Spalding was the fifth largest producer in this line and Rawlings was the seventh largest. Seven firms, including Spalding, Rawlings, Wilson and MacGregor, accounted for about 87 percent of the total industry production. As a result of the merger, Spalding became the leading producer in this higher priced line, with a market share of 20 percent.

The acquisition of Rawlings by Spalding eliminated a substantial competitive factor in the manufacture and sale of the higher priced line in each of the aforementioned product lines and substantially increased the high degree of concentration already existing in these lines. Moreover, in these quality lines, as in others wherein the general line firms have been predominant, there is little likelihood that some other company will replace Rawlings as a strong factor in competition.

Although the merger is primarily a horizontal one, it also has certain important vertical aspects. Many of the major products in the general line handled by Rawlings were purchased from other manufacturers and resold by Rawlings under its own trade name. In 1955 Rawlings' purchases from other industry members amounted to $2,252,371, a 74 percent increase over the preceding year. The importance of Rawlings' national sales organization to smaller manufacturers is evidenced by the following statement made in 1952 by Rawlings' president:

> * * * Rawlings now maintains a national sales force and has also developed acceptance for its brands in foreign markets. This sales force not only handles the products of Rawlings Manufacturing Company, but it also is becoming increasingly useful in the sale of products manufactured by others. During the last 12 years sales in that category have increased from $120,000 to $950,000 annually, and the Company's officers think a substantial volume of additional business is available in this direction. Many sporting goods manufacturers do not have the means of maintaining sales activities so large and effective as those of our Company. Such companies need the more adequate sales representation which our position offers.

Of 29 major athletic products handled by both Spalding and Rawlings, there are 9, including golf and tennis equipment, which are manufactured by Spalding but not by Rawlings. Prior to the merger, Rawlings purchased its requirements of these 9 products from Spalding and other manufacturers. By acquiring Rawlings, Spalding can, if it so desires, prevent other firms that manufacture these products from selling to Rawlings and thus cut off an important outlet for their merchandise. That there is a reasonable probability that this may occur is evidenced by a pre-merger announcement by Spalding that "where possible and practical, as much of both lines will be manufactured in Spalding's and Rawlings' factories as seems appropriate."

Prior to the merger, Spalding was a leading seller of baseball gloves and mitts, but did not manufacture these products. Consequently, it was an important purchaser of these products from other manufacturers of athletic goods. Its total purchases thereof amounted to $732,812 in 1954 and $1,144,703 in 1955. Rawlings,

on the other hand, was the leading producer in these product lines. By acquiring Rawlings, Spalding can not only prevent competitors from purchasing such products from Rawlings but can also foreclose manufacturers of such products from access to Spalding as a purchaser thereof.

Prior to the merger, Spalding's principal suppliers of higher priced gloves and mitts were Rawlings, Wilson, MacGregor, Kennedy Sporting Goods Manufacturing Co., Inc., and Stall and Dean Manufacturing Co. Its requirements of these items are now being supplied almost entirely by Rawlings. The total amount of its purchases from the other four suppliers dropped from $517,433 in 1955 to $455,149 in 1956. In 1956 Spalding's purchases of such products from Wilson amounted to $387,321. After 1956, Spalding discontinued purchasing these items from Wilson.

The hearing examiner, in concluding that the merger would not have the effect of lessening competition nor the tendency to create a monopoly in the aforementioned lines of commerce, placed considerable emphasis on the fact that neither of the officials of Wilson and MacGregor who had testified was questioned as to whether his company had been adversely affected by the acquisition. This was clearly an unsound basis for his conclusion. The statute refers to lessening of competition and not to injury to competitors. Moreover, it requires only that there be a reasonable probability that the acquisition have the proscribed effect on competition. Even if there had been testimony that Wilson and MacGregor had not been adversely affected, it would not alter the significant fact that competition which formerly existed among various manufacturers in the sale of higher priced gloves and mitts to Spalding has been virtually eliminated by the merger.

CONCLUSION

It is our opinion that the effect of the acquisition of Rawlings by respondent may be substantially to lessen competition or tend to create a monopoly in each of the lines of commerce considered and, as such, is in violation of Section 7 of the Clayton Act, as amended. The hearing examiner erred in holding to the contrary and in ruling that the complaint be dismissed.

The appeal of counsel supporting the complaint is granted and our order providing for appropriate modification of the initial decision is issuing herewith.

FINAL ORDER

The hearing examiner having filed his initial decision in this proceeding dismissing the complaint charging respondent with hav-

ing violated Section 7 of the Clayton Act, as amended, by its acquisition of all of the capital stock of Rawlings Manufacturing Company; and

Counsel supporting the complaint having appealed from the initial decision, assigning as error certain of the hearing examiner's rulings delineating the relevant market for determining the legality of said acquisition and the hearing examiner's holding that the evidence fails to establish that the effect of the acquisition of Rawlings Manufacturing Company by respondent may be substantially to lessen competition or tend to create a monopoly in any line of commerce; and

The Commission having determined, for the reasons appearing in the accompanying opinion, that the appeal of counsel supporting the complaint should be granted and that the initial decision should be modified by striking therefrom the findings and conclusions pertaining to the lines of commerce involved in said acquisition, the findings and conclusions pertaining to the competitive effect of said acquisition, and the order dismissing the complaint:

It is ordered, That the initial decision be modified by striking the date "March 12, 1955," from the first line of the first paragraph on page 2 thereof and substituting therefor the date "March 12, 1956."

It is further ordered, That the initial decision be modified by striking the date "1944" from the first line of the fourth paragraph on page 10 thereof and substituting therefor the date "1949."

It is further ordered, That the hearing examiner's initial decision be modified by striking therefrom the findings and conclusions beginning on page 13 with the words "Prior to the acquisition" and ending on page 32 thereof and substituting therefor the findings and conclusions embodied in the accompanying opinion beginning on page 3 with the words "The hearing examiner found" and ending on page 18 thereof.

It is further ordered, That the initial decision be modified by striking therefrom the order dismissing the complaint and substituting therefor the following:

It is ordered, That respondent, A. G. Spalding & Bros., Inc., shall divest itself absolutely, in good faith, of all rights, title and interest in all stock, assets, patents, trade-marks, trade names, contracts, business and good will, and all other properties, rights and privileges acquired by A. G. Spalding & Bros., Inc., as a result of the acquisition by A. G. Spalding & Bros., Inc., of the stock or share capital of Rawlings Manufacturing Company, in such manner as to restore Rawlings Manufacturing Company to substantially the

same relative competitive standing it formerly had in the athletic goods industry at or around the time of the acquisition.

It is further ordered, That in such divestment no property above mentioned to be divested shall be sold or transferred, directly or indirectly, to anyone who at the time of the divestiture is a stockholder, officer, director, employee, or agent of, or otherwise directly or indirectly connected with or under the control or influence of, respondent or any of respondent's subsidiaries or affiliated companies.

It is further ordered, That respondent, A. G. Spalding & Bros., Inc., shall, within sixty (60) days from the date of service upon it of this order, submit in writing, for the consideration and approval of the Federal Trade Commission, its plan for compliance with this order, such plan to include the date within which compliance can be effected, the time for compliance to be hereafter fixed by order of the Commission, jurisdiction being retained for these purposes.

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

IN THE MATTER OF

DAMASCUS HOSIERY 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 7574. Complaint, Sept. 1, 1959—Decision, Apr. 1, 1960

Consent order requiring Damascus, Va., manufacturers to cease violating the Wool Products Labeling Act by labeling as "100% Wool sole cushioning," men's hosiery the soles of which in fact contained a substantial quantity of non-wool fibers, and by failing to disclose on labels the fiber composition of sections of the hosiery which were recognizably distinct.

Mr. Frederick McManus for the Commission.

Mr. Ralph E. Boucher of *Boucher & Boucher*, of Abingdon, Va., for respondents.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, the Federal Trade Commission issued its complaint in this proceeding against the above-named respondents, charging them with violation of the

Federal Trade Commission Act, the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, in connection with the sale and delivery of certain wool products.

On February 1, 1960 there was submitted to the undersigned hearing examiner an agreement between certain respondents, their counsel and counsel supporting the complaint, providing for the entry of a consent order.

Under the foregoing agreement, R. G. Minton, named as a respondent in this proceeding, is not an officer of Damascus Hosiery Mills, Inc., his employment with that company having terminated on January 15, 1958, or more than eighteen months prior to the issuance of the complaint. Furthermore, R. G. Minton was not served with a copy of the complaint. It is therefore agreed that the complaint should be dismissed as to R. G. Minton. G. A. Hall, another respondent named in this proceeding, has submitted an affidavit indicating that although he is an owner of some of the capital stock of Damascus Hosiery Mills, Inc., he has no control over the policies of the company and his duties and authority are not related in any way to sales or production and specifically not related in any way to the labeling of the products of the corporation. There is no evidence available contradicting this affidavit of G. A. Hall and it is agreed that the complaint should be dismissed insofar as it relates to G. A. Hall as an individual, but not as an officer of said corporate respondent. The term "respondent" hereinafter used, therefore, includes Damascus Hosiery Mills, Inc., B. P. Murphy, individually and as an officer of said corporation, and G. A. Hall as an officer of said corporation.

Under the foregoing agreement the respondents admit all the jurisdictional allegations in the complaint. The agreement also provides 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 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, the respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered 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 and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

1. Respondent Damascus Hosiery Mills, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Virginia. Individual respondents B. P. Murphy and G. A. Hall are president and secretary, respectively, of the corporate respondent. Individual respondent B. P. Murphy formulates, directs and controls the acts, policies and practices of the corporate respondent. All respondents have their office and principal place of business on Shady Lane in Damascus, Virginia.

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 the respondents, Damascus Hosiery Mills, Inc., a corporation, and its officers, and B. P. Murphy, individually and as an officer of said corporation, and G. A. Hall, 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 men's hosiery or other wool products, do forthwith cease and desist from misbranding such products by:

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

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

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

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

(c) The name or the registered identification number of the manu-

facturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution, or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

3. Failing to set forth on stamps, tags, labels or other means of identification attached to such products the information required under Section 4(a) (2) (A) of the Wool Products Labeling Act with respect to each specifically designated section of a wool product composed of two or more sections where such sections are of a different fiber composition and are recognizably distinct.

4. Falsely or deceptively designating the character or amount of the fibers contained in any section of a wool product composed of two or more sections which are recognizably distinct in violation of Rule 23 of the Rules and Regulations promulgated pursuant to the Wool Products Labeling Act of 1939.

It is further ordered, That the complaint be dismissed as to respondent R. G. Minton and as to G. A. Hall as an individual.

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 1st day of April, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Damascus Hosiery Mills, Inc., a corporation, and B. P. Murphy, individually and as an officer of said corporation, and G. A. Hall, 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.

IN THE MATTER OF

ROBERT OTTEMBERG TRADING AS F. H. LEATHER PRODUCTS

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

Docket 7654. Complaint, Nov. 9, 1959—Decision, Apr. 1, 1960

Consent order requiring a New York City manufacturer to cease stamping the words "top grain cowhide" on wallets and billfolds which were made of

split leather and consisted substantially of non-leather materials simulating leather.

Mr. Charles W. O'Connell for the Commission.
No appearance for respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondent with violation of the Federal Trade Commission Act in connection with the manufacture and sale of wallets and billfolds. 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 he has violated the law was 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 agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. The respondent, Robert Ottemberg, is an individual trading as F. H. Leather Products, with his principal office and place of business located at 139 West 19th Street, New York, New York.

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 Robert Ottemberg, an individual trading as F. H. Leather Products, or under any other name or names, and his representatives, agents and employees, directly or

through any corporate or other device, in connection with the offering for sale, sale or distribution of wallets or billfolds, or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "top grain cowhide" or any other words of similar import in connection with leather goods made of split leather or misrepresenting in any manner the kind or quality of the materials of which his leather goods are composed.

2. Offering for sale or selling leather goods made in whole or in part of split leather without affirmatively disclosing such fact on or in immediate connection with such product in a clear and conspicuous manner.

3. Offering for sale or selling leather goods which, to any substantial extent, consist of parts made of materials other than leather and which simulate or imitate leather unless such parts and the materials of which they are composed are clearly and conspicuously set forth on or in immediate connection with such goods.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 2.31 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 1st day of April, 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

TOYCRAFT ASSOCIATES, INC., ET AL.

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

Docket 7658. Complaint, Nov. 16, 1959—Decision Apr. 1, 1960

Consent order requiring manufacturers in Brooklyn, N.Y., to cease selling their stuffed toy animals with tickets attached, or supplied for use therewith, printed with fictitious and greatly exaggerated prices, thus represented falsely as the usual retail selling prices.

Mr. Ames W. Williams counsel supporting the complaint.

Respondents, *pro se*.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on November 16, 1959 charging them with having violated the Federal Trade Commission Act. The complaint alleged that respondents had misrepresented the usual or customary prices of their toys.

On February 1, 1960 there was submitted to the undersigned hearing examiner an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

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, and it is ordered that said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent Toycraft Associates, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York. Its office and principal place of business is located at 10 John Street, Brooklyn, New York.

2. Respondent Harold Miller is an officer of the corporate respondent and together with Phil Miller, an individual, formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their business address is the same as the corporate respondent.

3. 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 the respondents Toycraft Associates, Inc., a corporation, its officers and Harold Miller, individually and as an officer of the corporation, and Phil Miller, an individual, and respondents' agents, representatives and employees, directly or through any corporate or other device, in the connection with the offering for sale, sale, or distribution of stuffed toy animals 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:

1. Representing, by preticketing or in any other manner, that any amount is the usual and regular retail price of merchandise when such amount is in excess of the price at which said merchandise is usually and regularly sold at retail in the trade area or areas where the representations are made.

2. Furnishing any means or instrumentality to others by and through which they may mislead the public as to the usual and customary prices of respondents' merchandise.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall on the 1st day of April, 1960, 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

EDWARD S. BARSKY, INC., ET AL.

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

Docket 7668. Complaint, Dec. 2, 1959—Decision, Apr. 1, 1960

Consent order requiring independent distributors of phonograph records for several manufacturers to retail outlets and jukebox operators in the area of eastern Pennsylvania, southern New Jersey, and Delaware, to cease giving concealed "payola" to disc jockeys of radio and television programs to induce them to "expose," or play frequently, certain of their records to increase sales thereof.

Mr. John T. Walker and *Mr. James H. Kelley* supporting the complaint.

Polisher, Steinberg, Yohlin & Polisher of Philadelphia, Pa., for respondents.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 2, 1959, charging them with having violated the provisions of the Federal Trade Commission Act by unfairly paying money or other valuable consideration to induce the playing of phonograph records over radio and television stations in order to enhance the popularity of such records.

On February 2, 1960 there was submitted to the undersigned hearing examiner an agreement between the above-named respondents, their counsel, and counsel supporting the complaint providing for the entry of a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint. The agreement also recommends that the complaint be dismissed as to Delaine Ginchoff, individually, but not as an officer of the corporate respondent.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

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, and it is ordered that said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent Edward S. Barsky, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 2522 North Broad Street, Philadelphia, Pennsylvania.

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2. Respondents Edward S. Barsky, Manuel Barsky and Delaine Ginchoff are president, vice-president and secretary, respectively, of the respondent corporation. The address of the individual respondents is the same as that of said corporate respondent.

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

ORDER

It is ordered, That respondents Edward S. Barsky, Inc., a corporation, and its officers, and Edward S. Barsky and Manuel Barsky, individually and as officers of said corporation, and Delaine Ginchoff, as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph records which have been distributed, in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Giving or offering to give without requiring public disclosure, any sum of money or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of and broadcasting of, any such records in which respondents, or any of them, have a financial interest of any nature.

2. Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any person, directly or indirectly, as an inducement to influence any employee of a radio or television broadcasting station, or any other person, in any manner, to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or any of them, have a financial interest of any nature.

There shall be "public disclosure" within the meaning of this order by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record, when he shall disclose, or cause to have disclosed, to the listening public at the time the record is played, that his selection and broadcasting of such record are in consideration for compensation of some nature, directly or indirectly, received by him or his employer.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to respondent Delaine Ginchoff as an individual.

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 1st day of April, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Edward S. Barsky, Inc., a corporation, and Edward S. Barsky and Manuel Barsky, individually and as officers of said corporation, and Delaine Ginchoff, 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.

IN THE MATTER OF

FELL-BASS, INC., ET AL.

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

Docket 7681. Complaint, Dec. 7, 1959—Decision, Apr. 1, 1960

Consent order requiring New York City manufacturers to cease violating the Wool Products Labeling Act by tagging as "100% Virgin Wool," ladies' skirts composed of fabrics containing substantially less than 100% wool, and by failing to label other wool products as required.

Mr. Charles W. O'Connell for the Commission.
Respondents, *pro se.*

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on December 7, 1959, issued its complaint herein, charging the above-named respondents with having violated the provisions of both the Federal Trade Commission Act and the Wool Products Labeling Act, together with the Rules and Regulations promulgated thereunder, and the respondents were duly served with process.

On February 8, 1960, 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 counsel supporting the complaint, under date of February 3,

1960, 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. Respondent Fell-Bass, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 498 - 7th Avenue, in the City of New York, State of New York.

Respondents Sam Fell, Theodore Fell and Kermit Bass are officers of the corporate respondent and they formulate, direct and control the acts and practices of the corporate respondent. The address of the individual respondents is the same as that of the corporate respondent.

2. 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.

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

4. 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 agreemnt.

5. 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.

6. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

7. 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.

8. 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 a 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 both the Federal Trade Commission Act and the Wool Products Labeling Act and the Rules and Regulations promulgated by the Commission under the latter Act, 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 respondents Fell-Bass, Inc., a corporation, and its officers, and Sam Fell, Theodore Fell, and Kermit Bass, 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 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 "wool products," as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

2. Failing to affix labels to such products showing each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

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 1st day of April, 1960, 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.

IN THE MATTER OF

ACTION RECORDS, INC., ET AL.

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

Docket 7712. Complaint, Dec. 30, 1959—Decision, Apr. 1, 1960

Consent order requiring independent distributors of phonograph records for several manufacturers in New York City to cease giving concealed "payola" to disc jockeys of radio and television programs to induce them to "expose," or play frequently, certain of their records to increase sales thereof.

Mr. John T. Walker and *Mr. James H. Kelley* for the Commission.

Dannenberg, Hazen & Lake, of New York, N.Y., by *Mr. Leonard M. Lake*, for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with violation of the Federal Trade Commission Act in connection with the sale and distribution of phonograph records. 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.

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 Action Records, Inc., is a corporation organized, existing and doing business under the laws of the State of New York, with its principal office and place of business located at 452 West 46th Street, New York, New York. Respondents Louis Klayman, Morris Price, and Herbert Cohen are president, treasurer and secretary, respectively, of the corporation. The address of the individual respondents is the same as that of said 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 respondents Action Records, Inc., a corporation, and its officers, and Louis Klayman, Morris Price, and Herbert Cohen, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph records which have been distributed in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Giving or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and broadcasting of, any such records in which respondents, or any of them, have a financial interest of any nature.

2. Giving or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person, directly or indirectly, as an inducement to influence any employee of a radio or television broadcasting station, or any other person, in any manner, to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or any of them, have a financial interest of any nature.

There shall be "public disclosure" within the meaning of this order by any employee of a radio or television broadcasting station,

or any other person, who selects or participates in the selection and broadcasting of a record, when he shall disclose, or cause to have disclosed, to the listening public at the time the record is played, that his selection and broadcasting of such record are in consideration for compensation of some nature, directly or indirectly, received by him or his employer.

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 1st day of April, 1960, 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

UTICA CUTLERY COMPANY ET AL.

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

Docket 7427. Complaint, Feb. 27, 1959—Decision, Apr. 2, 1960

Order requiring a Utica, N.Y., manufacturer to cease distributing for retail sale stainless steel tableware imported from Japan with no marking on the packages to indicate the foreign origin of the contents.

A charge of preticketing said merchandise with fictitious prices was settled by consent on Nov. 17, 1959, p. 509 herein, at which time the complaint was dismissed as to three respondents individually.

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

Mr. Ames W. Williams for the Commission.

Kernan and Kernan, of Utica, N.Y., for respondents.

INITIAL DECISION AS TO ALLEGATIONS SET FORTH IN PARAGRAPHS FOUR, FIVE, SIX AND SEVEN AND PORTIONS OF PARAGRAPHS ELEVEN AND TWELVE OF THE COMPLAINT

On September 30, 1959, an Initial Decision as to Certain Allegations of the Complaint based on an agreement for a consent order to cease and desist was issued by the hearing examiner in accordance with Section 3.25(a) of the Rules of Practice and Procedure of the

Commission. That decision disposed of all the proceedings as to all parties except with respect to the allegations set forth in paragraphs 4, 5, 6 and 7 of the complaint and paragraphs 11 and 12 insofar as they pertain to paragraphs 4, 5, 6 and 7, which are disposed of in this decision. In that decision the complaint was dismissed as to respondents Walter Joseph Matt, H. Robert Agne and W. H. Van Vliet, individually. The Commission, on November 17, 1959, affirmed the foregoing Initial Decision.

A hearing was held in this proceeding in New York City on November 18, 1959, at which time both oral testimony and physical exhibits were received in evidence. Counsel supporting the complaint rested his case and counsel for the respondent indicated that he had no evidence to offer in opposition to the allegations of the complaint. Proposed findings were filed by counsel supporting the complaint on January 4, 1960, and by counsel for the respondents on January 11, 1960.

This proceeding having now come on for final consideration upon the allegations of the complaint set forth in paragraphs 4, 5, 6 7 and paragraphs 11 and 12 insofar as they pertain to paragraphs 4, 5, 6 and 7, the testimony taken and the proposed findings submitted by respective counsel, and said hearing examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following Findings as to the Facts, Conclusions drawn therefrom and Order.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Corporate respondent Utica Cutlery Company 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 820 Noyes Street in the City of Utica, State of New York.

Respondent Albert Edward Allen is an officer of respondent Utica Cutlery Company. He formulates, directs and controls the acts and practices of said corporate respondent, including those set out in the complaint. Respondents Walter Joseph Matt, H. Robert Agne, and W. H. Van Vliet are officers of said corporation.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture and sale of kitchen utensils, cutlery, stainless steel tableware, advertising specialties, and other merchandise to wholesalers, jobbers, and retailers.

PAR. 3. In the course and conduct of their business respondents now cause, and for some time last past have caused, their products, when sold, to be shipped from their place of business in the State

of New York to purchasers thereof located in various other states of the United States and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents package for retail sale certain stainless steel tableware items imported from Japan. Such individual items are stamped or mark in a manner which discloses their Japanese origin, but when packaged by the respondents such markings are difficult if not impossible to discern.

No markings are placed upon the packages of tableware which identify the contents as being of foreign origin.

PAR. 5. Respondents, by their failure to affirmatively disclose that the packages of tableware contain items which are made in and imported from Japan, represent that such merchandise is manufactured in the United States of America.

The aforesaid representation is false, misleading and deceptive. In truth and in fact, as herein found, some of the said tableware is of Japanese origin.

PAR. 6. A substantial portion of the purchasing public maintains a decided preference for products of domestic manufacture and when the country of origin of merchandise is not marked on the packages containing said tableware, or if the markings are concealed, the purchasing public understands and believes such products to be wholly of domestic origin.

PAR. 7. The failure of the respondents to disclose the foreign origin of their tableware on the packages as aforesaid has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such merchandise was and is of domestic origin and into the purchase of substantial quantities of respondents' merchandise because of such erroneous and mistaken belief. As a result thereof, trade has been unfairly diverted to respondents from their competitors and substantial injury has thereby been done to competition in commerce.

CONCLUSIONS

The aforesaid acts and practices of the respondents, as herein found, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now 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, Utica Cutlery Company, a corporation, and its officers, and Albert Edward Allen, individually and as an officer of said corporation, and Walter Joseph Matt, H. Robert Agne, and W. H. Van Vliet, 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, stainless steel tableware, or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from offering for sale or selling packaged merchandise made in Japan, or in any other foreign country without (a) as to merchandise marked as to the country or countries of origin, indicating upon the package thereof that some of the contents originated in a stated foreign country or countries and that such items are marked as to the country or countries of origin, and (b) as to merchandise not marked as to the country or countries of origin, indicating upon the package thereof the country or countries of origin.

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 2nd day of April, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents, Utica Cutlery Company, a corporation, and Albert Edward Allen, individually and as an officer of said corporation, and Walter Joseph Matt, H. Robert Agne, and W. H. Van Vliet, as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

KITTY LEFIN TRADING AS KITTY LEFIN FUR HOUSE

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

Docket 7530. Complaint, July 13, 1959—Deicsion, Apr. 2, 1960

Order requiring a retail furrier in Schenectady, N.Y., to cease violating the Fur Products Labeling Act by removing required labels after sale of fur

products but before delivery to customers; by failing to name the animal producing certain furs or the country of origin, on labels, invoices, and in advertising; failing to use the designation "secondhand used," and to identify the manufacturer, etc., on tags; by failing in advertising to disclose that some fur products were secondhand and that others were dyed; and by failing in other respects to comply with requirements of the Act.

Mr. Charles W. O'Connell supporting the complaint.
Mr. George A. Marcus of Schenectady, N.Y., for respondent.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The complaint in this proceeding which was issued July 13, 1959 charges violation of the Federal Trade Commission Act and of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder. On August 31, 1959 respondent filed her answer denying the allegations of the complaint. Hearings were held in Schenectady, New York on September 17, 1959 and in New York, New York on September 24, 1959 at which evidence in support of and in opposition to the allegations of the complaint was received. The record contains 284 pages of testimony and a small number of exhibits.

Respondent has lived in Europe most of her life and has lived in the United States for only a few years and has considerable difficulty understanding and speaking the English language. It is not necessary to find whether she deliberately engaged in practices designed to mislead or deceive and the hearing examiner does not decide this. It could well be that she was unaware that any of the furs and fur products she advertised or sold were used but it is clear from the evidence that some of them were used fur garments.

Counsel supporting the complaint and respondent have filed proposed findings. The first two proposed findings filed by the respondent are identical with the first two proposed findings filed by counsel supporting the complaint and they are adopted, with certain deletions, in the findings. The remainder of the proposed findings filed by respondent are proposals that findings be made that counsel supporting the complaint has failed to prove certain allegations of the complaint. Counsel supporting the complaint has filed proposed findings which are in the main adopted. Proposed findings of fact and conclusions not herein specifically found or concluded are rejected.

Upon consideration of the entire record herein the hearing examiner makes the following findings of facts and conclusions.

1. Respondent Kitty Lefin is an individual trading as Kitty Lefin Fur House with her office and principal place of business located at 1022 State Street, Schenectady, New York.

2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has advertised "fur" and "fur products" in "commerce" and has offered for sale and sold "fur" and "fur products" which had been shipped and received in "commerce" as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

3. Respondent has removed or caused or participated in the removal, prior to the time certain fur products were delivered to the ultimate consumer, of labels required by the Fur Products Labeling Act to be affixed to such products, in violation of Section 3(d) of said Act and the Rules and Regulations promulgated thereunder. Respondent is a retail furrier and has, as she has testified, removed labels from certain fur products after their sale but before delivering them to her customers who were the ultimate consumers. She did this in order to use the labels in her inventory control system but in so doing failed to comply with Sec. 3(d) of the Fur Products Labeling Act, and the Rules and Regulations promulgated thereunder, both of which require that certain informative labels be attached at the time of delivery.

4. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder. Some of the requirements which were not observed were failure to name the animal that produced the fur or its country of origin, failure to state the complete name of such animal, failure to use the designation "secondhand used" and the name or other identification of the manufacturer or other person required to be shown, the mingling of required information with non-required information and using handwriting to disclose required information instead of printing or hand printing.

5. Certain of said fur products were deceptively invoiced by respondent in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder. The invoices were deficient in that in some instances they failed to disclose the correct name of the animal that produced the fur used in fur products and the name of the country of origin of imported fur used in fur products.

6. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondent caused the dissemination in commerce, as "commerce" is defined in said Act, of certain newspaper advertisements, con-

cerning said products, which were not in accordance with the provisions of Section 5(a) of the said Act and the Rules and Regulations promulgated thereunder; and which advertisements were intended to aid, promote and assist, directly or indirectly, in the sale, and offering for sale of said fur products. In such advertisements there were instances in which there was no disclosure of the name of the animal that produced the fur contained in the fur product as is set forth in the Fur Products Name Guide. In some instances the animal name Caracul was used. In another instance Persian was used as an animal name. Both names were used by respondent in describing Lamb and Sheep fur. Further, the advertisements did not disclose that certain of the furs were "secondhand used." The advertisements also failed to show that the Persian, which was really Persian Lamb, was dyed and the record shows that all Persian Lamb used in fur trade in this country is dyed. The advertisements contained information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder which was not set forth in type of equal size and conspicuousness and in close proximity with each other as required by Rule 38(a).

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

ORDER

It is ordered, That respondent Kitty Lefin, an individual trading as Kitty Lefin Fur House, 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, 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. Removing, or causing the removal or participating in the removal of labels required to be affixed to fur products, prior to the time fur products are sold and delivered to the ultimate purchaser of such products.

2. Misbranding fur products by:

A. Failing to affix labels to fur products showing in words and figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

B. Setting forth on labels affixed to fur products:

(1) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, mingled with non-required information;

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

C. Failing to set forth separately on labels attached to fur products composed of two or more sections containing different animal furs the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder with respect to the fur comprising each section.

3. Falsely and deceptively invoicing fur products by:

A. Failing to furnish to purchasers of fur products an invoice showing all of the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

B. Failing to furnish invoices to purchasers of fur products showing the item number or mark assigned to a fur product.

4. 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 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;

B. Fails to disclose that fur products contain or are composed of "secondhand used fur" when such is the fact.

C. Fails to set forth the information required under Section 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.

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 2nd day of April, 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

CARTERET JR. FASHIONS CORP. ET AL.

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

Docket 7689. Complaint, Dec. 14, 1959—Decision, Apr. 2, 1960

Consent order requiring New York City manufacturers to cease violating the Wool Products Labeling Act by failing to label ladies' dresses as to wool content.

Mr. Frederick McManus for the Commission.
Mr. Louis Mitler, of New York, N.Y., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with violation of the Federal Trade Commission Act and of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, by misbranding certain of their wool products, consisting of ladies' dresses.

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

The agreement states that corporate respondent Carteret Jr. Fashions Corp. 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 1375 Broadway, New York, New York, and that individual respondent Aaron

Dworkowitz is president of the corporate respondent and formulates, directs and controls the policies and practices of the corporate respondent, his address being the same as that of the corporate respondent.

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

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

The order agreed upon fully disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Federal Trade Commission Act and of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder. Accordingly, the Hearing Examiner finds this proceeding to be in the public interest, and accepts the agreement containing consent order to cease and desist as part of the record upon which this decision is based. Therefore,

It is ordered, That respondents Carteret Jr. Fashions Corp., a corporation, and its officers, and Aaron Dworkowitz 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 ladies' dresses or other wool products, as such products are defined in and subject to said Wool Products Labeling

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Act, do forthwith cease and desist from misbranding such products by failing to affix labels to such products showing each element of information required to be disclosed by §4(a)(2) of the Wool Products Labeling Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 2nd day of April, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Carteret Jr. Fashions Corp., a corporation, and Aaron Dworkowitz, individually and as 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.

IN THE MATTER OF

CHATHAM RESEARCH LABORATORIES ET AL.

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

Docket 7609. Complaint, Oct. 13, 1959—Decision, Apr. 4, 1960

Consent order requiring a San Francisco manufacturer of synthetic stones having the appearance of emeralds, along with the New York City wholesaler-distributors thereof, to cease representing falsely in advertising that said "Chatham Emeralds" were cultured, natural stones and identical to natural stones, and to cease using the word "emerald" to describe such stones unless it was immediately preceded by "synthetic" or a similar word.

Mr. Berryman Davis for the Commission.

Mr. Caesar L. Pitassy and *Royall, Koegel, Harris and Caskey*, of New York, N.Y., for Carroll F. Chatham, Anglomex, Inc., and Dan E. Mayers.

Mr. Peter W. Quinn, of New York, N.Y., for Ipekdjian, Inc., Cultured Gem Stones, Inc., Adom Ipekdjian and Georges Ipekdjian.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated October 13, 1959, the respondents are charged with violating the provisions of the Federal Trade Commission Act.

On February 3, 1960, the respondents and their attorneys entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for the disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent Carroll F. Chatham is an individual doing business as Chatham Research Laboratories, with his principal office and place of business located at 70 14th Street, in the City of San Francisco, State of California.

Respondent Anglomex, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondent Dan E. Mayers is an individual and officer of said corporate respondent. The office and principal place of business of respondents Anglomex, Inc., and Dan E. Mayers is 214 East 18th Street, in the City of New York, State of New York.

Respondent Ipekdjian, Inc., and respondent Cultured Gem Stones, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York. Respondents Adom Ipekdjian and Georges Ipekdjian are individuals and each is an officer of both the corporate respondent Ipekdjian, Inc., and the corporate respondent Cultured Gem Stones, Inc. The office and principal place of business of all of the respondents named in this paragraph is 580 Fifth Avenue in the City of New York, State of New York.

The term "respondents," as hereinafter used in this decision, shall refer to and include all the above-named respondents.

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

ORDER

It is ordered, That respondents Carroll F. Chatham, an individual, trading as Chatham Research Laboratories, or under any other name; Anglomex, Inc., a corporation, and its officers, and Dan E. Mayers, individually and as an officer of said corporation; Ipekdjian, Inc., a corporation, and its officers, and Cultured Gem Stones, Inc., a corporation, and its officers, and Adom Ipekdjian and Georges Ipekdjian, individually and as officers of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the manufacture for sale, offering for sale, sale and distribution of stones now known as Chatham Emeralds or Chatham Cultured Emeralds, or any other manufactured stone having essentially the same optical, physical and chemical properties, or any other manufactured stone having essentially the same optical, physical and chemical properties as a natural stone, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that such stones have been cultured, are natural stones, or are identical to natural stones;

2. Using the word "emerald" or the name of any other precious or semi-precious stone as descriptive of such stones unless such word or name is immediately preceded, with equal conspicuity, by the word "synthetic" or by some other word or phrase of such meaning as clearly to disclose the nature of such product and the fact that it is not a natural stone; provided, however, that this prohibition shall not be construed as requiring respondents or any of them to disclose the method or process, or any part thereof, used by respondent Chatham in the manufacture of his stones.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did, on the 4th day of April, 1960, 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 Commis-

sion 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

TITCHE-GOETTINGER COMPANY, ET AL.

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

Docket 7628. Complaint, Oct. 23, 1959—Decision, Apr. 6, 1960

Consent order requiring Dallas, Tex., furriers to cease violating the Fur Products Labeling Act by affixing to fur products labels containing fictitious prices represented thereby as the regular retail prices; by advertising in newspapers which represented prices of fur products as reduced from regular prices which were, in fact, fictitious, and contained comparative prices without giving a designated time of a bona fide compared price; and by failing to maintain adequate records as a basis for said pricing claims.

Mr. Garland S. Ferguson for the Commission.

Mr. Robert S. Strauss of *Goldberg, Fonville, Gump and Strauss,* of Dallas, Tex., for respondents.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

The Federal Trade Commission issued its complaint in this proceeding against the respondents on October 23, 1959, charging them with violation of the Federal Trade Commission Act, the Fur Labeling Act and the Rules and Regulations promulgated thereunder, in connection with the sale of fur products.

On February 5, 1960 there was submitted to the undersigned hearing examiner an agreement between certain respondents, their counsel and counsel supporting the complaint providing for the entry of a consent order.

Under the foregoing agreement, it is recommended that the complaint be dismissed insofar as it relates to respondent Henry Kaufman. Attached affidavits, executed by L. D. Starr, another respondent and president of the corporate respondent, recite that Mr. Kaufman is no longer associated with said company in any capacity whatsoever, having retired from the company more than a year prior to the issuance of the complaint. Moreover, during his employment with the corporate respondent, he was not concerned and exercised no control over the acts and practices of the corporate

respondent as set forth in the complaint. The term "respondents" hereinafter used, therefore, does not include Henry Kaufman.

Under the foregoing agreement the respondents admit all the jurisdictional facts alleged in the complaint. The agreement also provides 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 making 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 this proceeding without further notice to the respondents and when entered shall have the same force and effect as if entered after a full hearing, respondents specifically waiving all the rights they may have to challenge or contest the validity of the order; that the order may be altered, modified, or set aside in the manner provided for other orders; that the complaint may be used in construing the terms of the order; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

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. Corporate respondent Titche-Goettinger is a corporation existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at Main, Elm and St. Paul Streets, Dallas, Texas. Individual respondents L. D. Starr, W. A. Lea, and Saul Hirsch are officers of said corporation. They formulate, direct and control the practices of the corporate respondent. Their address 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 respondents Titche-Goettinger Company, a corporation, and its officers, and L. D. Starr, W. A. Lea, and Saul Hirsch, individually and as officers of said corporation, and respond-

ents' 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 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. Misbranding fur products by:

(a) Falsely or deceptively labeling or otherwise identifying uch products as to the regular prices thereof by any representation that the regular or usual prices of such products are any amount in excess of the prices at which respondents have usually and customarily sold such products in the recent regular course of business.

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 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.

(b) Represents, directly or by implication, that prices of fur products are reduced from previous higher prices without giving the time of such compared previous higher prices.

(c) Misrepresents in any manner the savings available to purchasers of respondents' fur products.

3. Making claims and representations respecting prices and values of fur products unless respondents maintain full and adequate records showing the facts upon which such claims and representations are based.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to respondent Henry Kaufman.

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 6th day of April, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Titche-Goettinger Company, a corporation, and L. D. Starr, W. A. Lea, and Saul Hirsch, in-

dividually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

TELEVISION AND APPLIANCE CREDIT CORPORATION ET AL.

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

Docket 7591. Complaint, Sept. 21, 1959—Decision, Apr. 7, 1960

Consent order requiring Los Angeles, Calif., sellers of questionnaire forms to be used to obtain information concerning delinquent debtors, to cease representing falsely that their company was a casting service and offered employment in motion pictures to recipients who answered their questionnaires, and that their said skip-tracer forms had been cleared and approved by the postal authorities and the Federal Trade Commission.

Mr. Garland S. Ferguson for the Commission.
Respondents, *pro se*.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated September 21, 1959 the respondents are charged with violating the provisions of the Federal Trade Commission Act.

On January 30, 1960, the respondents entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Corporate respondent Television and Appliance Credit Corporation is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 124 East Commercial Street, Los Angeles, California. Individual respondents Sidney Moray, Aaron Shaw, and Frank Chesler are officers of said corporation. They formulate, direct and control the practices of the corporate respondent. Their address 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 respondents, Television and Appliance Credit Corporation, a corporation, and its officers, and Sidney Moray, Aaron Shaw and Frank Chesler, 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 business of obtaining information concerning delinquent debtors, or the offering for sale, sale or distribution of forms or other material for use in obtaining information concerning delinquent debtors or in the collection of, or attempting to collect accounts in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using, or placing in the hands of others for use, any forms, letters, questionnaires, or other materials, printed or written, which do not clearly reveal that the purpose for which information is requested is that of obtaining information concerning delinquent debtors.

2. Representing in any manner that respondents are in the business of a casting service for the motion picture or television industry.

3. Representing in any manner that respondents offer employment to the persons to whom respondents' forms are sent to appear in motion pictures.

4. Representing in any manner that respondents' skip-tracer forms have been cleared or approved by the Postal Authorities, the Federal Trade Commission, or by any other government agency, or representing that said forms, or the use thereof, are not in violation of the Federal Trade Commission Act, 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 7th day of April, 1960, 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

MARVIN ACCESSORIES, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket 6418. Complaint, Sept. 21, 1955—Decision, Apr. 11, 1960

Order requiring New York City importers to cease selling in commerce silk scarves manufactured in Japan which were so highly flammable as to be dangerous when worn.

Mr. Brockman Horne, for the Commission.
Marlin & Sandberg, by *Mr. Milton Sandberg*, of New York, N.Y., for respondents.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint herein charges the respondents, Marvin Accessories, Inc., a corporation, and Julius Ruderman and Fannie Ruderman, individually and as officers of the respondent corporation, with violation of the Federal Trade Commission Act and the Flammable Fabrics Act, as also with violation of the Rules and Regulations promulgated under the last named Act, in the sale of articles of wearing apparel so highly flammable as to be dangerous when worn by individuals. All respondents were duly served with the aforesaid complaint according to law and, within the required time filed

answer thereto denying the pertinent charges of violation and setting up ten affirmative defenses.

On the issues thus joined the matter proceeded to trial during the course of which certain testimony was had, and exhibits received in evidence, all of which testimony was stenographically reported and, together with the exhibits, duly filed of record in the Office of the Commission in Washington, D.C., as required by law.

Subsequent thereto, both parties were accorded an opportunity, of which they availed, of filing with the hearing examiner their respective Proposed Findings of Fact and Conclusions of Law those deemed proper to be admitted having been incorporated herein, and those rejected being ignored, as a reading of this Initial Decision may indicate.

FINDINGS AS TO THE FACTS

1. As charged in the complaint, and formally admitted by the respondents' answer, respondent Marvin Accessories, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of New York. Julius Ruderman and Fannie Ruderman are individuals and, respectively, president and secretary-treasurer of respondent corporation and, as such, they formulate, direct and control its policies, acts and practices. The address of all respondents is 39–43 West 37th Street, New York, New York.

2. Subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, respondents did import from the country of Japan into the United States scarves having dimensions of approximately 32 x 32 inches and have sold, offered for sale, introduced, delivered for introduction, and transported and caused to be transported in commerce, as "commerce" is defined in the Flammable Fabrics Act, said scarves. Respondents have also transported and caused to be transported said scarves for the purpose of sale and delivery after sale in commerce.

3. Twelve scarves were received in evidence in support of the charges of the complaint, eleven of which were sold to six different customers located in various parts of the United States, the said eleven individual scarves being representative of, and extracted from, larger shipments made to its customers by the respondents.

4. All of the aforesaid eleven scarves were subjected to flammability tests in accordance with the standards contained in Commercial Standard 191-53, (Revised),[1] as expressly authorized and provided by section 4(a) of the Flammable Fabrics Act aforementioned,

[1] A publication of the United States Department of Commerce titled "Flammability of Clothing Textiles" recorded herein as Com. Ex. No. 19.

the results of such tests demonstrating failure of such scarves to pass the tests prescribed and thus to be entitled to enter the channels of commerce.

5. On the subject of the testing procedures and results the Commission introduced as its witness the expert who had conducted same and whose testimony was to the effect that all of said scarves failed to meet the required standard and were, in accordance with the provisions of the Commercial Standard aforesaid, classified as Class 3, or dangerously flammable, hence within that class of merchandise prohibited by the statute.

In support of his testimony the witness produced his laboratory reports of experiments as affecting each of the scarves in question [2] which, coupled with and explained in detail, step by step, as appears of record, satisfied this examiner that the protocol set up by the Commercial Standard 191-53 had been adhered to in all material respects and that the results arrived at and reported upon in each instance were correct, and it is so found.

6. Respondents in the course and conduct of their business are in competition in commerce with others in the sale and offering for sale of scarves which are not flammable "articles of wearing apparel" under the provisions of the Flammable Fabrics Act.

7. The use by respondents of the acts, practices and policies as herein found has resulted in substantial trade in commerce being unfairly diverted to them from their competitors and substantial injury has been done to competition in commerce.

The Defense

A. In their defense to the action respondents contended that the method of testing was inadequate in that but a single thickness of material was subjected to test instead of multiple, (or at least two), thicknesses, because, in the actual wearing of the scarves but one thickness is rarely encountered, the garment being usually folded into two or more thicknesses and then wrapped around the head or waist, or draped around the neck and shoulders of the wearer, as disclosed by the evidence of record. As to this attempted defense it is found that under any reading or application of the controlling Act no such construction is possible.[3]

[2] Com. Ex. Nos. 20 A through 28.

[3] *In the Matter of Victor B. Handal & Bro., Inc.*, Docket No. 6375, wherein a similar contention was made, the Commission, in its opinion of April 11, 1957, said:

"The procedures for preparing test specimens which are prescribed in minute detail in the Commercial Standard, and incorporated by reference into the Act, do not provide for folding of the swatch specimens into dual layers as advocated by the respondents and, moreover, the protocols there specified in effect preclude their preparation in such manner. It is clear, therefore, that garment design is wholly irrelevant and immaterial to the Act's prescribed testing procedures."

B. As a further contention of the defense it was urged that "scarves," as involved in this proceeding, are not "articles of wearing apparel" intended to be covered by the Act and hence the complaint should be dismissed. It will be remembered that the scarves forming the subject matter of this proceeding are of dimensions of approximately 32 x 32 inches. This attempted defense was rejected.[4]

C. As a further defense respondents claim that, in introducing their scarves in commerce they have acted in good faith and reliance upon certain information and advices "received from the United States" which operate to form a "bar or estoppel" to this proceeding. The "certain information and advices" referred to, are contained in several letters addressed to respondent corporation and produced by respondents, appearing herein as respondents' Exhibits Nos. 2–3–4–7–8–9 and 10. These letters, signed by the Deputy Collector, Restricted Merchandise Division, Bureau of Customs, U.S. Treasury Department, have to do with certain shipments of scarves of which some of the scarves here in question form a part. It is pointed out that a reading of these communications will disclose that any determinations by Customs as to compliance of said goods with the Act did not, and could not, operate by way of estoppel, either based upon the facts or upon applicable law. In fact, the whole situation is neatly and succinctly stated by the Deputy Collector of Customs in Respondents' Exhibit No. 2, quoted in the following words:

> This is not to be construed, however, as an official determination by the Federal Trade Commission that all of the merchandise contained in the shipment meets the prescribed tests for flammability set forth in the Flammable Fabrics Act *inasmuch as merchandise subject to the provisions of the Act must at all times speak for itself.* (Emphasis supplied.)

The foregoing represents a statement of the applicable law on the subject which, coupled with the facts hereinabove found that the merchandise is in violation of the provisions of the Act, forms the basis for rejection of the defense urged.

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[4] This question was the subject of an inquiry and ruling of the Federal Trade Commission titled:

"In the Matter of: An interpretation of the term 'Article of Wearing Apparel' as used in the Flammable Fabrics Act with respect to its applicability to handkerchiefs and scarfs" (File No. 205-2).

wherein the Commission stated its opinion to be:

"(1) That handkerchiefs up to a finished size of twenty-four (24) inches square are not 'articles of wearing apparel' as that term is used in the Flammable Fabrics Act." (Issued May 18, 1954.)

and further:

"The Commission, after due consideration of the matter * * * is of the opinion that scarfs are 'Articles of wearing apparel' as that term is used in the Flammable Fabrics Act." (Issued September 13, 1954.)

For certification and copies of the foregoing see Com. Ex. Nos. 29 A–B–C–D and E.

CONCLUSION

The acts and practices of respondents as hereinabove found were and are in violation of the Flammable Fabrics Act and of the Rules and Regulations promulgated thereunder, and as such 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 Marvin Accessories, Inc., and its officers, and respondents Julius Ruderman and Fannie Ruderman, individually and as officers of said corporation, and respondents' representatives, agents and employees, dirctly or through any corporate or other device do forthwith cease and desist from:

1. Importing into the United States; or
2. Selling, offering for sale, introducing, delivering for introduction, transporting or causing to be transported in commerce, as "commerce" is defined in the Flammable Fabrics Act; or
3. Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce,

any article of wearing apparel, which under the provisions of section 4 of said Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision, filed January 22, 1960, and having determined that said initial decision, as modified herein, is adequate and appropriate in all respects to dispose of this proceeding:

It is ordered, That the aforesaid initial decision be, and it hereby is, modified by striking the second sentence of paragraph 1 of the Findings as to the Facts contained therein, and substituting therefor the following two sentences:

"Respondents, Julius Ruderman and Fannie Ruderman, are president and secretary-treasurer, respectively, of said corporation. These individual respondents formulate, direct and control the policies, acts and practices of the respondent corporation."

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 Marvin Accessories, Inc., a corporation, and Julius Ruderman and Fannie Ruderman, individually and as officers of said corporation, shall, within sixty

(60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist contained in the initial decision as modified.

IN THE MATTER OF

SOCONY MOBIL OIL COMPANY, INC.

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

Docket 6915. Complaint, Oct. 14, 1957—Order, Apr. 11, 1960

Order dismissing, as not sustained by the evidence, complaint charging one of the world's largest integrated petroleum producers with unfairly diverting trade from competitors by furnishing lubrication equipment and property improvement facilities to automobile dealers agreeing to handle its lubrication oil and grease preferentially or exclusively.

Lynn C. Paulson, Esq., and *James H. Kelley*, Esq., for the Commission.

Howrey & Simon by *Edward F. Howrey*, Esq., and *Harold F. Baker*, Esq., of Washington, D.C., and *Henry C. Moses*, Esq., and *John P. Philbin*, Esq., of New York City, for respondent.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

STATEMENT OF THE CASE

On October 14, 1957, the Federal Trade Commission issued its complaint against Socony Mobil Oil Company, Inc. (hereinafter called respondent or Socony), charging it with unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act (hereinafter called the Act), 15 U.S.C. 41, *et seq.* Copies of said complaint together with a notice of hearing were duly served on respondent.

The complaint alleges in substance that respondent, by means of the loan, gift, lease, or sale upon easy terms of lubrication equipment, improvements and other facilities, upon the condition, express or implied, that the customer will thereafter handle Socony's petroleum products, preferentially or exclusively, induced a substantial number of such customers to discontinue handling competitive products and to handle Socony's products, preferentially or exclusively, with the effect of substantially lessening competition

among respondent's competitors and tending to create a monopoly in the purchase and resale of lubrication equipment and facilities.

Respondent appeared by counsel and filed an answer admitting the corporate, commerce, and competition allegations of the complaint, but denying the alleged unfair methods of competition and the alleged effects thereof. Pursuant to notice, hearings were thereafter held before the undersigned hearing examiner, duly designated by the Commission to hear this proceeding, at various times and places from September 16, 1958 to February 16, 1959. At the conclusion of the case-in-chief, respondent also rested. Both parties were represented by counsel, participated in the hearings and afforded full opportunity to be heard, to examine and cross-examine the witnesses, to introduce evidence pertinent to the issues, to argue orally upon the record, and to file proposed findings of fact, conclusions of law, and orders, together with reasons in support thereof. Both parties filed proposed findings of fact, conclusions of law, and orders, together with reasons in support thereof. All such findings of fact and conclusions of law proposed by the parties, respectively, not hereinafter specifically found or concluded are herewith specifically rejected.[1]

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

FINDINGS OF FACT

I. The Business of Respondent

The complaint alleged, respondent admitted, and it is found that respondent is a New York corporation with its principal office and place of business located at 150 East 42nd Street, New York, New York.

II. Interstate Commerce and Competition

The complaint alleged, respondent admitted, and it is found that it is now and for several years has been engaged in producing, refining, storing, transporting, selling and distributing various petroleum products, including lubrication oil and grease, and selling and distributing such products to various wholesale and retail buyers, including automobile dealers, throughout the United States, for resale to the public. In the course and conduct of this business, respondent is in direct and substantial competition in commerce with other corporations, individuals, and partnerships likewise engaged in the sale and distribution of petroleum products, including lubrication oil and grease, in commerce.

[1] 5 U.S.C. §1007(b).

Respondent is one of the largest integrated petroleum producers in the world. The record establishes and it is found that respondent's sales to said wholesale and retail purchasers, including automobile dealers, are and have been in the course of commerce, and that there is now and has been at all times mentioned herein a continuous stream of trade in commerce of said petroleum products, including lubrication oil and grease, between respondent and said purchasers located throughout the various states of the United States.

III. The Unlawful Practices

A. *The Issue*

The basic issue in this case is whether the sale, lease or loan of lubrication equipment or other facilities such as improvements to purchasers of lubrication oil and grease, upon terms which provide for the repayment or amortization of the cost of such equipment by the application of a designated portion of the purchase price of the oil and grease to be purchased pursuant to contract, is an unfair method of competition in violation of the Act.

B. *The Alleged Unfair Method of Competition*

The theory of the complaint is that as a result of the aforesaid furnishing of equipment, purchasers are induced or actually agree to handle respondent's products, preferentially or exclusively, thereby restraining and lessening competition among respondent's competitors and tending to monopoly in violation of Section 5 of the Act.

In addition, the complaint also alleged that respondent had furnished such equipment and improvements without charge, the cost of which did not bear a reasonable relation to the profits to be made on the prospective lubrication oil and grease sales, and that the practice of respondent tended to create a monopoly in the purchase and resale of lubrication equipment. Both of these latter allegations were abandoned during the hearings for want of proof. No proof whatsoever was offered with respect to any tendency to create a monopoly in the purchase and resale of lubrication equipment. With respect to the allegation concerning the cost not bearing a reasonable relation to the expected profits, the record establishes the contrary, and demonstrates that in each instance the equipment or improvements furnished bore a direct relationship to the profits expected to be made on such contracts, and were amortized by crediting a specific portion of the purchase price of each

gallon of lubricant purchased, so that in carrying out the terms of the sale contract entered into, the cost of the equipment was fully amortized and paid for by the purchaser.

The products involved in this case are motor oil and greases used for lubricating automobiles. The purchasing market defined and proven was automobile dealers, and the geographic area was generally confined to portions of the states of New York, Massachusetts, Rhode Island, Connecticut and New Jersey.

The record establishes that about 17 percent of all automotive motor oil and grease is sold through car dealers, while about 83 percent of said products is sold through service or filling stations, with which this case is not concerned. There are a large number of competitors in the motor oil market, and they fall generally into three groups of suppliers selling to car dealers. The first group are the marketers of the so-called "premium" or "Penn" motor oils, with a high degree of consumer acceptance and which generally sell at higher prices than those charged by both the so-called majors and the blenders, the other two groups. This group of premium oils includes Quaker State, Pennzoil, Wolfshead, Alemite, Amalie, Macmillan and Kendall. In general, the premium oils are sold to automobile dealers through distributors.

The second group of suppliers in the relevant market are the so-called major oil companies, which include respondent, Esso, Gulf, Shell, Texas, and others. The prices at which their comparable oil products are sold are somewhat below the premium oils and somewhat above the other group, referred to herein as blenders.

The third group of suppliers are independent compounders and blenders who purchase base oil stocks from refiners, blend these stocks with appropriate additives, and then market the finished product under their own brand names. This group includes White & Bagley, U.S. Oil, Colt-Worthington, Davis-Howland, Paragon, and others. In general, the price charged by the blenders is lower than that charged by the majors. (White & Bagley is an exception, charging prices above the majors but not as high as the Penn oils.) In the same grades, all of the products of the various groups are comparable or equal in quality. In general, the blenders do not sell nationally. The record establishes that the blenders, premiums, and majors in general are in competition, in varying degrees, throughout the geographic area encompassed by this proceeding.

Socony has been engaged in the sale of automotive lubricants and oil to car dealers for approximately 50 years, and with the exception of some of the newer entrants in the field, many of the premiums and blenders have been engaged in the same market for

substantial periods of years. Competition in the sale of automotive lubricants to car dealers has been keen for many years. In the years preceding World War II, it became common practice in the industry for sellers to furnish car dealers lubrication equipment, in varying degrees, in connection with the sale of lubricants to said dealers. At that time this usually consisted of relatively inexpensive dispensing equipment such as hi-boys, hand pumps and storage tanks, which were loaned to car dealers contracting for the purchase of oil. During the war the car dealer market declined substantially.

After the war, with the large increase in the sale of new automobiles, competition for the car dealer markets for oil became intense. In this connection, motor oil suppliers met this increased competition in various ways, such as lower prices, emphasis upon quality, furnishing lubrication equipment and other improvements to aid in the resale of automotive lubricants, quantity price discounts, and other promotional devices such as guaranteeing a purchaser's car against mechanical failure for life or 30,000 miles if the seller's oil was used exclusively. The type of equipment and improvements furnished increased substantially in complexity and cost, consisting of power lifts for lubricating cars, underground tanks, pumps, overhead reels, and in some instances improvements to the buyer's premises, such as structural changes, painting, and blacktopping. While under the pre-war practice the equipment furnished did not normally exceed a few hundred dollars in value, since the war increased competition and change in the type of equipment needed has brought about substantial equipment deals occasionally exceeding $10,000. All of the competitors rely upon some of the above-mentioned programs to meet the intense competition; either lower prices or substantial discounts from list prices, furnishing equipment and improvements, furnishing guarantees to the automobile users of their products, or stressing consumer preference for the so-called premium oils. With a few exceptions, substantially all of the competitors offer automobile dealers equipment or improvement deals in exchange for a contract agreeing to purchase specified quantities of the seller's lubricants for a stated period of time.

There is no substantial evidence in the record concerning total sales of lubricants in the geographic area encompassed, nor is there any evidence of respective shares of such market or whether or not respondent's share of the market has increased in recent years. While respondent furnished counsel supporting the complaint with

statistics showing respondent's total sales and car dealer accounts for the years 1951–1957, this proof was not offered in evidence.

Shortly after World War II, all of the majors and most of the motor oil suppliers undertook the furnishing of substantial equipment to car dealer customers. It is an industry practice that such purchasers sign contracts calling for the purchase of stated or minimum quantities of oil and grease for a specific period of time, varying from one to five years, and in some few instances as long as ten years. Although the complaint, at least in part, alleged that the furnishing of equipment was upon the condition or agreement, express or implied, that the customer would handle Socony's products preferentially or exclusively, the record establishes that the sales contracts entered into by respondent, without exception, are not exclusive dealing or exclusive requirements contracts, and leave the customer free to purchase lubricants from other sources than Socony. Although this case is brought under Section 5 of the Act as an unfair method of competition, it is clear from the complaint as well as counsel's brief that it is based primarily upon the theory of an exclusive dealing requirement which would, of course, be in violation of Section 3 of the Clayton Act, and hence under well-established legal principles constitute an unfair method of competition in violation of Section 5 of the Act. However, in addition to the alleged agreement or condition of preference or exclusiveness, the complaint also alleged that the practice of furnishing equipment induced, without reference to any condition or agreement, customers to handle Socony's products preferentially or exclusively, in violation of the Act.

Although the form and designation of the contracts covering the sale, lease or loan of equipment vary, in general the effect and result is the same in each instance. As previously found herein, substantially all of the motor oil suppliers engage in the practice of furnishing equipment to car dealers in varying degrees, depending upon their financial ability and the necessity of meeting competition. Although the terminology varies, the arrangement is one whereby the car dealer is furnished equipment by the seller which is paid for by the car dealer over the period of the contract, by means of the application of a percentage of the purchase price of each gallon of lubricant to the amortization of the cost of the equipment, mathematically computed so that the percentage of purchase price, or cents per gallon, multiplied by the estimated number of gallons a purchaser will use over the period of the purchase contract will equal the cost of the equipment and thus amortize it during the term of the contract. Actually, what the deals amount to is a

discount or reduction in price from the stated list price, with the reduction being credited to the amortization of the cost of equipment. The only difference between these arrangements and any other price reduction is that respondent, and all of its competitors who furnish equipment, in effect advance to the purchaser the price discount in full at the time the contract is entered into, by expending the approximate total of such discount for the period of the contract to purchase or pay for the equipment or improvements at the time the contract is signed.

Although some of the equipment and improvement arrangements are called loans, some are handled as conditional sales contracts, some are handled as leases, and some are handled by so-called reimbursement letters amending the retail purchase contracts, the net effect of all of them is that the purchaser acquires the equipment originally furnished and paid for by respondent by means of a price discount which is credited against the cost of the equipment as earned by the purchase of lubricants. Under the standard retail purchase contracts, purchasers are given an annual quantity allowance ranging from one to five cents a gallon. All purchasers receive this allowance each year regardless of equipment deals. Respondent's prices are substantially above those of the blenders, who in general charge fifteen to twenty cents a gallon less than Socony. In most of the equipment deals, respondent gave the purchaser an additional price discount equal to the annual quantity discount, and provided that both be applied to the amortization of the equipment. This usually would amount to a total of eight to ten cents per gallon, four to five cents of which the dealer would in any case receive. In a few instances the discount was greater. In general the total discount did not exceed ten cents per gallon, although in a few instances it was as high as twelve cents. The amount of the discount was so computed by respondent that it would amortize the equipment in the number of years provided for in the retail sales contract. In other words, in determining how much of an equipment advance would be feasible on a given contract, respondent estimated the annual purchases of lubricants by the car dealer, and this figure times the number of years the contract would run multiplied by the price discount per gallon would approximately equal the amount of investment made in the equipment.

In addition, respondent's policy required that such equipment deals be offered upon proportionately equal terms to all purchasers, and that respondent would not enter into any contracts providing for the furnishing of equipment or improvements unless necessary to do so in order to meet competition. In this connection, respond-

ent required proof from the prospective customer that he had received offers from competing sellers at least as good or better than the arrangement offered by Socony.

On occasion respondent furnished improvements other than equipment, such as painting, blacktopping, and structural changes. These, of course, could not be repossessed or returned to respondent in the same manner as equipment under a conditional sales contract or loan agreement. However, the effect was identical. Under the terms of the arrangement, if the purchaser terminated his contract prior to the stated number of years, he was obligated to pay the unamortized balance of the improvements at that time. In the same way under the conditional sales contracts, if the contract was terminated prior to its fixed term of years or the price discount applied to the amortization was insufficient, the purchaser was required to make good the difference.

As previously found, these contracts were not requirements contracts or exclusive dealing contracts, and the purchaser was free to purchase lubricants from other sources although agreeing to buy a minimum amount from respondent. In actual practice the equipment deals had no effect upon the purchaser's freedom to enter into contracts with other sellers for future purchases of lubricants. Because of the competitive conditions, substantially all of the sellers would take over equipment furnished by a competitor to a dealer, purchase such equipment or pay the unamortized portion thereof to the competitor, and provide for the amortization of same by the dealer in return for a contract agreeing to purchase oil from it. In other words, although unamortized amounts might still be owed on such equipment, in practice this in no way hindered the dealer from changing suppliers and negotiating new contracts with competitors.

In addition to the theory of an exclusive dealing arrangement, which it has been found did not exist, counsel supporting the complaint takes the position that the furnishing of equipment or improvements is an unfair method of competition because it tends to lessen competition and tends to monopoly in respondent by taking business away from others who are either unable or unwilling to meet such competition. The record establishes that in fact substantially all of the competitors, except a few who prefer not to do so, also enter into equipment deals with car dealers, and the extent to which each competitor engages in this practice is limited only by its financial ability and choice. Admittedly respondent, as well as other majors, has greater financial resources than most of the blender and premium competitors. In this connection it must

be borne in mind that respondent does not engage in this form of competition predatorily, but only in order to meet competition in attempting to secure and retain car dealer customers. Incidentally, counsel supporting the complaint argues that meeting competition is no defense to an unfair method of competition. Obviously this is correct and has been so held frequently. However, such proof was not offered for that purpose, but to cast light upon the issue of whether the practice lessened competition. Patently a competitive practice engaged in to meet competition does not have the effect of lessening competition, but in fact increases it.

Counsel supporting the complaint called a number of competitor witnesses, both blenders and premiums, but the record fails to establish any substantial loss of business or lessening of competition attributable to respondent's method of competition. In fact if anything the record establishes the contrary. Testimony was received from two of the distributors of premium oils and representatives of four of the blenders. Without reviewing this evidence in detail, the record establishes that most of these competitors substantially increased their volume of sales during the period when the practices allegedly were lessening competition, from the conclusion of World War II to the time of the hearing, and said competitors not only met such competition but in fact were more successful than respondent, taking away or winning from respondent more accounts than respondent succeeded in taking or winning from them. As a matter of fact, the record reveals that the so-called small competitors captured more than twice as many accounts as Soconoy as a result of competitive offers. The record reveals that other competitive devices used, such as the 30,000-mile warranty, the lifetime warranty, substantially lower list prices, special reductions from list prices, and equipment and improvement deals based upon a surcharge added to the list price, successfully took away from Socony accounts which it had previously had, and also successfully captured new accounts in competition with Socony and many of the other majors.

Of the six competitors testifying, at least three showed very substantial increases in total sales from 1946 to the time of the complaint, the period encompassing the major equipment deals entered into by Socony and its competitors. Of the other three, while there is practically no reliable or substantial evidence in the record concerning their sales volume, what litttle there is indicates that their sales steadily increased at least until 1956, and that the decline, if any, since then has been moderate and can in no sense be attributed to respondent's practices. The fact that these same competitors

were able to capture more accounts from Socony than it was able to capture from them is substantial evidence that Socony's competitive practices in no way contributed to any decline in their sales figures. In addition thereto, the record establishes that the peak year for new car sales was 1955. Since then sales of cars have have declined substantially, as well as the number of car dealers in business, both of which facts necessarily would cause a decline in the overall sale of lubricants to car dealers. It is concluded and found that there is no reliable, probative and substantial evidence in the record from which an inference may be drawn that the methods of competition engaged in by respondent have caused any decline in the sales of competitors, or any lessening of competition.

Actually, respondent's equipment deals amount to a price discount which still leaves respondent's price substantially higher than that of the blenders, and while it is substantially lower than that of the premiums (as it has always been), the record evidences that the premiums are competing effectively by means of their guarantee plans and superior public acceptance of their products. As a matter of dollars and cents, the deals offered by respondent are actually not as good as those obtainable from the blenders. The blenders' list prices are as much as 15 to 20 cents a gallon below those of respondent. In addition thereto, they frequently reduce this price in order to sell a customer. The record establishes that the discount given by respondent normally does not exceed ten cents per gallon, which includes the annual quantity allowance of four cents a gallon which the buyer receives in any event. By means of this discount, respondent's price was actually reduced only about six cents a gallon. That amount, together with the buyer's earned discount, is used to pay for the equipment over the term of the contract.

Simple arithmetic demonstrates that a price fifteen to twenty cents below respondent's list price is nine to fourteen cents lower than respondent's price including the discount, which is an excellent reason why the blenders are able to compete with more success than respondent, and capture more accounts from respondent than respondent is able to capture from them. The only advantage a buyer gains from respondent's arrangement is the cash advance of the discount from the list price over a period of years in the form of equipment or improvements. However, if a ten-cent surcharge is added to the blenders' list price in order to amortize equipment furnished car dealers by them, the deal is exactly the same but the net result and price to the purchaser is better than

the arrangement offered by respondent. In addition to this fact, it is a very simple matter for a car dealer, having secured equipment or improvements from respondent or one of its competitors, to enter into a contract with one of the blender competitors for the purchase of lubricants at fifteen to twenty cents a gallon less, use ten cents of this saving to pay off the conditional sales contract, and still effect a saving of five to ten cents a gallon on his lubricant purchases as well as keeping the equipment. Numerous other potential arrangements exist whereby a car dealer can effectuate a greater savings by means of the lower price offered by the blenders and still realize the same benefits offered by respondent.

It is apparently counsel's theory that because respondent has greater financial resources than some of its competitors it is an unfair method of competition for it to invest in equipment loans paid for by the purchaser by means of a price discount credited against such indebtedness, even though such discount still leaves the price in excess of the competitors, because such competitors are not financially able to engage in as much of the same type of competition as competitors with greater financial resources. If respondent engaged in such methods of competition with a predatory purpose or power to acquire unlawful monopoly, such practices, even though legal in and of themselves, might be considered an unfair method of competition as part of such a predatory scheme or objective tending toward monopoly. However, the record here demonstrates not only that the competitors are able to meet, and indeed beat, such competition, but that respondent only makes such competitive offers when compelled to do so in order to meet competition. This factor negates any inference of predatory intent or attempt to monopolize. The record establishes that if respondent did not meet such competition of the various types hereinabove considered, it would soon find itself completely out of the car dealer market.

Even assuming *arguendo*, that respondent's competitive offers were better than its competitors, in the final analysis what counsel supporting the complaint appears to be contending is that competing successfully is an unfair method of competition. Such a contention is, of course, the antithesis of the objectives of the Sherman Act—which seeks to preserve strong competition by outlawing those practices which eliminate such competition, e.g., price-fixing, boycotts, division of territory, and other restraints of trade, that the public may benefit by effective competition producing better products, service, and lower prices. Lessening of competition is used by counsel supporting the complaint in the sense of one competitor gaining a greater share of the market and hence the others a smaller

share, or, in other words, in the Clayton Act sense rather than the Sherman Act Section I sense. His contention in effect is that *any* method of competition which has the effect of lessening competition in that sense, i.e., reducing the share of the market of some competitors, is an unfair method of competition. Strong competition, by offering lower prices, better products, or better service, by those able to do so, necessarily has the effect of causing others not able to meet it to lose business and hence to lessen competition in that sense; *ergo*, successful or effective competition, or competition within the true meaning of the word, must necessarily be an unfair method of competition. *Webster's Dictionary*, 1954, defines competition as follows: "The effort of two or more parties, acting independently, to secure the custom of a third party *by offering most favorable terms*." [Emphasis added.] Hence it would seem that the attainment of the objective necessarily included in the definition would be an unfair method of competition in counsel's theory, inasmuch as it would lessen competition in the sense used by him.

The logical corollary to this reasoning is that only weak or ineffective competition, or a lack of competition, which does not gain or lessen any share of the market, is the fair method. However, that is the very type of conduct outlawed by the Sherman Act. Price fixing, division of territory, boycotts, etc., tend to eliminate competition among competitors and not permit anyone to capture a larger share or gain any public preference for its product. A method of competition, e.g., hard or effective competition, which, by reason of a better offer to purchasers in terms of price, product, or service, lessens competition in the sense of causing purchasers to prefer that seller and give it a larger share of the market, cannot be an unfair method of competition merely because it lessens competition. It follows that the original premise is false.

Certain types of competition which capture larger shares of the market, and in that sense lessen competition, such as price discrimination, exclusive dealing arrangements, and unfair and deceptive practices, have been legally declared unfair methods of competition. The methods used are unfair—and demonstration of probable effect is necessary—but the effect is not what creates the unfairness. If successful competition, which lessens competition by capturing a greater share of sales by means of lower prices, etc., is outlawed as an unfair method of competition, all real competition will cease and the very objectives sought by the antitrust laws, better products at lower prices achieved by the forces of real competition in the market place, will be negated.

Fundamentally, the question is: Is it illegal to offer a better

product, better service, or a uniform lower price? If one competitor is able to do so, the inevitable effect must be the capturing of a greater share of the market. The very statement answers the question, if competition is to have any significant meaning. It is a contradiction in terms to argue that competition which causes buyers to prefer a product is an unfair method of competition. Nothing would achieve what counsel supporting the complaint seeks except the elimination of competition by reducing all competitors to the level of the lowest common denominator.

In addition to the foregoing contentions, counsel supporting the complaint, apparently recognizing that there is no substantial proof evidencing any lessening of competition attributable to respondent's practices, appears also to be engaged in a boot-strap operation. He argues, first, that it is well-established that the Commission may infer a lessening of competition from an unfair method of competition, *ergo*, we draw here such an inference. Having thus established a lessening of competition, we may now conclude that it is an unfair method of competition, proceeding from the premise that a method of competition which tends substantially to lessen competition is an unfair method of competition. By this process nothing plus nothing equals something. In each syllogism appears a fatal fallacy. In the first, the assumption that the method is unfair, and in the second, the assumption that a lessening of competition alone demonstrates unfairness.

While counsel supporting the complaint leans heavily upon the holding of the Court in the *Hastings* case,[2] which concededly affords him some basis for argument, although the facts are predominantly inapposite, perhaps the most conclusive answer to his contention is that the Supreme Court in the *Sinclair* decision,[3] upon substantially similar but considerably stronger facts, has decided that the competitive practice herein is not an unfair method of competition under Section 5 of the Act. In that case the facts as found by the Commission were that Sinclair was lending and leasing gasoline dispensing equipment to retail dealers at nominal prices upon the condition that the equipment be used only with gasoline supplied by the lessor. The contracts in the instant proceeding contain the same provision that the equipment furnished by respondent be used only in connection with its lubricants. The Commission brought more than thirty cases against various refiners of gasoline. Four Courts of Appeal, the Second, Third, Sixth and Seventh Circuits, reversed the Commission's holding that the aforesaid practice was an

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2 *Hastings Co.* v. *F.T.C.*, 153 F. 2d 253 (C.A. 6, 1946).

3 *F.T.C.* v. *Sinclair*, 261 U.S. 463 (1923).

unfair method of competition. The Supreme Court considered all of the cases jointly in its decision.

In *Sinclair* the facts were considerably stronger in that the Commission and the Courts found that the equipment was loaned at prices which did not represent a reasonable return on the investment, and that many competitors, because of insufficient capital, could not purchase and lease such devices *as a result of which they lost* numerous customers to Sinclair. In the instant case the complaint contained a similar allegation, that the cost of the equipment furnished by respondent does not bear a reasonable relation to the profits to be made. As hereinabove found this allegation was abandoned and in fact the record establishes the contrary. In the present case the record also establishes, contrary to the facts in *Sinclair*, that most competitors are able to furnish such equipment, and that not only have they not lost numerous customers to respondent, but have actually gained more customers from respondent than respondent has been able to gain from them.

Even though the facts found in Sinclair are substantially stronger than herein, all of the Courts of Appeal, as well as a unanimous Supreme Court, held that the furnishing of such equipment was not an unfair method of competition. They also held, as previously found herein, that the contract did not require exclusive dealing within the meaning of Section 3 of the Clayton Act, and that the purchasers were free to deal with others. The requirement that the equipment be used only with products supplied by the seller was held not to result in any exclusive dealing requirement. Incidentally, the Sinclair complaint also included a similar allegation that the effect of the practice might be to lessen competition in the sale of equipment. With respect to this, the Supreme Court said that the suggestion was sterile and required no serious discussion. The Courts of Appeal treated it at greater length but in the same manner.

The instant case is almost identical except that the facts, as noted above, are substantially weaker than in Sinclair. In that case the Seventh Circuit said:

> The fact that the tank and pump are much more expensive does not make the transaction different, or unfair. If that is not true, then the law must mean that the Trade Commission is set as a watch on competitors, with the duty and the power to judge what is too fast a pace for some and to compel others to slow up; in other words, to destroy all competition except that which is easy. We are of the opinion that Congress did not intend to bestow any such power. * * *
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> * * * nor do we find anything in the law which indicates that it is illegal for one competitor to do that which is beyond the financial ability of an-

other competitor; nor do we find anything that authorizes respondent to regulate competition for that reason.

The Court of Appeals for the Third Circuit held:

That the practice imposes upon a competitor the investment of more capital is an argument which would apply with equal force—and with equal infirmity—to competition based on superiority of goods and liberality of credit.

The Supreme Court, in unanimously affirming all four Circuits, held:

Certainly the practice is not opposed to good morals because characterized by deception, bad faith, fraud, or oppression. *Federal Trade Commission* v. *Gratz*, 253 U.S. 421, 427, 64 L. ed. 993, 995, 40 Sup. Ct. Rep. 572. It has been openly adopted by many competing concerns. * * * No purpose or power to acquire unlawful monopoly has been disclosed, and the record does not show that the probable effect of the practice will be unduly to lessen competition * * *.

The powers of the Commission are limited by the statutes. It has no general authority to compel competitors to a common level, to interfere with ordinary business methods, or to prescribe arbitrary standards for those engaged in the conflict for advantage called "competition." The great purpose of both statutes was to advance the public interest by securing fair opportunity for the play of the contending forces ordinarily engendered by an honest desire for gain. And to this end it is essential that those who adventure their time, skill, and capital should have large freedom of action in the conduct of their own affairs.

Curiously enough, both parties rely upon the Supreme Court's statement in Sinclair, quoted above, that: "No purpose or power to acquire unlawful monopoly has been disclosed." Counsel supporting the complaint argues that the holding in Sinclair justifies a finding herein that the practice is an unfair method of competition and the issuance of an order, upon his conclusion that the evidence clearly shows a purpose and power to acquire unlawful monopoly. Counsel makes no reference to any evidence supporting this conclusion. The record in fact demonstrates the contrary. As previously found herein, the record establishes that Socony did not engage in these practices with a predatory intent or objective tending toward monopoly, but rather in a good faith effort to meet competition. Certainly Sinclair is a major oil company in the same sense as Socony. Here the evidence reveals, contrary to Sinclair, that the equipment was furnished at prices which did represent a reasonable return thereon, that most if not all of the competitors were able to furnish equipment in varying degrees, and that Socony did not capture numerous customers from its competitors as a result of such practice but on the contrary the competitors were more successful in capturing customers from Socony. The record in the Sinclair case appears to constitute much stronger evidence of a purpose or

power to acquire unlawful monopoly, yet the Supreme Court held upon those facts that no such purpose or power had been disclosed.

For all of the foregoing reasons, it is concluded and found that counsel supporting the complaint have failed to establish by reliable, probative, and substantial evidence that respondent, by engaging in the above-found practices, has engaged in an unfair method of competition within the intent and meaning of the Act.

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce, and engaged in the above-found acts and practices in the courts and conduct of its business in commerce, as "commerce" is defined in the Act.

2. The acts and practices of respondent hereinabove found do not, and do not tend to, substantially lessen competition or create a monopoly.

3. The acts and practices of respondent hereinabove found do not constitute unfair methods of competition or unfair acts and practices in commerce within the intent and meaning of Section 5 of the Act.

4. Respondent has not, as alleged in the complaint, engaged in unfair methods of competition or unfair and deceptive acts and practices in commerce in violation of the Act.

ORDER

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

OPINION OF THE COMMISSION

By the COMMISSION:

The complaint in this matter charges respondent with unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act. The hearing examiner in his initial decision held that the allegations were not sustained by the evidence and ordered dismissal of the complaint. Counsel supporting the complaint have appealed from that decision.

The Commission is of the opinion that the issues presented herein are the same as those decided in *Shell Oil Company*, Docket No. 7044. Since the same questions of law are involved in both cases, the requirements of proof are identical in each.

Counsel supporting the complaint argue that the record in this proceeding contains evidence to establish a violation which was not before the Commission in the *Shell* case. However, upon the basis

of our review of the whole record, it is our opinion that the proof here, like the proof in the *Shell* case, has failed. Under the circumstances, the Commission has no alternative to an affirmance of the initial decision.

Accordingly, the appeal of counsel supporting the complaint is denied and the initial decision is adopted as the decision of the Commission.

ORDER DISMISSING COMPLAINT

This matter having been heard by the Commission upon appeal of counsel supporting the complaint from the hearing examiner's initial decision, and upon briefs and oral argument in support thereof and in opposition thereto, and the Commission having determined, for the reasons stated in the accompanying opinion, that an order should be entered adopting the initial decision as the decision of the Commission:

It is ordered, That the hearing examiner's initial decision, filed July 2, 1959, be, and it hereby is, adopted as the decision of the Commission.

IN THE MATTER OF

R. H. OZAN TRADING AS OZAN'S FURS

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

Docket 7661. Complaint, Nov. 24, 1959—Decision, Apr. 13, 1960

Consent order requiring a Reading, Pa., furrier to comply with the labeling and invoicing requirements of the Fur Products Labeling Act.

Mr. Charles W. O'Connell for the Commission.
Mr. Emanuel Weiss, of Reading, Pa., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on November 24, 1959, issued its complaint herein, charging the respondent with having violated the provisions of both the Federal Trade Commission Act and the Fur Products Labeling Act, together with the Rules and Regulations promulgated thereunder, and the respondent was duly served with process.

On February 12, 1960, there was submitted to the undersigned hearing examiner of the Commission for his consideration and ap-

proval an "Agreement Containing Consent Order To Cease And Desist," which had been entered into by and between respondent and the attorneys for both parties, under date of February 6, 1960, 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. The respondent is R. H. Ozan, an individual trading as Ozan's Furs, with his principal office and place of business located at 643 Penn Street, in the City of Reading, State of Pennsylvania.

2. 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.

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

4. Respondent waives:

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

5. 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.

6. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

7. This 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.

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

9. 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 the respondent herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated by the Commission under the latter Act, against the respondent 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 R. H. Ozan, an individual trading as Ozan's Furs, 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, 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:

A. Misbranding fur products by:

1. Failing to affix labels to fur products showing in words and figures plainly legible all of the information required to be disclosed by each of the subsections of §4(2) of the Fur Products Labeling Act;

2. 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:

(a) In abbreviated form;

(b) Mingled with non-required information;

(c) In handwriting;

3. Failing to set forth on labels the item number or mark assigned to a fur product.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish to purchasers of fur products an invoice showing all of the information required to be disclosed by each of the subsections of §5(b)(1) of the Fur Products Labeling Act;

2. Setting forth required information in abbreviated form;

3. Failing to set forth the term "Dyed Broadtail-processed Lamb" as required;

4. Failing to set forth the item number or mark assigned to a fur product.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 13th day of April, 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

HECKETHORN MANUFACTURING & SUPPLY COMPANY

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

Docket 7499. Complaint, May 21, 1959—Decision, Apr. 14, 1960

Consent order requiring manufacturers in Dyersburg, Tenn., to cease discriminating in price in violation of Sec. 2(a) of the Clayton Act, by selling its automotive shock absorbers, seat cushions and other products to some purchasers at lower prices than to their competitors.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated the provisions of subsection (a) of Section 2 of the Clayton Act (U.S.C.A. Title 15, Section 13) as amended, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. The Heckethorn Manufacturing & Supply Com-

pany, hereinafter called respondent, is a corporation organized and existing under and by virtue of the laws of the State of Colorado, with its principal office and place of business located in Dyersburg, Tennessee. Its mailing address is P.O. Box 117, Dyersburg, Tennessee.

PAR. 2. Respondent is engaged in the business of manufacturing, selling, and distributing automobile shock absorbers and seat cushions and other products. Respondent's sales of shock absorbers are largely made by its Columbus Shock Absorber Division to various purchasers for use, consumption or resale within the United States. A substantial volume of such products are sold and distributed by manufacturer's representatives throughout the United States.

In addition, respondent exports a substantial volume of its products.

PAR. 3. In the course of its business, as aforesaid, respondent is now, and for several years last past has been, continuously engaged in commerce, as "commerce" is defined in the Clayton Act, in that respondent has sold and distributed its automotive shock absorbers, seat cushions and other products, from its plant in Tennessee to various wholesale and retail buyers located in various other states of the United States and the District of Columbia.

PAR. 4. In the course of conducting its business in commerce, respondent has been and is now in substantial competition with other individuals, corporations and firms engaged in the business of manufacturing, selling and distributing comparable automotive shock absorbers, seat cushions and other products in commerce between and among the various states of the United States and the District of Columbia.

PAR. 5. In the course of conducting its business in commerce, respondent has sold its automotive shock absorbers, cushions and other products to various purchasers who competed, directly or indirectly, each with the other.

PAR. 6. In the course and conduct of its business, as hereinabove described, the respondent has, directly or indirectly, discriminated in price between different purchasers of its automotive shock absorbers, seat cushions and other products, by selling said products to some of its purchasers at lower prices than such products of like grade and quality were sold at or near the same time to other purchasers, some of whom were in active competition with the aforesaid favored purchasers.

PAR. 7. The effect of respondent's discriminations in price between the different purchasers of its automotive shock absorbers, seat cushions and other products of like grade and quality, as hereinabove

described, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and the aforesaid favored purchasers are engaged, or to injure, destroy or prevent competition among and between said favored and unfavored purchasers, or with customers of either of them.

PAR. 8. The aforesaid acts and practices of the respondent constitute violations of the provisions of subsection (a) of Section 2 of the Clayton Act (U.S.C., Title 15, Sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936.

Mr. John T. Walker and *Mr. James H. Kelley* for the Commission.

Ewell and Ewell, of Dyersburg, Tenn., and *Mr. James A. Horton*, of Washington, D.C., for respondent.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated May 21, 1959, the respondent is charged with violating the provisions of subsection (a) of section 2 of the Clayton Act, as amended.

On February 1, 1960, the respondent and its attorneys entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondent admits the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondent of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondent that it has violated the law as alleged in the complaint.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

The complaint insofar as concerns the allegation of "primary line injury," namely, a substantial lessening of competition and tendency toward monopoly in the line of commerce in which the respondent is engaged should be dismissed on the grounds that the evidence in the light of subsequent developments is insufficient to substantiate that allegation.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposi-

tion of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent Heckethorn Manufacturing & Supply Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at Highway No. 20, Dyersburg, Tennessee (erroneously listed in the complaint as P.O. Box 117, Dyersburg, Tennessee).

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 Heckethorn Manufacturing & Supply Company, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in, or in connection with, the sale of automotive shock absorbers, seat cushions and other automotive parts and accessories in commerce, as commerce is defined in the Clayton Act, do forthwith cease and desist from discriminating, directly or indirectly, in the price of such products of like grade and quality by selling to any one purchaser at net prices lower than the net prices charged to any other purchaser who, in fact, competes with the purchaser paying the lower price in the resale or distribution of respondent's products.

It is further ordered, That the allegation of a substantial lessening of competition or tendency toward monopoly in the line of commerce in which the respondent is engaged be dismissed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 14th day of April, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That 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

MARLUN MANUFACTURING COMPANY, INC., ET AL.

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

Docket 7516. Complaint, June 10, 1959—Decision, Apr. 14, 1960

Consent order requiring the manufacturer of its "Black Angus" electric broiler rotisseries in Woodside, Long Island, N.Y., to cease discriminating in price by making promotional payments to certain wholesalers but not to all their competitors on proportionally equal terms; and to cease representing falsely in brochures, price lists and catalogue sheets distributed to dealer-customers and in newspaper and magazine advertising, that the excessive prices set forth were their customary retail prices.

COMPLAINT

The Federal Trade Commission, having reason to believe that Marlun Manufacturing Company, Inc., a corporation, Emanuel Sado and Maurice Sado, individually and as officers of said corporation, hereinafter referred to as respondents, have violated and are now violating the proivsions of Section 5 of the Federal Trade Commission Act and the provisions of subsection (d) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, and it appearing that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in those respects as follows:

COUNT I

PARAGRAPH 1. Respondent Marlun Manufacturing Company, Inc., is a corporation organized, existing, and doing business under the laws of the State of New York. Respondents Emanuel Sado and Maurice Sado are president and secretary-treasurer, respectively, of the corporate respondent. They formulate, direct, and control the policies, acts, and practices of the corporate respondent and are responsible for the acts and practices herein alleged to be unlawful. The business address of all respondents is 60-06 37th Avenue, Woodside 77, Long Island, New York.

PAR. 2. For a number of years respondent corporation has been, and now is, manufacturing and selling a line of electric broiler-rotisseries under the brand name of "Black Angus." It sells directly to some retailers and also to many independent wholesalers which resell such products to retailers.

PAR. 3. Respondent corporation is now, and for many years past has been engaged in commerce as defined in the Federal Trade Com-

mission Act and in the Clayton Act in that it ships its rotisseries from the state of manufacture to purchasers located in other states of the United States and, in so doing, is also in competition with other manufacturers and sellers of similar products.

PAR. 4. In the course and conduct of its business in commerce respondents have paid, or have contracted for the payment of, something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale, or offering for sale of the rotisseries sold to them by respondent Marlun Manufacturing Company, Inc., and such payments were not made available on proportionally equal terms to all other customers competing in the distribution of the rotisseries.

PAR. 5. For example, during the year 1957 respondents contracted to pay and did pay the sum of $807.00 to Everybody's Supply Company of Philadelphia, Pennsylvania, as compensation or as an allowance for advertising or other service or facility furnished by or through such customers in connection with its offering for sale or sale of rotisseries sold to it by Marlun Manufacturing Company, Inc.

Furthermore, during the year 1956 respondents contracted to pay and did pay the sum of $436.94 to Dobkin Electrical Supply Co. of Chicago, Illinois, as compensation or as an allowance for the wages of a clerk employed by Dobkin to demonstrate and to sell respondents' rotisseries both on Dobkin's premises and at the locations of some of Dobkin's dealer-customers in connection with the offering for sale or sale of the rotisseries sold to Dobkin Electrical Supply Co. by Marlun Manufacturing Company, Inc.

Such compensation or allowances were not offered or otherwise made available by respondents on proportionally equal terms to all other customers competing in the sale and distribution of respondents' rotisseries with Dobkin Electrical Supply Co. and Everybody's Supply Co. and with the dealer-customers of those two companies.

PAR. 6. The acts and practices of respondents, as alleged above, violate subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Section 13).

COUNT II

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

PAR. 2. Through the use of statements and representations appearing in brochures, price lists, and catalogue sheets distributed to

customers and in advertisements published in newspapers and magazines, respondents have represented directly or by implication that the prices set out in certain of such advertisements, brochures, price lists and catalogue sheets are the prices at which the rotisseries are regularly and customarily sold at retail.

PAR. 3. The statements and representations referred to above are false, misleading, and deceptive. In truth and in fact the prices set out in such brochures, price lists, catalogue sheets, and advertisements are not the regular or customary retail prices of the rotisseries but are in excess thereof because the rotisseries seldom, if ever, sold at the designated prices at retail but are usually sold at substantially less amounts.

PAR. 4. By furnishing the wholesalers and retailers of their products with price lists, brochures, catalogue sheets, and advertising and promotional material containing the statements and representations referred to in paragraph 2 above, respondents placed in the hands of such retailers and wholesalers the means and instrumentalities through and by which they are enabled to mislead and deceive the purchasing public as to the regular or customary retail prices of the rotisseries.

PAR. 5. The use by respondents of these false, misleading, and deceptive statements and representations has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true, and into the purchase of a substantial number of rotisseries because of such erroneous and mistaken belief. As a result thereof trade has been unfairly diverted to respondents from their competitors and injury has been done to competition in commerce.

PAR. 6. The aforesaid acts and practices of respondents are to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act (15 U.S.C.A. 45).

Mr. John B. Clayton for the Commission.

Mr. Vincent J. Fuller and *Mr. Edward Bennett Williams*, of Washington, D.C., for Marlun Manufacturing Company, Inc. and Emanuel Sado.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated June 10, 1959, the respondents are charged with violating the provisions of section 5 of the Federal Trade Com-

mission Act and subsections (d) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

On January 27, 1960, respondents Marlun Manufacturing Company, Inc., a corporation, and Emanuel Sado, individually and as an officer of said corporation, and their attorneys, entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

The hearing examiner finds that the content of the agreement meets all of the requirements of section 3.25(b) of the Rules of the Commission.

The complaint insofar as concerns respondent Maurice Sado should be dismissed for the reason that service of the complaint was not perfected and for other good reasons shown.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent Marlun Manufacturing Company 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 60-06 37th Avenue, in the City of Woodside 77, Long Island, State of New York. Respondent Emanuel Sado is an officer of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

ORDER

It is ordered, That respondents, Marlun Manufacturing Company, Inc., a corporation, and its officers, and Emanuel Sado, individu-

ally and as an officer of said corporation, and said respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale or the sale of rotisseries in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Clayton Act, as amended, do forthwith cease and desist from:

1. Paying, or contracting for the payment of, anything of value to or for the benefit of any customer or respondents as compensation or in consideration for advertising, display, wages of clerks, or any other services or facilities furnished by or through such customer in connection with the handling, processing, sale, offering for sale, or distribution of respondents' products, unless such payment or consideration is affirmatively offered on proportionally equal terms to all other customers competing in the resale of such products with the favored customer.

2. Representing, directly or by implication, that any price is the retail price of their rotisseries which is in excess of the price at which the rotisseries are regularly and customarily sold at retail in the trade area or areas where the representations are made, or that the prices at which such rotisseries are being offered for sale constitute reductions from the prices at which they are regularly or customarily sold in the trade area or areas where the representations are made, or that the amount of such reductions constitutes savings to purchasers.

3. Providing distributors and retailers of their rotisseries with materials by or through which they may mislead and deceive the purchasing public as to the regular and customary retail prices of their products.

It is further ordered, That the complaint in its entirety be and hereby is dismissed as to Maurice Sado, individually and as an officer of the respondent corporation.

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 14th day of April, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Marlun Manufacturing Company, Inc., a corporation, and Emanuel Sado, 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.

IN THE MATTER OF

STERN BROTHERS

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

Docket 7550. Complaint, July 23, 1959—Decision, Apr. 14, 1960

Consent order requiring a New York City department store to cease violating the Fur Products Labeling Act by labeling certain fur products falsely as to the animal producing the furs; by setting forth the name "United States" on invoices of furs of foreign origin; by advertising in newspapers which falsely represented fur products to be "priced below wholesale" and "nationally advertised from" certain prices which were not the usual prices in the trade area concerned, and made claims as to prices and values without maintaining adequate records as a basis therefor; and by failing in other respects to comply with requirements of the Act; and to cease such unfair trade practices as in advertising designating as "reg.," "regularly," and "usually," amounts in excess of its current selling prices.

Mr. Charles W. O'Connell for the Commission.
Sullivan & Cromwell, of New York, N.Y., for respondent.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER [1]

On July 23, 1959 the Federal Trade Commission issued its complaint in this proceeding against Stern Brothers, a corporation, charging it with violations of the Federal Trade Commission Act and the Fur Products Labeling Act in connection with the sale and distribution of fur products and other merchandise. On the same date, July 23, 1959, Stern Brothers was merged with Allied Stores Corporation, and the business previously carried on by said Stern Brothers has been carried on by Allied Stores Corporation as Stern Brothers Division of Allied Stores Corporation.

On February 1, 1960 Allied Stores Corporation, trading as Stern Brothers, by its duly authorized officer and by its attorney entered into an agreement for a consent order with counsel supporting the complaint in accordance with Section 3.25(a) of the Rules of Practice and Procedure of the Federal Trade Commission. Incorporated in, and made a part of, this agreement was a request by all of the parties that the complaint be amended by substituting Allied Stores Corporation, trading as Stern Brothers, a corporation, in the

[1] The initial decision amended the complaint by substituting Allied Stores Corporation, trading as Stern Brothers, a corporation, in the place and stead of the respondent named in the complaint.

place and stead of the respondent named in the complaint, with waiver of service of all proceedings involving the amendment of the complaint, including the complaint as amended. Pursuant to said agreement, the complaint herein is herewith amended as requested by counsel for all parties. The agreement further provides that respondent admits all the jurisdictional facts alleged in the amended complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the amended complaint and the agreement; that the making 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 this proceeding without further notice to the respondent and when entered shall have the same force and effect as if entered after a full hearing, respondent specifically waiving all the rights it may have to challenge or contest the validity of the order; that the order may be altered, modified, or set aside in the manner provided for other orders; that the amended complaint may be used in construing the terms of the order; 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 amended complaint; and that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The 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 Allied Stores Corporation is a corporation organized and existing under the laws of the State of Delaware, with its office located at 401 Fifth Avenue, New York, New York. The acts and practices alleged in the amended complaint as being violative of law were engaged in by Stern Brothers, located at 41 West 42nd Street, in the City of New York, State of New York, which was merged into said Allied Stores Corporation, as aforesaid.

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 Allied Stores Corporation, a corporation, trading as Stern Brothers, 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. Misbranding fur products by:

(a) Failing to affix labels to fur products showing in words and figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

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

(c) Setting forth on labels affixed to fur products information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder mingled with nonrequired information.

(d) Failing to affix labels to fur products showing the item number or mark assigned to a fur product.

2. Falsely or deceptively invoicing fur products by:

(a) Failing to furnish to purchasers of fur products an invoice showing all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

(b) Setting forth on invoices pertaining to fur products the name "United States" as the country of origin of the furs contained in fur products when such is not the fact.

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

(d) Failing to furnish to purchasers of fur products an invoice showing the item number or mark assigned to a fur product.

3. Falsely or deceptively advertising fur products through the use of any advertisements, 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 the prices of fur products are "priced below wholesale" or words of similar import, when such is not the fact.

(b) Represents, directly or by implication, that certain amounts are nationally advertised prices or words of similar import, when such is not the fact.

(c) Misrepresents in any manner the savings available to purchasers of respondent's fur products.

4. Making price claims and representations in advertisements respecting prices and values of fur products unless respondent maintains full and adequate records disclosing the facts upon which such claims or representations are based.

It is further ordered, That respondent Allied Stores Corporation, a corporation, trading as Stern Brothers, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That any amount is respondent's usual and regular price of merchandise when it is in excess of the price at which said merchandise has been usually and regularly sold by respondent in the recent regular course of its business.

(b) That any saving is afforded from respondent's price in the purchase of merchandise unless the price at which it is offered constitutes a reduction from the price at which the merchandise has been usually and customarily sold by respondent in the recent regular course of its business.

2. Misrepresenting in any manner the amount of savings available to purchasers of respondent's merchandise, or the amount by which the price of said merchandise is reduced from the price at which it is usually and customarily sold by respondent in the normal course of its business.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 14th day of April, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Allied Stores Corporation, a corporation, trading as Stern Brothers, 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

ELI PERLO ET AL. TRADING AS S. PERLO & SONS

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

Docket 7623. Complaint, Oct. 22, 1959—Decision, Apr. 14, 1960

Consent order requiring New York City distributors to cease violating the Wool Products Labeling Act by labeling and invoicing as "100% Reprocessed Wool," interlining materials which contained substantially less than 100% wool.

Mr. Thomas A. Ziebarth supporting the complaint.
Mr. Louis K. Bleecker, of New York, N.Y. for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On October 22, 1959, the Federal Trade Commission, pursuant to authority granted to it by the Federal Trade Commission Act and the Wool Products Labeling Act, caused a complaint to be issued against the above respondents, charging them with violations of the Wool Products Labeling Act and the Rules and Regulations promulgated by the Commission pursuant to the provisions of said Act. A true copy of said complaint was duly served upon respondents, as required by law. The complaint charges respondents with misbranding wool products sold by respondents in commerce within the intent and meaning of §4(a)(1) of the Wool Products Labeling Act, and with failure to stamp, tag and label wool products sold in commerce as required by §4(a)(2) of the Wool Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

After being served with the complaint, respondents appeared by counsel. Thereafter respondents entered into an agreement dated January 25, 1960, which purports to dispose of all this proceeding as to all parties without the necessity of conducting a formal hearing. Accompanying the January 25, 1960 agreement is an affidavit of Louis K. Bleecker, counsel for respondent that Hinda R. Perlo, one of the named respondents is deceased, and the Hearing Examiner is therefore dismissing her as a respondent as agreed to in the cease and desist order set forth in the January 25, 1960 agreement. The hearing examiner finds such disposition of this proceeding as to Hinda R. Perlo not to be inimical to the public interest, and to these proceedings.

The agreement of January 25, 1960, has been signed by all the respondents except Hinda R. Perlo, their counsel, by counsel supporting the complaint, and has been approved by the Director and the Assistant Director of the Bureau of Litigation of the Federal Trade Commission. In said agreement, respondents, except Hinda R. Perlo, admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts are duly made in accordance with such allegations. In such agreement the respondents who signed the same waive: any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. The agreement further provides that the record upon which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement: that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the 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 the cease and desist order provided for in said agreement may be entered in this proceeding without further notice to the respondents; and that, when so entered, such cease and desist order 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. 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 of January 25, 1960, containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties; the agreement of January 25, 1960, is hereby accepted and ordered filed at the same time that this decision becomes the decision of the Federal Trade Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings; and

The undersigned hearing examiner having considered the agreement and proposed order and being of the opinion that the acceptance thereof will be in the public interest, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. That the Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding;

2. Respondents Eli Perlo and Leon Perlo are individuals and co-partners trading as S. Perlo & Sons. Respondents' office and principal place of business is located at 313–321 West 37th Street, New York, New York.

3. Respondents are engaged in commerce as "commerce" is defined in the Federal Trade Commission Act.

4. The complaint herein states a cause of action against said respondents under the Federal Trade Commission Act, and the Wool Products Labeling Act, and this proceeding is in the public interest.

ORDER

It is ordered, That respondents Eli Perlo and Leon Perlo, individually and as copartners trading as S. Perlo & Sons, or under any other name, and respondents' representatives, agents and employees, direct or through any corporate or other device, in connection with the 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 interlining materials or other "wool products," as such products are defined in and subject to said Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by:

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

2. Failing to affix labels to wool products showing each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That Eli Perlo and Leon Perlo, individually and as copartners trading as S. Perlo & Sons, or under any other name, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of wool interlining materials, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Misrepresenting the character or amount of the constituent fibers contained in such products on invoices or shipping memoranda applicable thereto or in any other manner.

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It is further ordered, That the complaint herein, insofar as it relates to individual respondent, Hinda R. Perlo, be and the same hereby is dismissed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 14th day of April, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Eli Perlo and Leon Perlo, individuals and co-partners trading as S. Perlo & Sons 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

MORRISON KNITWEAR COMPANY, INC., ET AL.

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

Docket 7680. Complaint, Dec. 4, 1959—Decision, Apr. 14, 1960

Consent order requiring New York City distributors to cease representing falsely—by advertisements in magazines, display cards supplied to sellers, attached tags or labels, and otherwise—that their orlon sweaters would not "pill" (fuzz up in balls).

Mr. John W. Brookfield, Jr., for the Commission.
Mr. A. Harry Flescher, of New York, N.Y., for respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On December 4, 1959, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violating the provisions of the Federal Trade Commission Act in connection with the sale and distribution of women's garments, including sweaters.

On January 27, 1960, the respondents and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with section 3.25(a) of the Rules of Practice and Procedure of the Commission.

Under the foregoing agreement, the respondents admit the juris-

dictional facts alleged in the complaint and agree, among other things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith; and recites that the said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint. The hearing examiner finds that the content of the said agreement meets all the requirements of section 3.25(b) of the Rules of Practice.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Section 3.21 of the Rules of Practice; and in consonance with the terms of said agreement, the hearing examiner makes the following jurisdictional findings and order:

1. Respondent Morrison Knitwear Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 130-6 Palmetto Street, in the City of Brooklyn, New York. It is stipulated and agreed that the complaint may be amended to state the above as the correct address of respondents.

Respondents Morris Rosen, Max Jaffe, Harold Rosen and Hannah Rosen are officers and directors of said corporate respondent and their address is the same as that of said corporate respondent.

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

ORDER

It is ordered, That respondents Morrison Knitwear Company, Inc., a corporation, and its officers, and Morris Rosen, Max Jaffe, Harold Rosen and Hannah Rosen, 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 and distribution of women's

orlon sweaters (or any other product made of orlon) in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, directly or by implication, that said products will not pill.

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 14th day of April, 1960, 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

ROSENBAUM COMPANY OF PITTSBURGH

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

Docket 7685. Complaint, Dec. 9, 1959—Decision, Apr. 14, 1960

Consent order requiring a Pittsburgh furrier to cease violating the Fur Products Labeling Act by mutilating labels on fur products prior to ultimate sale and delivery; by setting forth on invoices and in advertising the name of another animal than that producing the fur; by advertising in newspapers which failed to disclose the names of animals producing certain furs or the country of origin or that furs were artificially colored; and by failing in other respects to comply with labeling and invoicing requirements.

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

Mr. James G. Park of *Buchanan, Ingersoll, Rodewald, Kyle and Berger*, of Pittsburgh, Pa., for respondent.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

The complaint in this matter charges the respondent with violation of the Federal Trade Commission Act and the Fur Products Labeling Act in connection with the sale, advertising and distribution in commerce of fur products.

An agreement has now been entered into by respondent and

counsel supporting the complaint which provides, among other things, that respondent admits all the jurisdictional facts alleged 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 the agreement; that the making 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 this proceeding without further notice to the respondent and when entered shall have the same force and effect as if entered after a full hearing, respondent specifically waiving all the rights it may have to challenge or contest the validity of the order; that the order may be altered, modified or set aside in the manner provided for other orders; that the complaint may be used in construing the terms of the order; 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 agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

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 Rosenbaum Company of Pittsburgh, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with its office and principal place of business located at Penn Avenue and 6th Street, in the City of Pittsburgh, State of Pennsylvania. It does business under the name of Rosenbaum's.

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

ORDER

It is ordered, That respondent Rosenbaum Company of Pittsburgh, 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 any fur product, or in connection with the sale, advertising, offering for sale, transportation, or distribution of any

fur product which is made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Mutilating, or causing the mutilation or participation in the mutilation of, labels required to be affixed to fur products, prior to the time fur products are sold and delivered to the ultimate purchaser of such products.

2. Misbranding fur products by:

A. Failing to affix labels to fur products showing in words and figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

B. Setting forth on labels affixed to fur products information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder:

(1) Mingled with non-required information

(2) In handwriting

C. Failing to set forth the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in the required sequence.

3. Falsely or deceptively invoicing fur products by:

A. Failing to furnish the purchasers of fur products an invoice showing all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

B. Falsely or deceptively invoicing or otherwise identifying any such products as to the name or names of the animal or animals that produced the fur from which such products were manufactured.

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

D. Failing to set forth the item number or mark assigned to a fur product.

4. Falsely or deceptive 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 contains or is composed of bleached,

dyed or otherwise artificially colored fur, when such is the fact;

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

B. Sets forth the name or names of any animal or animals other than the name or names specified in Section 5(a)(1) of the Fur Products Labeling Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 14th day of April, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That 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

FRED B. MILLER ET AL., TRADING AS MILLER LABORATORIES, ETC.

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

Docket 7740. Complaint, Jan. 12, 1960—Decision, Apr. 14, 1960

Consent order requiring distributors in Hagerstown, Md., to cease representing falsely in advertisements in newspapers and magazines and otherwise that their "Miller Truss" would bring permanent relief from ruptures, was custom fitted, was more effective than competitive products, was guaranteed to control ruptures 100%, etc.

Mr. John W. Brookfield, Jr., for the Commission.
Respondents, for themselves.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on January 12, 1960, issued its complaint herein, charging the respondents Fred B. Miller and Robert H. Miller, individuals and partners, trading as Miller Laboratories and as Fred B. Miller, with having violated the provisions of the Federal Trade Commission Act, and respondents were duly served with process.

On February 26, 1960, 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 attorney supporting the complaint, under date of February 23, 1960, 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 Fred B. Miller and Robert H. Miller are individuals and partners, trading and doing business under the names Miller Laboratories and Fred B. Miller, with their office and principal place of business located at 115 East Baltimore Street, in the City of Hagerstown, State of Maryland.

2. 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.

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

4. 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.

5. 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.

6. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

7. 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.

8. 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 a 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 the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act against 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:

It is ordered, That respondents Fred B. Miller and Robert H. Miller, individually or as partners trading as Miller Laboratories or Fred B. Miller, or under any other trade name or names, 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 devices designated as Miller Truss, or any other product or device of substantially similar construction or design, whether sold under the same name or any other name or names, do forthwith cease and desist from:

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

(a) That the use of respondents' devices gives lasting relief unless limited to the period of time in which the device is actually worn;

(b) That the use of respondents' devices gives permanent relief or ends suffering;

(c) That respondents' devices are custom fitted or in all cases are the correct truss;

(d) That respondents' devices will afford results that are different from those afforded by all other trusses;

(e) That respondents' devices are nature's way of closing or decreasing the size of hernal openings, or are nature's way of holding hernias;

(f) That respondents' devices will heal, cure or decrease the size of hernal openings;

(g) That the use of respondents' devices will aid blood circulation or strengthen the muscles;

(h) That respondents' devices will retain or hold all ruptures or hernias, or control ruptures 100%;

(i) That respondents' devices are guaranteed, unless the nature and extent of the guarantee and the manner of performance thereunder are clearly and conspicuously disclosed in connection with the representation of the guarantee;

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said devices, 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 14th day of April, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Fred B. Miller and Robert H. Miller, individuals and partners, trading as Miller Laboratories and as Fred B. Miller, 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

RECORDS, INC., ET AL.

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

Docket 7774. Complaint, Feb. 5, 1960—Decision, April 14, 1960

Consent order requiring Boston, Mass., distributors of phonograph records for several manufacturers to retail outlets and jukebox operators, to cease giving concealed "payola" to television and radio disc jockeys as inducement to play their records in order to increase sales.

Mr. John T. Walker and *Mr. James H. Kelley* for the Commission.
Mr. Morris Kirsner, of Boston, Mass., for respondents.