

Complaint

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FINAL ORDER

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

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

It is further ordered, That respondent, Exquisite Form Brassiere, Inc., 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.

Commissioner Tait dissenting in part.

IN THE MATTER OF

E & J CORPORATION TRADING AS CITY AUTO SALES
ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 7911. Complaint, June 3, 1960—Decision, Oct. 31, 1960

Consent order requiring used car dealers in Washington, D.C., to cease misrepresenting down payments, monthly terms, and guarantees on their used cars, made by such typical statements in newspaper and radio advertising as "1.00 Down", "No Money Down As Low as \$15 Per Mo.", "All Cars Guaranteed".

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that E & J Corporation, a corporation trading as City Auto Sales, and Arthur J. Bisogne, also known as Sonny Bisogne, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent E & J Corporation, is a corporation organized and existing under and by virtue of the laws of the Dis-

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trict of Columbia. Its office and principal place of business is located at 401 Massachusetts Avenue, N.W., Washington, D.C. Said corporation trades under the name of City Auto Sales.

Respondent Arthur J. Bisogne, also known as Sonny Bisogne, is an officer and the principal stockholder of the respondent corporation. He formulates, directs and controls the acts and practices of the corporate respondent, as hereinafter set forth. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of used automobiles in the District of Columbia. Their volume of business is substantial.

PAR. 3. In the course and conduct of their business, and for the purpose of inducing the sale of their used automobiles, respondents have made certain statements in newspapers published in the District of Columbia, and in radio broadcasts emanating from the District of Columbia, concerning their said automobiles and their method of doing business. Typical, but not all inclusive, of said statements are the following:

\$1.00 Down
 No Money Down on Approved Credit
 \$25 Down is all you Need to Ride
 No Money Down As Low as \$15 Per Mo.
 As Low as \$5.00 Down
 All Cars Guaranteed
 Drive Today! Nothing Down. Ride Today . . . No Money Needed!
 Name Your Own Terms on a Guaranteed Automobile Delivered to You This Very Day, with Little or No Money Down. . . .

PAR. 4. Through the use of the aforesaid statements, respondents represent:

(a) That they sell used automobiles on credit accounts, with little or no down payment.

(b) That their cars are guaranteed.

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

(a) Respondents do not sell used cars on credit, with little or no down payment. When a minimum or token sum is accepted by the respondents in connection with a car order or bill of sale, it is not, in fact, a down payment but is received for the purpose of providing a consideration for a contract of purchase. Frequently, purchasers of respondents' used cars are required to contract for small loans, mostly with sources outside of the District of Columbia, in order to meet respondents' down payment requirements, in addi-

tion to installment financing. The represented low monthly payments do not include said small loan charges.

(b) Respondents, in most instances, sell their used cars "as is", and no guarantee or warranty is made. In fact, a provision is incorporated in each car order and bill of sale to that effect. In those cases where a purported guarantee or warranty is made, it is limited in nature and the limitations are not fully disclosed.

PAR. 6. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of used automobiles.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of a substantial number of respondents' used automobiles by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, 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.

Mr. Ames W. Williams and *Mr. Michael P. Hughes* for the Commission.

Mr. Ralph H. Deckelbaum, of Washington, D.C., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the advertising, offering for sale, sale and distribution of used automobiles in the District of Columbia, with violation of the Federal Trade Commission Act, in that respondents have made certain false, misleading and deceptive statements in newspapers published in the District of Columbia, and in radio broadcasts emanating from the District of Columbia, concerning their said automobiles and their method of doing business.

After the issuance of the complaint, respondents, their counsel, and counsel supporting the complaint entered into an agreement

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containing consent order to cease and desist, which was approved by the Director, Associate Director, and Acting Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the Hearing Examiner for consideration.

The agreement states that respondent E & J Corporation is a corporation organized and existing under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at 401 Massachusetts Avenue, N.W., Washington, D.C.; that said corporation trades under the name of City Auto Sales; and that respondent Arthur J. Bisogne, also known as Sonny Bisogne, is an officer and the principal stockholder of the respondent corporation, his business 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 Hearing Examiner has determined that the aforesaid agreement containing the consent order to cease and desist provides for an appropriate disposition of this proceeding in the public interest, and such agreement is hereby accepted. Therefore,

It is ordered. That respondents E & J Corporation, a corporation, trading as City Auto Sales, or under any other name, and its officers, and Arthur J. Bisogne, also known as Sonny Bisogne, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any cor-

porate or other device, in connection with the offering for sale, sale or distribution of used automobiles in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. Their used automobiles can be purchased with a minimum down payment of one dollar or any other amount not in accord with the facts;

2. Their used automobiles are guaranteed when no guarantee is given to the purchaser;

3. Their used automobiles are guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and truthfully set forth:

4. Terms as low as \$15.00 per month or any other amount per month are available to purchasers, unless such is the fact.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The hearing examiner on August 31, 1960, having filed an initial decision in this proceeding wherein he accepted an agreement containing a consent order theretofore executed by the respondents and counsel in support of the complaint, and entered an order to cease and desist in conformity with said agreement; and

The Commission by order entered October 12, 1960, having extended until further order the date on which the initial decision otherwise would have become the decision of the Commission, and having now determined that said initial decision is adequate and appropriate to dispose of this matter:

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

It is further ordered, That the respondents, E & J Corporation, a corporation, and Arthur J. Bisogne, also known as Sonny Bisogne, 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 contained in the aforesaid initial decision.

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IN THE MATTER OF

TRIUMPH RECORDS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 7964. Complaint, June 22, 1960—Decision, Nov. 3, 1960*

Consent order requiring New York City manufacturers of phonograph records to cease giving concealed "payola" to disc jockeys and other personnel of radio and television programs to induce frequent playing of their records in order to increase sales.

COMPLAINT

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

PARAGRAPH 1. Respondent Triumph Records, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 54 West 74th Street, New York, New York.

Respondent Herbert C. Abramson is president of the corporate respondent, and formulates, directs and controls the acts and practices of said corporate respondent. The address of the individual respondent is the same as that of said corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, distribution and sale of phonograph records to independent distributors for resale to retail outlets in various states of the United States.

In the course and conduct of their business, respondents now cause, and for some time last past have caused, the records they manufacture, sell and distribute 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 phonograph records in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with corporations, firms and individuals in the manufacture, sale and distribution of phonograph records.

PAR. 4. After World War II, when television and radio stations shifted from "live" to recorded performances for much of their programming, the production, distribution and sale of phonograph records emerged as an important factor in the musical industry, with a sales volume of approximately \$400,000,000 in 1958.

Record manufacturing companies and distributors ascertained that popular disk jockeys could, by "exposure" or the playing of a record day after day, sometimes as high as six to ten times a day, substantially increase the sale of those records so "exposed." Some record manufacturers and distributors obtained and insured the "exposure" of certain records in which they were financially interested by disbursing "payola" to individuals authorized to select and "expose" records for both radio and television programs.

"Payola", among other things, is the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations to induce, stimulate or motivate the disk jockeys to select, broadcast, "expose" and promote certain records in which the payer has a financial interest.

Disk jockeys, in consideration of their receiving the payments heretofore described, either directly or by implication represent to their listening public that the records "exposed" on their broadcasts have been selected on their personal evaluation of each record's merits or its general popularity with the public, whereas, in truth and in fact, one of the principal reasons or motivations guaranteeing the record's "exposure" is the "payola" payoff.

PAR. 5. In the course and conduct of their business, in commerce, the respondents have engaged in unfair and deceptive acts and practices and unfair methods of competition in the following respects.

The respondents negotiated for and disbursed "payola" to disk jockeys broadcasting musical programs over radio or television stations broadcasting across state lines.

Deception is inherent in "payola" inasmuch as it involves the payment of a consideration on the express or implied understanding that the disk jockey will conceal, withhold or camouflage such fact from the listening public.

The respondents have aided and abetted the deception of the public by various disk jockeys by controlling or unduly influencing the

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"exposure" of records by said disk jockeys with the payment of money or other consideration to them.

Thus, "payola" is used by the respondents to mislead the public into believing that the records "exposed" were the independent and unbiased selections of the disk jockeys based either on each record's merit or public popularity. This deception of the public has the capacity and tendency to cause the public to purchase the "exposed" records which they otherwise might not have purchased and, also, to enhance the popularity of the "exposed" records in various popularity polls, which in turn has the capacity and tendency to substantially increase the sales of the "exposed" records.

PAR. 6. The aforesaid acts, practices and methods have the capacity and tendency to mislead and deceive the public, and to hinder, restrain and suppress competition in the manufacture, sale and distribution of phonograph records, and to divert trade unfairly to the respondents from their competitors, and substantial injury has thereby been done and may continue to be done to competition in commerce.

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

Mr. John T. Walker for the Commission.

Respondents, for themselves.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the manufacture, distribution and sale of phonograph records to independent distributors for resale to retail outlets in various states of the United States, with violation of the Federal Trade Commission Act, in that respondents have negotiated for and disbursed "payola", i.e., the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations, to induce, stimulate or motivate the disk jockeys to select, broadcast, "expose" and promote certain records, in which respondents are financially interested on the express or implied understanding that the disk jockeys will conceal, withhold or camouflage the fact of such payment from the listening public.

After the issuance of the complaint, respondents and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the Director,

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Associate Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the Hearing Examiner for consideration.

The agreement states that respondent Triumph Records, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business formerly located at 54 West 74th Street, New York, N.Y., and presently located at 300 Central Park West, New York, N.Y.; and that respondent Herbert C. Abramson is president of the corporate respondent, and formulates, directs and controls the acts and practices of said corporate respondent, his address being the same as the present address of said 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 Hearing Examiner has determined that the aforesaid agreement containing the consent order to cease and desist provides for an appropriate disposition of this proceeding in the public interest, and such agreement is hereby accepted. Therefore,

It is ordered, That respondents Triumph Records, Inc., a corporation, and its officers, and Herbert C. Abramson, individually, and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with 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 the broadcasting of, any such records in which respondents, or either 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 either 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 3rd day of November, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Triumph Records, Inc., a corporation, and Herbert C. Abramson, individually and as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

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IN THE MATTER OF

MAYER & SCHMIDT ET AL.

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

Docket 7987. Complaint, June 24, 1960—Decision, Nov. 4, 1960

Consent order requiring a department store in Tyler, Tex., and the lessee of its fur department to cease violating the Fur Products Labeling Act by advertising in newspapers which failed to disclose the names of animals producing certain furs and to use the term "Dyed Broadtail processed Lamb" as required, and by failing in other respects to comply with labeling, invoicing, and advertising requirements.

COMPLAINT

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

PARAGRAPH 1. Respondent Mayer & Schmidt, a retail department store, is a corporation organized, 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 Tyler, Texas.

Respondent Klasky, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arkansas, with its home office located in the fur department of Mayer & Schmidt in Tyler, Texas. Respondent Klasky, Inc., leases and operates the fur department located in respondent Mayer & Schmidt department store. All advertising and purchasing for the fur department is carried on under the name of Mayer & Schmidt. Klasky, Inc., also leases and operates fur departments in other department stores located in Lubbock, Texas, Shreveport, Louisiana, and Texarkana, Arkansas.

Respondent Lyle L. Klasky is president of the corporate respondent Klasky, Inc. The individual respondent controls, directs and formulates the acts, practices and policies of the said corporate

respondent Klasky, Inc. The address of said individual respondent is the same as this corporate respondent, located in the fur department of Mayer & Schmidt in Tyler, Texas.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce and in the sale, advertising, and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products; and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 4. Certain of said fur products were falsely and deceptively invoiced by respondents in that they were not invoiced as required under the provisions of Section 5(b)(1) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 5. Certain of said products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act and in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

Required item numbers were not set forth on invoices, in violation of Rule 40 of said Rules and Regulations.

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

PAR. 7. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in various issues of The Tyler Courier Times and the Tyler Courier Times Telegraph, morning and evening editions of a newspaper published in the City of Tyler, State of Texas, and having a wide circulation in said state and the adjacent areas in other states of the United States. By means of said advertisements

and others of similar import and meaning, not specifically referred to herein, respondents falsely and deceptively advertised fur products in that said advertisements:

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

(b) Failed to use the term "Dyed Broadtail processed Lamb" as required, in violation of Rule 10 of said Rules and Regulations.

PAR. 8. Respondents have made pricing claims and savings claims and representations in advertising, and failed to maintain full and adequate records disclosing the facts upon which such claims and representations were purportedly based in violation of Rule 44(e) of the Rules and Regulations under the Fur Products Labeling Act.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, 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.

Mr. Michael P. Hughes and *Mr. Charles W. O'Connell* for the Commission.

Spruiell, Lowry, Potter, Lasater & Guinn, by *Mr. John H. Minton, Jr.*, of Tyler, Tex., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on June 24, 1960, issued its complaint herein, charging the above-named respondents 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 respondents were duly served with process.

On September 21, 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 attorneys for both parties, under date of September 8, 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 Mayer & Schmidt, a retail department store, is a corporation organized, 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 Tyler, Texas.

Respondent Klasky, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arkansas, with its home office located in the fur department of Mayer & Schmidt, in Tyler, Texas.

Individual respondent Lyle L. Klasky is an officer of corporate respondent Klasky, Inc. The individual respondent controls, directs and formulates the acts, practices and policies of the said corporate respondent Klasky, Inc. The address of said individual respondent is the same as corporate respondent Klasky, Inc., located in the fur department of Mayer & Schmidt in Tyler, Texas.

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.

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Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order To Cease And Desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, however, unless and until it becomes part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order To Cease And Desist" that the Commission has jurisdiction of the subject matter of this proceeding and of each of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act and the Fur 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:

It is ordered, That respondents Mayer & Schmidt and Klasky, Inc., corporations, and their officers, and Lyle L. Klasky, individually and as officer of Klasky, Inc., and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, offering for sale, transportation or distribution of fur products, in commerce, 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 § 4(2) of the Fur Products Labeling Act;

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 § 5(b)(1) of the Fur Products Labeling Act;

b. Failing to set forth on invoices the item number or mark assigned to such fur product;

3. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement, or no-

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tice which is intended to aid, promote or assist, directly or indirectly, in the sale or offering for sale of fur products and which:

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

b. Fails to set forth the term "Dyed Broadtail Processed Lamb" where an election is made to use that term instead of Dyed Lamb;

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 4th day of November 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Mayer & Schmidt and Klasky, Inc., corporations, and their officers, and Lyle L. Klasky, individually and as officer of Klasky, Inc., shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

 IN THE MATTER OF

FRANK WALLECK TRADING AS WALLECK'S FUR SHOP

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

Docket 8045. Complaint, July 18, 1960—Decision, Nov. 4, 1960

Consent order requiring a Pittsburgh furrier to cease violating the Fur Products Labeling Act by removing, before delivery to the ultimate consumer, labels required to be affixed to fur products; by failing to set forth the term "Persian Lamb" as required on labels and invoices and the term "Dyed Mouton processed Lamb" on invoices, and to reveal on labels when fur products contained flanks: and by failing in other respects to comply with labeling and invoicing requirements.

COMPLAINT

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

vested in it by said Acts, the Federal Trade Commission, having reason to believe that Frank Walleck, an individual trading as Walleck's Fur Shop, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Frank Walleck is an individual trading as Walleck's Fur Shop with his office and principal place of business located at 414 Federal Street, Pittsburgh, Pennsylvania.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has been and is now engaged in the introduction into commerce and in the sale, advertising, and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products; and has sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Respondent has removed or caused or participated in the removal of, prior to the time certain fur products were sold and delivered to the ultimate consumer, 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.

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

PAR. 5. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) The term "Persian Lamb" was not set forth in the manner required where an election is made to use that term instead of Lamb in violation of Rule 8 of the said Rules and Regulations.

(b) Failure to disclose that fur products are composed in whole or substantially of flanks when such is the fact in violation of Rule 20 of said Rules and Regulations.

(c) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was mingled with non-required information, in violation of Rule 29(a) of said Rules and Regulations.

(d) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in handwriting on labels, in violation of Rule 29(b) of said Rules and Regulations.

(e) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth separately on labels with respect to each section of fur products composed of two or more sections containing different animal furs, in violation of Rule 36 of said Rules and Regulations.

(f) Required item numbers were not set forth on labels in violation of Rule 40 of said Rules and Regulations.

PAR. 6. Certain of said fur products were falsely and 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.

PAR. 7. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) The term "Persian Lamb" was not set forth in the manner required where an election is made to use that term instead of Lamb in violation of Rule 8 of said Rules and Regulations.

(b) The term "Dyed Mouton processed Lamb" was not set forth in the manner required where an election is made to use that term instead of Dyed Lamb.

(c) Required item numbers were not set forth on invoices in violation of Rule 40 of said Rules and Regulations.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, 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.

Mr. Garland S. Ferguson supporting the complaint.

Respondent, for himself.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On July 18, 1960, the Federal Trade Commission, pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, caused its complaint to be issued in this proceeding, to which Frank Walleck, an individual trading as Walleck's Fur Shop, is respondent. A true copy of said complaint

was served upon the respondent as required by law. The complaint charges the respondent with violating the Federal Trade Commission Act, and the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, in the sale, advertising and offering for sale of fur products, by removing, or causing or participating in the removal from certain of said products, prior to the time they were sold and delivered to the ultimate consumer, of labels required by said Act and Rules to be attached thereto; and further, by misbranding and falsely and deceptively invoicing certain of said fur products. Respondent introduces fur products into commerce, and sells, advertises, offers for sale, transports and distributes said products in commerce; and has sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act. After being served with the complaint, respondent entered into an agreement dated September 12, 1960, which purports to dispose of all of this proceeding as to all parties without the necessity of conducting a hearing. The agreement has been signed by the respondent as Frank J. Walleck (the same person named in the complaint as Frank Walleck), and by counsel supporting the complaint, and has been approved by the Director, Associate Director and Assistant Director of the Bureau of Litigation of this Commission. On September 21, 1960, the said agreement was submitted to the above-named hearing examiner for his consideration in accordance with § 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondent, in the aforesaid agreement of September 12, 1960, has admitted all of the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of such jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondent waives any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all of the rights he may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. In the said agreement the parties, *inter alia*, agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist issued in accordance with the said agreement shall have the same force and effect as if entered after a full hearing; that the order may be altered, modified or set aside in the manner provided for other orders;

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that the complaint may be used in construing the terms of the order; and that said agreement is for settlement purposes only and does not constitute an admission by the respondent that he has violated the law as alleged in the complaint.

This proceeding now having come on for final consideration on the complaint and the aforesaid agreement of September 12, 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 aforesaid agreement of September 12, 1960, is hereby accepted and approved as complying with § 3.21 and § 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

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. Frank Walleck is an individual trading as Walleck's Fur Shop, with his office and principal place of business located at 414 Federal Street, Pittsburgh, Pennsylvania. Respondent presently is, and subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, has been engaged in the introduction into commerce and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution, in commerce, of fur products; and has sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.
3. Respondent is engaged in commerce as "commerce" is defined in the Federal Trade Commission Act.
4. The complaint herein states a cause of action against said respondent under the Federal Trade Commission Act and under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder. This proceeding is in the public interest.

ORDER

It is ordered. That respondent Frank Walleck, an individual trading as Walleck's Fur Shop or under any other trade name, and respondent's representatives, agents and employees, directly or

through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce, of 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 to be removed 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 fur products, unless proper substitute labels are affixed to such fur products in accordance with § 3(e) of said Act;

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 § 4(2) of the Fur Products Labeling Act;

B. Failing to set forth the term "Persian Lamb" where an election is made to use that term instead of Lamb;

C. Failing to disclose that fur products are composed in whole or in substantial part of paws, tails, bellies, sides, flanks, gills, ears, throats, heads, scrap pieces, or waste fur when such is the fact;

D. Setting forth on labels affixed to fur products:

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

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

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

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

3. Falsely or deceptively invoicing fur products by:

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

B. Failing to set forth the term Persian Lamb where an election is made to use that term instead of Lamb;

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- C. Failing to set forth the term Dyed Mouton processed Lamb where an election is made to use that term instead of Dyed Lamb;
- D. Failing to set forth on invoices 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 4th day of November, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Frank Walleck, an individual trading as Walleck's Fur Shop, 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

RADIO-TELEVISION TRAINING SCHOOL, INC., ET AL.

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

Docket 7824. Complaint, Mar. 11, 1960—Decision, Nov. 5, 1960

Consent order requiring a Los Angeles correspondence school to cease using numerous false claims in advertising and by salesmen to sell three courses—known as Radio-Television Technician, Industrial Electronics, and Arts and Production—including, among others, misrepresentations of earnings, employment opportunities, school placement service, and approval by U.S. Veterans Administration, as in the order below indicated.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Radio-Television Training School, Inc., a corporation, and Bertram A. Knight, Gloria N. Knight and Pearl B. Knight, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Radio-Television Training School, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 5100 South Vermont Avenue, Los Angeles, California.

Respondents Bertram A. Knight, Gloria N. Knight and Pearl B. Knight are individuals and officers of the corporate respondent Radio-Television Training School, Inc. Said individual respondents formulate, direct and control the policies and practices of said corporate respondent. Their business address is the same as that shown above for the corporate respondent.

All of said respondents have cooperated and acted together in the performance of the acts and practices hereinafter set forth.

PAR. 2. Respondents Radio-Television Training School, Inc., and its officers are now, and for several years last past have been, engaged in the business of conducting a correspondence school and in selling and distributing, between and among the various states of the United States and in the District of Columbia, three courses of instruction for home study, known as Radio-Television Technician, Industrial Electronics, and Arts and Production. They have caused, and are now causing, these courses of instruction in said subjects, when sold, to be transported from their place of business in the State of California to purchasers thereof at their respective locations in other states of the United States and in the District of Columbia, and have maintained, and now maintain, a course of trade in said courses of instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Respondents are, and at all times mentioned herein have been, in substantial competition, in commerce, with other corporations, firms and individuals engaged in the sale of similar courses of instruction.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of enrolling prospective students and thereby promoting the sale of their said courses of instruction in radio and television and in electronics, respondents, through advertisements inserted and published in newspapers and periodicals having general circulation throughout the United States; in pamphlets, leaflets, circulars, form letters, cards, printed contracts and other media distributed through the United States mail; through oral representations made by their salesmen, and by other means and media, have made, and are now making, numerous statements with respect to the nature of their Radio-Television Technician and Industrial Electronics courses of instruction and the advantages and benefits which

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the purchasers thereof will receive. Among and typical of such statements, but not limited thereto, are the following:

Reliable

MEN WANTED

in this Area

To Qualify as Operators of RTS
Approved TV—RADIO—ELECTRONICS

Repair Shops

NO EXPERIENCE NEEDED—WE TRAIN YOU

We sponsor and finance you in
your own profitable business full or part time.

This Bona Fide offer may be your
Big Opportunity. Apply Today—Open
for limited time only

ELECTRONICS is easy to learn the RTS Way.

RTS Lessons are written in easy to understand language.

Unskilled MEN TO TRAIN FOR ELECTRONICS.

NO EXPERIENCE NEEDED.

NO HIGH SCHOOL DIPLOMA NEEDED.

Get into this Fifteen Billion Dollar TV-Electronics field now while top pay jobs are open.

Even those with very limited education have had no difficulty whatever understanding the RTS Lessons.

An Appeal To Every Man 18 to 55.

You are needed in Industrial Electronics.

NO EXPERIENCE NECESSARY.

YOU CAN WRITE YOUR OWN TICKET IF YOU GET IN NOW.

Who . . . Me? Yes . . . You!

If I could put you into a top job in the brand new growing field of electronics . . . could you fill the job? These jobs pay more money per year than most people make in two. There's work with:

- Electric Timers
- Application of Photo Cells
- High Frequency Heating
- Geiger Counters
- X-Ray
- Radar
- Computers
- Telemetering
- Microwaves

Practical work gives you the necessary Basic Experience you will need.

R.T.S. makes it possible for you to get easy practical training in Radio-Television Electronics.

Here are wide-open opportunities in the new field of Industrial Electronics
* * * This great new industry is literally screaming for trained personnel!
* * * it's our responsibility to train men for the industry.

We want men all over the country * * *. No experience is necessary! No high school diploma is necessary for you to take part in the RTS Emergency Manpower Training Program.

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FIRST COME—FIRST SERVED

This is a wide open field * * * the demand for trained technicians has never been satisfied * * * Now you have the opportunity to get into this rich and waiting field in a matter of months.

UNLIMITED JOB OPPORTUNITIES OPEN TO YOU AS AN RTS TRAINED ELECTRONIC TECHNICIAN.

(Followed by a list of 62 positions under the headings: INDUSTRIAL ELECTRONICS, ELECTRIC CONTROLS, AVIATION RADIO, RECEIVER DESIGN AND MANUFACTURING MERCHANDISING, RADIO AND TV SERVICING, PUBLIC ADDRESS SYSTEMS, POLICE RADIO.)

National Electronics Companies want and need RTS Graduates.

Unless you are now making over \$600 PER MONTH you can't afford not to invest in this training.

Correspondence schools better than classrooms.

The famous RTS Business Plan to which each graduate of this course is entitled.

R.T.S. will finance all your equipment.

Radio Television Training School was established in 1922 * * *.

Leads the way with big new improved Radio and Television Kits (with depiction of kits and tubes).

This is our "Guided Futures Program". It can prepare you for an important position in the industry or a business of your own.

Prepare for a better job as an electronics technician.

YOU CAN QUALIFY.

You can join the new army of Electronic Technicians and prosper.

Electronics Easily Mastered.

Unlimited Opportunities for You.

RTS Balanced Training Prepares You.

PAR. 5. Through the use of the aforesaid statements, and others of similar import not specifically set forth, with respect to their Radio-Television Technician and Industrial Electronics Courses, respondents represent that:

1. Respondents offer employment in the Radio, Television and Electronics industries.

2. Electronics is easy to learn and persons without a high school education can successfully complete said courses of instruction without difficulty.

3. Respondents' said courses provide all the necessary instruction and experience to qualify persons who have completed them for top positions in the radio, television and electronics fields.

4. There is a shortage in the field of Industrial Electronics for persons with the training provided by respondents' said courses of instruction.

5. National electronic firms will employ persons who have completed respondents' said courses of instruction.

6. Persons who complete said courses of instruction are assured of employment in the radio, television and electronics fields and will be able to earn more than \$600.00 a month in such employment.

7. Respondents' said courses give superior training to that provided by classroom instruction.

8. Respondents furnish complete radio and television sets in kit form to those who purchase said courses of instruction.

9. The R.T.S. Business Plan is available to all persons who complete respondents' said courses of instruction and wish to open a radio and television shop.

10. Respondents will fully finance the cost of all necessary equipment and supplies for a radio or radio and television shop under their R.T.S. Business Plan.

11. Respondents have been training persons in the radio field since 1922.

Respondents' salesmen, in soliciting the sale of the Radio-Television Technical and Industrial Electronics courses, repeat, in substance, the statements made in the foregoing advertisements and in addition represent that:

1. The courses are approved by the United States Veterans Administration and the cost thereof will be paid by the Federal Government for qualified Veterans.

2. Respondents will place persons who complete said courses in jobs.

3. The student may discontinue the course at any time, without obligation to make further payments for the course.

4. If the prospective student does not enroll at the time of the salesman's visit, the salesman cannot return at a later date to enroll the prospect and the opportunity to purchase the course will be lost.

PAR. 6. The aforesaid statements and representations are grossly exaggerated or false, misleading and deceptive. In truth and in fact:

1. Respondents' offer is not an offer of employment. Its sole purpose is to interest prospects in the purchase of their said courses of instruction.

2. Electronics is not easy to learn and persons without a high school education find it difficult to successfully complete said courses of instruction.

3. Respondents' said courses of instruction do not provide all of the necessary instruction and experience to qualify persons who have completed them for top positions in the radio, television and electronics fields. Most employers require considerable practical experience in addition to such information as may be obtained from the courses.

4. There is no shortage in the field of Industrial Electronics for persons with the training provided by respondents' said courses of instruction.

5. Most national electronic firms will not employ persons because they have completed said courses of instruction.

6. There is no assurance that persons who complete said courses of instruction will be able to secure employment in the radio, television or electronics fields. If such employment is secured, it usually will be at substantially less than \$600.00 a month.

7. Respondents' said courses of instruction do not give superior training to that provided by classroom instruction.

8. Respondents do not furnish complete radio and television kits in connection with their said courses of instruction as such kits do not contain tubes.

9. The R.T.S. Business Plan is not available to all persons who complete respondents' said courses of instruction. On the contrary, credit ratings satisfactory to respondents must be furnished.

10. Respondents do not fully finance the cost of necessary equipment and supplies for a radio or radio and television shop under their R.T.S. Business Plan, as a substantial amount must be paid by the person who wishes to open a shop under this Plan.

11. Respondents have not been training persons in radio since 1922.

12. Respondents' said courses are not approved by the United States Veterans Administration and the cost thereof will not be paid by the Federal Government for qualified Veterans.

13. Respondents do not operate a placement service. The only effort made by respondents to secure employment for persons who have completed said courses of instruction is to write a letter to prospective employers.

14. Respondents require payment for the entire course in most cases even though the course is discontinued.

15. It is not necessary for the prospective student to enroll at the time of the salesman's call as the salesman will return if there is a prospect of a sale. Moreover, said courses may be purchased at any time by mail.

PAR. 7. Respondents have also made, in the manner set forth in Paragraph Four hereof, numerous statements and representations with regard to their Radio and Television Arts and Production Course of Instruction. Among and typical of such statements and representations, but not limited thereto, are the following:

Here's the Best and Quickest Way you can Qualify AT HOME for a big paying career in SHOW BUSINESS.

... HOME STUDY Prepares for Exciting Careers Such As: Emcee, Radio and TV Writer, Make-up Artist, Costume Designer, Cameraman, Announcer, Radio-TV Director, Commentator, Disc Jockey, and many others. . . . Cameraman, Emcee, Film Editors, and dozens more draw fabulous pay. . . . Prepare At Home—in spare time with course recommended by stars.

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In brief, RTS training prepares you for a job in any field of "show business" whether it is in Radio, Television, Motion Pictures, Legitimate Theatre, or "Little Theatre", or Small Type groups.

PREPARE AT HOME FOR THE CAREER OF YOUR CHOICE . . . FOR YOU CAN PREPARE for a Show Business career through Home Study—easily, conveniently, and at MUCH LOWER COST than similar training in a school you attend personally.

Will you allow me, and the whole RTS organization, to help you achieve your dreams of a career in Show Business. Perhaps here in Hollywood—or, if you prefer, in a Radio or TV Station nearer your home.

R.T.S. Training will help you qualify for one of the following well paying and important jobs in Radio and Television Arts and Production: Disc Jockey, Emcee, Fashion Consultant, TV Writer, Floor Manager, TV Directing, Film Editor, Scenic Designer, Commentator, Make-up Artist, TV Cameraman, Producer, Microphone Room Operator, Announcing, Acting, Radio Writer, Costuming, Dolly Pusher, Production Assistant, Casting Director, Programming, Artist.

Radio and Television Industry Needs You.

Fantastic Salaries—Life of Glamour in World's Most Exciting Careers * * *

Prepare at home—in spare time with course recommended by Stars.

Practically everything it is possible to teach is covered.

The fantastic growth of television has brought a sky rocketing demand for talent and skill in every phase of Radio TV Arts and Production.

We have been training ambitious people by correspondence since 1922 (36 years!).

We have designed your course to include a strong foundation knowledge of voice improvement, Radio and TV Announcing, Acting, Writing, Theatrical Make-up, Camera Technique, Costume Designing and Set Designing.

This course is designed to prepare you for "SHOW BUSINESS" and show business in a BIG MONEY field.

Your show business opportunity might be just around the corner.

BE PREPARED . . . ENROLL NOW

PLACEMENT ASSISTANCE

The most comprehensive and complete course of its kind available today * * * complete instruction.

Job Placement Guidance.

Your future in this field can be virtually unlimited!

RTS is the key to TOP PERFORMANCE in Arts and Production.

RTS can give you the training you need now.

PAR. 8. Through the use of the aforesaid statements, and others of the same import not specifically set forth, respondents represent, directly or by implication, with respect to their Radio and Television Arts and Production Course of Instruction, that:

1. There are unlimited job opportunities in Radio and Television Arts and Production.

2. Upon completion of the said course, a person will be properly prepared and trained for success in the fields of radio and television show business.

3. There is a big demand in the radio and television industries for those who complete said course.

4. Persons completing said course of instruction will obtain jobs paying unusually large salaries.

5. Respondents maintain a placement service.

6. Respondents' said course has brought success to many persons in the radio and television fields.

Respondents' salesmen, in soliciting the sale of the said Arts and Production Course, repeat, in substance, the statements made in the foregoing advertisements and in addition represent that:

1. Respondents will place persons completing said course of instruction in high paying jobs.

2. If the prospective student does not enroll at the time of the salesman's visit, the salesman cannot return at a later date to enroll the prospect and the opportunity to purchase the course would be lost.

PAR. 9. The aforesaid statements and representations with respect to respondents' Radio and Television Arts and Production Course are grossly exaggerated or false, misleading and deceptive. In truth and in fact:

1. Job opportunities in Radio and Television Arts and Production are few.

2. Persons who complete said course are not properly prepared or trained for success in any of the fields of radio or television as practical experience is required in addition to such training as may be afforded by respondents' said course.

3. There is little demand in the radio or television industries for those who complete said course.

4. There is no assurance that persons who complete said course of instruction will obtain jobs and if jobs are obtained they will usually be with small radio or television stations with modest salaries.

5. Respondents do not maintain a placement service. The only effort made by them in connection with securing jobs is to write letters to prospective employers.

6. Comparatively few of those who have completed respondents' said course have had success in the radio or television fields.

7. Respondents do not ordinarily place persons completing said course of instruction in jobs paying any salaries.

8. It is not necessary for the prospective student to enroll at the time of the salesman's call as the salesman will return if there is any prospect of a sale. Moreover, said course may be purchased by mail at any time.

PAR. 10. The use by respondents of the aforesaid statements and representations and the acts and practices engaged in by them, as aforesaid, have had, and now have, the tendency and capacity to

mislead and deceive members of the purchasing public into the erroneous belief that said statements and representations were true and to induce the purchase of respondents' said courses of instruction on account thereof. As a result, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has been, and is being, done to competition in commerce.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, 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.

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

Mr. Burnett L. Essey, of Los Angeles, Calif., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on March 11, 1960, issued its complaint herein, charging the above-named respondents with having violated the provisions of the Federal Trade Commission Act in certain particulars.

On September 20, 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 for both parties, under date of September 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. Respondent Radio-Television Training School, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 5100 South Vermont Avenue, Los Angeles, California.

Respondents Bertram A. Knight, Gloria N. Knight and Pearl B. Knight are individuals and officers of the corporate respondent Radio-Television Training School, Inc. Said individual respondents formulate, direct and control the policies and practices of said

corporate respondent. Their address 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.

It is agreed that subparagraphs 4, 5 and 11 of Paragraphs Five and Six, and subparagraph 6 of Paragraphs Eight and Nine of the Complaint herein may be dismissed on the grounds that the evidence now available is insufficient to substantiate the allegations set out therein.

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," said agreement is hereby approved and accepted and is ordered filed if and when said agreement shall have become a part of the Commission's decision. The hearing examiner finds from the complaint and the said agreement that the Commission has jurisdiction of the subject matter of this proceeding and of the persons of each of the respondents herein; that the complaint states legal causes for complaint under the Federal Trade Commission Act against each

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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 the parties 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 respondent Radio-Television Training School, Inc., a corporation, and its officers, and respondents Bertram A. Knight, Gloria N. Knight and Pearl B. Knight, 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 offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of their courses of instruction known as Radio-Television Technician and Industrial Electronics, or any other courses of instruction containing substantially the same material, do forthwith cease and desist from representing, directly or by implication, that:

1. Respondents offer employment in the Radio, Television or Electronic industries;
2. Electronics is easy to learn, unless limited to basic electronics as taught in respondents' course;
3. All persons without a high school education can successfully complete said courses of instruction without difficulty;
4. Said courses provide the necessary instruction and experience to qualify persons for top positions in the Radio, Television or Electronics fields;
5. There is any assurance that persons who complete said courses of instruction will find employment in the Radio, Television or Electronics fields;
6. Persons who have completed respondents' said courses will be able to earn \$600.00 a month or more as a starting salary, or will be able to earn any amount in excess of the amount that is usually and customarily earned by said persons;
7. Respondents' said courses give superior training to that provided by classroom instruction;
8. Respondents furnish complete radio and television kits in connection with said courses of instruction, unless said kits contain the necessary tubes;
9. Respondents' R.T.S. Business Plan is available to all persons who complete said courses of instruction, unless all the terms and conditions necessary for participation in said Plan are clearly set forth;

10. Said courses are approved by the United States Veterans Administration, or that the cost thereof will be paid by the Federal Government for qualified veterans;

11. Respondents will place persons who complete said courses in jobs;

12. Persons purchasing said courses may discontinue them at any time without obligation to make any further payments;

13. There is any limitation as to the time when such courses may be purchased.

It is further ordered, That respondent Radio-Television Training School, Inc., a corporation, and its officers, and respondents Bertram A. Knight, Gloria N. Knight and Pearl B. Knight, 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 offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of their course known as Radio and Television Arts and Production, or any other course of instruction containing substantially the same material, do forthwith cease and desist from representing, directly or by implication, that:

1. Opportunities in Radio and Television Arts and Production are unlimited or that such opportunities are greater than actually exist;

2. Upon completion of said course, a person will be trained properly for success in any of the fields of radio or television show business;

3. There is a big demand in the radio or television business for persons who complete said course or that the demand is in excess of that which actually exists;

4. Persons completing said course will obtain jobs paying high salaries or that the salaries for jobs that may be obtained are in excess of those actually paid;

5. Respondents maintain a placement service;

6. Respondents place persons completing said course of instruction in jobs;

7. There is any limitation as to the time when said course may be purchased.

It is further ordered, That subparagraphs 4, 5, and 11 of Paragraphs 5 and 6 and subparagraph 6 of Paragraphs 8 and 9 of the complaint be, and the same hereby are, 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 5th day

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of November 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Radio-Television Training School, Inc., a corporation, and Bertram A. Knight, Gloria N. Knight and Pearl B. Knight, 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.

IN THE MATTER OF

JOSEPH PALANKER ET AL. TRADING AS
JOSEPH PALANKER AND SONS

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

Docket 7986. Complaint, June 24, 1960—Decision, Nov. 5, 1960

Consent order requiring furriers in Buffalo, N.Y., to cease violating the Fur Products Labeling Act by failing to set forth the terms "Persian Lamb", "Persian Broadtail Lamb", and "Dyed Broadtail-processed Lamb" as required on invoices; by advertising which failed to disclose the names of animals producing certain furs or that certain fur products were composed of artificially colored fur; by failing in other respects to comply with labeling and invoicing requirements; and by failing to maintain adequate records as a basis for price and value claims.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Joseph Palanker, Bernard Palanker, and Marvin Palanker, individuals and copartners trading as Joseph Palanker and Sons, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Joseph Palanker, Bernard Palanker, and Marvin Palanker are individuals and copartners trading as Joseph Palanker and Sons with their office and principal place of business located at 80 West Genesee Street, Buffalo 2, New York.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising, and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products, and have manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 4. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(b) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was mingled with non-required information, in violation of Rule 29(a) of said Rules and Regulations.

(c) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in handwriting on labels, in violation of Rule 29(b) of said Rules and Regulations.

(d) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth separately on labels with respect to each section of fur products composed of two or more sections containing different animal furs, in violation of Rule 36 of said Rules and Regulations.

(e) Required item numbers were not set forth on labels, in violation of Rule 40 of said Rules and Regulations.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced by respondents 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.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(b) The term "Persian Lamb" was not set forth in the manner required where an election was made to use that term instead of Lamb in violation of Rule 8 of the Regulations.

(c) The term "Persian Broadtail Lamb" was not set forth in the manner required where an election was made to use that term instead of Lamb in violation of Rule 8 of the Regulations.

(d) The term "Dyed Broadtail-processed Lamb" was not set forth in the manner required where an election was made to use that term instead of Lamb in violation of Rule 10 of the Regulations.

(e) Required item numbers were not set forth on invoices, in violation of Rule 40 of said Rules and Regulations.

PAR. 7. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondents caused the dissemination in commerce, as "commerce" is defined in said Act, of certain newspaper advertisements, concerning 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.

PAR. 8. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in issues of the Buffalo Courier Express, a newspaper published in the City of Buffalo, State of New York, and having a wide circulation in said State and various other States of the United States.

By means of said advertisements and others of similar import and meaning, not specifically referred to herein, respondents falsely and deceptively advertised fur products in that said advertisements:

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

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

PAR. 9. Respondents in advertising fur products for sale as aforesaid made claims and representations respecting prices and values of fur products. Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based in violation of Rule 44(e) of said Rules and Regulations.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, 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.

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

Rivo & Loonsk, of Buffalo, N.Y., by *Mr. Herman P. Loonsk*, for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued June 24, 1960, charges respondents Joseph Palanker, Bernard Palanker and Marvin Palanker, individually and as copartners, trading as Joseph Palanker and Sons, located at 80 West Genesee Street, Buffalo, New York, with the use of unfair and deceptive acts and practices in commerce, in violation of the provisions of the Federal Trade Commission Act, and the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

After the issuance of the complaint, respondents entered into an agreement containing consent order to cease and desist with counsel in support of the complaint, disposing of all the issues as to all parties in this proceeding.

It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

By said agreement, the parties expressly waived 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

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

Respondents further agreed that the order to cease and desist, issued in accordance with said agreement, shall have the same force and effect as if made after a full hearing.

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

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and, in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That Joseph Palanker, Bernard Palanker, and Marvin Palanker, individually and as copartners trading as Joseph Palanker and Sons or under any other trade name, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the sale, advertising or offering for sale, or the transportation or distribution, in commerce, of fur products or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

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

- (a) In abbreviated form.
- (b) Mingled with non-required information.
- (c) In handwriting.

3. Failing to set forth separately on labels affixed 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.

4. 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 invoices showing all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

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

3. Failing to set forth the term "Persian Lamb" where an election is made to use that term instead of Lamb.

4. Failing to set forth the term "Persian Broadtail Lamb" where an election is made to use that term instead of Lamb.

5. Failing to set forth the term "Dyed Broadtail-processed Lamb" where an election is made to use that term instead of Lamb.

6. Failing to set forth on invoices the item number or mark assigned to a fur product.

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

1. Fails to disclose:

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

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

D. Making price claims and representations respecting prices and values of fur products unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 5th day

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of November, 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

GENERAL DISTRIBUTING COMPANY, INC., ET AL.

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

Docket 7941. Complaint, June 14, 1960—Decision, Nov. 9, 1960

Consent order requiring Baltimore distributors of phonograph records to cease giving concealed "payola" to disc jockeys and other personnel of radio and television programs to induce frequent playing of their records in order to increase sales.

COMPLAINT

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

PARAGRAPH 1. Respondent General Distributing Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 2329 Pennsylvania Avenue, in the City of Baltimore, State of Maryland.

Respondent Henry Nathanson is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the distribution, offering for sale, and sale, of phonograph records to various retail outlets.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said records, when sold, to be shipped from the State of Maryland to purchasers thereof located in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a course of trade in said phonograph records in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and at all times mentioned herein, respondents have been in competition, in commerce, with corporations, firms and individuals in the sale of phonograph records.

PAR. 5. After World War II when TV and radio stations shifted from "live" to recorded performances for much of their programming, the production, distribution and sale of phonograph records emerged as an important factor in the musical industry with a sales volume of approximately \$400,000,000 in 1958.

Record manufacturing companies and distributors ascertained that popular disk jockeys could, by "exposure" or the playing of a record day after day, sometimes as high as 6 to 10 times a day, substantially increase the sales of those records so "exposed". Some record manufacturers and distributors obtained and insured the "exposure" of certain records in which they were financially interested by disbursing "payola" to individuals authorized to select and "expose" records for both radio and TV programs.

"Payola", among other things, is the payment of money or other valuable consideration to disk jockeys of musical programs on radio and TV stations to induce, stimulate or motivate the disk jockey to select, broadcast, "expose" and promote certain records in which the payer has a financial interest.

Disk jockeys, in consideration of their receiving the payments heretofore described, either directly or by implication, represent to their listening public that the records "exposed" on their broadcasts have been selected on their personal evaluation of each record's merits or its general popularity with the public, whereas, in truth and in fact, one of the principal reasons or motivations guaranteeing the record's "exposure" is the "payola" payoff.

PAR. 6. In the course and conduct of their business, in commerce, during the last several years, the respondents have engaged in unfair and deceptive acts and practices and unfair methods of competition in the following respects:

The respondents alone or with certain unnamed record distributors negotiated for and disbursed "payola" to disk jockeys broadcasting musical programs over radio or television stations broadcasting across state lines, or to other personnel who influence the

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selection of the records "exposed" by the disk jockeys on such programs.

Deception is inherent in "payola" inasmuch as it involves the payment of a consideration on the express or implied understanding that the disk jockey will conceal, withhold or camouflage such fact from the listening public.

The respondents by participating individually or in a joint effort with certain collaborating record distributors have aided and abetted the deception of the public by various disk jockeys by controlling or unduly influencing the "exposure" of records by disk jockeys with the payment of money or other consideration to them, or to other personnel which select or participate in the selection of the records used on such broadcasts.

Thus, "payola" is used by the respondents to mislead the public into believing that the records "exposed" were the independent and unbiased selection of the disk jockeys based either on each record's merit or public popularity. This deception of the public has the capacity and tendency to cause the public to purchase the "exposed" records which they might otherwise not have purchased and also to enhance the popularity of the "exposed" records in various popularity polls, which in turn has the capacity and tendency to substantially increase the sales of the "exposed" records.

PAR. 7. The aforesaid acts, practices and methods have the capacity and tendency to mislead and deceive the public and to hinder, restrain and suppress competition in the manufacture, sale or distribution of phonograph records, and to divert trade unfairly to the respondents from their competitors and injury has thereby been done and may continue to be done to competition in commerce.

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

Mr. Harold A. Kennedy and Mr. Arthur Wolter, Jr., for the Commission.

Mr. Paul G. Marshall, of New York, N.Y., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the distribution, offering for sale, and sale of phonograph records to various retail outlets, with violation of the Federal Trade Commission Act, in that respondents, alone or with certain unnamed record

distributors, have negotiated for and disbursed "payola", i.e., the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations, to induce, stimulate or motivate the disk jockeys to select, broadcast, "expose" and promote certain records, in which respondents are financially interested, on the express or implied understanding that the disk jockeys will conceal, withhold or camouflage the fact of such payment from the listening public.

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, Associate Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the Hearing Examiner for consideration.

The agreement states that respondent General Distributing Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 2329 Pennsylvania Avenue, Baltimore, Maryland, and that respondent Henry Nathanson is an officer 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 Hearing Examiner has determined that the aforesaid agreement containing the consent order to cease and desist provides for

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an appropriate disposition of this proceeding in the public interest, and such agreement is hereby accepted. Therefore,

It is ordered, That respondents General Distributing Company, Inc., a corporation, and its officers, and Henry Nathanson, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with 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 the broadcasting of, any such records in which respondents, or either 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 either 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 9th day of November, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents General Distributing Company, Inc., a corporation, and Henry Nathanson, individually and as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

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IN THE MATTER OF

TOWER WOOLEN CORPORATION ET AL.

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

Docket 7945. Complaint, June 15, 1960—Decisions, Nov. 9, 1960

Two identical consent orders requiring New York City distributors to cease violating the Wool Products Labeling Act by labeling as "85% wool and 15% camel hair", wool fabrics which contained substantially less wool and camel hair than thus indicated; by failing to label certain wool products as required; and by removing identifying tags from wool fabrics before selling them to garment manufacturers.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Tower Woolen Corporation, a corporation, and Jack Forman and Raymond Garskoff, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Tower Woolen Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Individual respondents Jack Forman and Raymond Garskoff are officers of the corporate respondent. Said individual respondents cooperate in formulating, directing and controlling the acts, policies and practices hereinafter referred to. All respondents have their office and principal place of business at 240 West 37th Street, New York, New York.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since 1958 respondents have introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in said Act, wool products as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a)(1) of

the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products were wool fabrics labeled or tagged by respondents as 85% wool and 15% camel hair whereas, in truth and in fact, said products contained substantially less than 85% wool, as "wool" is defined in the Wool Products Labeling Act and substantially less than 15% camel hair.

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

PAR. 5. Certain of said wool products purchased in and transported to respondents in commerce had affixed thereto, when delivered to them at their said place of business, stamps, tags, labels or other means of identification required by the Wool Products Labeling Act. Thereafter, and before being offered for sale or sold by respondents to garment manufacturers, the respondents, with intent to violate the provisions of said Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, removed or participated in and caused the removal of such stamps, tags, labels, or other means of identification which purported to contain the information required by the provisions of said Act and the Rules and Regulations thereunder, in violation of Section 5 of the Wool Products Labeling Act.

PAR. 6. The respondents in the course and conduct of their business as aforesaid were and are in substantial competition in commerce with other corporations, firms and individuals likewise engaged in the sale of wool products, including woolen fabrics.

PAR. 7. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, 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.

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

Mr. DeWitt T. Puckett for the Commission.

Mr. Murray Lichtenberg, of New York, N.Y., for respondents Tower Woolen Corporation and Raymond Garskof.

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INITIAL DECISION AS TO RESPONDENTS TOWER WOOLEN CORPORATION
AND RAYMOND GARSKOF

The complaint in this matter charges the respondents with violation of the Wool Products Labeling Act of 1939, and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act in connection with the sale of wool products. An agreement has now been entered into by respondents Tower Woolen Corporation and Raymond Garskof and counsel supporting the complaint which provides, among other things, that said 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 conclusion 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, said 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; that the agreement is for settlement purposes only and does not constitute an admission by said 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 Tower Woolen Corporation is a New York corporation, with its office and principal place of business located at 240 West 37th Street, New York, New York. Individual respondent Raymond Garskof (erroneously referred to in the complaint as Raymond Garskoff) is an officer of the corporate respondent, and his 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 said respondents, and the proceeding is in the public interest.

ORDER

It is ordered. That respondents Tower Woolen Corporation, a corporation, and its officers, and Raymond Garskof (erroneously

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referred to in the complaint as Raymond Garskoff), individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the 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 fabrics or other "wool products", as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from:

A. Misbranding of such products by:

1. Falsely and 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.

B. Causing or participating in the removal of any stamp, tag, label or other means of identification affixed to any such "wool product", pursuant to the Wool Products Labeling Act of 1939, which purports to contain all or any part of the information required by said Act, with intent to violate any of the provisions of said 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 as to respondents Tower Woolen Corporation and Raymond Garskof by the hearing examiner shall, on the 9th day of November, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Tower Woolen Corporation, a corporation, and Raymond Garskof, 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.

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

Mr. DeWitt T. Puckett for the Commission.

Mr. Saul Pulner, New York, N.Y., for respondent Jack Forman.

INITIAL DECISION AS TO RESPONDENT JACK FORMAN

The complaint in this matter charges the respondents with violation of the Wool Products Labeling Act of 1939, and the Rules

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and Regulations promulgated thereunder, and the Federal Trade Commission Act in connection with the sale of wool products. An agreement has now been entered into by respondent Jack Forman and counsel supporting the complaint which provides, among other things, that said respondent admits all of the jurisdiction 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, said 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 said respondent that he has violated the law as alleged in the complaint.

The agreement further shows that respondent Jack Forman severed his connections with the corporate respondent on March 31, 1960, and has not been an officer of the corporation since that date. The agreement therefor provides for dismissal of the complaint as to respondent Jack Forman in his capacity as an officer of the corporation.

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 Jack Forman is an individual and former officer of respondent Tower Woolen Corporation. Respondent Jack Forman's present address is 170-10 73rd Avenue, Jamaica, New York. His former address was 240 West 37th Street, New York, New York.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the said respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Jack Forman, an individual, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the intro-

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duction 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 fabrics or other "wool products," as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from:

A. Misbranding of such products by:

1. Falsely and 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.

B. Causing or participating in the removal of any stamp, tag, label or other means of identification affixed to any such "wool product," pursuant to the Wool Products Labeling Act of 1939 which purports to contain all or any part of the information required by said Act, with intent to violate any of the provisions of said Act.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to respondent Jack Forman as an officer of Tower Woolen 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 as to Jack Forman by the hearing examiner shall, on the 9th day of November, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Jack Forman, individually, 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

JAY KAY DISTRIBUTING CO. ET AL.

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

Docket 8033. Complaint, July 7, 1960—Decision, Nov. 10, 1960

Consent order requiring Detroit distributors of phonograph records to cease giving concealed "payola" to disc jockeys and other personnel of radio

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and television programs to induce frequent playing of their records in order to increase sales.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Jay Kay Distributing Co., a corporation, and John S. Kaplan, Marion Kaplan and Allen Kaplan, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Jay Kay Distributing Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 3725 Woodward Avenue, in the City of Detroit, State of Michigan.

Respondents John S. Kaplan, Marion Kaplan and Allen Kaplan, are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the distribution, offering for sale, and sale, of phonograph records to various retail outlets.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said records, when sold, to be shipped from Michigan to purchasers thereof located in northwestern Ohio, and maintain, and at all times mentioned herein have maintained, a course of trade in said phonograph records in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and at all times mentioned herein, respondents have been in competition, in commerce, with corporations, firms and individuals in the sale of phonograph records.

PAR. 5. After World War II when TV and radio stations shifted from "live" to recorded performances for much of their programming, the production, distribution and sale of phonograph records emerged as an important factor in the musical industry with a sales volume of approximately \$400,000,000 in 1958.

Record manufacturing companies and distributors ascertained that popular disk jockeys could, by "exposure" or the playing of a record day after day, sometimes as high as 6 to 10 times a day, substantially increase the sales of those records so "exposed." Some record manufacturers and distributors obtained and insured the "exposure" of certain records in which they were financially interested by disbursing "payola" to individuals authorized to select and "expose" records for both radio and TV programs.

"Payola," among other things, is the payment of money or other valuable consideration to disk jockeys of musical programs on radio and TV stations to induce, stimulate or motivate the disk jockey to select, broadcast, "expose" and promote certain records in which the payer has a financial interest.

Disk jockeys, in consideration of their receiving the payments heretofore described, either directly or by implication, represent to their listening public that the records "exposed" on their broadcasts have been selected on their personal evaluation of each record's merits or its general popularity with the public, whereas, in truth and in fact, one of the principal reasons or motivations guaranteeing the record's "exposure" is the "payola" payoff.

PAR. 6. In the course and conduct of their business, in commerce, during the last several years, the respondents have engaged in unfair and deceptive acts and practices and unfair methods of competition in the following respects:

The respondents alone or with certain unnamed record distributors negotiated for and disbursed "payola" to disk jockeys broadcasting musical programs over radio or television stations broadcasting across state lines, or to other personnel who influence the selection of the records "exposed" by the disk jockeys on such programs.

Deception is inherent in "payola" inasmuch as it involves the payment of a consideration on the express or implied understanding that the disk jockey will conceal, withhold or camouflage such fact from the listening public.

The respondents by participating individually or in a joint effort with certain collaborating record distributors have aided and abetted the deception of the public by various disk jockeys by controlling or unduly influencing the "exposure" of records by disk jockeys with the payment of money or other consideration to them, or to other personnel which select or participate in the selection of the records used on such broadcasts.

Thus, "payola" is used by the respondents to mislead the public into believing that the records "exposed" were the independent and unbiased selection of the disk jockeys based either on each record's merit or public popularity. This deception of the public has the

capacity and tendency to cause the public to purchase the "exposed" records which they might otherwise not have purchased and also to enhance the popularity of the "exposed" records in various popularity polls, which in turn has the capacity and tendency to substantially increase the sales of the "exposed" records.

PAR. 7. The aforesaid acts, practices and methods have the capacity and tendency to mislead and deceive the public and to hinder, restrain and suppress competition in the manufacture, sale or distribution of phonograph records, and to divert trade unfairly to the respondents from their competitors and injury has thereby been done and may continue to be done to competition in commerce.

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

Mr. Arthur Wolter, Jr., for the Commission.

Katz and Victor, by *Mr. Norman D. Katz*, of Detroit, Mich., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the distribution, offering for sale, and sale of phonograph records to various retail outlets, with violation of the Federal Trade Commission Act, in that respondents, alone or with certain unnamed record distributors, have negotiated for and disbursed "payola," i.e., the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations, to induce, stimulate or motivate the disk jockeys to select, broadcast, "expose" and promote certain records, in which respondents are financially interested, on the express or implied understanding that the disk jockeys will conceal, withhold or camouflage the fact of such payment from the listening public.

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, Associate Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the Hearing Examiner for consideration.

The agreement states that respondent Jay Kay Distributing Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and

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principal place of business located at 3725 Woodward Avenue, Detroit, Michigan; that respondents John S. Kaplan, Marion Kaplan and Allen Kaplan are officers of the corporate respondent; that respondents John S. Kaplan and Marion Kaplan formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices set forth in the agreement; and that their address is the same as that of the corporate respondent.

The agreement further states that, according to an affidavit attached thereto and made a part thereof, it appears that Allen Kaplan has no part in formulating, directing or controlling the acts or practices of the corporate respondent, and that it is accordingly agreed that the complaint should be dismissed against him in his individual capacity.

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 Hearing Examiner has determined that the aforesaid agreement containing the consent order to cease and desist provides for an appropriate disposition of this proceeding in the public interest, and such agreement is hereby accepted. Therefore,

It is ordered, That respondents Jay Kay Distributing Co., a corporation, and its officers, and John S. Kaplan and Marion Kaplan, individually and as officers of said corporation, and Allen Kaplan as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation 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 the 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 Allen Kaplan in his individual capacity.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the Hearing Examiner shall, on the 10th day of November, 1960, become the decision of the Commission; and, accordingly:

It is ordered. That respondents Jay Kay Distributing Co., a corporation, and John S. Kaplan and Marion Kaplan, individually and as officers of said corporation, and Allen Kaplan as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

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IN THE MATTER OF

CARI COLETTE, INC., ET AL.

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

Docket 8040. Complaint, July 13, 1960—Decision, Nov. 10, 1960

Consent order requiring New York City manufacturers of fur and wool products to cease violating the Fur Products Labeling Act by setting forth on labels attached to fur products the names of animals other than those producing certain furs, and by failing to comply in other respects with labeling and invoicing requirements; and to cease violating the Wool Products Labeling Act by failing to identify on labels as required the constituent fibers contained in interlinings of wool garments.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Fur Products Labeling Act, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Cari Colette, Inc., a corporation, and Elliott Bass, Samuel Bort and Stanley Melcer, individually and as officers of said corporation, hereinafter referred to as respondents have violated the provisions of said Acts, and the Rules and Regulations promulgated under the Fur Products Labeling Act and the Wool Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issue its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Cari Colette, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 512 7th Avenue, New York, New York.

Individual respondents Elliott Bass, Samuel Bort and Stanley Melcer are president, treasurer and secretary, respectively, of said corporate respondent. Said individual respondents formulate, direct and control the acts, practices, and policies of the corporate respondent. The office and principal place of business of the individual respondents are located at the same address as that of the corporate respondent.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act, on August 9, 1952, respondents have been, and are now, engaged in the introduction into commerce and in the manufacture for introduction into commerce and in the sale, advertising

and offering for sale in commerce and in the transportation and distribution in commerce, of fur products and have manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce," "fur" and "fur products" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that respondents, on labels attached thereto, set forth the name of an animal other than the name of the animal that produced the fur, in violation of Section 4(3) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

PAR. 4. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

a. Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was mingled with non-required information, in violation of Rule 29(a) of said Rules and Regulations.

b. Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in handwriting on labels in violation of Rule 29(b) of said Rules and Regulations.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced by respondents 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 required by the Rules and Regulations promulgated thereunder.

PAR. 6. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since January 1, 1959, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in said Act, wool products as "wool products" are defined therein.

PAR. 7. Certain of said wool products were misbranded in violation of the Wool Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

a. By failing to separately set forth on the required stamp, tag, label or other mark of identification the character and amount of

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the constituent fibers contained in the interlinings of the said wool products, in violation of the aforesaid Rules and Regulations.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and the Wool Products Labeling Act of 1939, and the Rules and Regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Garland S. Ferguson for the Commission.

Phillips, Nizer, Benjamin, Krim and Ballon, of New York, N.Y., by *Mr. Jacob M. Usadi*, for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with violation of the Fur Products Labeling Act and the Wool Products Labeling Act of 1939, and the Rules and Regulations promulgated under those Acts, and the Federal Trade Commission Act. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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:

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1. Respondent Cari Colette, Inc., is a New York corporation with its principal place of business located at 512 7th Avenue, New York, New York. Individual respondents Elliott Bass, Samuel Bort and Stanley Melcer are officers of said corporation. They formulate, direct and control the acts, practices, and policies 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 Cari Colette, Inc., a corporation, and its officers, and Elliott Bass, Samuel Bort, and Stanley Melcer, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction into commerce, or the sale, advertising, offering for sale, transportation or distribution of fur products, in commerce, or in connection with manufacture for sale, sale, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by setting forth on labels attached to fur products:

1. The name or names of any animal or animals other than the name or names of the animal or animals producing the fur or furs contained in said fur product as set forth in the Fur Products Name Guide and prescribed under the Rules and Regulations.

2. Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations thereunder mingled with nonrequired information.

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

B. Falsely or deceptively invoicing fur products by failing to furnish purchasers of fur products an invoice showing all of the information required to be disclosed by each of the sub-sections of Section 5(b)(1) of the Fur Products Labeling Act.

It is further ordered, That respondents Cari Colette, Inc., a corporation, and its officers, and Elliott Bass, Samuel Bort, and Stanley Melcer, individually and as officers of said corporation, and re-

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spondents' 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 interlining 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 failing to affix labels to such products showing each element of the 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 10th day of November, 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

MAIN STREET FURNITURE, INC., ET AL.

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

Docket 7786. Complaint, Feb. 24, 1960—Decision, Nov. 16, 1960

Order requiring a retail furniture dealer in Kansas City, Mo., to cease advertising fictitious retail prices and savings such as, typically, "wall to wall carpeting, reg. \$7.95, now only \$2.50 per yard * * *", and "* * * 3 piece foam rubber sectional regular \$219.95 white elephant sale price \$89.50 * * *" when he had, in fact, no regular retail prices but sold his articles for whatever the traffic would bear.

Mr. DeWitt T. Puckett for the Commission.

Mr. Kenneth E. Bigus, of Kansas City, Mo., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding involves violations of the Federal Trade Commission Act in the fictitious pricing of furniture, home appliances, and carpets offered for sale and sold by respondents in commerce.

As hereinafter stated, the proceedings are dismissed as to respondents Main Street Furniture, Inc., a corporation, and Donald Bennefeld individually and as an officer of said corporation for lack of proof. Therefore, where respondent is referred to herein, unless otherwise stated, reference is made only to the respondent Charles D. Edwards.

The complaint issued February 24, 1960, and in due course the joint answer of all respondents was filed. Hearings were held June 30, and July 1, 1960, at which time all parties rested. Pursuant to order, proposed findings of fact, conclusions of law and orders were duly submitted by the parties on September 22, 1960.

The complaint charges, in substance, that respondents engaged in using fictitious retail prices in connection with certain of their merchandise in radio broadcasts having sufficient power to carry across state lines. Respondents denied these allegations in their answer although a number of matters charged in the complaint were admitted in the answer, and, in substance, there is very little real dispute in the evidence as to the basic facts in the case. In this initial decision it is found that the respondent Edwards has violated the Federal Trade Commission Act as charged in the complaint, and the proceeding is dismissed as to the other respondents.

Full and careful consideration has been given to the entire record and to all proposed findings of facts, conclusions of law and the orders presented by the respective counsel and insofar as they have been adopted they are incorporated in this initial decision. Those not specifically found or adopted, either verbatim or in substance and effect, have been rejected. In determining the facts in this proceeding upon the whole record as required by law, the examiner has given full, careful and impartial consideration to all the evidence properly presented on the record, including stipulations, and other fair and reasonable inferences arising from such matters. He has carefully examined the pleadings and found as true those facts alleged in the complaint which are admitted by the answer. From these matters and his observation of the conduct and demeanor of the witnesses at the hearing, and upon consideration of the whole record, the examiner makes the following:

FINDINGS OF FACT

The respondent Charles D. Edwards has been in the furniture business for some ten years. From about October 1956 until September 18, 1959, he conducted a retail furniture business under the trade name Main Street Furniture, located at 3230 Main Street, Kansas City, Missouri. On the latter date he incorporated this

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business as Main Street Furniture, Inc., with himself as its president. During the operations he also maintained several other furniture stores in that city. At the time of the incorporation, said respondent registered it under the laws of the State of Missouri as such but was not required to list the name of the officers until the corporation's first annual statement should be filed, upon March 1, 1960. While respondent Donald Bennefeld was tentatively considered as a vice president, he actually never assumed that office and had nothing to do with the advertising and other business policies of the respondent Edwards or his said corporation. Under these circumstances, the complaint is dismissed as to respondent Bennefeld. Since the corporation itself was not in existence at the time of the advertising in question in evidence in this case, that is, during February, 1959, the proceeding is also dismissed as to said corporation. On motions made on behalf of the said two respondents, counsel supporting the complaint offered no resistance. And it may well be noted that as to the corporation, the order hereinafter issued covers respondent Charles D. Edwards, among other things, "through any corporate or other device." Hence it seems quite appropriate as well as legally proper to dismiss as to said corporation. The order, of course, will cover his operations through any of the other furniture enterprises he may now or hereafter engage in, whether corporate or otherwise.

The advertising practices complained of occurred during February, 1959, when respondent Edwards was solely responsible for the preparation and broadcasting of the advertising claims and representations set out or referred to in the complaint. While he contends that these spot announcements, which are in evidence as Exhibits 1 to 4, inclusive, passed through several hands and that errors might have occurred, it is basic that management cannot escape liability in a Federal Trade Commission proceeding for advertising which is false, misleading and deceptive to the public. While the evidence discloses he also advertised in the *Kansas City Star*, and in view of the widespread character of his business throughout many of the States of the United States, it is possible some of this business was the result of other types of advertising than through radio broadcasting. This is immaterial since the complaint is premised entirely upon that specific type of advertising, and there is no evidence of just how he advertised by other media.

Respondent Edwards also engaged as a sole trader from October, 1956 until the incorporation of his business on September 18, 1959, as hereinabove found, and that business has been the advertising, offering for sale, sale and distribution of furniture, home appliances, and carpets at retail to the public in Kansas City, Missouri. The

evidence in this case primarily concerns only his operations and advertising connected with the 3230 Main Street business, although reference is made in the record to his having sold or transferred at wholesale some of his merchandise to one or more of his other enterprises. In the course and conduct of his business the respondent has caused, and now causes, his merchandise when sold, including some of the articles advertised in the radio broadcasts hereinabove referred to, to be shipped from his place of business in the State of Missouri to purchasers located not only in that State and the neighboring States of Kansas and Iowa but also in more distant States such as Florida, Oklahoma, and Colorado. Originally 70 percent of his business was in States other than Missouri but more recently this has been reduced to only 30 percent in such interstate commerce.

From the examiner's observation of respondent as a witness during the two days of hearings, he appeared to be an exceedingly active and energetic businessman; also the revelations as to the manner in which he kept records in his business indicate either weakness in accounting procedures and other business records or an operation intended to avoid implications charged in the complaint. The manner in which the sales were made in his store by an almost continuous course of advertised sales and a finance company official standing by to finance the transaction then and there indicate the rapidity with which sales were made when customers came in response to the radio advertisements of such sales. That the respondent has built a fairly large business and a substantial course of trade in his said merchandise in commerce between and among various states of the United States is evidenced by his testimony that the annual dollar volume of sales grew from \$125,000 in 1957 to \$250,000 in 1958, \$550,000 in 1959, and between \$650,000 to \$750,000 estimated for 1960, the witness having testified in June, 1960. This great expansion of business, it may be inferred, is in large part premised upon not only his capabilities and energies but also his more or less continuous advertisement of sales throughout the various media he employs, including radio. Certainly the public interest is involved where there is any reasonable inference, as in this case, that such a large business is developed in any way by what is found herein to be fictitious pricing in advertising.

In the course and conduct of his said business respondent Edwards, during February, 1959, advertised certain of his merchandise over radio station KCKN, located in Kansas City, Kansas, which the evidence shows is a station having sufficient power to, and in fact does, carry its broadcasts across state lines and into the channels of commerce. It is charged in the complaint that among and typical of the statements made in said broadcasts are the following:

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Wall to wall carpeting, reg. \$7.95, now only \$2.50 per yard * * *
* * * 3 piece foam rubber sectional regular \$219.95 white elephant sale
price \$89.50 * * *
Divan and chairs regular \$199.95 white elephant sale price \$89.50 * * *

It is admitted in the answer and by the evidence of respondent that these broadcasts (Commission's Exhibits 1 to 4, inclusive) were made and in fact respondent offered, and there was received in evidence a substantial number of other broadcasts made prior thereto which, upon careful examination, appear not to involve the matters complained of in this proceeding.

Most of the record in this case involves the alleged differences between respondent Edwards and the witness John L. Holland, an investigator for the Commission, over what took place at a transaction between them on October 28, 1959. In substance, Holland testified that various exhibits in evidence (Commission's Exhibits 5A to E, inclusive and G to I, inclusive and 5F) were submitted to him by respondent Edwards as sales slips evidencing at least as typical of the regular prices of the merchandise sold by Edwards in the regular course of his business prior to the sale of February, 1959, involved in the broadcasts hereinbefore referred to. It appears from the evidence of both that Edwards had to fill in the prices on the sales slips as they had not been placed there in the regular course of the sales with respect to the particular items of carpet, sectional sofas, divans and chairs referred to in the foregoing quoted statements in the said broadcasts. Edwards contends that he had to recall these from memory and, upon close cross-examination with reference to such matters, evinced an altogether evasive attitude exemplified repeatedly in the record (see, for example, the uncertain and ambiguous answers given on pages 32 to 35, inclusive). From this evidence, as has already been indicated, the examiner finds that the respondent had no regular prices but that they were established from time to time to meet the exigencies of a particular time to sell the merchandise when the customers came in. It follows that it would, therefore, be false and misleading for him to advertise regular prices. Certainly a merchant keeping appropriate records could immediately refer to his price lists and the like and tell the price of any given article which he advertised for sale at a reduced price. This is pointed up by said respondent's testimony (R. 126) where he says with reference to whether he makes a practice of following a manufacturer's suggested retail price: "The manufacturer's price means nothing. I throw the piece of paper away." No other inference can be drawn than that respondent feels it unnecessary to keep adequate records

and is unable to give his regular prices at any particular given time or period because he does not have any regular prices.

This view of the examiner is confirmed by the fact that prior to the giving of the testimony of respondent Edwards it had been stipulated between his counsel and counsel supporting the complaint that Commission's Exhibits 6 to 12, inclusive, were "photostats of the original sales slips of the respondents covering the sale of merchandise advertised in Commission's Exhibits 1 to 4, inclusive," respondents' counsel stating, "We stipulate to the reception of these named exhibits in evidence for the purposes as stated except for the fact that some of these prices in these sales tickets were not filled in at the time of the sale but were filled in by Mr. Edwards at the time of the investigation. Of course, this exception created no disagreement between investigator Holland and respondent Edwards as they both testified that Edwards wrote in such prices on such exhibits at the time Holland visited Edwards on October 28, 1959.

Through the use of the aforesaid statements and representations, respondent Edwards represented, directly or by implication, that the higher stated prices were the usual and customary retail prices charged by him for said merchandise in his recent regular course of business and that he had reduced said prices from the stated higher prices to the stated lower sale prices and that purchasers of the merchandise so advertised realized a saving of the differences between the said higher and lower prices.

The said statements and representations set forth and referred to in the finding hereof and broadcast at respondent Edwards' direction were false, misleading, and deceptive. The higher prices appearing in said respondent's advertisements were fictitious. Said respondent had no regular or customary retail prices at which his articles of merchandise were sold in the usual course of his business. He sold said articles for whatever the traffic would bear. The purchasers of the articles so advertised as above described and referred to did not realize a saving of the difference between the said higher and lower prices. The evidence supporting these findings is that respondent advertised ". . . 3 piece foam rubber sectional regular \$219.95 white elephant sale price \$89.50 . . ." (Commission's Exhibit 2), while Commission's Exhibits 5-A to 5-I show that said merchandise was sold by respondents on 7-12-58 at \$229.95; on 7-13-58 at \$199.95; on 11-7-58 at \$199.95; on 12-2-58 at \$220.00; on 12-6-58 at \$175.00; on 12-23-58 at \$290.00; on 2-23-59 at \$249.95; on 2-26-59 at \$199.50.

Also, in Commission's Exhibit 2 respondent Edwards advertised ". . . living room group, 7 pieces 2 piece sectional, corner table, step

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and coffee table & 2 lamps \$199.50 value white elephant sale price \$69.50 . . ." Commission's Exhibits 6 and 7 show that said group sold on 8-14-58 for \$129.95 and on 8-9-58 for \$119.95 (some items substituted, making a total of \$131.20).

In Commission's Exhibit 2, respondent Edwards also advertised ". . . divan and chairs regular \$199.95 white elephant sale price \$89.50 . . ." Commission's Exhibit 8 shows the sale of said merchandise on 12-16-58 for \$193.00.

As shown by Commission's Exhibit 1 the respondent Edwards advertised ". . . wall to wall carpeting, reg. \$7.95, now only \$2.50 per yard . . ." Commission's Exhibits 9 to 12 show that said carpeting sold on 2-16-59 at \$5.65 per yd.; on 2-18-59 at \$9.00 per yd.; on 2-18-59 at \$6.25 per yd.; and on 2-24-59 at \$5.50 per yd.

While respondent denies that he has any real competition, nevertheless, there can be no question but what such furniture and equipment as respondent admittedly sells are competitive items and that the furniture business is highly competitive. It must be found, therefore, that in the course and conduct of his business the respondent was, and is now, in direct and substantial competition with corporations and with firms and individuals in the sale of furniture, household appliances and carpets of the same general kind and nature as that sold by respondents.

The use by the respondent Edwards of the foregoing false, misleading and deceptive statements and representations has had, and now has, the capacity and tendency to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of substantial quantities of respondent's merchandise by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

CONCLUSIONS OF LAW

The evidence having sustained the material allegations of the complaint, upon such evidence as hereinabove found the examiner draws the following conclusions of law:

1. The Commission has jurisdiction of the subject-matter of this proceeding and of the person of the respondents.
2. There is substantial and specific public interest in this proceeding.
3. The aforesaid acts and practices of respondents as alleged in the complaint and 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.

The following order is therefore entered:

It is ordered, That respondent, Charles D. Edwards, an individual, his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale or sale 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 the usual and customary retail price of respondent's merchandise when such amount is in excess of the price at which said merchandise is usually and customarily sold at retail by respondent in the recent, regular course of his business;

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

2. Using the words "regular" or "reg." or any other word or term of the same import, to describe or refer to prices of merchandise unless respondent has sold said merchandise at such prices in the recent regular course of business.

3. Misrepresenting in any manner the amount of savings available to purchasers of respondent's merchandise, or the amounts by which the prices of said merchandise are reduced from the prices at which said merchandise is usually and customarily sold by respondent in the recent, regular course of his business.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to respondents Main Street Furniture, Inc., a corporation, and Donald Bennefeld, individually and as an officer of the said 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 16th day of November 1960, become the decision of the Commission; and, accordingly:

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

Complaint

IN THE MATTER OF

BURLINGTON INDUSTRIES, INC.

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

Docket 7865. Complaint, Apr. 18, 1960—Decision, Nov. 16, 1960

Consent order requiring important manufacturers of textile products to cease violating the Wool Products Labeling Act by labeling as "100% Alpaca", woolen fabrics manufactured by their Peerless Woolen Mills Division in Rossville, Ga., which contained substantially less than 100% alpaca, and by failing in other respects to comply with labeling requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Burlington Industries, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under said Wool Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Burlington Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business in Greensboro, North Carolina.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since January 1, 1958, respondent, through its Peerless Woolen Mills Division, Rossville, Georgia, has manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in said Act, wool products as "wool products" are defined therein.

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

Among such misbranded wool products were fabrics tagged and labeled as "100% Alpaca", whereas, in truth and in fact, said fabrics contain substantially less than 100% alpaca.

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

PAR. 5. The respondent in the course and conduct of its business was, and is, in competition in commerce with other corporations and with firms and individuals in the sale of wool products, including fabrics of the same nature as those sold by respondent.

PAR. 6. The aforesaid acts and practices of respondent were in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Ames W. Williams for the Commission.

Corcoran, Youngman and Rowe, by *Mr. James H. Rowe, Jr.*, for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondent 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 its wool products.

After the issuance of the complaint, respondent, its counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the Acting Director, Associate Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the Hearing Examiner for consideration.

The agreement states that respondent Burlington Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business in Greensboro, North Carolina.

The agreement provides, among other things, that respondent admits all the jurisdictional facts alleged in the complaint, and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint may be used in construing the

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

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

The Hearing Examiner has determined that the aforesaid agreement containing the consent order to cease and desist provides for an appropriate disposition of this proceeding in the public interest, and such agreement is hereby accepted. Therefore,

It is ordered, That the respondent Burlington Industries, Inc., a corporation, and its officers, 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 "wool products" are defined in and subject to the 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 contained therein; and
2. 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 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 16th day of November, 1960, become the decision of the Commission; and, accordingly:

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

Complaint

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IN THE MATTER OF

FOREIGN TEXTILE PRODUCTS, INCORPORATED, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS LABELING ACTS*Docket 7920. Complaint, June 3, 1950—Decision, Nov. 16, 1960*

Consent order requiring New York City distributors of woolen fabrics to cease violating the Wool Products Labeling Act by labeling as "95% wool, 5% Nylon", woolen fabrics which contained substantially more non-woolen fibers than indicated by such tags, and by failing to conform in other respects to requirements of the Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Foreign Textile Products, Incorporated, a corporation, and Bela Gyenes, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Foreign Textile Products, Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Individual respondent Bela Gyenes is president and treasurer of the corporate respondent. Said individual respondent formulates, directs and controls the acts, practices and policies of said corporate respondent. Respondents' office and principal place of business is located at 303 Fifth Avenue, New York, New York.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since January 1, 1959, respondents have introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool products" are defined therein.

PAR. 3. Certain of said wool products, namely woolen fabrics, were misbranded by respondents within the intent and meaning of Section 4(a)(1) of said Wool Products Labeling Act and the Rules and Regulations promulgated thereunder in that they were falsely

and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products were woolen fabrics imported from Italy by respondents and labeled or tagged by them as consisting of "95% wool, 5% Nylon," whereas, in truth and in fact, said woolen fabrics in each instance contain substantially less wool and substantially more non-woolen fibers than was indicated by the foregoing labels or tags affixed thereto.

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

PAR. 5. The respondents in the course and conduct of their business as aforesaid were and are in substantial competition in commerce with other corporations, firms and individuals likewise engaged in the importation and sale of said wool products, including imported woolen fabrics.

PAR. 6. The acts and practices of the respondents as set forth in Paragraphs 3 and 4 above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, 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.

Mr. Harry E. Middleton, Jr., supporting the complaint.

Mr. Samuel B. Ghlbaum of New York, N.Y., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On June 3, 1960, the Federal Trade Commission issued a complaint charging that the above-named respondents had violated the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated under said Wool Products Labeling Act by falsely and deceptively stamping, labeling, or tagging, certain woolen products. Among such misbranded wool products were woolen fabrics imported from Italy by respondents.

After issuance and service of the complaint, the above-named respondents, their attorney, and counsel supporting the complaint entered into an agreement for a consent order. The agreement has been approved by the Director, Associate Director and Acting Assistant Director of the Bureau of Litigation. The agreement disposes of the matters complained about.

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The pertinent provisions of said agreement are as follows: Respondents admit all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said 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 record herein shall consist solely of the complaint and the agreement; respondents waive the requirement that the decision must contain a statement of findings of fact and conclusions of law; respondents waive further procedural steps before the hearing examiner and the Commission, and the order may be altered, modified, or set aside in the manner provided by statute for other orders; respondents waive any right to challenge or contest the validity of the order entered in accordance with the agreement and the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The undersigned hearing examiner, having considered the agreement and proposed order, hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. Respondent Foreign Textile Products, Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 303 Fifth Avenue, New York, New York.

2. Respondent Bela Gyenes is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent. His address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That the respondents Foreign Textile Products, Incorporated, a corporation, and its officers, and Bela Gyenes, individually and as an officer of said corporation and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the offering for sale, sale, transportation and distribution in commerce, as "commerce" is defined in the Federal Trade

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Commission Act and the Wool Products Labeling Act, of wool products as "wool products" are defined in and subject to the Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by:

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

The Commission having considered the hearing examiner's initial decision, filed September 29, 1960, accepting an agreement containing a consent order theretofore executed by the respondents and counsel in support of the complaint; and

It appearing that the initial decision contains a statement which is not based upon the aforesaid agreement and is, to that extent, at variance with such agreement; and the Commission being of the opinion that this departure from the agreement should be corrected:

It is ordered, That the initial decision be, and it hereby is, modified by striking from said decision the second sentence in the first paragraph thereof.

It is further ordered, That the initial decision, as so modified, shall, on the 16th day of November, 1960, become the decision of the Commission.

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

IN THE MATTER OF

GORDON-MASLING OPTICAL COMPANY, INC., ET AL.

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

Docket 7955. Complaint, June 16, 1960—Decision, Nov. 16, 1960

Consent order requiring sellers of optical goods in Rochester, N.Y., to cease advertising falsely that all persons could successfully wear their contact

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lenses and could wear them all day without discomfort; that their lenses would correct all defects in vision; and that purchasers could discard their eyeglasses.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Gordon-Masling Optical Company, Inc., a corporation, trading under the name of Optical Associates of Rochester, and Bernard Masling and Stanley Gordon, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Gordon-Masling Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 353 East Main Street, Rochester, New York. Said corporation trades under the name of Optical Associates of Rochester.

Individual respondents Bernard Masling and Stanley Gordon are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the sale of contact lenses to the purchasing public. Contact lenses are devices designed to correct errors and deficiencies in the vision of the wearer and are devices, as "device" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their aforesaid business respondents have disseminated, and caused the dissemination of, advertisements concerning their said devices by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements in newspapers and by means of circulars and pamphlets, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said devices; and respondents have disseminated, and caused the dissemination of, advertisements concerning their said devices by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were and are likely to induce, directly or indirectly, the

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purchase of their said devices in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among and typical of the statements contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

I would recommend Contact Lenses to any person who is now wearing glasses.

See for yourself how comfortable really invisible contact lenses are.

* * * Wear our contact lenses all day long * * *

Learn how easy it is for you to do as hundreds of other Rochesterians have done * * * getting rid of their hateful, annoying glasses and getting the benefits of more natural and comfortable vision.

PAR. 5. By and through the statements in said advertisements disseminated and caused to be disseminated, as aforesaid, respondents represent and have represented, directly and by implication:

1. All persons in need of visual correction can successfully wear respondents' contact lenses.
2. There is no discomfort in wearing their contact lenses.
3. Said contact lenses can be worn all day without discomfort.
4. Their contact lenses will correct all defects in vision.
5. Eyeglasses may be discarded upon the purchase of their contact lenses.

PAR. 6. The advertisements containing the aforesaid statements and representations are misleading in material respects and constitute "false advertisements", as the term is defined in the Federal Trade Commission Act. In truth and in fact:

1. A significant number of persons in need of visual correction cannot successfully wear respondents' contact lenses.
2. Practically all persons will experience some discomfort when first wearing respondents' contact lenses. In a significant number of cases discomfort will be prolonged and in some cases will never be overcome.
3. Many persons cannot wear respondents' contact lenses all day without discomfort and no person can wear said lenses all day without discomfort until he or she has become fully adjusted thereto.
4. Respondents' contact lenses will not correct all defects in vision.
5. Eyeglasses can not always be discarded upon the purchase of respondents' contact lenses.

PAR. 7. The dissemination by the respondents, of the aforesaid false advertisements constitutes unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Mr. Frederick McManus supporting the complaint.

Cucci, Welch & Boehm, of Rochester, N.Y., for respondents.

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on June 16, 1960, charging them with the use of unfair and deceptive acts and practices in commerce, in violation of the Federal Trade Commission Act, by falsely advertising certain contact lenses manufactured and sold by them. After being served with said complaint, respondents appeared by counsel and entered into an agreement dated September 8, 1960, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by respondents, by counsel for said respondents and by counsel supporting the complaint, and approved by the Acting Director, Associate Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, and that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

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1. Respondent Gordon-Masling Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 353 East Main Street, Rochester, New York. Said corporation trades under the name of Optical Associates of Rochester.

Individual respondents Bernard Masling and Stanley Gordon are officers of the corporate respondent. They formulate, direct and control the acts and 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 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 Gordon-Masling Optical Company, Inc., a corporation, and its officers, and Bernard Masling and Stanley Gordon, individually and as officers of said corporation, respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of contact lenses, do forthwith cease and desist from, directly or indirectly:

A. 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, that:

(1) All persons in need of visual correction can successfully wear their contact lenses.

(2) There is no discomfort in wearing their contact lenses.

(3) All persons can wear respondents' lenses all day without discomfort; or that any person can wear respondents' lenses all day without discomfort except after that person has become fully adjusted thereto.

(4) Their lenses will correct all defects in vision.

(5) Eyeglasses can always be discarded upon the purchase of their lenses.

B. Disseminating, or causing to be disseminated, any advertisement, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in Paragraph A, above.

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DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 16th day of November 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

SIEGMUND WERNER, INC., ET AL.

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

Docket 7961. Complaint, June 17, 1960—Decision, Nov. 17, 1960

Consent order requiring manufacturers in Bloomfield, N.J., to cease pre-ticketing their sleeping bags with fictitious and excessive prices represented falsely thereby as the usual retail prices, and to cease misrepresenting the sizes of various of said bags by setting out on attached labels "cut size", "full size", etc., dimensions almost invariably larger than the actual sizes of the finished product.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Siegmund Werner, Inc., a corporation, and Siegmund Werner, Harry Douty and Hedy Werner, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Siegmund Werner, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 225 Belleville Avenue, in the City of Bloomfield, State of New Jersey. Said corporation operates branches in Los Angeles, California and Chicago, Illinois.

Respondents Siegmund Werner, Harry Douty and Hedy Werner are individuals and officers of said corporate respondent. They

formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, distribution, sale and advertising, among other things, of sleeping bags.

PAR. 3. In the course and conduct of their business respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of New Jersey and from branches in Los Angeles, California and Chicago, Illinois 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 their said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents have engaged in the practice of using fictitious prices in connection with their said products by attaching or causing to be attached thereto, tags upon which certain amounts are printed, thereby representing, directly or by implication, that said amounts are the usual and customary retail prices of said sleeping bags when, in truth and in fact, said stated amounts are fictitious and in excess of the usual and regular retail prices of said sleeping bags, in the trade areas where the representations are made.

PAR. 5. By the aforesaid practice respondents place in the hands of retailers and other purchasers of their products, the means and instrumentalities by and through which they may mislead the public as to the usual and customary retail prices of said sleeping bags.

PAR. 6. Respondents, in connection with the sale of their sleeping bags, have engaged in misrepresenting the sizes of various of said bags on tags sewn or attached thereto and in advertisements of said bags. Respondents' size descriptions are stated as "cut size," "full cut size," "full size" and "size." The dimensions following such descriptions are almost invariably larger than the actual size of the bags in question. The terms "cut size," "full cut size," "full size" and "size," when used in the manner as stated above, are confusing and tend to indicate that sizes following such descriptions are the actual sizes of the finished product. In truth and in fact, this is almost never the case, as the actual sizes of the finished product are substantially smaller than the sizes set out on the labels and as advertised.

PAR. 7. In the course and conduct of their business at all times mentioned herein, respondents have been engaged in substantial

competition in commerce, with corporations, firms and individuals in the sale of sleeping bags.

PAR. 8. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices, has had and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations, were, and are, true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, 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.

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

Mr. Irving Mandelbaum, of Newark, N.J., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on June 17, 1960, charging Respondents with violation of the Federal Trade Commission Act, by using fictitious prices in connection with the sleeping bags which they manufacture, distribute, sell and advertise, and by misrepresenting the sizes of various of said bags.

Thereafter, on September 19, 1960, Respondents, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Acting Director, Associate Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter, on September 29, 1960, submitted to the Hearing Examiner for consideration.

The agreement identifies Respondent Siegmund Werner, Inc., as a New York corporation, with its office and principal place of business located at 225 Belleville Avenue, Bloomfield, New Jersey, and individual Respondents Siegmund Werner, Harry Douty and Hedy Werner as officers of the corporate Respondent, stating further that Respondents Siegmund Werner and Harry Douty formulate, direct and control the acts and practices of the corporate Respondent, their address being the same as that of the corporate Respondent.

The agreement contains a recommendation that the complaint be dismissed as to Respondent Hedy Werner in her individual capacity

for the reasons set forth in the affidavit which is attached to the agreement and made a part thereof.

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

Respondents waive any further procedure before the Hearing Examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only, and does not constitute an admission by Respondents that they have violated the law as alleged in the complaint.

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

It is ordered. That Respondent Siegmund Werner, Inc., a corporation, and its officers, and Respondents Siegmund Werner and Harry Douty, individually and as officers of said corporation, and Respondent Hedy Werner, as an officer of said corporation, and Respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of sleeping bags or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising, labeling or otherwise representing the "cut size" or dimensions of materials used in their construction, unless such representation is accompanied by a description of the finished or actual size, with the latter description being given at least equal prominence;

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2. Misrepresenting the size of such products on tags or advertising or in any other manner;

3. Representing, by preticketing or in any other manner, that a certain amount is the retail price of merchandise when said amount is in excess of the price at which said merchandise is customarily and usually sold at retail in the trade area where the representation is made;

4. Furnishing any means or instrumentality to others by and through which they may mislead the public as to any of the matters referred to in Paragraphs 1, 2 and 3.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to Respondent Hedy Werner in her individual capacity.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 17th day of November, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Siegmund Werner, Inc., a corporation; Siegmund Werner and Harry Douty, individually and as officers of said corporation; and Hedy Werner, 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

CONCORD DISTRIBUTING COMPANY ET AL.

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

Docket 8022. Complaint, June 27, 1960—Decision, Nov. 17, 1960

Consent order requiring a distributor in Cleveland, Ohio, to cease giving concealed payola to disc jockeys of radio and television musical programs to induce frequent playing of their phonograph records in order to increase sales.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Concord

Distributing Company, a corporation, and Arthur Freeman and Ben Herman, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Concord Distributing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 620 Frankfort Avenue, in the City of Cleveland, State of Ohio.

Respondents Arthur Freeman and Ben Herman are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the distribution, offering for sale, and sale, of phonograph records to various retail outlets and jukebox operators.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said records, when sold, to be shipped from Ohio to Michigan to purchasers thereof and maintain, and at all times mentioned herein have maintained, a course of trade in said phonograph records in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and at all times mentioned herein, respondents have been in competition, in commerce, with corporations, firms and individuals in the sale of phonograph records.

PAR. 5. After World War II when TV and radio stations shifted from "live" to recorded performances for much of their programming, the production, distribution and sale of phonograph records emerged as an important factor in the musical industry with a sales volume of approximately \$400,000,000 in 1958.

Record manufacturing companies and distributors ascertained that popular disk jockeys could, by "exposure" or the playing of a record day after day, sometimes as high as 6 to 10 times a day, substantially increase the sales of those records so "exposed." Some record manufacturers and distributors obtained and insured the "exposure" of certain records in which they were financially interested by disbursing "payola" to individuals authorized to select and "expose" records for both radio and TV programs.

"Payola," among other things, is the payment of money or other valuable consideration to disk jockeys of musical programs on radio

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and TV stations to induce, stimulate or motivate the disk jockey to select, broadcast, "expose" and promote certain records in which the payer has a financial interest.

Disk jockeys, in consideration of their receiving the payments heretofore described, either directly or by implication, represent to their listening public that the records "exposed" on their broadcasts have been selected on their personal evaluation of each record's merits or its general popularity with the public, whereas, in truth and in fact, one of the principal reasons or motivations guaranteeing the record's "exposure" is the "payola" payoff.

PAR. 6. In the course and conduct of their business, in commerce, during the last several years, the respondents have engaged in unfair and deceptive acts and practices and unfair methods of competition in the following respects:

The respondents alone or with certain unnamed record distributors negotiated for and disbursed "payola" to disk jockeys broadcasting musical programs over radio or television stations broadcasting across state lines, or to other personnel who influence the selection of the records "exposed" by the disk jockeys on such programs.

Deception is inherent in "payola" inasmuch as it involves the payment of a consideration on the express or implied understanding that the disk jockey will conceal, withhold or camouflage such fact from the listening public.

The respondents by participating individually or in a joint effort with certain collaborating record distributors have aided and abetted the deception of the public by various disk jockeys by controlling or unduly influencing the "exposure" of records by disk jockeys with the payment of money or other consideration to them, or to other personnel which select or participate in the selection of the records used on such broadcasts.

Thus, "payola" is used by the respondents to mislead the public into believing that the records "exposed" were the independent and unbiased selection of the disk jockeys based either on each record's merit or public popularity. This deception of the public has the capacity and tendency to cause the public to purchase the "exposed" records which they might otherwise not have purchased and also to enhance the popularity of the "exposed" records in various popularity polls, which in turn has the capacity and tendency to substantially increase the sales of the "exposed" records.

PAR. 7. The aforesaid acts, practices and methods have the capacity and tendency to mislead and deceive the public and to hinder, restrain and suppress competition in the manufacture, sale or distribution of phonograph records, and to divert trade unfairly to

the respondents from their competitors and injury has thereby been done and may continue to be done to competition in commerce.

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

Mr. Harold A. Kennedy and *Mr. Arthur Wolter, Jr.*, for the Commission.

Respondents, for themselves.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the distribution, offering for sale, and sale of phonograph records to various retail outlets and jukebox operators, with violation of the Federal Trade Commission Act, in that respondents, alone or with certain unnamed record distributors, have negotiated for and disbursed "payola," i.e., the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations, to induce, stimulate or motivate the disk jockeys to select, broadcast, "expose" and promote certain records, in which respondents are financially interested, on the express or implied understanding that the disk jockeys will conceal, withhold or camouflage the fact of such payment from the listening public.

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

The agreement states that respondent Concord Distributing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 620 Frankfort Avenue, Cleveland, Ohio, and that respondents Arthur Freeman and Ben Herman are officers of the corporate respondent and formulate, direct and control the acts and practices of the corporate respondent, their 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

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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 Hearing Examiner has determined that the aforesaid agreement containing the consent order to cease and desist provides for an appropriate disposition of this proceeding in the public interest, and such agreement is hereby accepted. Therefore,

It is ordered, That respondents Concord Distributing Company, a corporation, and its officers, and Arthur Freeman and Ben Herman, 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 the 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.

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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 17th day of November, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Concord Distributing Company, a corporation, and Arthur Freeman and Ben Herman, 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.

IN THE MATTER OF

PRESTIGE RECORDS, INC., ET AL.

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

Docket 8035. Complaint, July 11, 1960—Decision, Nov. 17, 1960

Consent order requiring manufacturers in Bergenfield, N.J., to cease giving concealed payola to disc jockeys of radio and television musical programs to induce frequent playing of their phonograph records in order to increase sales.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Prestige Records, Inc., a corporation, and Robert Weinstock, Selig Weinstock and Joan Weinstock, individually and as officers of said corporation, herein-after referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Prestige Records, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 203 South Washington Avenue, in the City of Bergenfield, State of New Jersey.

Respondents Robert Weinstock, Selig Weinstock and Joan Weinstock are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture and distribution, offering for sale, and sale, of phonograph records to distributors.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said records, when sold, to be shipped from one State of the United States to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a course of trade in said phonograph records in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and at all times mentioned herein, respondents have been in competition, in commerce, with corporations, firms and individuals in the sale of phonograph records.

PAR. 5. After World War II when TV and radio stations shifted from "live" to recorded performances for much of their programming, the production, distribution and sale of phonograph records emerged as an important factor in the musical industry with a sales volume of approximately \$400,000,000 in 1958.

Record manufacturing companies and distributors ascertained that popular disk jockeys could, by "exposure" or the playing of a record day after day, sometimes as high as 6 to 10 times a day, substantially increase the sales of those records so "exposed." Some record manufacturers and distributors obtained and insured the "exposure" of certain records in which they were financially interested by disbursing "payola" to individuals authorized to select and "expose" records for both radio and TV programs.

"Payola," among other things, is the payment of money or other valuable consideration to disk jockeys of musical programs on radio and TV stations to induce, stimulate or motivate the disk jockey to select, broadcast, "expose" and promote certain records in which the player has a financial interest.

Disk jockeys, in consideration of their receiving the payments heretofore described, either directly or by implication, represent to their listening public that the records "exposed" on their broadcasts have been selected on their personal evaluation of each record's merits or its general popularity with the public, whereas, in truth and in fact, one of the principal reasons or motivations guaranteeing the record's "exposure" is the "payola" payoff.

PAR. 6. In the course and conduct of their business, in commerce, during the last several years, the respondents have engaged in unfair and deceptive acts and practices and unfair methods of competition in the following respects:

The respondents alone or with certain unnamed record distributors negotiated for and disbursed "payola" to disk jockeys broadcasting musical programs over radio or television stations broadcasting across state lines, or to other personnel who influence the selection of the records "exposed" by the disk jockeys on such programs.

Deception is inherent in "payola" inasmuch as it involves the payment of a consideration on the express or implied understanding that the disk jockey will conceal, withhold or camouflage such fact from the listening public.

The respondents by participating individually or in a joint effort with certain collaborating record distributors have aided and abetted the deception of the public by various disk jockeys by controlling or unduly influencing the "exposure" of records by disk jockeys with the payment of money or other consideration to them, or to other personnel which select or participate in the selection of the records used on such broadcasts.

Thus, "payola" is used by the respondents to mislead the public into believing that the records "exposed" were the independent and unbiased selection of the disk jockeys based either on each record's merit or public popularity. This deception of the public has the capacity and tendency to cause the public to purchase the "exposed" records which they might otherwise not have purchased and also to enhance the popularity of the "exposed" records in various popularity polls, which in turn has the capacity and tendency to substantially increase the sales of the "exposed" records.

PAR. 7. The aforesaid acts, practices and methods have the capacity and tendency to mislead and deceive the public and to hinder, restrain and suppress competition in the manufacture, sale or distribution of phonograph records, and to divert trade unfairly to the respondents from their competitors and injury has thereby been done and may continue to be done to competition in commerce.

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

Mr. Arthur Wolter, Jr., for the Commission.

Mr. Morris B. Raucher, of New York, N.Y., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the manufacture and distribution, offering for sale, and sale of phonograph records to distributors, with violation of the Federal Trade Commission Act, in that respondents, alone or with certain unnamed record distributors, have negotiated for and disbursed "payola", i.e., the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations, to induce, stimulate or motivate the disk jockeys to select, broadcast, "expose" and promote certain records, in which respondents are financially interested, on the express or implied understanding that the disk jockeys will conceal, withhold or camouflage the fact of such payment from the listening public.

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 Acting Director, Associate Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the Hearing Examiner for consideration.

The agreement states that respondent Prestige Records, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 203 South Washington Avenue, Bergenfield, New Jersey, and that respondents Robert Weinstock, Selig Weinstock and Joan Weinstock are officers of the corporate respondent and formulate, direct and control the acts and practices of the corporate respondent, their 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

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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 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 Hearing Examiner has determined that the aforesaid agreement containing the consent order to cease and desist provides for an appropriate disposition of this proceeding in the public interest, and such agreement is hereby accepted. Therefore,

It is ordered. That respondents Prestige Records, Inc., a corporation, and its officers, and Robert Weinstock, Selig Weinstock and Joan Weinstock, 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 the 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 17th day of November 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Prestige Records, Inc., a corporation, and Robert Weinstock, Selig Weinstock and Joan Weinstock, 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.

IN THE MATTER OF

McGRAW-HILL PUBLISHING COMPANY, INC., ET AL.

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

Docket 6971. Complaint, Dec. 5, 1957—Decision, Nov. 18, 1960

Order dismissing, for failure of proof, complaint charging New York City publishers of magazines and periodicals with using deceptive promotional material to sell advertising space in two of their magazines, including representations that a readership survey showing favorable results with respect to "The American Automobile" had been conducted by New York University, and that a survey chart indicating current reader interest as between their "Electrical Merchandising" magazine and a competitor's magazines was based on a survey more than three years old.

Mr. Charles S. Cox supporting the complaint.

Mr. Orison S. Marden and *Mr. Haliburton Fales* of *White & Case*, of New York, N.Y., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

PRELIMINARY STATEMENT

The complaint charges that each respondent named in the caption hereof violated the provisions of Section 5 of the Federal Trade

Commission Act. Each respondent through its counsel, denied the violation alleged against it and filed a motion to dismiss the complaint on the ground that the matters complained about were two isolated transactions, had been discontinued prior to issuance of the complaint and will not be resumed in the future. In support of its motion to dismiss, the respondent McGraw-Hill Publishing Company, Inc., stated that the violation charged against it had been discontinued in November, 1955, more than two years before issuance of the complaint. The other respondent, McGraw-Hill International Corporation, in its motion to dismiss, stated that the violation charged against it had been discontinued in August, 1956, more than one year prior to issuance of the complaint, and would not be resumed. (The complaint was issued on December 5, 1957). The motion to dismiss was accompanied by the affidavits of responsible officers of the corporate respondents.

Counsel supporting the complaint filed a reply opposing the motion to dismiss and denied that either respondent had discontinued the practices complained about. Oral argument was heard before the Hearing Examiner in support of and in opposition to the motion to dismiss. At the oral argument, counsel supporting the complaint re-affirmed his denial that neither respondent had discontinued such practices, as stated in the affidavits, and asserted that, at the very time of the oral argument, respondents were continuing to engage in unlawful practices similar to those complained about. Upon the basis of the assertions made by counsel supporting the complaint that the unlawful practices alleged in the complaint had not been discontinued by respondents, the Hearing Examiner denied respondents' motion to dismiss the complaint and ordered that the hearing proceed on the allegations contained in the complaint and on the matters set forth in the motion to dismiss. Hearings have been held and completed. At the conclusion of the Commission's case-in-chief, counsel for each respondent elected to rest its case on the record as developed by witnesses who were called to testify by counsel supporting the complaint, including some of respondents' officers and employees. Proposed findings of fact, conclusions of law, and order have been submitted by respective counsel and oral argument had thereon before the Hearing Examiner. These have been considered. All findings of fact and conclusions of law not specifically found or concluded herein are rejected. In appraising and evaluating the credibility and the weight to be given to the testimony of the various witnesses who testified, the Hearing Examiner has taken into consideration his observation of said witnesses and their demeanor while testifying on the witness stand. Upon the basis of the entire record, the Hearing Examiner makes the

following findings of fact and conclusions of law, and issues the following order:

FINDINGS OF FACT

1. The respondents McGraw-Hill Publishing Company, Inc., hereinafter called "MHPCo," and McGraw-Hill International Corporation, hereinafter called "MHICorp" are corporations organized and doing business under the laws of the State of New York. The principal place of business of each corporation is at 330 West 42nd Street, New York 36, New York.

2. The respondent MHPCo. is in the publishing business, publishing directly or through its subsidiaries approximately thirty domestic magazines. These magazines are circulated and distributed on a paid subscription basis to subscribers and other persons located in various states of the United States and the District of Columbia. One of these publications is "Electrical Merchandising" which the respondent MHPCo. has been publishing for more than fifty years. The respondent MHPCo. has at all relevant times been in substantial competition in commerce with other corporations, firms and individuals engaged in the publication, promotion and sale of magazines and periodicals.

3. The respondent MHICorp. is also in the publishing business, publishing five magazines for distribution outside the United States and is in substantial competition in commerce with other corporations, firms and individuals engaged in the publication, promotion and sale of magazines and periodicals. One of the magazines published by MHICorp. is "The American Automobile," a monthly magazine, which began publication more than thirty years ago. This magazine is devoted to the promotion and advertising of American automobiles, parts and accessories for export and is sold on a subscription basis to approximately 38,000 subscribers located in various parts of the world, exclusive of the United States. The only exception being 15 or 20 copies sold to foreign buying commissions located in the United States interested in purchasing the products advertised in the magazine.

4. In the course and conduct of the business of each respondent, said respondents employ salesmen who call on customers and prospective customers for the purpose of selling advertising in respondents' magazines. In connection with their sales presentations, these salesmen sometimes use readership surveys which compare the circulation and usefulness of respondents' magazines with those of competitors. It is the use by respondents of certain printed promotional material describing two of these surveys which form the basis of the complaint in this proceeding. Findings of Fact with

respect to each of the two charges complained about will be made and discussed separately and in the order in which they are alleged in the complaint.

5. The first charge, set out in Paragraph Five of the complaint, is that the respondent MHICorp., in soliciting advertising space in its magazine "The American Automobile," represented that a readership survey showing favorable results for said magazine had been conducted by New York University when in truth and in fact said survey was not conducted by New York University but was conducted by respondent MHICorp. in collaboration with a New York University professor acting in his individual capacity and not as a representative of New York University. From this it is seen that the thrust of the complaint is not directed toward the survey itself. The charge is that MHICorp. represented that the survey had been conducted by New York University whereas, in fact, it was conducted by respondent MHICorp. in collaboration with a New York University professor acting in his individual capacity and not as a representative of New York University. The respondent MHICorp. admits that, in conducting the survey, the professor was acting in his individual capacity and not as a representative of New York University. It follows, therefore, that the questions to be resolved in connection with this charge are: (1) Did the respondent MHI Corp. represent that the survey had been conducted by New York University?, and (2) Was the survey conducted by respondent MHICorp. in collaboration with Professor Krieghbaum?

6. The idea for the survey was conceived by Mr. Russell F. Anderson, published of "The American Automobile," as an aid to its eleven salesmen in selling advertising space in the magazine. Mr. Anderson was personally acquainted with Hillier Krieghbaum, Associate Professor of Journalism at New York University and aware of his reputation in advertising circles as an authority on communications. Mr. Anderson believed that Professor Krieghbaum would be an excellent man to conduct the survey. At that very time Professor Krieghbaum was heading the work under a grant of \$80,000 from the Rockefeller Foundation for a study on scientific research writing in the field of communications. After several discussions with Professor Krieghbaum, Mr. Anderson employed Professor Krieghbaum to supervise the conducting of the survey. This was in the fall of 1955. The survey was designed to evaluate all media channels available to firms engaged in selling automotive products abroad and to study the methods and practices of these companies in placing their advertising. Mr. Anderson, on behalf of the respondent MHICorp., agreed to provide the station-

ery, printing, stenographic and clerical help for the preparation, mailing and tabulation of the questionnaires to be used by Professor Krieghbaum in conducting the survey. Since the idea for the survey was the brainchild of Mr. Anderson and he was familiar with the information sought to be elicited from the automotive export companies with respect to their advertising practices, Mr. Anderson prepared a draft of a form of questionnaire setting forth his ideas to the questions to be asked. Mr. Anderson then submitted it to Professor Krieghbaum for his suggestions and approval. Professor Krieghbaum revised and re-edited the draft which had been submitted to him by Mr. Anderson. The questionnaire was then mimeographed and mailed by respondent MHI Corp. to approximately 100 companies in the United States who were then exporting automotive products. Later a similar type of questionnaire was mailed to approximately 400 jobbers and distributors located outside the United States who had been named by the domestic exporters who had responded to the first questionnaire. Each company which answered the questionnaire signed and return the completed questionnaire to Professor Krieghbaum. After examining and analyzing the questionnaire, Professor Krieghbaum forwarded them to the respondent MHI Corp. for tabulation. By reason of this assistance rendered by respondent MHI Corp. to Professor Krieghbaum, counsel supporting the complaint urges that the survey was not Professor Krieghbaum's but was a MHI Corp. survey, compiled by MHI Corp. in collaboration with Professor Krieghbaum. Although Professor Krieghbaum had the benefit of the draft of questionnaire form which had been prepared by Mr. Anderson and received the assistance of employees of the respondent MHI Corp. in mailing and tabulating replies to the questionnaires, nevertheless Professor Krieghbaum supervised the entire operation in connection with the survey and all major decisions respecting the method and techniques employed in conducting the survey were made by Professor Krieghbaum. Therefore, it is found that in all substantial respects, the survey was the work of Professor Krieghbaum and is, in fact, Professor Krieghbaum's survey even though he received technical and clerical assistance from employees of respondent MHI Corp. in conducting the survey. It is further found that Professor Krieghbaum conducted the survey in his individual capacity and not as a part of his duties as an Associate Professor at New York University, although the University was aware of his activities in making the survey. In fact, the University encourages its professors to engage in such outside projects so long as these projects do not interfere with the official duties of such professors.

7. From the information contained in the returned questionnaires, Professor Krieghbaum prepared the text of a 16-page booklet setting forth his findings of the survey. (CX-1). The booklet is entitled "AUTOMOTIVE EXPORT ADVERTISING." Approximately 5,600 copies of the booklet were printed by the respondent MHICorp. The outside cover is of blue paper and, in blue letters prominently outlined in a dark brown ink box approximately 5" x $\frac{6}{16}$ " are the words "AUTOMOTIVE EXPORT ADVERTISING * * * * BY HILLIER KRIEGHBAUM." The other words on the cover are in smaller, brown letters, without any box. Under the name of the author "BY HILLIER KRIEGHBAUM" at the bottom of the page are the words, in smaller brown type, with no box, "Associate Professor of Journalism, Communication Arts Group, NEW YORK UNIVERSITY". On the inside front cover of the booklet the names of 51 companies who participated in the survey by answering the questionnaire are listed, also a picture and biographical sketch of the author, Professor Krieghbaum. Page 1 of the booklet outlines the purpose of the survey and the manner in which it was conducted. The remainder of the booklet is devoted to an analysis of the information obtained from the questionnaires and a discussion of the findings made from the survey. Copies of the questionnaires are shown on pages 14, 15 and 16. The booklet clearly and prominently states that Professor Krieghbaum is the author. No statement is made in the booklet that New York University was in any way or manner connected with its authorship or sponsorship.

8. After the booklet (CX-1) was printed, approximately 2,200-2,300 copies were mailed on July 19, 1956 to approximately 500 advertising agencies in the United States, Europe, the Far East, and Latin-America. The remaining 1,700-1,800 copies of the 2,200-2,300 copies were distributed to companies exporting automotive products who were on MHICorp's promotion list. On this mailing, the booklet (CX-1) was mailed alone, without any covering material. The second distribution of the booklet (CX-1) occurred on August 3, 1956 when copies were mailed to participating companies with a letter of thanks from Professor Krieghbaum for their cooperation in the survey. The evidence offered in support of the allegation in the complaint that respondent MHICorp. represented that the survey had been conducted by New York University consists of two printed pieces which respondent MHICorp. distributed in promotion of the survey. These two promotional pieces are identified as CX-2 and CX-3A, and were distributed *after* (underscoring mine) the first two distributions of CX-1, as described above.

Each exhibit was received in evidence and will hereafter be discussed in the order of their use by MHI Corp.

9. CX-3A will first be discussed. CX-3A is a newsletter dated August 15, 1956, issued by respondent MHI Corp. The newsletter is issued twice each month. The first page of the newsletter carries the heading "AUTOMOTIVE EXPORT NEWSLETTER," "The American Automobile & El Automovil Americano." The newsletter is addressed to "Dear Sir:" and is followed by "NYU completes 9-months survey of automotive export advertising: A nine month's case study of the methods and practices of the largest companies engaged in automotive exporting has just been completed by Hillier Krieghbaum, Associate Professor of Journalism, New York University * * * * * Copies of the booklet summarizing the results, can be obtained from Hillier Krieghbaum, Associate Professor of Journalism, Communication Arts Group, New York University, Washington Square, New York 3, N.Y." It is the introductory line of this newsletter "NYU completes 9-months survey of automotive export advertising" which counsel supporting the complaint contends is a representation by respondent MHI Corp. that New York University conducted the survey. This Hearing Examiner does not agree with such an interpretation. The first sentence of the newsletter should be read in its entirety. If the entire first sentence is read, it clearly states that Hillier Krieghbaum, Associate Professor of Journalism, New York University, made and completed the survey. The first part of the first sentence "NYU completes 9-months survey of automotive export advertising" is and should be considered as an introductory or so-called "headline" to the first paragraph of the newsletter. A reading of the first sentence clearly states that the survey was made by Professor Krieghbaum. It is found therefore, that the use by respondent MHI Corp. of the words "NYU completes 9-months survey of automotive export advertising" in the first line of the newsletter (CX-3A) does not establish the allegation of the complaint that respondent MHI Corp. represented that New York University conducted the survey.

10. CX-2 is a promotional piece in the form of a one-page memorandum dated August 20, 1956, from Russell F. Anderson, publisher of "The American Automobile," which accompanied the third distribution of Professor Krieghbaum's booklet (CX-1). This memorandum (CX-2), in the handwriting of Mr. Anderson, was placed in an envelope along with CX-1 and mailed to the same 2,200 or 2,300 persons and firms which were on the promotional list of "The American Automobile" and to whom the first two mailings of CX-1 had been sent on July 19 and August 3, 1956, respectively. This covering memorandum CX-2, in the handwriting of Mr. Anderson,

consists of a single page on the stationery of "The American Automobile," Office of the Publisher, dated August 20, 1956, and is addressed to "Dear Sir". Reproduced and imprinted in the middle of the page of the memorandum is a part of a newspaper article containing the headline "NYU COMPLETES MAJOR SURVEY OF AUTO EXPORT ADVERTISING". Immediately under the headline just quoted, and in Mr. Anderson's handwriting, is the explanatory statement that the survey had just been completed by Hillier Krieghbaum, Associate Professor of New York University, and that the survey was financed by "McGraw-Hill." The wording of the memorandum, CX-2, calls the addressee's attention to the survey (CX-1), a copy of which was enclosed with the memorandum. Counsel supporting the complaint contends that the headline "NYU COMPLETES MAJOR SURVEY OF AUTO EXPORT ADVERTISING" reproduced in the memorandum constitutes a representation by respondent MHI Corp. that the survey was conducted by New York University. Such an interpretation is strained and stilted. Although the headline is a misstatement of fact, the headline should not be considered alone, isolated from the copy immediately below the headline. Certainly no advertising agency or department would be misled and purchase advertising on the strength of this headline. He would read and inquire further. When the memorandum (CX-2) is read in its entirety, it is clear that the memorandum states that the survey had been made by Professor Krieghbaum, not by New York University. Professor Krieghbaum's survey report (CX-1) accompanied the memorandum (CX-2). Any person reading the memorandum would immediately see that the survey was conducted by Professor Krieghbaum, and especially advertising agencies and departments. These were the only persons who received the memorandum. The exhibits complained about were not distributed to the general public. CX-1, CX-2, and CX-3A were only distributed to prospective purchasers of advertising space in "The American Automobile," a discriminating and skeptical audience. This audience consisted of advertising agencies and advertising departments of companies exporting automotive products. Each person or firm which received the two promotional pieces complained about, (CX-2 and CX-3A), also received CX-1, which also clearly stated that Professor Krieghbaum was the author of the survey. Furthermore, any person reading the promotional pieces complained about (CX-2 and CX-3A) would, before placing any advertising on the mere strength of the copy complained about in the two promotional pieces (CX-2 and CX-3A), read and examine the survey itself (CX-1). By reading CX-1, it would also be apparent that Professor Krieghbaum con-

ducted the survey, not New York University. A preponderance of the evidence clearly shows that the two promotional pieces complained about, CX-2 and 3A, when read and considered in their entirety, do not represent nor convey the impression, nor were they intended by respondent MHICorp. to represent or convey the impression, that New York University conducted the survey. Furthermore, neither CX-1, CX-2, nor CX-3A is likely to represent or convey the impression that New York University conducted the survey, rather than Professor Krieghbaum. It is found, therefore, that the use by the respondent MHICorp. of the booklet CX-1, the printed survey by Professor Krieghbaum, the memorandum (CX-2), as well as the newsletter (CX-3A), do not establish the allegation of the complaint that MHICorp. represented that the survey had been conducted by New York University.

11. The second charge of the complaint is directed toward the respondent MHPCo. This charge, set out in Paragraph Six of the complaint, is that the respondent MHPCo. published and disseminated a survey chart (CX-5) representing that the comparative percentages on said chart indicated current trade coverage or reader interest as between MHPCo's magazine "Electrical Merchandising" and a competing magazine, whereas "such readership coverage claims were not based on a recent or current survey but were based on a survey more than three years old," thus tending to deceive the purchasing public and unfairly diverting business to respondent from its competitors.

12. As an aid in promoting the sale of advertising space in its magazine "Electrical Merchandising", respondent MHPCo., in 1951, employed Crossley, Inc., Princeton, New Jersey, a firm specializing in Marketing and Opinion Analysis, to make a consolidated radio and television reader preference survey of dealers on the customer lists of television manufacturers. It was originally intended that ten television manufacturers participate in the survey but, as finally constituted, seven manufacturers took part. The purpose of the survey was to obtain for each manufacturer's advertising department and agency the trade publication preference of its own dealers plus those of a sizeable segment of the industry's retail outlets. Seven television manufacturers, Admiral, Arving, Bendix, Motorola, Philco, Stewart-Warner, and Zenith agreed to participate and send postcard questionnaires to 2,500 radio and appliance dealers on their customer lists. The respondent MHPCo. supplied the postcards for Crossley's use in the survey. These postcards contained two questions for the dealers to answer and instructed each dealer to answer the two questions on the postcard and return to the participating manufacturer. The questions were: 1. "Which trade

publications do you read regularly?" and 2, "Which one do you find most useful in your business?" The postcard questionnaires were addressed and mailed in the fall of 1951 by each manufacturer to its own dealers. 1,986 usable replies were received to the questions propounded in the postcard questionnaires. The returns were addressed to and received by the respective participating manufacturer who tabulated them. The individual returns were then delivered by each manufacturer to Crossley, Inc. Crossley then eliminated any duplications and made a composite tabulation and report of its findings from the survey. Its report and findings were delivered to "Electrical Merchandising" on or about June 11, 1952. Crossley, Inc. retained possession of the postcard replies and they were never delivered to the respondent MHPCo. In August, 1952, the respondent printed the results of the Crossley survey in booklet form (CX-6). The booklet (CX-6) describes the manner in which the survey was conducted, i.e., by sending a postcard questionnaire to specified persons, and lists the names of the companies participating in the survey, a specimen of the postcard questionnaires which were used and the results of the survey as certified by Crossley, Inc. (CX-6). The survey booklet (CX-6) shows on its face that the results of the survey were transmitted to "Electrical Merchandising" on June 11, 1952.

13. Thereafter, but prior to March, 1954, a television manufacturer inquired of an "Electrical Merchandising" salesman for information on duplication, i.e., the extent to which the same reader may subscribe to and read two different magazines. (Advertisers are necessarily interested in duplication for the reason that, where duplication of readership of two or more magazines exists, an advertiser in each magazine has increased his costs without increasing his audience coverage). When the "Electrical Merchandising" salesman notified his superior of this inquiry, the respondent MHPCo. requested such duplication figures from Crossley, Inc., since Crossley had possession of the postcard responses which contained this information. MHPCo. requested the duplication figures as between respondents' "Electrical Merchandising" and "Television Retailing." ("Television Retailing" was formerly known as "Electrical Retailing," "Radio Retailing," and "Radio-TV Retailing," published by Caldwell-Clements, Inc. "Television Retailing," a monthly magazine with "controlled" circulation, became known as "Mart" as of the September, 1953 issue. By "controlled" circulation is meant that the magazine was delivered free to persons in the industry who asked for it as contrasted to a magazine with a paid circulation).

14. Crossley, Inc. obtained the duplication figures from the responses to Question No. 1 in the Crossley survey, to-wit: "Which

trade publications do you read regularly?" The duplication figures were obtained in the following manner: To ascertain the number of persons who read "Electrical Merchandising" only, as between "Electrical Merchandising" and "Television Retailing (Mart)," Crossley counted the number of persons who had stated in their reply to Question No. 1 that they read "Electrical Merchandising" and did not say that they read "Television Retailing (Mart)." To ascertain the number of persons who read "Television Retailing (Mart)" only, as between the two publications, Crossley counted the number of persons who stated that they read "Television Retailing (Mart)" and did not say that they read "Electrical Merchandising." To ascertain how many persons read both publications, Crossley counted the number of persons who said that they read both "Television Retailing (Mart)" and "Electrical Merchandising."

15. After MHPCo. received the duplication figures from Crossley, Inc., MHPCo. prepared a chart which compared the readership coverage of "Electrical Merchandising" with "Television Retailing (Mart)." The chart was prepared upon the basis of the duplication figures furnished by Crossley, Inc. The respondent MHPCo. printed the chart in March, 1954. It is this chart (CX-5) which forms the basis of the second charge complained about which is contained in Paragraph Six of the complaint. This chart (CX-5) compared "Electrical Merchandising" with the competing publication "Television Retailing (Mart)" and stated that:

2 out of 3 (66.9%) Read Electrical Merchandising.

1 out of 2 (51.7%) Read Electrical Merchandising only.

By adding Mart (Successor to TV Retailing) to Electrical Merchandising you increase your . . .

. . . Audience by 33%.

. . . Costs 82%.

* From 7 Company Study supervised and tabulated by Crossley Inc. Rates from January 26, 1954 SRDS (12 Time B&W Page).

16. Three hundred copies of this chart (CX-5) were printed by MHPCo. in March, 1954. Copies of this chart were distributed by MHPCo. to its salesmen for inclusion in their sales kits for future use in the event questions of duplication should arise in the course of their sales presentations in selling advertising space in "Electrical Merchandising." Respondent's salesmen used CX-5 from March, 1954 until November, 1955, when CX-5 was withdrawn from respondent's salesmen and its use discontinued. No general mailing and distribution was made of the chart. Occasionally a copy of the chart was left with a prospect. When the chart (CX-5) was printed in March, 1954, 200 additional copies of the Crossley survey (CX-6) were also printed. Copies of the Crossley survey (CX-6)

were also carried by salesmen in their kits. The chart (CX-5) does not state on its face the date when it was prepared nor the date when the Crossley Survey (CX-6) was prepared. However, CX-5 states that it is based on the Crossley Survey (CX-6) and the Crossley Survey (CX-6) states that the survey was completed and the results delivered to MHPCo. on June 11, 1952.

17. The phrase "Rates from January 26, 1954 SRDS (12 Time B&W Page)" at the bottom of CX-5 is a reference to the date of the publication "Standard Rate and Data Service," a directory setting forth advertising rates, distribution, etc., of magazines and newspapers. This publication is almost constantly used in advertising circles and is commonly referred to as the advertising man's "Bible." There is no reasonable probability that an advertising space buyer would consider the reference above quoted as being the date of the Crossley Survey, as contended by Counsel supporting the complaint. Advertising men were the only persons who were exposed to CX-5 and CX-6. Any buyer or prospective buyer of advertising space who may have examined CX-5 would naturally examine and study the Crossley Survey (CX-6) in connection with CX-5 before purchasing space in "Electrical Merchandising." He would not purchase space on the basis of CX-5 alone. One of the many contentions of counsel supporting the complaint is that, since the results of the Crossley Survey were published in booklet form in August, 1952 (CX-6), and CX-5 was not prepared and published until 1954, the information showing duplication in CX-5 was not *current* (underscoring mine), whereas, CX-5 represents that it was based on current information. CX-5 does not make such a representation, either directly or by implication. CX-5 does not state on its face when it was prepared. CX-5 states on its face that the duplication figures shown in the chart (CX-5) were based on information obtained from the Crossley Survey (CX-6) which, to the knowledge of most advertising agencies and prospective space buyers, was completed and published in 1952. Any agency or prospective space buyer who did not actually remember the year when the Crossley Survey (CX-6) was completed and publicly distributed could and would examine the survey (CX-6) and ascertain the date when it was completed and published. Certainly no buyer of advertising space would purchase space on the strength of CX-5 alone. Most assuredly, he would refer to CX-6. This is so because CX-5 states on its face that it is based on CX-6. Moreover, when do the findings of a survey begun in June, 1951, and completed in June, 1952, cease to be *current*? (underscoring mine). The burden of proof rests with counsel supporting the complaint to establish the allegations of the complaint. CX-5 was used by respondent's

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salesmen during the period from March, 1954, when CX-5 was printed, until November, 1955, when its use was discontinued. In the absence of testimony to the contrary, such as testimony that there was a more recent survey, etc., it cannot be said that the duplication figures in CX-5 which were obtained from the Crossley Survey (CX-6), were not current (underscoring mine), or that the persons who purchased or were likely to purchase advertising space in "Electrical Merchandising" did so on the strength that CX-5 was based on a more recent survey than the Crossley Survey (which was completed in June, 1952). To repeat, CX-5 was not distributed nor exhibited to the general public. Its use was confined to professional advertisers who are experienced in evaluating survey charts and promotional advertising material. None of the media buyers who testified at the hearing stated that they were misled as to the date of CX-5 nor as to the date when the duplication figures underlying CX-5 were obtained. Accordingly, it is found that no space buyer was deceived or likely to be deceived by CX-5 as charged in the complaint. It is further found, from a preponderance of the evidence, that surveys play a minute part in the eyes of a media buyer in helping him to decide whether to purchase advertising space in a particular magazine. From the evidence, it is found that a media buyer would not purchase advertising space in "Electrical Merchandising" on the strength of CX-5 alone, without an examination of CX-6, the Crossley Survey itself.

18. Counsel supporting the complaint advances many additional reasons why CX-5 and CX-6 are false and deceptive. Each of these contentions will not be discussed in detail. Some of these contentions are the following: CX-6 was not a Crossley survey, but was actually a McGraw-Hill survey; MHPCo. singled out "Television Retailing-Mart" for special treatment and prepared CX-5 for the purpose of damaging "Television Retailing-Mart" financially, causing it to lose advertising revenue and putting it out of business; and that "Television Retailing" was not succeeded by "Mart," as represented by CX-5. These contentions are not supported by the evidence. The Crossley Survey (CX-6) was conducted by Crossley, Inc., not by the respondent MHPCo. The circumstance that the manufacturers participated in the survey to the extent of mailing out the postcard questionnaires and receiving the replies did not make it any less a Crossley, Inc. survey. After the television manufacturers received the replies to the questionnaires and delivered them to Crossley, Inc., Crossley, Inc. tabulated the returns and issued its report and findings (CX-6). The survey is properly characterized as a Crossley, Inc. survey.

19. With respect to the contention that respondent singled out "Television Retailing-Mart" for special treatment by preparing CX-5, the evidence establishes the contrary. At the time respondent requested Crossley Inc. to furnish it with the readership duplication figures as between "Electrical Merchandising" and "Television Retailing-Mart," respondent also requested the duplication figures as between respondent's magazine "Electrical Merchandising" and two other top competing magazines, "Retailing Daily" and "Electrical Dealer." From these figures, respondent prepared RX-10 and RX-11 which compared the readership coverage between "Electrical Merchandising" and "Retailing Daily" and "Electrical Dealer," respectively. Thus, it cannot be said that respondent singled out "Television Retailing-Mart" for special treatment.

20. With respect to the contention that CX-5 caused "Television Retailing-Mart" to lose advertising revenues, the evidence shows that, beginning in September, 1953, after "Television Retailing" had been succeeded by "Mart," the number of pages of display advertising in "Mart" dropped considerably and continued at that approximate level until 1956. For the first six months of 1956, the advertising revenues increased by approximately 9% while the advertising revenues of "Electrical Merchandising" decreased. In this connection, it is significant to note that CX-5 was not printed until March, 1954, six months after the advertising revenues of "Mart" had begun to drop with the first issue of "Mart" in September, 1953. Certainly, this diminution of advertising revenue which began in September, 1953, cannot be attributed to CX-5, since it was not printed until March, 1954.

21. Mr. Maurice Clements, former president of Caldwell-Clements, Inc., publisher of "Television Retailing-Mart," was the principal witness who testified in support of the allegations of the complaint, especially with respect to the second charge, contained in Paragraph Six of the complaint. Mr. Clements attended each session of the hearing at which oral testimony was received. In addition, an attorney for Mr. Clements attended each session of the hearing. This attorney sat at the side of counsel supporting the complaint at the counsel table, conferred with counsel supporting the complaint during the interrogation of witnesses at the hearing and handed written notes to counsel supporting the complaint during his interrogation of witnesses. The evidence also shows that Mr. Clements' attorney supplied counsel supporting the complaint with some of the exhibits offered in evidence by counsel supporting the complaint. These facts, as well as the actions and demeanor of Mr. Clements during his

attendance at sessions of the hearing and while testifying as a witness, observed by the Hearing Examiner, demonstrate Mr. Clements' animosity toward the respondents and his personal interest in the outcome of this proceeding. For these reasons, the Hearing Examiner does not accord the testimony of Mr. Clements the same weight and credibility it might otherwise receive.

22. Some of the other contentions urged by counsel supporting the complaint are: that respondent used CX-5 in a surreptitious manner; respondents are so huge that they can not only break a magazine, but break advertising agencies by boycotting them; and that respondent is a giant and it is just as right to issue a cease and desist order against respondents as it is against the "small ones." The evidence does not establish the contention that respondent used CX-5 in a surreptitious manner. The relative size of respondents has no relationship to the determination of whether a cease and desist order should be issued. Such an order should issue only upon the basis of evidence showing deception or a capacity to deceive, in respondents' advertising. When each and all of respondents' advertising pieces complained of as being false and deceptive are considered, especially in view of the limited, sophisticated, and experienced audience to whom they were directed and exposed, it cannot be said, under a reasonable and fair interpretation of the evidence, that respondents' advertising is false and deceptive as alleged. This hearing examiner has carefully considered the testimony of each of the witnesses who were offered in support of the complaint, as well as the documentary evidence and pleadings, in the record. Upon the basis of the entire record, he is unable to make a finding that respondents' advertising is false and deceptive as alleged. Such a finding can and should only be made upon a record of clear and convincing evidence. Such a record has not been made here. This is not to suggest or infer any lack of expertise or ability on the part of counsel supporting the complaint. Counsel has prosecuted the case with zeal and vigor. However, sufficient evidence to support the allegations of deception is lacking and it cannot be created by counsel supporting the complaint, however diligent and industrious he may be.

23. During the hearings, in addition to offering evidence in support of the allegations of the complaint, counsel for the Commission also offered evidence against respondents' motion to dismiss the complaint. The motion to dismiss was based, among other things, on the grounds of abandonment and discontinuance of the practices complained about, prior to issuance of the complaint. Counsel supporting the complaint argues that respondents are in a poor position

to request dismissal of the complaint after they were given an opportunity, prior to the filing of the complaint, to enter into a stipulation agreement with the Commissioner to cease and desist from engaging in the practices complained about. In reply, respondents state that they refused to enter into such stipulation agreement for the reason that they did not consider such practices unlawful. The fact that respondents declined to execute the stipulation agreement does not prejudice their right to move for dismissal of the complaint. Respondents' motion to dismiss is bottomed on the doctrine announced and followed by the Commission in *Wildroot Company, Inc.*, (D. 5928), *Argus Cameras, Inc.*, (D. 6199), *Bell & Howell Co.*, (D. 6729), and *Ward Baking Company* (D. 6833), where, if it is found that unusual circumstances exist and the practices complained about have been voluntarily discontinued by the respondents, the Commission may dismiss the complaint on the theory that the purpose of the complaint has been accomplished. In their motion to dismiss in the present case, respondents urged that the acts complained of are not in fact actionable and at worst are isolated, insubstantial instances of human oversight which have long since ceased; that the violation charged against MHPCo. was discontinued in November, 1955, more than two years prior to issuance of the complaint on December 5, 1957, and the violation charged against MHICorp. was discontinued in August, 1956, more than one year prior to issuance of the complaint. Respondents certify that the practices complained about will not be repeated in the future.

24. As bearing on the question of discontinuance of the practices complained about, counsel for the Commission claims that CX-27 supports his contention that respondents have not discontinued the practices complained about as they state in their motion to dismiss. (It should be kept in mind that the first charge in the complaint alleges that the promotion pieces CX-2 and CX-3A distributed by respondent MHICorp. in connection with the Krieghbaum Survey, CX-1, are false and deceptive). CX-27 is an advertisement which appeared in the August, 1951 issue of "Electrical Merchandising." The advertisement (CX-27) referred to "Electrical Merchandising" as "The Best Seller" and states that "Electrical Merchandising" was bought by more people in the appliance-radio-TV industry than any other trade publication in the field. The advertisement further states that an analysis of surveys of leading appliance-radio-TV dealers of leading manufacturers shows that "Electrical Merchandising" rates number one among other publications in the field. The name of the competing publications are not shown but are listed as publications "A," "B," "C," "D," and "E." It is the contention of coun-

sel supporting the complaint that this advertisement is deceptive and is evidence tending to show that respondent had not discontinued the false and deceptive advertising complained about. The false and deceptive advertising complained about (CX-2 and CX-3A) were mailed by respondent in August, 1956. CX-27 appeared in the August, 1951 issue of "Electrical Merchandising," five years prior to respondents' use of CX-2 and CX-3A. An advertisement (CX-27) which appeared in 1951 is not appropriate evidence to show *continuance* (underscoring mine) of a practice which occurred in 1956. Only deceptive advertisements which respondent may have published and distributed subsequent to (CX-2 and CX-3A) are competent evidence to show that respondent was continuing to publish and distribute deceptive advertisements. (The complaint does not charge that CX-27 is false and deceptive. CX-27 was furnished to counsel supporting the complaint by counsel for Mr. Clements and was offered by Commission counsel as evidence to show that respondent had not (as of the date of respondents' motion to dismiss) discontinued the practices complained about. The evidence offered by counsel supporting the complaint does not show CX-27 to be false and deceptive. When CX-27 appeared in the August, 1951 issue of "Electrical Merchandising," there were approximately one half dozen recent surveys which indicated that "Electrical Merchandising" ranked first in the appliance-radio-TV industry trade. The format of the advertisement "The Best Seller" (CX-27) was modeled after an illustration which appeared in the book review section of the "New York Times." The illustration listed the popularity of certain books. This advertisement (CX-27) appeared only one time, in the August, 1951 issue of "Electrical Merchandising."

25. CX-26, a survey conducted by Erdos and Morgan among appliance-TV dealers dated February, 1958, is another survey used by "Electrical Merchandising" and which counsel supporting the complaint alleges to be false and misleading. As to this survey, the evidence shows that, in 1957, the respondent MHPCo. employed the firm of Erdos and Morgan, specialists in marketing and research, to conduct a survey among appliance-TV dealers. Six of the leading manufacturers of radio, television receivers and electrical appliances were each asked to supply Erdos and Morgan with the names of a random sample of approximately 1,200 retailers of their products across the country. The manufacturers who participated were RCA, Whirlpool, Kelvinator, Westinghouse, Admiral, Hoover and General Electric. Between the 18th and 23d of November, 1957, Erdos and Morgan sent a letter, questionnaire and stamped reply envelope to approximately 6,000 of their dealers asking them

which appliance TV trade publication they found most useful in sales-making ideas and which they found most useful for the advertisements contained in it. Erdos and Morgan received the replies from dealers, tabulated them and prepared a survey report dated February, 1958. The report showed that "Electrical Merchandising" was named by more retailers than any other magazine in reply to the two questions asked. "Mart" which had been sold by Caldwell-Clements, Inc. in 1956, ranked second. The Erdos and Morgan survey was printed in a four-page booklet CX-26, dated February, 1958. The booklet (CX-26) listed the names of the companies which participated in the survey, the methods used, the results obtained, and reproductions of the questions asked in the questionnaires. The survey (CX-26) was mailed to the entire promotional list of "Electrical Merchandising" of approximately 2,800 and copies were also supplied to salesmen and all branch offices of respondent. The survey was conducted by Erdos and Morgan in accordance with standard practices of marketing and research organizations and the survey report issued by Erdos and Morgan was true and correct to the best of their knowledge and belief. On May 26, 1958, respondent MHPCo. placed an advertisement in "Advertising Age" which stated, among other things: "Researchers Erdos and Morgan merely confirmed what appliance Pros have long known: more dealers choose 'Electrical Merchandising' for 'sales-making ideas' and for 'usefulness of advertisements' than choose the next two publications combined" (CX-25).

26. In September or October, 1957, Bittenheim Publishing Company, the publisher of "Mart," purchased "Electrical Dealer." In deciding how to report the results of the Erdos and Morgan survey in view of this occurrence and in view of the fact that "Retailing Daily" had changed its name to "Home Furnishings Daily" on April 1, 1957, representatives of respondent MHPCo. conferred with Dr. Erdos and Mr. Morgan as to how the listing should be made in the survey as a result of these developments. "Electrical Dealer" and "Mart" had been separate publications for years and since the Erdos and Morgan Survey sought information concerning readership interest over a period of time prior to November, 1957, it did not appear appropriate to combine the responses with reference to the two magazines. Space buyers were familiar with the facts concerning the two publications.

27. When Bittenheim acquired "Electrical Dealer," it did not retain any of the personnel of "Electrical Dealer." After acquisition, the format of "Mart" remained the same and its circulation remained much the same. Counsel supporting the complaint contends that the Erdos and Morgan Survey (CX-26) is false and

misleading because the replies to the questionnaires which listed "Mart" as the trade publication found most useful should have also included the replies which listed "Electrical Dealer" as the most useful because at the time the questionnaires were mailed out, in November, 1957, Bittenheim Publishing Company, the then publisher of "Mart" magazine had also purchased "Electrical Dealer" which was a competing magazine. Counsel supporting the complaint further argues that, since the publisher of "Mart" also owned "Electrical Dealer" in February, 1958, when the Erdos and Morgan Survey was completed and publicly distributed, the replies should have been combined because at the time the Erdos and Morgan Survey was completed the publisher of "Mart" also owned "Electrical Dealer." Such a line of reasoning does not logically follow. The questionnaires, as stated above, were inquiries to dealers as to which publications they (the dealers) had found most useful in their business. The questionnaires were mailed during the month of November, 1957. Necessarily, the inquiry concerned publications which the dealer had used and was familiar with prior to 1957, at which time "Mart" and "Electrical Dealer" were separate publications.

28. Counsel further argues that the Erdos and Morgan Survey is deceptive because it consolidates and combines the replies from dealers who listed the publications "Home Furnishings Daily" and "Retailing Daily" as being most useful in their business. This is of no real significance and is explained by the fact that "Home Furnishings Daily" and "Retailing Daily" is one and the same publication. Only a change in name. On or about April 1, 1957, the name of the publication "Retailing Daily" was changed to "Home Furnishings Daily." Possibly, some of the dealers who listed the name "Retailing Daily" in their reply to the questionnaire were not aware that the name of the publication "Retailing Daily" had been changed to "Home Furnishings Daily."

29. On the other hand, there is in evidence a promotional piece (RX-12), dated May 5, 1958, signed by Mr. Edward George Allen, publisher of "Mart" magazine, which was distributed to the trade. In this piece (RX-12), Mr. Allen praised the Erdos and Morgan Survey and commended "Electrical Merchandising" for sponsoring the study. RX-12 further stated that the publisher of "Mart" magazine was proud of the fact that, in the Erdos and Morgan Survey, "Mart" magazine showed up a strong second to "Electrical Merchandising" in dealer preference. Accordingly, it is found that the contentions of counsel supporting the complaint with respect to respondents' motion to dismiss have not been sustained.

1152

Order

CONCLUSIONS

Since evidence has been received on the entire case and it has been found that the allegations of the complaint have not been established by a preponderance of the evidence that respondents prepared and distributed false and deceptive advertisements, the complaint should, therefore, be dismissed.

ORDER

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

**AUTOMOTIVE
EXPORT
ADVERTISING**

**A Study of the Methods and Practices
of the Largest Companies Engaged
in Automotive Exporting...**

- ... How Companies Define Advertising Objectives
- ... How Advertising Budgets are Planned
- ... How Advertising Outlets are Evaluated
- ... How Advertisers Assess Publishing Practices
- ... How Advertisers Appraise Circulation Methods
- ... How Companies Rank Magazines
- ... How Readers Grade Magazines

FEDERAL TRADE COMMISSION
 DOCKET NO. 6971
 IN THE MATTER OF *McGraw Hill*
 DATE *10/29/58* WITNESSED *As above*
 AGS REPORTING CO., Official Reporter
 By *[Signature]*

BY HILLIER KRIEGHBAUM

Associate Professor of Journalism
Communication Arts Group
NEW YORK UNIVERSITY

Order

57 F.T.C.

C. Anderson

FEDERAL TRADE COMMISSION
 DOCKET NO. 6971 COMMISSION EXHIBIT NO. 2
 IN THE MATTER OF McGraw-Hill
 DATE 10/29/58 WITNESS Anderson
 ACE REPORTING CO., Official Reporter
 By Anderson
 McGRAW-HILL INTERNATIONAL CORPORATION
 330 WEST 42nd STREET, NEW YORK 36, N. Y.

OFFICE OF THE PUBLISHER

August 20, 1958

Dear Sir,

Perhaps you've already obtained a copy of this since it has been rather heavily publicized.



But if not, you will certainly want a copy (which I attach) since it is the most complete survey ever undertaken of automotive export advertising. It was financed by McGraw-Hill.

I'd like to call attention to the overall results particularly to advertisers 1) who are working on 1957 budgets and 2) those who use split schedules.

On these findings, I'll rest my case...

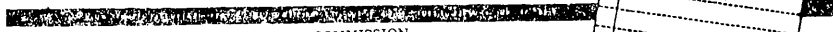
Russell F. Anderson
C - 2 - 11

EXHIBITS IN CONNECTION WITH CHARGE AGAINST
McGraw-Hill International Corporation

AUTOMOTIVE EXPORT NEWSLETTER

THE AMERICAN AUTOMOBILE & EL AUTOMOVIL AMERICANO

CHECK AND FAN ALONGS	



FEDERAL TRADE COMMISSION
 DOCKET NO. 6921 EXHIBIT NO. 34
 IN THE MATTER OF McGraw-Hill August 15, 1956
 DATE 8/29/58 WITNESS Amber
 By: U. Mark
 ACE REPORTING CO., Official Reporter

NTU completes 9-months survey of automotive export advertising: A nine months' case study of the methods and practices of the largest companies engaged in automotive exporting has just been completed by Hillier Kriegbaum, Associate Professor of Journalism, New York University. Purpose of the survey, which also included media preference research in 44 countries, was to evaluate media channels available to firms engaged in selling automotive products abroad and the methods and practices of these companies in placing their advertising. "The study", in the words of the preface, "was undertaken to make an analysis of a cross-section of export advertising. The automotive industry was selected because this field has ranged from six to ten per cent of all export advertising during recent years and because it includes easily identifiable products." Fifty-one firms, which represented a sizable portion, if not the majority, of automotive export advertising billings, cooperated in the study. They supplied information on their methods and practices as they related to defining their advertising objectives, how they planned their budgets, how they assessed publishing practices and circulation methods, and how they ranked magazines as to their effectiveness. The companies participating in the case study also supplied names and addresses of their overseas distributors, jobbers, or other outlets, in 44 countries and this group in turn was surveyed to determine how overseas readers evaluated media channels being employed by automotive exporters and their advertising agencies. Copies of the booklet, summarizing the results, can be obtained from: Hillier Kriegbaum, Associate Professor of Journalism, Communication Arts Group, New York University, Washington Square, New York 3, N. Y.

African Shipping Rates Go Up: Ocean freight rates to South and East African ports and harbors in Madagascar, Mauritius and Reunion Islands will be increased moderately on Oct. 1 because of constantly rising operating costs, it has been announced by the Gulf South and East African Conference of New Orleans, La.

Australian Auto Imports Curbed: The Australian Department of Trade has announced that imports of fully assembled motor vehicles from the dollar area would be reduced by 50 per cent and unassembled chassis by 30 per cent. Imports of components from the dollar area for manufacture of vehicles in Australia are not affected. The reductions, which will be made under the new import restrictions announced last month are the same as those applying to vehicles from sterling and non-dollar areas.

Volkswagen announces 1955 profits: Volkswagen, largest vehicle producer in Europe made a profit of 6,272,142 marks last year. In addition, a profit of 2,335,241 marks was carried over from 1954. These figures were disclosed in the company's annual balance sheet. As Volkswagen is in public hands, there is no question of a dividend. A statement of progress said that during 1955 the company increased the number of its dealers and service stations outside West Germany to 2,498. Their service network is regarded as one of the reasons for its export success.

C-3A-119

Order

57 F.T.C.

HILLIER KRIEGHBAUM

ASSOCIATE PROFESSOR OF JOURNALISM · COMMUNICATION ARTS GROUP

NEW YORK UNIVERSITY
WASHINGTON SQUARE, NEW YORK 3, N. Y.PRESS RELEASE

A nine months' case study of the methods and practices of the largest companies engaged in automotive exporting has just been completed by Hillier Krieghbaum, Associate Professor of Journalism, New York University.

Purpose of the survey, which also included media preferences research in 44 countries, was to evaluate media channels available to firms engaged in selling automotive products abroad and the methods and practices of these companies in placing their advertising.

"The study", in the words of the preface, "was undertaken to make an analysis of a cross-section of export advertising. The automotive industry was selected because this field has ranged from six to ten per cent of all export advertising during recent years and because it includes easily identifiable products."

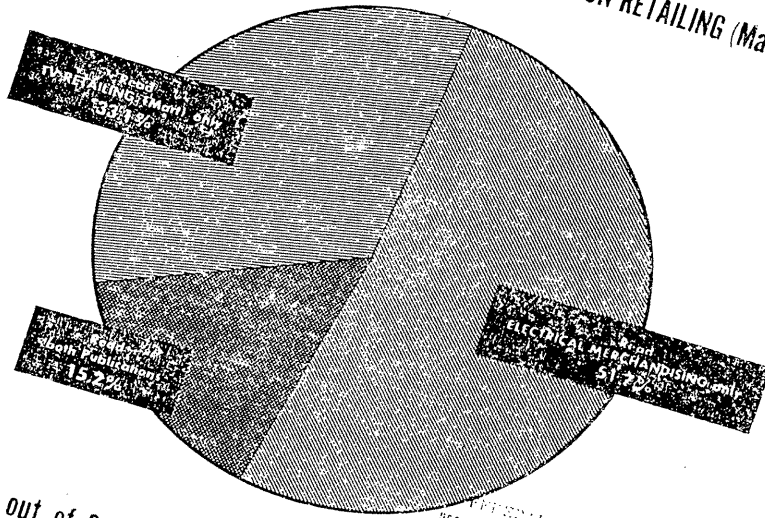
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FEDERAL TRADE COMMISSION
COMMISSION EXHIBIT NO. 4
DOCKET NO. 1971
IN THE MATTER OF ACE REPORTING CO., OFFICIAL REPORTS
DATE 12/29/57
WITNESSES
By

Here's what happens when a TV manufacturer advertises in ELECTRICAL MERCHANDISING and TELEVISION RETAILING (Mart)*



2 out of 3 (66.9%) READ ELECTRICAL MERCHANDISING
 1 out of 2 (51.7%) READ ELECTRICAL MERCHANDISING only

By adding Mart (successor to TV Retailing) to ELECTRICAL MERCHANDISING
 you increase your ... Audience by 33%
 ... Costs 82%

*From 7 Company Study supervised and tabulated by Crossley Inc.
 Rates from January 26, 1954 SRDS (12 Time BRW Page)

DECISION OF THE COMMISSION

Counsel in support of the complaint having filed an appeal from the hearing examiner's initial decision dismissing the complaint herein for failure of proof, and the Commission having considered the matter, including the briefs and oral arguments of counsel and the record as a whole, and having determined that the initial decision constitutes an appropriate disposition of the proceeding:
It is ordered, That the appeal of counsel in support of the complaint be, and it hereby is, denied.
It is further ordered, That the aforesaid initial decision be, and it hereby is, adopted as the decision of the Commission.