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

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

Commissioner Elman not participating.

IN THE MATTER OF

ART NATIONAL MANUFACTURERS DISTRIBUTING CO., INC., ET AL.

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

Docket 7286. Complaint, Oct. 24, 1958—Decision, May 10, 1961

Order requiring two associated concerns with common officers—a catalog mail order house and a watch manufacturer which made a substantial part of its sales through the former's catalog—to cease misrepresenting the size and extent of their business quarters, or the length of time in business; representing falsely that their "Louis" watches were shockproof, had been awarded a Gold Medal, were jeweled with rubies, and were guaranteed; and to cease preticketing their watches with excessive prices represented thereby as the usual retail prices.

Mr. Harry E. Middleton, Jr., for the Commission.

Mr. B. Paul Noble, of Washington, D. C., for respondents.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

This proceeding is based upon a complaint brought under §5 of the Federal Trade Commission Act, charging respondents with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce in connection with the sale and distribution of various items of merchandise, including watches.

This proceeding is now before the Hearing Examiner for final consideration upon the complaint, answers thereto, testimony and other evidence, proposed findings of fact and conclusions of law filed by all parties. The Hearing Examiner has given consideration to the proposed findings of fact and conclusions submitted, and all find-

ings of fact and conclusions proposed by the parties, not hereinafter specifically found or concluded, are herewith rejected. The motion to dismiss the complaint filed by the respondents is denied.

The Hearing Examiner, having considered the entire record herein, makes the following findings as to the facts and conclusions drawn therefrom, and issues the following order:

FINDINGS OF FACT

1. Respondents Art National Manufacturers Distributing Co., Inc., hereinafter referred to as "Art National", and Louis Watch Company, Inc., hereinafter referred to as "Louis Watch", are corporations organized, existing and doing business under and by virtue of the laws of the State of New York. Their offices and principal places of business are, respectively, 58–40 Borden Avenue, Maspeth, New York, and 580 Fifth Avenue, New York, New York.

2. Respondents Louis Friedman, Martin Friedman and Albert Friedman are officers of said corporations. The individual respondents have participated in the formulation, direction and control of the policies, acts and practices of the corporate respondents, and have cooperated in carrying on the practices hereinafter found, except that respondent Martin Friedman has not been shown to have participated in the conduct of the affairs of Louis Watch, although he was nominally an officer of that corporation.

3. The respondents are engaged in interstate commerce.

4. Respondents are in competition with other catalog merchandisers and watch importers.

5. Art National publishes catalogs, circulars and other printed material, and such material is disseminated in commerce.

6. Art National represented that it has been in business for thirty-two years. Art National, however, was organized and incorporated in 1951.

7. Louis Watch represented that it was established in 1904, but this firm was not organized and incorporated until 1932.

8. The corporate respondents impliedly represented that the buildings depicted in their advertising were entirely occupied by them, when in fact each of them occupied only a small portion of the buildings depicted in their advertising.

9. Art National represented that it sold its merchandise at America's lowest prices. However, competitors of Art National sold many of the same items of merchandise at prices as low as those of this respondent, and respondent, in many instances, did not sell at wholesale prices.

10. Louis Watch represented that its watches were Gold Medal Award winners, but its watches have never been awarded a gold medal or any other kind of medal.

11. Louis Watch represented that the jewels in its watches were rubies. The jewels in Louis watches were not rubies, but were made of synthetic material.

12. Louis Watch represented that certain of its watches were shockproof, but they were not shockproof.

13. Louis Watch represented that its watches carried a "full year's written guarantee", but the written guarantee furnished Louis Watch purchasers, against "any original defects or workmanship", did not set out the manner in which the guarantor would perform, nor was such disclosure made in the Louis Watch advertisements.

14. The evidence does not establish whether or not the suggested resale prices with which respondent Louis Watch preticketed its watches were the prices at which such watches were usually and customarily sold at retail. Those sold by Art National through its catalog were sold for substantially less than Louis Watch's preticketed prices, and a number of peddlers, discount dealers and wholesalers sold them at retail for less than the preticketed prices; but all of the retailers who operated retail jewelry stores, who were called as witnesses, sold them at the suggested resale or preticketed prices. The evidence does not permit a determination that the usual or customary resale prices were less than the preticketed prices, nor does it permit a determination that the preticketed prices were fictitious.

CONCLUSIONS

The allegations of the complaint relating to the preticketing of watches with fictitious retail prices have not been sustained by the evidence.

The other acts and practices of respondents, as hereinabove found, were all to the prejudice and injury of the public and of respondents' competitors, and constituted unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent Art National Manufacturers Distributing Co., Inc., a corporation; its officers; respondents Louis Friedman, Martin Friedman and Albert Friedman, individually and as officers of said corporation; and their agents, representatives and

employees, directly or through any corporate or other device, in connection with the sale or distribution of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That said corporation has been in existence, or that said corporation or individuals have been in business for any period or length of time that is not in accordance with the facts;

2. That respondents occupy any portion of buildings depicted that is not in accordance with the facts, or misrepresenting, in any manner, the size or extent of the buildings in which they carry on their business;

3. That respondent Art National Manufacturers Distributing Co., Inc. sells its merchandise at America's lowest prices, or misrepresenting in any other manner its prices as compared to those of its competitors;

4. That Louis watches are shockproof.

It is further ordered, That respondent Louis Watch Company, Inc., a corporation; its officers; respondents Louis Friedman and Albert Friedman, individually and as officers of said corporation; and their representatives, agents and employees, directly or through any corporate or other device, in connection with the sale or distribution of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That said corporation has been in existence, or that said corporation or individuals have been in business for any period or length of time that is not in accordance with the facts;

2. That they occupy any portion of buildings depicted that is not in accordance with the facts, or misrepresenting, in any manner, the size or extent of the buildings in which they carry on their business;

3. That Louis watches have been awarded a Gold Medal or any other kind of medal;

4. That the jewels in Louis watches are rubies;

5. That Louis watches are shockproof.

OPINION OF THE COMMISSION

By Dixon, *Commissioner*:

The complaint in this proceeding was issued October 24, 1958. In it the respondents are charged with having made false, misleading and deceptive statements or representations in promotional material in connection with the interstate sale of a wide variety of goods including watches. It is alleged that these practices violate Section 5 of the Federal Trade Commission Act.

After an answer had been filed the respondents changed counsel and upon request were granted permission to file new and somewhat different answers. Issue having been joined the matter proceeded to hearing. After three days of hearings during which the testimony of eight witnesses was heard, the hearing examiner became fatally ill and on July 2, 1959, a substitute hearing examiner was appointed in his stead.

On July 28, 1959, we denied respondents' interlocutory appeal from the order replacing the hearing examiner on the ground that respondents had failed to show that their right to a full and fair hearing had in any manner been prejudiced by the substitution. Hearings in support of and in opposition to the complaint were then held in several cities throughout the country culminating in New York City on June 28, 1960.

The hearing examiner's initial decision partially upholding and partially dismissing the complaint was filed on October 27, 1960. The proceeding is before us on cross-appeals by respondents and counsel supporting the complaint. The appeal of counsel supporting the complaint makes two assignments of error while respondents plead that the hearing examiner erred in nine of his findings and charge further errors in five legal questions.

Respondent Art National Manufacturers Distributing Co., Inc., is a "catalog mail order house" selling a sundry line of hard goods to consumers and occasionally to retailers. This proceeding is almost entirely concerned with alleged false and deceptive representations made in the Art National catalog distributed to more than 400,000 addressees.

Louis Watch Company, Inc., is a manufacturer and distributor of watches. A substantial part of its total sales are made through the medium of Art National. Several of the specific charges against this respondent involve its advertising appearing in the Art National catalog while others deal with practices engaged in while distributing watches through other media.

The two corporate respondents are of a type commonly referred to as "family" corporations. They are completely owned and managed by the Friedman family and three of the members of that family, the father and two sons, are named as party respondents. The evidence clearly indicates interlocking control and management of the two corporations through the medium of common officers.

The respondents admit that respondent Louis Friedman "owns" and "runs" respondent Louis Watch Company, Inc., and that respondent Albert Friedman manages and formulates the policy of respondent Art National Manufacturers Distributing Co., Inc. They

deny that respondent Martin Friedman has any authority or control in either corporation. The evidence shows that Martin Friedman owns 25% of the stock of Art National; that he was its vice-president when it was incorporated, and that his brother Albert was "not too sure" that he was still the vice-president at the time of hearing. These might be rather tenuous grounds for holding Martin Friedman as a party respondent but we do not have to rely on them alone. Mr. Louis Friedman, the father of Albert and Martin, when asked whether he and his two sons owned and ran Art National testified: "Art National, yes. Well, they actually run it, to be more specific." This statement allays any question of Martin Friedman's responsibility for the operation of respondent Art National and with it any doubt concerning his being a proper party to this proceeding.

Several of respondents' assignments of error can be disposed of without extended discussion since they have been met with such frequency in the past that their solution presents no problem for which a clear and controlling precedent has not been established. One such plea is respondents' claim that they have discontinued or abandoned several of the practices indicted by the complaint and have no intention to again engage in them. To resolve such questions we generally look to the timing and circumstances surrounding the alleged discontinuance. In this case it is admitted that the practices were not discontinued until the Commission attorney investigating this matter informed respondents of their questionable nature. Such discontinuance after the commencement of proceedings will not support a conclusion or give assurance that the practices will not be resumed, and under such circumstances we have consistently refused to dismiss complaints. E.g., *Ward Baking Company*, 54 F.T.C. 1919 (1958); *Arnold Constable Corporation*, Docket No. 7657 (January 12, 1961). Respondents here have presented no grounds which would justify our departure from past holdings and we accordingly reject their plea of abandonment.

Another of respondents' pleas which appears to fly in the face of established precedent is the contention that the substitution of hearing examiners during the course of the hearing had the effect of denying them a fair trial. They urge that the replacement hearing examiner did not hear the testimony of all witnesses and may not make findings which are to any extent based upon testimony not offered in his presence. Respondents cite no legal precedent for this proposition, for indeed there is none. A leading case on this point is *Gamble-Skogmo, Inc.* v. *Federal Trade Commission*, 211 F.2d 106 [5 S.&D. 603]

(8th Cir. 1954). In that case a substitute hearing examiner was appointed when his predecessor became unavailable after all testimony had been received and briefs and oral argument received and heard. On appeal from the Commission's order to cease and desist the court of appeals made a rather detailed analysis of the evidence and concluded that the initial decision of the substitute hearing examiner was: "* * * based in controlling measure upon the credibility evaluation which he made between the opposing witnesses in their irreconcilable testimony." (Id. at 117–118) The court set aside the order of the Commission holding that the Commission had not complied with the provisions of Section 5(c) of the Administrative Procedure Act (5 U.S.C.A. § 1004(c)), which provides in part:

> The same officers who preside at the reception of evidence * * * shall make the recommended decision or initial decision * * * except where such officers become unavailable to the agency.

In ruling against the Commission, the court decided that even when a hearing examiner had become "unavailable" a substitute hearing examiner could not decide the case unless:

> * * * it fairly could be said that credibility evaluation from hearing and seeing the witnesses testify was unnecessary, in the sense that a direct choice in personal credibility as between them would not have to be made or would not from the nature of the situation be capable of being of material assistance, in the attempt of the substitute examiner to arrive at the controlling facts. (Id. at 115)

To bring themselves within the rule of the *Gamble-Skogmo* case respondents would have to show that the hearing examiner based his findings upon the contradicted testimony of witnesses which he had not observed testifying. While it is true that the substitute hearing examiner did not hear the testimony of eight witnesses (including two of the individual respondents) respondents do not challenge the credibility of these witnesses or point to any irreconcilable conflict between their testimony and other evidence. A further defect in respondents' plea is the failure to show that the findings and decision of the hearing examiner were based to any extent upon the testimony of the unobserved witnesses. Thus, we conclude that respondents have totally failed to show that the substitution of hearing examiners in any way prejudiced their right to a fair trial.

Both corporate respondents are charged with misrepresenting the time they have been in business. Louis Watch Company advertised that it has been in business since 1904 and there doesn't appear to be any question but that this representation is completely false.

The situation with Art National is different. This company represented in its 1956–57 catalog as follows:

For 32 years ART NATIONAL has been the choice of progressive dealers * * *.

The complaint alleged that this statement was false and that respondent "* * * was not incorporated until 1951."

The hearing examiner ordered respondent Art National to cease representing that it had been in business for any period of time "* * * that is not in accordance with the facts; * * *." Let us briefly examine just what the record facts are with respect to this charge.

The respondent in its answer freely admitted that it had represented that Art National had been in business for thirty-two years and also admitted that it was not incorporated until 1951. It specifically denied that its representations as to the length of time which it had been in business were false. Absolutely the only evidence adduced in support of the complaint on this point consists of the testimony of the principal officer and founder of Art National, Mr. Louis Friedman. This witness testified as follows:

I formed Art Watch Company in 1927 and Art National was reincorporated, I believe, in '51 under the Art National Manufacturing and Distributing Company.

There can be no doubt that the above-quoted testimony and the admissions in the respondents' answer are an insufficient basis upon which to predicate a finding that this respondent has not been in business for thirty-two years. Findings of fact must be supported by "reliable, probative, and substantial evidence." (Section 7(c), Administrative Procedure Act.) The evidence on this point does not fulfill any of these requirements. The burden was on complaint counsel to prove that this respondent had not been "in business" for 32 years. And this burden is not satisfied by a showing of incorporation (or "reincorporation") in 1951. Therefore, on this point we find that the hearing examiner's finding and order are not supported by the record and must be vacated.

The complaint charges and the examiner found that respondent Louis Watch Company, Inc., represented that its watches carried a "full years written guarantee" without disclosing in the advertisements or in the guarantee certificate furnished to purchasers the manner in which the guarantor would perform. But the hearing examiner, after having made the finding, failed to include a prohibition of the practice within his order to cease and desist. Our examination of the record indicates that the finding is based upon substantial evidence and we can only conclude that the omission of an appropriate prohibition in the order was an unintentional over-

sight. Thus the appeal of complaint counsel on this point should be granted and an appropriate order will issue.

Although neither party has raised the point, it appears that numbered paragraph three of the order against Art National and its officers is unsupported by a factual finding. This deficiency is not the result of a failure of proof since the amended answer of Art National admits making the representation that Louis watches are shockproof. The proposed findings submitted on behalf of all respondents admit that the watches are, in fact, not shockproof. Thus it appears that here also the absence of an appropriate finding in the initial decision with respect to Art National is the result of an oversight. Therefore the initial decision will be modified by adding a finding that Art National has falsely represented that Louis watches are shockproof.

The hearing examiner refused to find that the suggested retail prices with which respondent Louis Watch Company preticketed its watches were fictitious and higher than the prices at which the watches were usually sold at retail. As he points out, the evidence on this point is conflicting but we do not agree with his further conclusion that the evidence as a whole does not permit a determination that the preticketed prices were fictitious.

As pointed out above a substantial number of Louis watches are sold to consumers through the medium of the Art National catalog. Louis Friedman, the president of both Art National and Louis Watch Company testified with respect to the Louis watches handled by Art National: "Sure. They handle the same thing as any other customer." He further testified with respect to the manner in which he, as president of Louis Watch Company, dealt with Art National:

Q. It is the only catalog distributor that Louis Watch sells to at the present time?

A. Right.

Q. And you do not furnish them with a separate price list?

A. They are the same as anybody else.

Q. Do they carry the same price tags as the watches that are distributed to the—

A. Yes. Everything is the same. Everything is uniform, no different.

Q. They establish their own coded price?

A. Yes.

The record clearly shows that the price lists furnished to Art National and others by Louis Watch Company contain suggested retail prices; that these suggested prices correspond with the prices on the tickets attached to the watches and to the "retail" prices listed in the Art National catalog.

The evidence is uncontroverted that the prices charged consumers by Art National (the "coded" price referred to in the quote above) were substantially below the suggested retail list, and corresponding ticket, price fixed by Louis Watch Company. In some cases the price regularly charged was equal to less than 25% of the suggested retail or preticketed price.

Under the circumstances of this matter, where one family owns and controls the entire operation, respondents are in a poor position to deny that Louis watches are not preticketed with fictitious prices when they themselves regularly sell the watches to all comers at prices which are only a fraction of said preticketed prices. Thus, we find that the hearing examiner's refusal to order all respondents to cease this practice was in error.

On our review of the entire record we find that respondents have been afforded a fair hearing and the findings of the hearing examiner except as vacated by this opinion are supported by reliable and substantial evidence. An appropriate order to cease and desist, modified to conform with this opinion, will issue.

Commissioner Elman did not participate in the decision of this matter.

FINAL ORDER

This matter having been heard by the Commission on cross-appeals by respondents and counsel supporting the complaint; and the Commission having rendered its decision denying in part and granting in part both appeals and having determined, for the reasons stated in the accompanying opinion, that the initial decision should be modified:

It is ordered, That the initial decision of the hearing examiner be modified by striking therefrom findings 6, 12 and 14, and by substituting in place of the stricken findings 12 and 14 the following:

12. Art National and Louis Watch Company represented that certain Louis watches were shockproof, but they were not shockproof.

14. All respondents have cooperated in the practice of misrepresenting by preticketing and by other means that the regular retail prices of Louis watches are substantially higher than they in fact are.

It is further ordered, That the following order be substituted for the order contained in the initial decision:

It is ordered, That respondent Art National Manufacturers Distributing Co., Inc., a corporation, and respondents Louis Friedman, Martin Friedman and Albert Friedman, individually and as

officers of said corporation, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the sale or distribution of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(a) Representing, directly or indirectly:

1. That respondents occupy any portion of buildings depicted that is not in accordance with the facts, or misrepresenting, in any manner, the size or extent of the buildings in which they carry on their business;

2. That respondent Art National Manufacturers Distributing Co., Inc., sells its merchandise at America's lowest prices, or misrepresenting in any other manner its prices as compared to those of its competitors;

3. That Louis watches are shockproof.

(b) Representing by means of prices on tickets attached to or accompanying merchandise, or by any other means, that any price is the retail price of merchandise when it is in excess of the price at which said merchandise is usually and customarily sold at retail.

(c) Furnishing means and instrumentalities to dealers or others by and through which they may misrepresent the usual and customary retail prices of respondents' merchandise.

It is further ordered, That respondent Louis Watch Company, Inc., a corporation, and respondents Louis Friedman and Albert Friedman, individually and as officers of said corporation, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the sale or distribution of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(a) Representing directly or indirectly:

1. That said corporation has been in existence, or that said corporation or individuals have been in business for any period or length of time that is not in accordance with the facts;

2. That they occupy any portion of buildings depicted that is not in accordance with the facts, or misrepresenting, in any manner, the size or extent of the buildings in which they carry on their business;

3. That Louis watches have been awarded a Gold Medal or any other kind of medal;

4. That the jewels in Louis watches are rubies;

5. That Louis watches are shockproof;

6. That Louis watches are guaranteed unless the nature and extent of the guarantee and the manner in which the guarantors will perform are clearly set forth.

(b) Representing by means of prices on tickets attached to or accompanying merchandise, or by any other means, that any price is the retail price of merchandise when it is in excess of the price at which said merchandise is usually and customarily sold at retail.

(c) Furnishing means and instrumentalities to dealers or others by and through which they may misrepresent the usual and customary retail prices of respondents' merchandise.

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

It is further ordered, That the respondents 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.

Commissioner Elman not participating.

IN THE MATTER OF

HOFFMANN AIRCRAFT COMPANY ET AL.

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

Docket 8136. Complaint, Oct. 7, 1960—Decision, May 18, 1961

Consent order requiring sellers of home study courses in Overland Park, Kans., to cease using false employment offers and other deception to sell their correspondence courses on jet-gas turbine and turbo-prop engine mechanics, as in the order below set out.

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 Hoffmann Aircraft Company, a corporation, and George R. Hoffmann, Royce George Hoffmann and Emma F. Hoffmann, 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 Hoffmann Aircraft Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kansas, with its principal office and place of business located at 8201 Craig, Overland Park, Kansas.

Individual respondents George R. Hoffmann, Royce George Hoffmann and Emma F. Hoffmann are officers of said corporation. They formulate, direct and control the acts and practices of the corporate respondent. 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 business of advertising, offering for sale, selling and distributing various home study and correspondence courses, including those on jet-gas turbine and turbo-prop engine mechanics and for positions in the airline and aircraft industries.

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

PAR. 3. In the course and conduct of their business, respondents employ sales representatives or agents to sell said courses of study. Respondents caused advertisements concerning said study courses to be placed in newspapers and in other media, a typical example of which is the following:

NEW JET INDUSTRY
Men and Women

WANTED TO TRAIN FOR PERMANENT POSITIONS WITH SECURITY AND LUCRATIVE PAY AS JET-GAS TURBINE AND TURBO-PROP ENGINE MECHANICS AND SPECIALISTS SPECIALIZING IN ANY ONE OF THE FOLLOWING:

AIRLINE, AIRCRAFT, AUTOMOTIVE TRUCKING, OR MARINE INDUSTRIES, IN ADDITION TO ROCKETS AND GUIDED MISSILES.

TRAINED MEN EARN AS MUCH OR MORE $150 PER WEEK
FREE LIFETIME PLACEMENT SERVICE
H.S. DIPLOMA NOT NECESSARY

SHORT TRAINING PERIOD WILL NOT INTERFERE WITH PRESENT EMPLOYMENT. SMALL BUDGET TERMS CAN BE ARRANGED. AGES 17–55. SEE IF YOU CAN QUALIFY!

SEND COUPON, POSTCARD, OR LETTER WITH SAME INFORMATION TODAY TO HOFFMANN AIRCRAFT CO., BOX DA–187, c/o DAILY AMERICAN REPUBLIC

Name_____
Street_____
City_____
State_____
Phone_____
Hours at home_____

Persons responding to said advertisements were sent various form letters and later called upon by said sales representatives or agents of respondents and the purchase of said courses was solicited.

PAR. 4. Through the use of the statements appearing in the advertisement hereinabove set out, and others similar thereto but not specifically set out herein, pictorially, by form letters and by oral statements made by respondents' said sales representatives or agents, respondents have represented, directly or by implication, that:

1. The offer made in the advertisements is an offer of employment.

2. Respondents will only sell their courses to those who have special qualifications.

3. Respondents are an aircraft manufacturing or airline company.

4. Purchasers of respondents' courses will receive on-the-job training in the corporate respondent's plant.

5. Persons who complete and pass respondents' courses are in great demand in the aerodynamics and aeronautics fields and will receive larger salaries than are generally obtainable.

6. Respondents guarantee positions with aircraft and airline companies to persons who satisfactorily complete their courses.

7. Respondents have succeeded in placing persons who have satisfactorily completed their courses in positions with aircraft and airline companies at high salaries.

8. Persons taking respondents' courses will receive actual training at their homes through visits of the respondents' instructors and teachers.

9. Respondents will employ in their plant persons who have completed and passed their courses.

10. Persons who take and fail to pass respondents' courses will be refunded the money they paid for same.

11. Pictures of buildings in advertisements are those occupied by the corporate respondent.

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

1. The advertisements are not offers of employment.

2. Respondents do not require special qualifications of persons taking their courses other than to have the financial ability to pay the price asked for the course.

3. Respondents are not an aircraft manufacturing or airline company.

4. Purchasers of respondents' courses do not receive on-the-job training at respondent's plant as they do not own or operate such a plant.

5. Persons who satisfactorily complete respondents' courses are not in demand by those in the aerodynamics and aeronautics fields at any salary as respondents had not graduated any person at the time the statement was made.

6. Respondents do not guarantee or obtain positions for persons who have satisfactorily completed their courses with aircraft and airline companies, or with any other companies.

7. Respondents have not placed persons who have satisfactorily completed their courses in positions with aircraft and airline companies, or with any other companies.

8. Respondents do not furnish instructors or teachers to give actual training in the homes of persons taking their courses.

9. Respondents do not employ persons who have satisfactorily completed their courses in their plant as respondents do not own a plant.

10. Respondents do not refund the money paid by purchasers if they fail the course.

11. Pictures of buildings in advertisements were not buildings occupied by the corporate respondent at the time the advertisements were published and used.

PAR. 6. Respondents through the use of the corporate name "Hoffmann Aircraft Company" represent that they are engaged in the aircraft industry, when in truth and in fact they are not so engaged. The use of said corporate name enhances and confirms the representation set out in Paragraph Four that respondents are in the aircraft industry.

PAR. 7. In the course and conduct of their business respondents are in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of correspondence courses covering the same subjects as those of respondents.

PAR. 8. The use by respondents of the foregoing false, deceptive and misleading statements, representations and practices had the tendency and capacity to mislead a substantial portion of the public into the erroneous and mistaken belief that such statements and representations were true and into the purchase of substantial quantities of respondents' said courses by reason of such erroneous and mistaken belief. As a consequence thereof, trade in commerce has been unfairly diverted to respondents from their competitors and injury has thereby been 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. William A. Somers supporting the complaint.

Mr. Donald E. Willson of *Popham, Thompson, Popham, Trusty & Conway*, of Kansas City, Mo., for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER [1]

The complaint in this proceeding was issued October 7, 1960 charging respondents with violation of the Federal Trade Commission Act by the use of false, deceptive and misleading statements, representations and practices, including the use of a misleading corporate name, in the sale or offering for sale of home study and correspondence courses. It was twice amended by orders dated November 18, 1960 and January 30, 1961. The first amendment corrected an error in paragraph seven in the description of the courses offered and the second amendment corrected the name of respondent Royce George Hoffmann.

On March 20, 1961, counsel presented an agreement dated March 1, 1961, among counsel supporting the complaint, each of the respondents and counsel for respondents, containing a consent order to cease and desist. Said agreement was duly approved by the Director, the Associate Director and the Assistant Director of the Bureau of Litigation.

The hearing examiner finds that said agreement includes all of the provisions required by Section 3.25(b) of the Rules of the Commission, that is:

A. An admission by all the respondent parties thereto of jurisdictional facts;

B. Provisions that:

1) The complaint, as amended, may be used in construing the terms of the order;

2) The order shall have the same force and effect as if entered after a full hearing;

3) The agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission;

4) The entire record on which any cease and desist order may be based shall consist solely of the complaint, as amended, and the agreement;

[1] Title changed pursuant to order dated January 30, 1961 amending the complaint as amended November 18, 1960 to use correct name of respondent Royce George Hoffmann.

5) The order may be altered, modified, or set aside in the manner provided by statute for other orders;

C. Waivers of:

1) the requirement that the decision must contain a statement of findings of fact and conclusion of law;

2) Further procedural steps before the hearing examiner and the Commission.

In addition the agreement contains the following permissive provisions: A waiver by the respondents of any right to challenge or contest the validity of the order entered in accordance with the agreement, and a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint, as amended.

Having considered said agreement, including the proposed order, and being of the opinion that it provides an appropriate basis for settlement and disposition of this proceeding; the hearing examiner hereby accepts the agreement but orders that it shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The following jurisdictional findings are made and the following order issued:

1. Respondent Hoffmann Aircraft Company is a corporation existing and doing business under and by virtue of the laws of the State of Kansas. Respondents George R. Hoffmann, Royce George Hoffmann, erroneously referred to in the complaint as Roger George Hoffmann, and Emma F. Hoffmann are individuals and officers of said corporate respondent. The office and principal place of business of said respondents is located at 8201 Craig, Overland Park, Kansas.

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

ORDER

It is ordered, That respondents Hoffmann Aircraft Company, a corporation, and its officers, and George R. Hoffmann, Royce George Hoffmann and Emma F. Hoffmann, 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 of home study and correspondence courses, in commerce, as "commerce" is

defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that:

(a) Respondents offer employment when, in fact, employment is not offered.

(b) Respondents will sell their course only to those who have special qualifications.

(c) Respondents are an aircraft manufacturing or airline company.

(d) Respondents give purchasers of their courses on-the-job training in an aircraft or airline plant.

(e) Persons who satisfactorily complete respondents' courses are in demand in the aerodynamics and aeronautics fields, unless such is a fact.

(f) Respondents guarantee employment with aircraft and airline companies to those that satisfactorily complete their courses.

(g) Respondents have placed persons who have satisfactorily completed their courses in positions with aircraft or airline companies.

(h) Respondents give actual training by visits of their instructors or teachers to the homes of persons purchasing the courses.

(i) Respondents will employ persons who have satisfactorily completed the respondents' courses in their plant.

(j) Respondents refund the purchase price of their courses to persons who take and fail to pass the same, unless such refunds are actually made.

2. Using pictures of plants or other facilities, in connection with the solicitation of the sale of their courses, which they do not own or misrepresenting in any manner the plant or other facilities which they may own.

3. Using the words "Aircraft Company" as a part of any trade or corporate name under which they do business.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the initial decision of the hearing examiner filed April 5, 1961, wherein he accepted an agreement containing a consent order to cease and desist executed by the respondents and counsel in support of the complaint; and

It appearing that the initial decision erroneously characterizes one of the provisions of the consent agreement which is made mandatory by Section 3.25 of the Commission's Rules of Practice as "permissive"; and the Commission being of the opinion that this error should be corrected:

It is ordered, That the initial decision be, and it hereby is, modified by striking therefrom the word "permissive" which appears in the first line of the last paragraph on page 2.

It is further ordered, That the initial decision as so modified shall on the 13th day of May 1961, become the decision of the Commission.

It is further 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

UNITED STATES PLYWOOD CORPORATION ET AL.

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

Docket 8185. Complaint, Nov. 23, 1960—Decision, May 13, 1961

Consent order requiring New York City distributors to cease advertising—in magazines and newspapers and on tags resembling a tanned cowhide supplied to fabricator purchasers—as "Leather Product of Imported Italian Leather Fibers—Permanently Bonded", its imported product "Barco", having a leather-like appearance but composed of bonded, ground, or pulverized leather with one side plastic coated, and used in the manufacture of such articles as suitcases and ladies' handbags.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the United States Plywood Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent United States Plywood Corporation is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at 55 West 44th Street, New York, New York.

PAR. 2. Respondent United States Plywood Corporation is now, and for several years last past has been, engaged in the business of advertising, offering for sale, sale and distribution of a material

which it designates as "Barco" to fabricators, who use said product in the manufacture, among other things, of suitcases and ladies handbags which they sell to distributors and jobbers and also to retailers for resale to the public. Respondent corporation imports said material which is composed of bonded, ground or pulverized leather with one side coated with a plastic or similar substance.

PAR. 3. In the course and conduct of its business respondent now causes, and for some time last past has caused, said product when sold, to be shipped from its place of business in the State of New York to purchasers thereof located in various other States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, respondent has made certain statements with respect to its product "Barco" in advertisements, in magazines and newspapers and on tags supplied to the purchasers of said product of which the following is typical:

Leather Product of Imported Italian Leather Fibers—Permanently Bonded.

The fabricators using respondent's product make use of the foregoing statement originating with respondent in connection with the products manufactured by them. In addition, respondent furnishes said fabricators with tags resembling a tanned cowhide upon which the aforesaid statement is printed which are attached by some of said fabricators to products manufactured by them from said product, which products, with said tags attached thereto, are shipped by said fabricators to retailers located in states other than the state or states in which the shipments originate.

PAR. 5. Products made of "Barco" have the appearance of leather and in the absence of an adequate disclosure as to their actual composition are readily accepted and understood by many members of the public as being genuine leather, which is not the fact. The statement "Leather Product of Imported Leather Fibers—Permanently Bonded" is confusing to many members of the public and not informative to the extent that they know the actual composition of said product and are thereby enabled to distinguish it from genuine leather.

PAR. 6. There is a preference on the part of many members of the public for products such as suitcases and ladies handbags made of genuine leather over such articles made from a product such as respondent's.

PAR. 7. Respondent by means of the aforesaid acts and practices, and by failing to adequately disclose the actual composition of its

said product, furnishes means and instrumentalities to others whereby the public is confused or misled as to the actual composition of articles made from its said product.

PAR. 8. In the course and conduct of its business, respondent is in substantial competition in commerce with corporations, firms and individuals engaged in the sale of genuine leather and leather substitutes used in the manufacture of suitcases and ladies handbags.

PAR. 9. The aforesaid acts and practices of the respondent and its failure to adequately disclose the composition of its said product has the capacity and tendency to confuse the public as to its composition and to mislead the public into the erroneous and mistaken belief that the articles made therefrom are genuine leather and into the purchase thereof by reason of such erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been unfairly diverted to respondent from its competitors and substantial injury has thereby been done to competition in commerce.

Morton Nesmith, Esq., supporting the complaint.
Robert N. Hawes, Esq., of Washington D.C., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on November 23, 1960, issued its complaint in this proceeding against respondent United States Plywood Corporation, and a true copy was duly served on said respondent. Thereafter, on February 7 and 15, 1961, said respondent filed motions to dismiss the complaint accompanied by an affidavit and copy of contract for the sale of its Barash Division (manufacturers of "Barco") and all of its assets to The Barash Company, Inc. Said contract was entered into prior to the issuance of this complaint, on October 24, 1960, but the sale was consummated on January 3, 1961. On February 24th, the undersigned hearing examiner denied the motion to dismiss the complaint until such time as there were impleaded in this proceeding the respondent's successors, vendees and assigns in the sale of "Barco." Pursuant to the terms of an agreement dated March 15, 1961, filed with the undersigned on March 20, 1961, signed by attorneys for the original respondent, the substituted respondents, and counsel supporting the complaint, and approved by the Bureau of Litigation, The Barash Company, Inc., a New York corporation, and Samuel M. Abrams and M. Barash, individually and as officers of said corporation, as the successors, vendees and assigns of all the assets of the Barash Division of the respondent United States Plywood Corporation

agreed that they be substituted as respondents herein in lieu of said respondent United States Plywood Corporation.

It is ordered, That pursuant to the aforesaid agreement The Barash Company, Inc., a New York corporation, and Samuel M. Abrams and M. Barash, individually and as officers of said corporation, as the successors, vendees and assigns of all the assets of the Barash Division of the respondent United States Plywood Corporation be and hereby are substituted as respondents in lieu of respondent named in the complaint, United States Plywood Corporation.

The substituted respondents, The Barash Company, Inc., a corporation, and Samuel M. Abrams and M. Barash, individually and as officers of said corporation hereby have waived any further notice of the foregoing complaint. This agreement containing a consent order to cease and desist is hereby approved and accepted as conforming with the provisions of §3.25 of this Commission's Rules of Practice for Adjudicative Proceedings. Said agreement is hereby found dispositive of all the issues raised in the original complaint after the substitution of the new respondents as hereinabove ordered.

The undersigned hearing examiner finds that in accordance with the terms of the aforementioned agreements the substituted respondents admit all the jurisdictional facts alleged in the complaint as modified by this agreement and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations and this agreement. In the agreement the 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 rights respondents may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The parties further agree, in said agreement, that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Federal Trade Commission; that the order to cease and desist entered in this proceeding by the Commission may be entered without further notice to the substituted respondents, and when so entered such order will have the same force and effect as if entered after a full hearing. Said order may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement of March 15, 1961, con-

taining consent order, and it appearing that the order which is approved in and by said agreement disposes of all the issues presented by the complaint as to all of the parties involved, said agreement 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 findings and issues the following order:

FINDINGS

1. The Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding; and this proceeding is in the public interest;

2. The substituted respondent, The Barash 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 122 Fifth Avenue, in the City of New York, State of New York. The substituted respondents Samuel M. Abrams and M. Barash are officers of The Barash Company, Inc. They formulate, direct and control the acts and practices of said corporation. Their address is the same as that of the corporate respondent;

3. Respondents are engaged in commerce as "commerce" is defined in the pertinent statutes which are invoked by the complaint filed herein. Now, therefore,

It is ordered, That respondents The Barash Company, Inc., a corporation, and its officers and Samuel M. Abrams and M. Barash, 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 manufacturing, offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of "Barco" or other material of leather fibers do forthwith cease and desist from representing directly or indirectly:

1. That a material or product which is not manufactured from the hide of an animal is leather or genuine leather;

2. That a material is leather if such material is made of leather fibers bonded together with an adhesive and thus is not wholly the hide of an animal, provided however that this shall not be construed as preventing an accurate representation that the material is composed of leather fibers and an adhesive;

3. That such material is leather by attaching hand tags thereto in the shape of a tanned cowhide.

It is further ordered, That said respondents, their representatives, agents or employees cease and desist from offering for sale or selling "Barco" or any other leather fiber material which has the appearance of leather unless accompanied by a disclosure that it is not leather or a disclosure of the general nature of such material as will clearly show that it is not leather, but this shall not be construed as preventing an accurate representation that the material is composed of leather fibers and an adhesive.

It is further ordered, That the complaint be and the same hereby is dismissed as to the respondent United States Plywood Corporation, a corporation, without prejudice.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 13th day of May 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents The Barash Company, Inc., a corporation, and its officers and Samuel M. Abrams and M. Barash, 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

NATIONAL ALBUMS, INC., ET AL.

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

Docket 7860. Complaint, Apr. 8, 1960—Decision, May 16, 1961

Consent order requiring Los Angeles sellers of photograph albums together with certificates for photographs to be taken at independent affiliated studios, through salesmen who called upon mothers of newborn children particularly, to cease making such false representations as that persons solicited were specially selected, were to receive free a photograph album worth $49.95 and up, and that the value of the album and photographs provided by the certificate was approximately $165.85.

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 National Albums, Inc., a corporation, and Harry Fracter, Harry A. Goldman, Albert Parvin and Rudy Haber, 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, National Albums, 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 8755 Colgate Avenue, Los Angeles, California.

Respondents Harry Fracter, Harry A. Goldman, Albert Parvin and Rudy Haber are officers of the corporate respondent. These individuals formulate, direct and control the policies, acts and practices of the corporate respondent and their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the sale and distribution of photograph albums, together with certificates for photographs to be taken at independent affiliated studios. In the course and conduct of their business, respondents either have caused their photograph albums, when sold, and the aforesaid certificates, to be transported from their place of business in the State of California to purchasers thereof located in various other States of the United States, or have shipped said albums across state lines to their salesmen who deliver albums to the purchasers upon the execution of contracts of purchase. Respondents, subsequent to the purchase of albums, have engaged in an extensive course of commercial intercourse in commerce with the purchasers. They maintain, and at all times mentioned herein have maintained, a course of trade in said albums and certificates in commerce, as "commerce" is defined in the Federal Trade Commission Act. Their volume of trade in said commerce is and has been substantial. Respondents further engage in commerce in that they transmit various instruments of a commercial nature to their customers located in states other than the State of California and receive from said customers instruments of the same nature.

PAR. 3. At all times mentioned herein, respondents have been, and are now, in direct and substantial competition with other corporations, firms and individuals engaged in the sale and distribu-

tion of photograph albums, together with certificates for photographs to be taken at independent studios.

PAR. 4. Respondents, in connection with and as a part of their business, have entered into agreements or understandings with a number of photographic studios located in the various States of the United States, whereby said studios have agreed to honor certificates for photographs delivered to the purchasers of respondents' albums. These certificates provide that the holders are entitled to receive fourteen 8 x 10 photographs of any member of the family at the rate of two a year at intervals of not less than ninety days. In the course and conduct of their business, salesmen employed by respondents call upon individuals, usually mothers of newborn children, in their homes, whose names are usually obtained from newspapers, hospitals, maternity lists, baby lists or by referrals, and solicit the sale of the aforesaid albums and certificates at a price of $49.95.

PAR. 5. Respondents, in the course and conduct of their business, by means of oral statements made by their sales representatives, and by means of statements in the purchase contracts, have represented, directly or by implication:

1. That the persons solicited have been especially selected.

2. That the persons solicited were to receive a photograph album free.

3. That respondents' album was worth various amounts ranging from $49.95 upwards.

4. That the value of the album and the photographs provided by the certificate was approximately $165.85.

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

1. The persons solicited by respondents' salesmen are not especially selected.

2. The persons solicited do not receive an album free for the reason that they are required to pay $49.95, which amount is a charge for the album.

3. Respondents' album is not worth or of a value of $49.95; that is, its usual and customary selling price at retail is not $49.95.

4. The value of the album and the photographs provided by the certificate is substantially less than $165.85 in many areas where respondents have offered for sale and sold said combination.

PAR. 7. The use by respondents of the foregoing false, misleading and deceptive statements and representations has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken

belief that such statements and representations were true and to induce the purchasing public to purchase substantial quantities of respondents' albums as a result of such erroneous and mistaken belief. As a result thereof, trade has been unfairly diverted to respondents from their competitors and injury has thereby been 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 in commerce and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Mr. John J. McNally and *Mr. Edward F. Downs*, for the Commission.

Mindlin and Levy, by *Mr. Victor L. Mindlin*, 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 April 8, 1960, issued its complaint herein, charging the respondents National Albums, Inc., a corporation, and Harry Fracter, Harry A. Goldman, Albert Parvin and Rudy Haber, individually and as officers of said corporation, with having violated the provisions of the Federal Trade Commission Act, and respondents were duly served with process.

On March 21, 1961, 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 National Albums, Inc., Harry Fracter and Rudy Haber, their counsel and counsel supporting the complaint, under date of February 13, 1961, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

After due consideration, 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 signatory thereto have specifically agreed to the following matters:

1. Respondent National Albums, Inc. is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located

at 8755 Colgate Avenue, Los Angeles, California. Respondents Harry Fracter and Rudy Haber are officers of the corporate respondent. The said respondents formulate, direct and control the acts and practices of the corporate respondent and their address is the same as that of the corporate respondent.

2. The said 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 and provides for dismissal of the charges of the complaint against respondents Harry A. Goldman and Albert Parvin, as individuals and as officers of respondent corporation, on the basis of matter set forth in affidavits of Harry Fracter, Harry A. Goldman and Albert Parvin which are incorporated into this agreement by reference.

4. Respondents National Albums, Inc., a corporation, and Harry Fracter and Rudy Haber, as individuals and as officers of said corporation, 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 the said 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 the said 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 said complaint and agreement, the hearing examiner approves and accepts the said "Agreement Containing Consent Order To Cease And Desist"; finds that the Commission has jurisdiction of the subject matter of this pro-

ceeding and of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act against respondents National Albums, Inc., a corporation, and Harry Fracter and Rudy Haber, individually and as officers of said corporation, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; and that the following order to cease and desist, as proposed in said agreement, is appropriate for the just disposition of all the issues in this proceeding as to the corporate respondent and individual respondents Harry Fracter and Rudy Haber, as is the dismissal of the complaint herein, as provided for in the agreement, with respect to respondents Harry A. Goldman and Albert Parvin. Therefore,

It is ordered, That respondents National Albums, Inc., a corporation, and its officers, and Harry Fracter and Rudy Haber, as individuals or 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 of photograph albums or certificates for photographs, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

(a) That persons solicited are individually selected, or that they sell only to selected persons;

(b) That their album is given free or without cost;

(c) That the value of the albums is any amount which is in excess of the price at which such albums are usually and customarily sold at retail;

(d) That the value of the photographs is any amount which is in excess of the price at which such photographs are usually and customarily sold at retail;

(e) That the value of the albums and the photographs, sold together, is any amount which is in excess of the price at which said albums and the photographs are usually and customarily sold, as separate items, at retail.

It is further ordered, That the complaint herein, insofar as it concerns respondents Harry A. Goldman and Albert Parvin, as individuals and as officers of respondent corporation, be, and the same hereby is, dismissed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 16th day of

May 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents National Albums, Inc., a corporation, and Harry Fracter and Rudy Haber, 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

REO PRODUCTS MANUFACTURING CORP. ET AL.

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

Docket 8054. Complaint, July 26, 1960—Decision, May 16, 1961

Consent order requiring Brooklyn, N. Y., distributors of cutlery—engaged in fabricating steak knives and carving sets from English knife blades, Japanese fork tines, and American fork tines, sharpening steels, and handles—to cease placing in containers packaging such products, tags and labels bearing fictitious prices represented thereby as usual retail prices; and to cease representing falsely—by their trade name and in catalogs, stationery, invoices, on containers, etc.—that they were manufacturers, that they had a factory in Sheffield, England, and that their aforesaid carving sets were "MADE IN SHEFFIELD, ENGLAND".

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 Reo Products Manufacturing Corp., a corporation, and Milton Cohen, Sam Siegel, Theodore Ribak, and Barnett L. Ribak, 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 Reo Products Manufacturing Corp. 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 316 McDonald Avenue in the City of Brooklyn, State of New York.

Respondents Milton Cohen, Sam Siegel, Theodore Ribak, and Barnett L. Ribak 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 advertising, offering for sale, sale and distribution of cutlery, forks and sharpening steels to distributors and to retailers for resale to the public.

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

PAR. 4. Respondents purchase knife blades from an English manufacturer, certain fork tines from Japanese manufacturers and certain other fork tines from an American supplier, sharpening steels from an American supplier, and knife, fork and sharpening steel handles from American manufacturers.

Respondents unite the said knife blades, fork tines and sharpening steels with the said handles, thereby fabricating steak knives and carving sets.

PAR. 5. In the said course and conduct of their business and for the purpose of inducing the purchase of said products, respondents have:

(a) Engaged in the practice of using fictitious prices in connection therewith by placing tags and labels in the containers in which said products are packaged, on which said tags and labels certain amounts are printed, thereby representing, directly or indirectly, that said amounts are the usual and regular retail prices charged for said products.

(b) Made certain statements and representations with respect to respondents' status and concerning the origin and composition of said products. Such statements and representations have been, and are, made in respondents' catalogs, stationery, invoices and other printed and promotional material, and in and on the containers in which said products are offered for sale and sold to the purchasing public.

Typical of such statements and representations are the following:

REO PRODUCTS MFG. CORP.
Manufacturers
REO PRODUCTS MFG. CORP.
320 Fifth Ave. N.Y. 1, N.Y. SHEFFIELD, ENGLAND
MADE IN SHEFFIELD, ENGLAND
SHEFFIELD STAINLESS CARVER SET

PAR. 6. By the aforesaid practice, and through the use of the aforesaid statements and representations, respondents have:

(a) Placed in the hands of distributors and retailers the means and instrumentalities by and through which they might mislead the public as to the uusal and regular retail prices of said products.

(b) Represented, directly or by implication, that:

(1) Respondents are manufacturers.

(2) Respondents own, operate or control a factory in Sheffield, England.

(3) Respondents' products are of English origin in their entirety.

PAR. 7.

(a) The said printed amounts are, in truth and in fact, fictitious and in excess of the usual and regular prices charged for said products.

(b) Said statements and representations are false, misleading and deceptive. In truth and in fact:

(1) Respondents perform no manufacturing functions but are merely assemblers of components manufactured by and purchased from others.

(2) Respondents do not own, operate or control a factory in Sheffield, England.

(3) Only knife blades utilized by respondents in the assembly of complete knives are of English origin.

PAR. 8. There is a preference on the part of a substantial number of the purchasing public to deal with manufacturers of products in the belief that there are certain advantages in doing so, including but not limited to the receiving of lower prices.

PAR. 9. In the conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of cutlery, forks and sharpening steels.

PAR. 10. 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 pur-

chase 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. 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. Berryman Davis supporting the complaint.
Mr. Seymour L. Morse, of New York, N. Y., for respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on July 26, 1960, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by the use of false, misleading and deceptive statements concerning their business status, and the origin, composition and prices of the cutlery and other products sold by them. After being served with said complaint, respondents appeared by counsel and entered into an agreement dated March 1, 1961, 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 all respondents (except Barnett L. Ribak), by counsel for said respondents and by counsel supporting the complaint, and approved by the 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.

The order which has been agreed upon provides that the complaint shall be dismissed as to respondent Barnett L. Ribak. The basis for such a disposition as to said respondent is set forth in an affidavit by him which has been submitted together with, and as part of, the above-mentioned agreement containing consent order. Said affidavit, which was subscribed and sworn to on February 28, 1961, recites that respondent Barnett L. Ribak ceased to be an officer of the corporate respondent on April 23, 1960 (prior to the issuance of the complaint in this proceeding), and has since been inactive in the operations of said corporate respondent, and that even prior thereto said individual respondent was not active in its operations having been made an officer because of his investment of money therein. The parties have recommended that the complaint be dismissed as to respondent Barnett L. Ribak for the reasons set forth in the aforementioned affidavit.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, together with the affidavit of Barnett L. Ribak which has been made a part of said agreement, 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, 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:

1. Respondent, Reo Products Manufacturing Corp., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 316 McDonald Avenue, in the City of Brooklyn, State of New York.

Respondents Milton Cohen, Sam Siegel and Theodore Ribak are individuals and officers of the corporate respondent, and they formulate, direct and control the policies, acts and practices of said cor-

porate respondent. Their office and principal place of business is the same as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents 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 respondent Reo Products Manufacturing Corp., a corporation, and its officers, and respondents Milton Cohen, Sam Siegel, and Theodore Ribak, individually and as officers of said corporation, and each of them, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of cutlery, forks, sharpening steels or other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "manufacturing" or any other word of the same or similar import or meaning as a part of their corporate or trade name or names in connection with products not manufactured by them; or representing in any manner or by any means that they manufacture any article or product that is not manufactured in a factory owned, operated or controlled by them.

2. Representing, directly or indirectly:

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

(b) That respondents, or any of them, own, operate or control a factory in Sheffield, England, or in any other place where they do not own, operate or control a factory.

(c) That any merchandise offered for sale, sold or distributed by them or any of them, containing parts not manufactured in England, is of English origin, or otherwise misrepresenting the origin of merchandise.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to respondent Barnett L. Ribak.

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

May 1961, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents herein, except respondent Barnett L. Ribak, 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

BISESE & CONSOLE, INC.

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

Docket 8057. Complaint, July 29, 1960—Decision, May 16, 1961

Consent order requiring a Norfolk, Va., wholesale grocer or commission merchant to cease violating Sec. 2(c) of the Clayton Act by accepting unlawful brokerage on its own purchases of citrus fruit and produce, such as a discount of 10 cents per 1⅘ bushel box of citrus fruit or a lower price reflecting brokerage received from packers in Florida.

COMPLAINT

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

PARAGRAPH 1. Respondent Bisese & Console, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its office and principal place of business located at 240 Brewer Street, Norfolk, Virginia.

PAR. 2. Respondent is now, and for the past several years has been, engaged in business primarily as a wholesale grocer or commission merchant, buying, selling and distributing for its own account, citrus fruit and produce, as well as other food products, all of which are hereinafter sometimes referred to as food products. Respondent purchases its food products from a large number of suppliers located in many sections of the United States. The volume of business done by respondent in the purchase and sale of food products is substantial.

PAR. 3. In the course and conduct of its business for the past several years, respondent has purchased and distributed, and is

now purchasing and distributing, food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, from suppliers or sellers located in several States of the United States other than the State of Virginia, in which respondent is located. Respondent transports or causes such food products, when purchased, to be transported from the places of business or packing plants of its suppliers located in various other States of the United States to respondent who is located in the State of Virginia, or to respondent's customers located in said State, or elsewhere. Thus, there has been at all times mentioned herein a continuous course of trade in commerce in the purchase of said food products across state lines between respondent and its respective suppliers or sellers of such products.

PAR. 4. In the course and conduct of its business for the past several years, but more particularly since January 1, 1959, respondent has been and is now making substantial purchases of food products for its own account for resale from some, but not all, of its suppliers, and on a large number of these purchases respondent has received and accepted, and is now receiving and accepting, from said suppliers a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection therewith.

For example, respondent makes substantial purchases of citrus fruit from a number of packers or suppliers located in the State of Florida, and receives on said purchases a brokerage or commission, or a discount in lieu thereof, usually at the rate of 10 cents per 1⅗ bushel box, or equivalent. In many instances respondent receives a lower price from the supplier which reflects said commission or brokerage.

PAR. 5. The acts and practices of respondent in receiving and accepting a brokerage or a commission, or an allowance or discount in lieu thereof, on its own purchases, as above alleged and described, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13).

Mr. Cecil G. Miles and *Mr. Ernest G. Barnes* for the Commission.

Broudy, Baker & Broudy, by *Mr. M. R. Broudy*, of Norfolk, Va., for respondent.

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

Pursuant to the provisions of subsection (c) of Section 2 of the Clayton Act, as amended, the Federal Trade Commission on July 29, 1960 issued and subsequently served its complaint in this proceeding against the above-named respondent.

On March 17, 1961 there was submitted to the undersigned hearing examiner an agreement between respondent and counsel supporting the complaint providing for the entry of a consent order.

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

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

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

1. Respondent Bisese & Console, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Virginia, with its office and principal place of business located at 240 Brewer Street, Norfolk, Virginia.

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

ORDER

It is ordered, That respondent Bisese & Console, Inc., a corporation, and its officers, representatives and employees, directly or through any corporate or other device, in connection with the purchase of citrus fruit or produce in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of citrus fruit or produce for respondent's own account, or where respondent is the agent, representative, or

other intermediary acting for or in behalf, or is subject to the direct or indirect control, of any buyer.

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 May 1961, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

SHIP'n SHORE, INC., ET AL.

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

Docket 8161. Complaint, Nov. 4, 1960—Decision, May 16, 1961

Consent order requiring manufacturers of women's and children's blouses and sportswear at Upland, Pa., to cease misrepresenting the material from which their products were made as the long-time well-known fabric produced in the Madras Province of India, by advertising and labeling garments falsely as "madras".

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 Ship 'n Shore, Inc., a corporation, and William Netzky, 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 Ship'n Shore, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at Upland, Pennsylvania. Respondent William Netzky is an officer of said corporate respondent. He formulates, directs and controls the acts and practices of 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 manufacturing, advertising, offering for sale, sale and distribution of women's and children's blouses and sportswear.

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

PAR. 4. Respondents, for the purpose of inducing the purchase of their products, have engaged in the practice of misrepresenting the material from which their products are made or composed, by advertising and labeling their garments as "madras." In truth and in fact the said garments are not "madras."

By the use of such advertising and labels respondents represent that their color-fast domestic fabrics are the same or similar to madras cotton fabrics imported from India, which have a distinctive character and quality.

The word "madras" has long been applied to a fabric produced in the Madras Province of India and is made of fine hand-loomed cotton and if in a color other than natural, is dyed with bleeding vegetable dyes. Such fabric has for a long time been well and favorably known to the purchasing public.

PAR. 5. By the aforesaid practices the respondents place in the hands of retailers the means and instrumentalities by and through which they may mislead the public as to the character and quality of their products.

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 merchandise of the same general kind and nature as that sold by respondents.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the tendency and capacity 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. 8. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public, and to 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. Harry E. Middleton, Jr., supporting the complaint.

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

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On November 4, 1960, the Federal Trade Commission issued a complaint charging that the above-named respondents had misrepresented the material from which their products are made or composed by advertising and labeling their garments as "Madras".

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

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 Ship'n Shore, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located in the City of Upland, State of Pennsylvania.

2. William Netzky is an officer of said 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 respondents Ship'n Shore, Inc., a corporation, and its officers, and William Netzky, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of blouses, sportswear, or other textile products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "madras" or any simulations thereof, either alone or in connection with other words to designate, describe, or refer to any fabric or other textile product which is not in fact made of fine cotton, handloomed and imported from India, and if the cloth is other than natural in color, has not been dyed with bleeding vegetable dyes.

2. Placing in the hands of retailers the means and instrumentalities by and through which they may deceive the purchasing public concerning Paragraph 1, above.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision filed March 30, 1961, accepting an agreement containing a consent order to cease and desist, theretofore executed by the respondents and counsel in support of the complaint; and

It appearing that the order contained in said initial decision departs from the proposed order set forth in the agreement of the

parties in that the words "merchandise in the respects set out in" were inadvertently left out of paragraph 2 of the order contained in the initial decision; and

The Commission being of the opinion that said error should be corrected; accordingly

It is ordered, That paragraph 2 of the order contained in the initial decision be, and it hereby is, revised to read:

2. Placing in the hands of retailers the means and instrumentalities by and through which they may deceive the purchasing public concerning merchandise in the respects set out in Paragraph 1, above.

It is further ordered, That the initial decision as so modified, shall, on the 16th day of May 1961, 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 aforesaid initial decision as modified.

IN THE MATTER OF

FAWCETT PUBLICATIONS, INC., ET AL.

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

Docket 8187. Complaint, Nov. 28, 1960—Decision, May 16, 1961

Consent order requiring a New York City publisher to cease selling reprints of books from which portions of the text were deleted or for which new titles were substituted without making conspicuous disclosure when such was the case.

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 Fawcett Publications, Inc., a corporation, and Wilfred Fawcett and Gordon Fawcett, 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 Fawcett Publications, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 67 West 44th Street, in the City of New York, New York.

Respondents Wilfred Fawcett and Gordon Fawcett are individuals and officers of said corporate respondent and have their office and place of business at the same address. These individual respondents have dominant control of the advertising policies and business activities of said corporate respondent, and all of the respondents have cooperated with each other and have acted together doing the acts and things hereinafter alleged.

PAR. 2. Respondents are now, and for more than two years last past have been, engaged in selling and distributing books and causing said books, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in the various States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said books, in commerce, as "commerce" is defined in the Federal Trade Commission Act, among and between the various States of the United States and in the District of Columbia.

PAR. 3. Among the books sold by respondents, as aforesaid, are reprints of books from which portions of the text have been deleted. In some cases respondents do not disclose the fact that their books are abridged, while in other cases they disclose the fact of such abridgment by printing the word "Abridged" in small, inconspicuous letters on the front covers of said books.

PAR. 4. The said disclosure on the front cover of respondents' said books that such books are abridged does not constitute adequate notice of such abridgment in that such disclosure is not noticeable to the average purchaser and is not displayed in such a manner or position to readily attract the attention of prospective purchasers.

PAR. 5. Respondents have also disseminated advertising material concerning said abridged books which contains no disclosure that the books are abridged, and also have published and disseminated advertising material concerning books for which they have substituted new or alternate titles for the original titles, without disclosing such change of title.

PAR. 6. In the course and conduct of said business, respondents have been, and are, in substantial competition in commerce with other corporations and with individuals, partnerships and others engaged in the sale of books.

PAR. 7. The respondents' said acts and practices further serve to place in the hands of dealers a means and instrumentality whereby such persons may mislead the purchasing public with regard to the abridgment and prior publication of the contents of respondents' books.

PAR. 8. The failure of respondents to make adequate disclosure that certain of their books are abridgments and that books to which they have given new titles are not different from the books of which they are reprints has had, and now has, the tendency and capacity to lead a substantial portion of the purchasing public into the mistaken and erroneous belief that said books are complete and unabridged, or are new and original publications, and to induce a substantial portion of said public to purchase respondents' said books, in commerce, because of said erroneous and mistaken belief. As a result thereof, trade has been, and is being, unfairly diverted from their competitors in commerce and substantial injury has been, and is being, done to competition in commerce.

PAR. 9. The aforesaid acts and practices of respondents 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 W. Brookfield, Jr., supporting the complaint.
De Witt, Nast & Diskin, of New York, N. Y., respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On November 28, 1960 the Federal Trade Commission issued a complaint charging that the above-named respondents had violated the provisions of the Federal Trade Commission Act. The complaint alleged that respondents had not adequately disclosed the fact that their books are abridgments or newly-titled reprints.

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

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 Fawcett Publications, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 67 West 44th Street, in the City of New York, State of New York.

2. Individual respondents Wilfred Fawcett and Gordon Fawcett are officers of said corporate respondent and have their office and place of business at the same address.

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 respondents Fawcett Publications, Inc., a corporation, and its officers, and respondents Wilfred Fawcett and Gordon Fawcett, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of books in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale or selling any abridged copy of a book unless one of the following words, "abridged", "abridgment", "condensed" or "condensation", or some other word or phrase stating with equal clarity that said book is abridged, appears in clear, conspicuous type upon the front cover and upon the title page of the book,

either in immediate connection with the title or in another position adapted to attract readily the attention of a prospective purchaser.

2. Using or substituting a new title for, or in place of, the original title of a reprinted book, unless a statement which reveals the original title of the book and that it has been published previously under such title appears in clear and conspicuous type upon the front cover and upon the title page of the book, either in immediate connection with the title or in another position adapted to attract readily the attention of a prospective purchaser.

3. Disseminating advertising pertaining to any abridged copy of a book or to a book reprint having a substitute title, unless such advertising discloses the fact of abridgment or contains a statement revealing the original title and that the book has been previously published thereunder, or both, as the case may be, in clear, conspicuous type either in immediate connection with the title under which the book is sold or in another position adapted to attract readily the attention of a prospective purchaser.

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 May 1961, 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

CALIFORNIA FLORAL MANUFACTURING COMPANY ET AL.

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

Docket 8217. Complaint, Dec. 9, 1960—Decision, May 16, 1961

Consent order requiring distributors in Yucaipa, Calif., to cease violating the Flammable Fabrics Act by selling fabric for making leis which was so highly flammable as to be dangerous when worn.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that California Floral Manufacturing Company, a corporation, and Raymond E. Ramont, individually, as an officer of said corporation and also trading as Ramont's Floral Arts Studio, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Flammable Fabrics 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 California Floral Manufacturing Company is a corporation duly organized, existing, and doing business under and by virtue of the laws of the State of California. Respondent Raymond E. Ramont is president of the corporate respondent and formulates, directs, and controls its policies, acts and practices. He also trades as Ramont's Floral Arts Studio. The business address of all the respondents is 35112 California Street, Yucaipa, California.

PAR. 2. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have sold and offered for sale, in commerce; have introduced, delivered for introduction, transported, and caused to be transported, in commerce; and have transported and caused to be transported for the purpose of sale or delivery after sale in commerce; as "commerce" is defined in the Flammable Fabrics Act, fabric, as that term is defined therein, which fabric was, under Section 4 of the Flammable Fabrics Act, as amended, so highly flammable as to be dangerous when worn by individuals. Said fabric is offered for sale and sold by respondents for the purpose of making leis.

PAR. 3. Respondents, in the course and conduct of their business, are engaged in direct and substantial competition, in commerce, with corporations, firms and individuals in the sale and offering for sale of fabrics for the same general use as that of respondents' which are not dangerously flammable under the definition of the Flammable Fabrics Act.

PAR. 4. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act and the Rules and Regulations promulgated thereunder, and as such constitute unfair methods of competition and unfair and deceptive acts and practices in

commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Brockman Horne for the Commission.
Mr. Carl B. Sturzenacker, 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 December 9, 1960, issued its complaint herein, charging the respondents, California Floral Manufacturing Company, a corporation, and Raymond E. Ramont, individually, and as an officer of said corporation, and also trading as Ramont's Floral Arts Studio, with having violated the provisions of the Federal Trade Commission Act, and of the Flammable Fabrics Act and the Rules and Regulations promulgated thereunder; and respondents were duly served with process.

On March 20, 1961, 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 respondents, their counsel, and counsel supporting the complaint on March 9, 1961, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

After due consideration, 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 California Floral Manufacturing Company is a corporation existing and doing business under and by virtue of the laws of the state of California, with its office and principal place of business located at 35112 California Street, Yucaipa, California. Respondent Raymond E. Ramont is an individual and is an officer of the corporate respondent. As such, he formulates, directs, and controls the policies, acts and practices of said corporation. He also trades as Ramont's Floral Arts Studio. His business 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.

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 said complaint and agreement, the hearing examiner approves and accepts the "Agreement Containing Consent Order To Cease And Desist"; finds that the Commission has jurisdiction of the subject matter of this proceeding and of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act and under the Flammable Fabrics Act and the Rules and Regulations promulgated thereunder, against the respondents, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; and that the order proposed in said agreement is appropriate for the just disposition of all the issues in this proceeding as to all of the parties hereto; and therefore issues the said order, as follows:

It is ordered, That respondents California Floral Manufacturing Company, a corporation, and its officers, and respondent Raymond E. Ramont, individually, and as an officer of said corporation, and trading as Ramont's Floral Arts Studio, or under any other name, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

1. Selling, offering for sale, introducing, delivering for introduction, transporting, or causing to be transported, in commerce, as "commerce" is defined in the Flammable Fabrics Act; or

2. Transporting or causing to be transported for the purpose of sale or delivery after sale in commerce, any fabric, intended or sold for use in wearing apparel, which, under the provisions of §4 of the said Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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 May 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents California Floral Manufacturing Company, a corporation, and Raymond E. Ramont, individually, and as an officer of said corporation, and trading as Ramont's Floral Arts Studio, 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

ECONOMY PRODUCTS CORPORATION ET AL.

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

Docket 8223. Complaint, Dec. 21, 1960—Decision, May 16, 1961

Consent order requiring Chicago manufacturers to cease misrepresenting the size of their sleeping bags on attached labels and in advertisements which gave as the "cut size", dimensions almost invariably larger than the actual size.

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 Economy Products Corporation, a corporation, and Harry Wagner, Vernon M. Wagner, and Arnold W. Behrstock, 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 Economy Products Corporation is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 1215 Washington Boulevard, in the City of Chicago, State of Illinois. Said corporation does business under the name of Sportline.

Respondents Harry Wagner, Vernon M. Wagner, and Arnold W. Behrstock 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 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, in connection with the sale of their sleeping bags, have engaged in misrepresenting the sizes of various of said bags on tags attached thereto and in advertisements of said bags. Respondents' size descriptions are stated as "cut size" whereas the dimensions following such descriptions are almost invariably larger than the actual size of the bags in question. The term "cut size", when used in the manner as stated above, is confusing and tends to indicate that the size following such description is the actual size of the finished product. In truth and in fact, this is almost never the case, as the actual size of the finished product is substantially smaller than the size set out on the tags and as advertised.

PAR. 5. By the aforesaid practices, respondents have placed in the hands of their retailers means and instrumentalities by and through which they mislead the public as to the size of their sleeping bags.

PAR. 6. 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 products of the same general kind and nature as that sold by the respondents.

PAR. 7. The use by respondents of the aforesaid practice has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that their sleeping bags are larger than is the fact, and into the purchase thereof because 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. Charles W. O'Connell for the Commission.

Altheimer, Gray, Naiburg & Lawton, by *Mr. David V. Kahn*, of Chicago, Ill., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on December 21, 1960, charging Respondents with violation of the Federal Trade Commission Act by misrepresenting the sizes of various of their sleeping bags on tags attached thereto and in advertisements thereof.

Thereafter, on March 21, 1961, Respondents, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter, on March 24, 1961, submitted to the Hearing Examiner for consideration.

The agreement identifies Respondent Economy Products Corporation as an Illinois corporation, selling sleeping bags under the name Sportline, with its office and principal place of business located at 1215 Washington Boulevard, Chicago, Illinois, and Respondents Harry Wagner, Vernon M. Wagner, and Arnold W. Behrstock as individuals and officers of said corporate Respondent, who formulate, direct and control the acts and practices of the

corporate Respondent, their address being the same as that of the corporate Respondent.

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

Respondents waive any further procedure before the Hearing Examiner and the Commission; the making of findings of fact 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 the respondents Economy Products Corporation, a corporation, and its officers, and Harry Wagner, Vernon M. Wagner, and Arnold W. Behrstock, 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 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;

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

3. 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 and 2.

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 May 1961, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

BEN KAHN FURS CORP. ET AL.

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

Docket 8236. Complaint, Dec. 28, 1960—Decision, May 16, 1961

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by setting forth fictitious prices on invoices; by failing in other respects to comply with invoicing and labeling requirements; and by furnishing false guaranties that certain of their furs were not misbranded, falsely invoiced, and falsely advertised.

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 Ben Kahn Furs Corp., a corporation, and Ben Kahn, Bernard Marson, Ernest Graf and Theodore Kahn, 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 it appearing to the Commission that a proceed-

ing 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. Ben Kahn Furs Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 150 West 30th Street, New York, New York.

Individual respondents Ben Kahn, Bernard Marson, Ernest Graf and Theodore Kahn are officers of the corporate respondent and control, direct and formulate the acts, practices and policies of the corporate respondent. Their office and principal place of business is the same 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, 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 that 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.

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 that repondents set out on invoices certain prices of fur products which were in fact fictitious in violation of Section 5(b)(2) of the Fur Products Labeling Act.

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 that 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.

PAR. 8. Respondents furnished false guaranties that certain of their fur products were not misbranded, falsely invoiced and falsely advertised when respondents in furnishing such guaranties had reason to believe that fur products so falsely guaranteed would be introduced, sold, transported or distributed, in commerce, in violation of Section 10(b) of 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. Charles W. O'Connell supporting the complaint.
Mr. Charles Goldberg, of New York, N. Y., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On December 28, 1960, the Federal Trade Commission issued a complaint charging the above-named respondents with misbranding and falsely and deceptively invoicing certain of their fur products in violation of the Federal Trade Commission Act and the Fur Products Labeling Act.

After issuance and service of the complaint the 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 the Assistant Director of the Bureau of Litigation. The agreement disposes of the matters complained about.

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 conclu-

sions 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 Ben Kahn Furs Corp. is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 150 West 30th Street, New York, New York.

2. Respondents Ben Kahn, Bernard Marson, Ernest Graf and Theodore Kahn are officers of the corporate respondent and control, direct and formulate the acts, practices and policies of the corporate respondent. Their address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That Ben Kahn Furs Corp., a corporation, and its officers, and Ben Kahn, Bernard Marson, Ernest Graf and Theodore Kahn, 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, manufacture for introduction, or the sale, advertising or offering for sale 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 mingled with non-required information.

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

3. Representing, directly or by implication, on invoices that the former, regular or usual prices of any fur product is any amount which is in excess of the price at which respondents have formerly, usually or customarily sold such products in the recent regular course of business.

C. Furnishing a false guaranty that any fur or fur product is not misbranded, falsely invoiced, or falsely advertised when the respondents have reason to believe that such fur or fur product may be introduced, sold, transported or distributed in commerce.

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 May 1961, 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

INTERSEAS FUR TRADING, INC., ET AL.

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

Docket 8247. Complaint, Dec. 28, 1960—Decision, May 16, 1961

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by naming the United States falsely on invoices as the country of origin of imported furs, and by failing in other respects to comply with 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 Interseas Fur Trading, Inc., a corporation, and Max Cohen, 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 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. Interseas Fur Trading, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 208 West 30th Street, New York.

Max Cohen is president of the said corporate respondent and controls, directs and formulates the acts, practices and policies of the said corporate respondent. His office and principal place of business is the same as that of the said 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 sale, advertising, offering for sale, in commerce, and in the transportation and distribution in commerce of fur, as the terms "commerce" and "fur" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur was falsely and deceptively invoiced in that such fur was 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. 4. Certain of said fur was falsely and deceptively invoiced or otherwise falsely or deceptively identified with respect to the name of the country of origin of imported fur in violation of Section 5(b)(2) of the Fur Products Labeling Act in that the country of origin was disclosed on such invoices as the United States when in fact such fur was imported.

PAR. 5. 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 S. Cox supporting the complaint.
Olman & Adler, of New York, N.Y., for respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 28, 1960, charging them with having violated the Fur Products Labeling Act and the Rules and Regulations issued thereunder, and the Federal Trade Commission Act, through the false and deceptive invoicing of certain fur products. After being served with said complaint, respondents appeared by counsel and thereafter entered into an agreement, dated March 3, 1961, 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 all respondents, by counsel for said respondents, and by counsel supporting the complaint, and approved by the 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 agreements, have admitted all the jurisdictional allegations of 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 of 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:

1. Respondent Interseas Fur Trading, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 208 West 30th Street, in the City of New York, State of New York.

Max Cohen is president of said corporate respondent. 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 respondents hereinabove named. The complaint states a cause of action against said respondents under the Fur Products Labeling Act and the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That Interseas Fur Trading, Inc., a corporation, and its officers, and Max Cohen, 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, sale, advertising or offering for sale, in commerce, or the transportation or distribution in commerce, of fur as "commerce" and "fur" are defined in the Fur Products Labeling Act do forthwith cease and desist from:

1. Falsely or deceptively invoicing furs by:

A. Failing to furnish to purchasers of fur, 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.

B. Setting out on invoices that furs of foreign origin are domestic.

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 May 1961, 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

DOFAN HANDBAG CO., INC., ET AL.

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

Docket 8283. Complaint, Feb. 8, 1961—Decision, May 16, 1961

Consent order requiring New York City distributors to cease stamping the words "Leather Lined" upon some of their handbags which were, in fact, only partially leather lined.

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 Dofan Handbag Co., Inc., a corporation, and Zoltan J. Grosz and Armand A. Grosz, 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 Dofan Handbag Co., 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 33 East 33rd Street, in the City of New York, State of New York.

Respondents Zoltan J. Grosz and Armand A. Grosz are officers of Dofan Handbag Co., Inc. They formulate, direct and control the acts and practices of said corporation. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the advertising, offering for sale, sale and distribution of ladies' handbags to retailers for resale to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, said ladies' handbags when sold to be shipped from their place of business in the State of New York to the purchasers thereof located in other States of the United States and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said handbags in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business done by respond-

ents in said handbags in commerce is now, and has been, substantial.

PAR. 4. In the course and conduct of their business, respondents have stamped or imprinted upon some of their handbags "Leather Lined". Said handbags are, when sold to retailers, displayed to the purchasing public with the words stamped or imprinted "Leather Lined" affixed to said handbags.

PAR. 5. There is a preference on the part of many members of the purchasing public for products such as ladies' handbags made of genuine leather or lined with genuine leather over products not composed wholly of leather or wholly leather lined.

PAR. 6. In truth and in fact the handbags stamped and imprinted "Leather Lined" by respondents are not completely leather lined but are only partially leather lined.

PAR. 7. Respondents by means of the aforesaid acts and practices and by failing to adequately disclose that said handbags are only partially leather lined, furnished means and instrumentalities to others whereby the public is confused or misled as to the actual composition of said handbags or the linings thereof.

PAR. 8. In the course and conduct of their business respondents are in substantial competition in commerce with corporations, firms and individuals engaged in the sale of genuine leather ladies' handbags and genuine wholly leather lined ladies' handbags.

PAR. 9. The aforesaid acts and practices of the respondents and their failure to adequately disclose the composition of their ladies' handbags have the capacity and tendency to confuse the public as to their composition and to mislead the public into the erroneous and mistaken belief that the linings of said handbags are wholly genuine leather, and into the purchase thereof by reason of such erroneous and mistaken belief. As a consequence thereof substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has thereby been done to competition in commerce.

PAR. 10. 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. Morton Nesmith for the Commission.

Mr. Myron J. Kleban, of New York, N.Y., for respondents.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

The complaint in this proceeding, issued February 8, 1961, charged the respondents, Dofan Handbag Co., Inc., a New York corporation, located at 33 East 33rd Street, New York, New York, and Zoltan J. Grosz and Armand A. Grosz, individually and as officers of said corporation, and located at the same address as the corporate respondent, with violation of the provisions of the Federal Trade Commission Act, by misbranding ladies' handbags advertised, sold and distributed by them in commerce.

After the issuance of the complaint, respondents (with the advice of their attorney), and counsel supporting the complaint entered into an agreement, containing consent order to cease and desist, thus disposing of all the issues as to all parties to 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 rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance therewith.

Respondents agreed further 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 provide for an appropriate disposition of this proceeding, the same is hereby accepted and, upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, shall be filed; and, in consonance with the terms

thereof, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, and that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That respondents Dofan Handbag Co., Inc., a corporation, and its officers, and Zoltan J. Grosz and Armand A. Grosz, individually, and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of ladies' handbags, or other merchandise do forthwith cease and desist from representing directly or by implication:

1. That certain ladies' handbags or other merchandise are leather lined unless said articles are completely lined with genuine leather.

2. That certain ladies' handbags or other merchandise are leather lined by affixing stampings or labels thereto that they are leather lined unless such articles are completely lined with genuine leather.

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 May 1961, 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.

Commissioner Elman not participating.

IN THE MATTER OF

IRVING ADELMAN TRADING AS IRVING ADELMAN

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

Docket 8284. Complaint, Feb. 8, 1961—Decision, May 16, 1961

Consent order requiring a New York City furrier to cease violating the Fur Products Labeling Act by deceptively invoicing fur with respect to the name of the producing animal, and by failing in other respects to comply with 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 Irving Adelman, an individual trading as Irving Adelman, 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. Irving Adelman is an individual trading as Irving Adelman with his office and principal place of business located at 145 West 28th Street, New York, New York.

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

PAR. 3. Certain of said fur was falsely and deceptively invoiced in that such fur was 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. 4. Certain of said fur was falsely and deceptively invoiced or otherwise falsely or deceptively identified with respect to the name or names of the animal or animals that produced the fur in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 5. 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. Ernest D. Oakland for the Commission.
Mr. Ronald Hoffman, of New York, N.Y., for respondent.

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations made pursuant thereto, the Federal Trade Commission on February 8, 1961, issued and subsequently served its complaint in this proceeding against the above-named respondent.

On March 15, 1961, there was submitted to the undersigned hearing examiner an agreement between respondent and counsel supporting the complaint providing for the entry of a consent order.

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

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

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

1. Respondent Irving Adelman is an individual trading as Irving Adelman with his office and principal place of business located at 145 West 28th Street, in the City of New York, State of New York.

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

ORDER

It is ordered, That Irving Adelman, an individual trading as Irving Adelman 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, sale, advertising or offering for sale, in commerce, or the transportation or distribution in commerce, of fur as "commerce" and "fur" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Falsely or deceptively invoicing fur by:

A. Failing to furnish to purchasers of fur 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.

B. Falsely or deceptively invoicing or otherwise falsely or deceptively identifying fur as to the name or names of the animal or animals that produced the fur.

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 May 1961, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

EINBENDER'S INC., ET AL.

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

Docket 8192. Complaint, Nov. 28, 1960—Decision, May 17, 1961

Consent order requiring furriers in St. Joseph, Mo., to cease violating the Fur Products Labeling Act by affixing to fur products labels bearing fictitious prices, represented thereby as the regular retail selling prices; by advertising in newspapers which failed to disclose that certain fur products were composed of flanks, and, by use of such terms as "Values to", represented falsely that the following excessive figure was their usual retail price, and failed in other respects to comply with advertising requirements; and by failing to keep adequate records as a basis for pricing 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 Einbender's Inc., a corporation, and Sylvia B. Einbender, Lester L. Einbender and Edwin I. Einbender, 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 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. Einbender's Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State

of Missouri with its office and principal place of business located at 502 Felix Street, St. Joseph, Missouri.

Individual respondents Sylvia B. Einbender, Lester L. Einbender and Edwin I. Einbender are officers of said corporate respondent and control, formulate and direct the acts, practices and policies of the said corporate respondent. Their office and principal place of business is the same as that of the said 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 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 labels affixed thereto contained fictitious prices and misrepresented the regular retail selling prices of such fur products in that the prices represented on such labels as the regular prices of the fur products were in excess of the retail prices at which the respondents usually and regularly sold such fur products in the recent regular course of their business, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 4. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondents caused the dissemination in commerce, as "commerce" is defined in said Act, of certain advertisements, concerning said 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. 5. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in issues of St. Joseph, Missouri News Press, a newspaper published in the City of St. Joseph, State of Missouri, 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) Contained information required under Section 5(a) of the Fur Products Labeling Act and Rules and Regulations promulgated thereunder in abbreviated form in violation of Rule 4 of said Rules and Regulations.

(b) Failed to disclose that fur products were composed in whole or in substantial part of flanks when such is the fact in violation of Rule 20 of said Rules and Regulations.

(c) Failed to set forth the information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in type of equal size and conspicuousness and in close proximity with each other in violation of Rule 38(a) of said Rules and Regulations.

PAR. 6. In advertising fur products for sale as aforesaid respondents falsely and deceptively advertised said fur products in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of the said Rules and Regulations, by representing, directly or by implication, through such statements as "40th Anniversary Sale—Mink Stoles $99.40—Values to $195.00", that respondents had reduced their price of mink stoles to the advertised lower sale price; that the higher price designated by the term "Values to" was respondents' regular and usual price for the mink stole thus advertised; and that a purchase at the advertised lower sale price would result in a saving to the purchaser of the difference between the advertised lower sale price and the advertised higher price designated by the term "Values to".

In truth and in fact, the advertised higher price designated by the term "Values to" was not respondents' regular or usual price for the mink stoles thus advertised but was in excess of the regular or usual price charged by respondents for such mink stoles; therefore, a purchase of a mink stole at the advertised lower sale price would not result in a saving to the purchaser of the difference between the advertised lower sale price and the advertised higher price designated by the term "Values to".

PAR. 7. Respondents in advertising fur products for sale as aforesaid made claims and representations respecting the 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 the said 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 constitute unfair

and deceptive acts and practices in commerce under the Federal Trade Commission Act.

Mr. William A. Somers, supporting the complaint.

Morison, Murphy, Clapp & Abrams by *Mr. Samuel K. Abrams* of Washington, D.C., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On November 28, 1960, the Federal Trade Commission issued a complaint charging the above-named respondents with misbranding and falsely and deceptively advertising certain of their fur products in violation of the Federal Trade Commission Act and the Fur Products Labeling Act.

After issuance and service of the complaint the respondents, their attorneys, and counsel supporting the complaint entered into an agreement for a consent order. The agreement states, among other things, that Edwin I. Einbender is an administrative officer and had nothing to do with the acts and practices involved in this proceeding. This fact is set out in an affidavit executed by Edwin I. Einbender, which is attached to and made a part of the agreement. Accordingly, the term "respondents", as hereinafter used, does not include Edwin I. Einbender in his individual capacity.

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 Einbender's Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri with its office and principal place of business located at 502 Felix Street, St. Joseph, Missouri.

2. Individual respondents Sylvia B. Einbender, Lester L. Einbender and Edwin I. Einbender are officers of said corporate respondent. Their office and principal place of business is the same as that of the said 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 Einbender's Inc., a corporation, and its officers, and Sylvia B. Einbender and Lester L. Einbender, individually and as officers of said corporation, and Edwin I. Einbender, as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of any 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 falsely or deceptively labeling or otherwise identifying such products as to the regular prices thereof by any representation that the regular or usual prices of such products are any amount in excess of the prices at which respondents have usually and customarily sold such products in the recent regular course of business.

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

A. Sets forth information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form.

B. Fails to disclose that fur products are composed in whole or in substantial part of flanks, when such is the fact.

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

D. Represents directly or by implication through the use of the term "Values to" or any other words or terms of similar import or meaning, that the regular or usual price of any fur product is any amount which is in excess of the price at which the respondents have usually and customarily sold such products in the recent regular course of business.

E. Misrepresents in any manner the savings available to purchasers of respondents' fur products.

3. Making pricing claims or representations respecting prices or values of fur products unless there are maintained full and adequate records disclosing the facts upon which such claims and representations are based.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to Edwin I. Einbender, individually but not as an officer of 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 17th day of May 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents, Einbender's Inc., a corporation; Edwin I. Einbender, as an officer of said corporation; and Sylvia B. Einbender and Lester L. Einbender, individually and as officers of said corporation, shall within sixty 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

RUSSELL-WARD CO., INC.

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

Docket 8207. Complaint, Dec. 7, 1960—Decision, May 17, 1961

Consent order requiring a Seattle, Wash., distributor of food products to cease violating Sec. 2(c) of the Clayton Act by accepting commissions from suppliers on substantial purchases of food products for its own account for resale, such as a discount usually at the rate of 10 cents per 1⅗ bushel box

of citrus fruit from Florida sellers, or a lower price which reflected such discount.

COMPLAINT

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

PARAGRAPH 1. Respondent Russell-Ward Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 1528 Occidental Avenue, Seattle 4, Washington.

PAR. 2. Respondent is now, and for the past several years has been, engaged in business primarily as a distributor, buying, selling and distributing, for its own account, citrus fruit, produce and other food products, all of which are hereinafter sometimes referred to as food products. Respondent purchases its food products from a large number of suppliers located in many sections of the United States.

In many transactions respondent also acts in the capacity of a broker, representing packer-principals, located in many sections of the United States, in the sale and distribution of their citrus fruits and produce, and is paid for its services in connection therewith the packers' usual rate of brokerage on the particular type of product sold. For example, some of the packer-principals so represented by respondent are citrus fruit packers located in the State of Florida. When so representing these packer-principals located in Florida, as their broker, respondent is paid for its services in connection with the sale of their citrus fruit, a brokerage or commission usually at the rate of 10 cents per 1⅗ bushel box, or equivalent.

The annual volume of business done by respondent, both as a distributor and as a broker, is substantial.

PAR. 3. In the course and conduct of its business for the past several years, respondent has purchased and distributed, and is now purchasing and distributing, food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, from suppliers or sellers located in several States of the United States other than the State of Washington, in which respondent is located. Respondent transports, or causes such food products, when purchased, to be transported from the places of business or packing plants of its suppliers located in various other States of the United

States to respondent who is located in the State of Washington, or to respondent's customers located in said State, or elsewhere. In addition, respondent, when representing packer-principals, has, directly or indirectly, caused such food products, when sold or purchased, to be shipped and transported from various packers' packing plants or places of business to respondent or to respondent's customers located in states other than the state of origin of the shipment. Thus, for the past several years, respondent has been, and is now, engaged in a continuous course of trade in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended.

PAR. 4. In the course and conduct of its business for the past several years, but more particularly since January 1, 1958, respondent has been and is now making substantial purchases of food products for its own account for resale from some, but not all, of its suppliers, and on a large number of these purchases respondent has received and accepted, and is now receiving and accepting, from said suppliers, a brokerage, commission, or other compensation, or an allowance or discount in lieu thereof, in connection therewith.

For example, respondent has made substantial purchases of citrus fruit for its own account from suppliers or sellers located in the State of Florida and has received from these suppliers or sellers on said purchases, a brokerage or commission, or a discount in lieu thereof, usually at the rate of 10 cents per 1⅗ bushel box, or equivalent. In many instances, respondent receives a lower price from the suppliers or sellers which reflects said brokerage or commission.

PAR. 5. The acts and practices of respondent in receiving and accepting a brokerage or commission, or an allowance or discount in lieu thereof, on its own purchases, as herein alleged and described, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13).

Mr. Cecil G. Miles, *Mr. Ernest G. Barnes*, and *Mr. George W. Elliott* for the Commission.

Mr. K. Dennis Jones, of Seattle, Wash., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on December 7, 1960, issued its complaint herein, charging the respondent, Russell-Ward Co., Inc., a corporation, with having violated the provisions of §2(c) of the Clayton Act, as amended (U.S.C. Title 15, §13), and respondent was duly served with process.

On March 17, 1961, 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 respondent, its attorney, and counsel supporting the complaint, under date of March 15, 1961, subject to the approval of the Bureau of Litigation of the Commission, which had duly approved the same.

After due consideration, 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 Russell-Ward Co., Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 1528 Occidental Avenue, Seattle, Washington.

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

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

4. Respondent waives:

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

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

(c) All of the rights it 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 of the Commission shall be based shall consist solely of the complaint and this agreement.

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

7. This agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

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

Upon due consideration of said complaint and agreement, the hearing examiner approves and accepts the "Agreement Containing

Consent Order To Cease And Desist"; finds that the Commission has jurisdiction of the subject matter of this proceeding and of the respondent herein; that the complaint states a legal cause for complaint under §2(c) of the Clayton Act, as amended, against the respondent, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; and that the order 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 therefore issues the said order, as follows:

It is ordered, That respondent Russell-Ward Co., Inc., a corporation, and its officers, representatives and employees, directly or through any corporate or other device, in connection with the purchase of citrus fruit or other food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of citrus fruit or other food products for respondent's own account, or where respondent is the agent, representative, or other intermediary acting for or in behalf, or is subject to the direct or indirect control, of any buyer.

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 May 1961, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

JULEE MANUFACTURING CORPORATION ET AL.

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

Docket 8221. Complaint, Dec. 16, 1960—Decision, May 17, 1961

Consent order requiring manufacturers at Longmeadow, Mass., to cease misrepresenting the size of their sleeping bags by stating as "cut size" in catalogs and on attached labels, size descriptions almost invariably larger than the actual size of the bags in question.

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 Julee Manufacturing Corporation, a corporation, and Julius Kaplan and Lee 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 Julee Manufacturing Corporation is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Massachusetts. The address of said corporation is 51 Colony Acres Road, Longmeadow, Massachusetts.

Respondents Julius Kaplan and Lee Kaplan 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 have been engaged in the manufacture, distribution, sale and advertising of sleeping bags and other various types of outdoor supply equipment.

PAR. 3. In the course and conduct of their business respondents have caused their said products, when sold, to be shipped from their place of business in the State of Massachusetts 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, in connection with the sale of their sleeping bags, have engaged in misrepresenting the size of various of said bags in their catalogues and on labels sewn or attached thereto. Respondents' size descriptions are characterized as "cut size," whereas, the sizes following such description are almost invariably larger than the actual size of the bags in question. The term "cut size," when used in the manner as alleged above, is confusing and tends to indicate that size following such description is the actual size of the finished product. In truth and in fact, this is almost never the case, as the actual size of the finished product is smaller than the size set out on the labels.

PAR. 5. By the aforesaid practices respondents have placed in the hands of their retailers means and instrumentalities by and

through which they mislead the public as to the size of their sleeping bags.

PAR. 6. 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 products of the same general kind and nature as that sold by the respondents.

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 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. 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. Charles W. O'Connell, supporting the complaint.
Respondents, *pro se*.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 16, 1960, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by the use of false, deceptive and misleading statements concerning the size of sleeping bags manufactured and sold by them. After being served with said complaint, respondents appeared and entered into an agreement dated February 23, 1961, 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 all respondents and by counsel supporting the complaint, and approved by the 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 of 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:

1. Respondent Julee Manufacturing Corporation is a corporation existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at 51 Colony Acres Road, in the City of Longmeadow, State of Massachusetts.

Respondents Julius Kaplan and Lee Kaplan are individuals and 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 repondents 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 Julee Manufacturing Corporation, a corporation, and its officers, and respondents Julius Kaplan and Lee Kaplan, 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 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;

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

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

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 May 1961, 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

FLEMINGTON FUR COMPANY ET AL.

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

Docket 8246. Complaint, Dec. 28, 1960—Decision, May 17, 1961

Consent order requiring furriers in Flemington, N.J., to cease violating the Fur Products Labeling Act by advertising in newspapers which failed to disclose the name of the country of origin of imported furs, and represented falsely that they manufactured all the fur products they handled and acted as their own distributor; and by failing to comply with 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 Flemington Fur Company, a corporation, and Philip J. Benjamin and Joseph Birnbaum, 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 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. Flemington Fur Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its office and principal place of business located at 8 Spring Street, Flemington, New Jersey.

Respondents Philip J. Benjamin and Joseph Birnbaum are officers of the corporate respondent. They control, formulate and direct 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. 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, offering for sale, 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 falsely and deceptively invoiced by the 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. 4. 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 radio broadcasts concerning said products which were not in accordance with the provisions of Sec-

tion 5(a) of the Act and the Rules and Regulations promulgated thereunder and which advertisements were intended to aid, promote or assist, directly or indirectly in the sale and offering for sale of said fur products.

PAR. 5. Among and included in the advertisements as aforesaid but not limited thereto were advertisements of respondents which were broadcast over Station WOR, a radio station located in New York, New York and having a wide coverage 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 failed to disclose the name of the country of origin of the imported furs contained in the fur product, in violation of Section 5(a)(6) of the Fur Products Labeling Act.

PAR. 6. In advertising fur products for sale as aforesaid respondents falsely and deceptively advertised said fur products in violation of Section 5(a)(5) of the Fur Products Labeling Act by representing, directly or by implication, through such statements as "Flemington furs are of the finest quality * * * the same fine quality as you would expect to find at the leading couturiers throughout the world. Only the price is lower because you buy from New Jersey's largest manufacturer and distributor of fine furs", that respondents manufacture all of the fur products marketed by them and act as their own distributor of all such fur products, and, therefore, purchasers of respondents' fur products are enabled to obtain price concessions not obtainable in the usual retail channels of trade.

In truth and in fact, respondents procure a substantial majority of their fur products from outside manufacturers and wholesalers and sell and offer for sale such products at retail prices. The term "distributor" is used with reference to such products and is not limited to the products manufactured by respondents. Purchasers of fur products which are procured from outside manufacturers and wholesalers are not dealing directly with the manufacturer or distributor as advertised.

PAR. 7. 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 and *Mr. Arthur Wolter, Jr.*, for the Commission.

Respondents, *pro se*.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated December 28, 1960, the respondents are charged with violating the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

On March 13, 1961, the respondents entered into an agreement with counsel in support of the complaint for a consent order.

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

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

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

1. Respondent Flemington Fur Company is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey. Individual respondents Philip J. Benjamin and Joseph Birnbaum are officers of said corporate respondent. Said individual respondents formulate, direct, and control the acts and practices of the corporate respondent. All respondents have their office and principal place of business at 8 Spring Street, Flemington, New Jersey.

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 Flemington Fur Company, a corporation, and its officers, and Philip J. Benjamin and Joseph Birnbaum, 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, manufacture for introduction, 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, 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:

1. 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 Section 5(b)(1) of the Fur Products Labeling Act.

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

A. Represents directly or by implication that respondents are wholesale or manufacturing distributors of fur products when such is not the fact.

B. Uses the word "manufacturers" or any simulation thereof with reference to any fur products procured from outside sources of supply and not manufactured by respondents.

C. Fails to disclose the name of the country of origin of any imported furs contained in 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 17th day of May 1961, 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

KNICKERBOCKER CASE CORPORATION ET AL.

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

Docket 7818. Complaint, Mar. 10, 1960—Decision, May 18, 1961

Consent order requiring a Chicago manufacturer-jobber to cease representing falsely in catalogs and other advertising that its vinyl and surtex luggage and brief cases had all the qualities of leather, that they were scuff proof, that products made of vinyl or a plastic containing pulverized leather were manufactured of leather, that it was the manufacturer of all such products offered for sale, and that amounts set out as "retail" were the usual retail prices therefor.

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 Knickerbocker Case Corporation, a corporation, and Chester William Buchsbaum and Samuel Buchsbaum, 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 Knickerbocker Case Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 501 West Huron Street, Chicago, Illinois. Respondents Chester William Buchsbaum and Samuel Buchsbaum are individuals and president and secretary-treasurer, respectively, of the said corporation, and have their office and place of business at the same address as the corporate respondent. Said individual respondents direct and control the policies, acts and practices of the corporate respondent.

PAR. 2. Respondents are now, and for more than two years last past have been, engaged in the sale offering for sale and distribution of luggage, brief cases and other merchandise, as manufacturers and jobbers to wholesalers and retailers for resale to the public.

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 Illinois 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 products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing sales of their products, the respondents have made certain statements and representations in their catalogues and other advertising media. Among and typical, but not all inclusive, of the statements and representations so made are the following:

Vinyl leather-like
Leather-like Surtex
Leather-like vinyl in levant-grain buchyde
Scuff proof
Made from skuff proof vinyl quality Italian bond-leather
Black vinyl leather
Buy direct from manufacturer and save
Your cost . . . $9.45 Retail Price . . . $15.75

Your cost	Similar goods retail
$22.50	$39.50
24.50	41.50

PAR. 5. The respondents, through use of the aforesaid statements and representations, and others similar thereto, represent, directly and by implication, that:

1. Respondents' products advertised as made of vinyl and surtex have all the qualities and characteristics of leather.

2. Respondents' products as advertised are scuff proof.

3. Products advertised by respondents are manufactured of leather.

4. Respondents are the manufacturer of all the luggage, cases, binders, portfolios and other similar products offered for sale in their catalogue, and that a purchaser thereof can effect a saving by purchasing from the respondents any of the products offered for sale in their catalogue.

5. The amounts set out in the catalogue and other advertising material and designated as "retail" are the usual and regular retail prices for their products.

PAR. 6. The said statements and representations as hereinabove set forth are false, misleading and deceptive. In truth and in fact:

1. The products advertised as made of vinyl and surtex do not have all the qualities and characteristics of leather.

2. The products represented as such are not scuff proof.

3. Certain of respondents' products represented as being manufactured of leather are manufactured of and made out of vinyl or a plastic or pulverization of leather containing 50%, more or less, of leather that has been pulverized.

4. Respondents do not manufacture all the luggage, cases, binders, portfolios and other similar products they offer for sale in their catalogue, and purchasers can purchase the products, jobbed and offered for sale by the respondents, at a lower price from the manufacturer of the products jobbed by the respondents.

5. The amounts set out in the catalogue and advertising material, and designated as "retail" were, in many instances, fictitious and in excess of the prices at which such products were usually and regularly sold at retail.

PAR. 7. There has long been a preference on the part of a substantial portion of the purchasing and consuming public to deal direct with the manufacturer of the product being purchased, in the belief that more reliance may be placed on a manufacturer with reference to carrying out representations and contracts, and that lower prices, elimination of middlemen's profits, superior products and other advantages can thereby be obtained.

PAR. 8. 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 luggage, cases, portfolios and other products of the same general kind and nature as that sold by respondents.

PAR. 9. 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 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. 10. 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 constitutes, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

William A. Somers, Esq., for the Commission.

Kennedy, Golan & Morris, by *Stanley J. Morris, Esq.*, of Chicago, Ill., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission on March 10, 1960, issued its complaint against the above-named respondents, charging them with having violated the Federal Trade Commission Act, by misrepresenting the quality and price of their products. Respondents appeared and entered into an agreement dated January 25, 1961, containing a consent order to cease and desist, disposing of all the issues in this proceeding without further hearings, which agreement has been duly approved by the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with §3.25 of the Rules of Practice of the Commission.

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

With respect to respondent Samuel Buchsbaum, named in the complaint individually and as an officer of the corporate respondent, the agreement recites that he does not now direct or control, or have any responsibility for directing or controlling, nor has he ever directed or controlled, or had any responsibility for directing or controlling, alone or with the respondent Chester William Buchsbaum, any policies, acts or practices of the corporate respondent, except for acts, if any, required of him as such officer and a director of the

corporate respondent, as shown in the affidavit of Samuel Buchsbaum, which affidavit is attached to and made a part of the agreement; and accordingly the agreement provides for dismissal of the complaint as to respondent Samuel Buchsbaum individually.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part of the Commission's decision pursuant to §3.21 and §3.25 of the Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and issues the following order:

1. Respondent Knickerbocker Case Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, respondent Chester William Buchsbaum, an individual and officer of the said corporate respondent, directs and controls the policies, acts and practices of the corporate respondent, and Samuel Buchsbaum is an officer of said corporation, with their office and principal place of business located at 501 West Huron Street, Chicago, Illinois.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named, except respondent Samuel Buchsbaum individually, against whom the complaint shall be dismissed. 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.

It is ordered, That respondent Knickerbocker Case Corporation, a corporation, and its officers, Samuel Buchsbaum and Chester William Buchsbaum as officers of said corporation; and Chester William Buchsbaum, individually, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of products made of vinyl, or surtex, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that:

(a) A product has any of the characteristics or qualities of leather which it does not in fact possess; or misrepresenting in any manner the characteristics or qualities of a product;

(b) Any product made of vinyl or surtex is scuff proof, or that any other product is scuff proof, unless such is the fact;

(c) Any product not made entirely of leather, is leather, provided however, that if a part of a product is leather such part may be designated as leather providing the part is clearly identified;

(d) Respondents are the manufacturers of any products sold by them unless they own, operate or directly and absolutely control the manufacturing plant or factory where the product is manufactured;

(e) Any product is offered for sale at the manufacturer's price unless respondents manufacture the product so offered or, if they do not manufacture such product, unless the price at which it is offered is in fact the manufacturer's price;

(f) Any amount is the usual and regular retail price of a product when it is in excess of the price at which said product is usually and regularly sold at retail in the trade areas or areas where the representation is made;

2. Misrepresenting in any manner, directly or by implication, the savings resulting in the purchase of respondents' product.

It is further ordered, That the complaint be, and it is hereby, dismissed as to respondent Samuel Buchsbaum as an individual.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 18th day of May, 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Knickerbocker Case Corporation, a corporation, Samuel Buchsbaum and Chester William Buchsbaum as officers of said corporation, and Chester William Buchsbaum, individually, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

MARS ELECTRONICS, INC., ET AL.

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

Docket 8181. Complaint, Nov. 23, 1960—Decision, May 18, 1961

Consent order requiring a television repair service in Washington, D.C., to cease such false advertising by radio, in newspapers, and otherwise, as "Repairs Made in Your Home . . . . for only $1.00" when in fact they removed sets to

their shop for estimates and charged $13.50 for the pickup, redelivery, and alleged examination, and the said low service charge was a form of bait to induce persons to call for service; and to cease advertising falsely that their repair employees were factory trained, and that all their repairs were fully 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 Mars Electronics, Inc., a corporation, and Andre Rivera and Juan Rivera, Jr., 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 Mars Electronics, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at 3424 Georgia Avenue, N.W., Washington, D.C.

Respondents Andre Rivera and Juan Rivera, Jr. are individuals and officers of said corporation. They formulate, direct and control the policies, 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 past have been, engaged in the sale and distribution of television and radio replacement parts. An essential and integral part of respondents' said business is the furnishing of television repair services. In connection with their television repair services, respondents remove television sets from the home of owners located in the District of Columbia and in the State of Maryland and transport said television sets to their repair shops, which are located in the District of Columbia, for servicing and replacement of parts, said parts being furnished and sold by respondents after which the television sets are delivered to the owners at their place of residence.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said business, in commerce, in the District of Columbia, and between the District of Columbia and the State of Maryland. The volume of business in said commerce has been, and is, substantial.

PAR. 3. In the course and conduct of their aforesaid business, respondents have made and are now making certain statements and representations concerning said business, by means of advertisements

on radio, in newspapers, mailing cards and by other advertising media. Among and typical of the statements and representations made in such advertising are the following:

"Factory Trained Technicians. All Work Guaranteed. Repairs Made in Your Home. HOME CALLS for only $1.00. We only charge for Parts and Labor if we fix your set. A Get Acquainted Offer With This Card Only. SAVE THIS CARD."

"All Work Fully Guaranteed".

"FOR THE TOPS IN TV SERVICE IN THE CAPITOL OF THE NATION." HERE'S NO DOUBT ABOUT IT . . . "EVERYONE'S TALKING ABOUT THE FAST DEPENDABLE, EXPERT TV REPAIR BY THE MEN FROM MARS TV." "HOME CALLS ONLY ONE DOLLAR. FOR FAST HONEST, AND DEPENDABLE SERVICE, . . . REMEMBER MARS TV IN NORTHEAST, NORTHWEST, SOUTHEAST AND MARYLAND."

PAR. 4. By and through the use of the aforesaid statements and representations, and others of similar import, but not specifically set out herein, respondents represented, directly or by implication:

(1) That respondents service and repair television sets in the home for $1.00;

(2) That the persons employed by respondents to service and repair television sets are factory trained; and

(3) That all work and repairs are fully guaranteed.

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

(1) In most instances respondents do not service or repair television sets in the home for $1.00 or any other amount but remove the sets to their shop for such servicing and repairs. The advertising of said low service charge is a form of bait to induce persons to call for service and thereby enable respondents to remove television sets from homes to their shop.

In case the owner, after his set has been removed to respondents' shop and he has received an estimate of the cost of repairs, decides not to have the repairs made, respondents refuse to redeliver the set to his home except upon the payment of $13.50 for pickup, redelivery and alleged examination. The fact that such a charge will be made is not clearly disclosed to the owner before his set is removed from his home by the respondents.

(2) The persons employed by respondents to service and repair television sets are not factory trained, but, on the contrary, possess a limited knowledge in the field of television repairs.

(3) Respondents' television repairs are not fully guaranteed. They are limited in certain respects and this limitation is not disclosed to the purchaser.

PAR. 6. At all times mentioned herein respondents have been, and are now, in direct and substantial competition in commerce with corporations, firms and individuals engaged in a similar business.

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 such statements and representations were, and are, true and to induce said persons to have respondents service and repair their television sets because of such 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. Michael J. Vitale supporting the complaint.

Murphy and Nelson by *Mr. Eugene X. Murphy* of Washington, D.C., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On November 23, 1960, the Federal Trade Commission issued a complaint charging that the above-named respondents had violated the provisions of the Federal Trade Commission Act. The complaint alleged that the respondents have made false, misleading and deceptive statements and representations in connection with their business, which consists of servicing and repairing television sets.

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

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 agree-

ment 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 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 Mars Electronics, Inc. is a corporation existing and doing business under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at 3424 Georgia Avenue, N.W., Washington, D.C.

2. Respondents Andre Rivera and Juan Rivera, Jr. are officers of said corporate respondent. They formulate, direct and control the acts and practices of said corporate respondent. Their address is the same as the corporate respondent.

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

ORDER

It is ordered, That respondents Mars Electronics, Inc., a corporation, and its officers, and Andre Rivera and Juan Rivera, Jr., 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 and distribution of replacement parts for television sets, or any other products, or repair services in connection therewith, 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 respondents service or repair television sets in the homes of owners for $1.00 or any other amount, unless such is the fact;

(b) That their employees are factory trained technicians or misrepresenting the training or qualifications of their employees;

(c) That work or repairs are guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

2. Failing to clearly disclose to owners of television sets that in case their sets are removed from their homes by respondents and no repairs are made by respondents that a charge in a stated amount will be made before the sets are redelivered to the owners.

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 18th day of May 1961, 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

HAINES CITY CITRUS GROWERS ASSOCIATION ET AL.

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

Docket 7144. Complaint, May 7, 1958—Decision, May 19, 1961

Order requiring a Haines City, Fla., cooperative of approximately 140 citrus grove owners to cease violating Sec. 2(c) of the Clayton Act by paying unlawful commissions to buyers on purchases for their own accounts for resale, and requiring two brokers to cease accepting such commissions from suppliers of citrus fruit or other fruit products on direct purchases for resale; and

Consent order requiring a third broker respondent to desist from the same practice.

Mr. Cecil G. Miles for the Commission.

Mr. Counts Johnson, of Tampa, Fla., for respondent Haines City Citrus Growers Assn.; *Hoyle & Hoyle*, by *Mr. T. C. Hoyle, Jr.*, of Greensboro, N.C., for respondent E. B Garrett Co, Inc.; and *Langer & Simpson*, by *Mr. J. C. Simpson*, of San Francisco, Calif., for respondent Sam J. Bushala.

INITIAL DECISION AS TO ALL RESPONDENTS EXCEPT DALE G. SNYDER BY ABNER E. LIPSCOMB, HEARING EXAMINER

1. THE COMPLAINT

The complaint herein was issued on May 7, 1958, charging the Respondents with having violated §2(c) of the Clayton Act as amended by the Robinson-Patman Act (U.S.C. Title 15, §13). Specifically, the complaint charges Respondent Haines City Citrus Growers Association, a corporation, hereinafter referred to as Respondent Haines and as the selling Respondent, with paying brokerage or a commission, or granting or allowing a discount in lieu thereof, to certain buyers purchasing citrus fruit and citrus fruit products on their own account for resale. The other Respondents, who are described as broker Respondents, are charged with unlawfully receiving such brokerage or commission, or discount in lieu thereof, upon purchases made by them for their own account from Respondent Haines.

2. THE RELEVANT PROVISIONS OF THE CLAYTON ACT

The provisions of §2 of the Clayton Act which the Respondents are charged with having violated are as follows:

(c) That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

3. THE ANSWERS

Respondents submitted separate answers admitting their identity and business operations, but denying having violated §2(c) of the Clayton Act. In an amended answer filed after counsel supporting the complaint had rested his case, Respondent Haines alleged that each transaction disclosed by the testimony herein, between Respondent Haines and each of the broker Respondents, involved a pool-car transaction, and if any of the fruit so sold by Respondent Haines was purchased by any of the brokers for their own account for resale, such broker did not disclose that fact to Respondent Haines as required by law, and that Respondent Haines was therefore wholly justified, under applicable provisions of law, to treat every

such transaction as a legitimate pool-car transaction for which brokerage was required to be paid by Respondent Haines.

4. Rulings on Proposed Findings

Consideration has been given to the entire record herein, including particularly the proposed findings as to the facts and proposed conclusions submitted by counsel supporting the complaint and counsel for Respondent Haines. Each proposed finding as to the facts and each proposed conclusion which has been accepted has been, in substance, adopted and incorporated into this initial decision. All proposed findings as to the facts and proposed conclusions not so adopted and incorporated herein are hereby rejected.

5. Identity and Organization of Respondents

Respondent Haines is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at Haines City, Florida. Respondent Haines is a cooperative association consisting of approximately 140 members who are citrus-grove owners located in the vicinity of Haines City, Florida, for whom Respondent Haines acts as a selling agent in the sale and distribution of their citrus fruit.

Respondent Sam J. Bushala, hereinafter referred to as Respondent Bushala, is an individual doing business as Sam Bushala, with his office and principal place of business located at 510 Battery Street, San Francisco, California. Respondent Bushala is engaged principally in the brokerage business, buying and selling for others on a commission basis, but has occasionally purchased citrus fruit for resale on his own account.

Respondent E. B. Garrett Company, Inc., hereinafter referred to as Respondent Garrett, is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 1029 Westside Drive, Greensboro, North Carolina. Respondent Garrett, like Respondent Bushala, is engaged principally in the brokerage business, buying and selling for others on a commission basis, but has occasionally purchased citrus fruit for resale on its own account.

6. Interstate Commerce

Respondent Haines is now and for the past several years has been engaged in the business of selling and distributing citrus fruit, prin-

cipally grapefruit, oranges and tangerines, produced and packed in the State of Florida by its member growers. Respondent Haines sells and distributes this fruit throughout the United States, directly without the intervention of brokers to buyers located in states other than Florida, and also to such buyers through brokers who represent Respondent Haines in effecting such sales. Many brokers thus serving Respondent Haines are likewise located in states other than the State of Florida. On sales made through brokers, Respondent Haines pays its brokers for their services a brokerage fee or commission on a basis ranging from 7¢ to 10¢ per box of 1⅗ bushels capacity. Respondent Haines is a substantial factor in the sale and distribution of citrus fruit and citrus fruit products in the State of Florida, with sales of fresh fruit ranging from 500,000 to 600,000 boxes annually. There has been, for the past several years, a continuous course of trade in commerce in said citrus fruit across state lines between Respondent Haines and its respective buyers and brokers.

Respondents Bushala and Garrett are now and for the past several years have been engaged principally in the brokerage business, representing various principals located in many states of the United States other than the state of their residence. Both Respondents Bushala and Garrett also occasionally purchase citrus fruit on their own account for resale. Thus there has been for the past several years a course of trade in commerce in the purchase and sale of citrus fruit across state lines between Respondents Bushala and Garrett on the one hand and their respective principals on the other, and between said Respondents and Respondent Haines.

7. Transactions Between Seller-Respondent Haines and Broker-Respondent Bushala

The record shows that Respondent Haines made approximately twenty-five sales of Florida citrus fruit to Respondent Bushala during the period of time from January, 1955, through March, 1956, and paid brokerage on each of these transactions at the rate of 10¢ per box. Respondent Bushala testified that he represented ten to fifteen packers on a strictly brokerage basis, but that all his transactions with Respondent Haines were strictly on an f.o.b.-market-price basis, and that he resold the fruit, principally grapefruit or tangerines, purchased from Respondent Haines to jobbers and commission houses at prices determined by himself, which were based on his costs plus freight plus mark-up. He further testified that the citrus fruit which he purchased from Respondent Haines was shipped to him directly and that he remitted to Respondent Haines

in the amount called for by the invoice. He also testified that he paid the shipping charges and, when necessary, the storage charges. If the fruit arrived in a decaying condition, he reported that fact to Respondent Haines, and a satisfactory adjustment of the damage was usually made. He further testified that if the fruit was injured in transit, he filed a claim with the transportation company in his own name. In addition, he testified that if the fruit had to be repacked due to decay, he usually notified Respondent Haines of that circumstance and Respondent Haines was always willing to do what was right concerning that matter. The invoices covering Respondent Bushala's purchases showed on their faces that brokerage was usually deducted at the rate of 10¢ per box from the gross amount due Respondent Haines. In one instance in which Respondent Haines inadvertently failed to show such a deduction for brokerage, Respondent Bushala deducted the usual brokerage himself before remitting to Respondent Haines, and made a notation on the face of the invoice: "Less brokerage $40.00".

The manner in which Respondent Bushala handled the purchase and resale in these various transactions with Respondent Haines is illustrated by the following typical example:

Cost of Merchandise	
Fruit Cost	$1,656.25
Fumigation Cost	35.00
Freight Cost	824.00
Cost of Ice	41.57
H—H Cost	34.25
Linale Cost	5.19
	$2,596.26
Less Adj. for decay	149.50
Total cost of Mdse.	$2,446.76

Sale of Merchandise	
Total Sales	$2,901.15
Less cost of Mdse.	2,446.76
Profit on Sale of Mdse.	$454.39
Plus Brokerage	38.50
Total Profit	$492.89

The foregoing facts compel the conclusion that Respondent Bushala knowingly received brokerage or a commission or discount in lieu thereof upon purchases made from Respondent Haines, in violation of §2(c) of the Clayton Act.

8. Transactions Between Seller-Respondent Haines and Broker-Respondent Garrett

The record shows that Respondent Haines dealt with Respondent Garrett by two separate methods. When Respondent Garrett, acting as a broker, placed an order for a full car or truckload of citrus fruit on behalf of one or two buyers, Respondent Haines billed the customers direct and paid Respondent Garrett a brokerage fee at

the rate of 7¢ per box. This type of transaction, which conforms to our traditional practice of brokerage operations, is not challenged in the complaint. The other type of transaction, which is so challenged, consists of the purchase by Respondent Garrett of a full load or partial load of citrus fruit from Respondent Haines, with no purchaser other than Respondent Garrett appearing. Respondent Haines also paid Respondent Garrett brokerage on this type of shipment. On six such shipments in 1955, the record shows that Respondent Garrett purchased citrus fruit from Respondent Haines, paying therefor on an f.o.b. basis and taking delivery in his own trucks in Florida. The fruit was thereafter transported by Respondent Garrett from Florida to various locations in other states, including South Carolina and Virginia, and there resold to various purchasers at a price fixed by Respondent Garrett. It should be observed that Respondent Garrett did not have a license from the Interstate Commerce Commission to transport the products of others across state lines, which fact indicates that Respondent Garrett regarded the citrus fruit so transported as his own property. The evidence shows further that Respondent Garrett carried insurance in his own name on such fruit. In every respect, both Respondent Garrett and Respondent Haines behaved, in those transactions, as if Respondent Garrett were buying for his own account.

Whether Respondent Garrett resold his citrus fruit at a profit cannot be determined, because he transported it in his own trucks and himself defrayed all the expenses involved in repacking and handling. Although proof of profit or loss would be relevant as tending to show ownership of the commodity sold, it is not essential to the establishment of a violation of §2(c) of the Clayton Act. The point which is essential to be proved is the ownership of the fruit after Respondent Garrett loaded it on his trucks. The evidence indicates unmistakably that such fruit was treated by all concerned as though it belonged to Respondent Garrett. We must conclude, therefore, that Respondent Garrett purchased citrus fruit from Respondent Haines for his own account, and accepted brokerage thereon in violation of §2(c) of the Clayton Act.

9. Respondent Haines' Defenses

As heretofore stated, counsel for Respondent Haines, both in his amended answer and in his proposed findings as to the facts, raised several related contentions in defense of Respondent Haines' payments to the broker-Respondents on purchases for their own accounts. First, he points out correctly that each broker-Respondent with whom Respondent Haines has been engaged in business trans-

actions was a duly-licensed broker, and primarily so engaged. He also calls attention to the fact that the Secretary of Agriculture has proposed, in the Federal Register of November 10, 1959, Volume 24, No. 220, §46.25 (d), a regulation concerning the duties of a broker operating under the Perishable Agricultural Commodities Act, which would require a broker acting in a dual capacity, both as a broker and as a dealer buying for himself, to inform the seller when he was buying on his own account for resale.

Counsel for Respondent Haines points out specifically that neither of the broker-Respondents herein advised Respondent Haines that they were not buying as brokers for pool-car purchasers, but that they were in fact buying on their own account for resale. Counsel for Respondent Haines contends that in view of the foregoing facts, Respondent Haines was under a legal duty to pay a brokerage fee on each transaction herein proved, and that in so doing it did not violate the Clayton Act as alleged.

In considering the above contentions, we must remember that the record shows that in every proven transaction between Respondent Haines and the two broker-Respondents, the citrus fruit involved was purchased from Respondent Haines in the name of the broker-Respondents; that the fruit was thereafter delivered to the broker-Respondents and paid for by them; and that in each transaction brokerage was deducted from the total amount due Respondent Haines, either by Respondent Haines or by the brokers themselves. The record further shows that Respondent Haines did not know or make any effort to determine who the actual purchasers in these transactions might be. In fact, each transaction herein proved has all the elements of a simple buyer-seller relationship between Respondent Haines and the broker-Respondent. We believe that under such circumstances, if Respondent Haines did not know to whom it was really selling its citrus fruit, it should have known.

It appears from the record that a pool-car shipment, as here involved, consists of a quantity of citrus fruit purchased by a broker on behalf of and to be distributed in relatively small portions among a number of buyers. It appears further that in such transactions the broker collects the purchase price from the buyers and remits it to the seller less his brokerage. We believe that when a seller sells a so-called "pool-car" shipment, ostensibly through a broker to a number of persons unknown to the seller, and in every respect concerning that shipment, deals with the broker as though the broker were himself the true purchaser, the transaction is ambiguous, and therefore imposes upon the seller the duty of determining the true facts as to who is his real customer. The ambiguity of such a trans-

action arises from the comparatively recent practice among sellers in the citrus-fruit industry, when making pool-car sales, of billing the broker and receiving payment from the broker, instead of the old, immemorial practice of billing the actual purchasers direct, receiving payment from them for the merchandise, and thereafter paying the broker his fee. In this recent practice, as employed by Respondents herein, a pool-car transaction has all the appearance, from the seller's standpoint, of a sale to a broker for his own account, on which the payment of brokerage is prohibited by law. If the broker fails to inform the seller that he is in a specific instance buying for his own account, as he should do, the transaction presents no distinguishing feature whereby the true facts may be known to the seller. Therefore, when entering into such an ambiguous transaction, the seller is clearly obligated to ascertain who is the true purchaser, in order to avoid the possibility of paying brokerage in violation of law. Nor can the seller justify his failure so to inform himself of the true purchaser, by the previous failure of that purchaser to declare that he is buying for his own account. The mere designation "pool-car" does not render lawful that which is unlawful. The seller may not, simply by using such a designation, evade his responsibility of complying with the provisions of §2(c) of the Clayton Act.

CONCLUSION

The acts and practices of Respondent Haines in paying brokerage to Respondents Bushala and Garrett on purchases for their own accounts for resale, and the acts and practices of Respondents Bushala and Garrett in receiving and accepting brokerage from Respondent Haines on their own purchases, as alleged in the complaint and hereinabove found, constitute violations of §2(c) of the Clayton Act, as amended (U.S.C. Title 15, §13). Accordingly,

It is ordered, That Respondent Haines City Citrus Growers Association, a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the sale of citrus fruit or fruit products in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

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

It is further ordered, That Respondents E. B. Garrett Company, Inc., a corporation, and its officers; and Sam J. Bushala, an individual doing business as Sam Bushala, and Respondents' agents, representatives and employees, directly or through any corporate, partnership, or other device, in connection with the purchase of citrus fruit or fruit products in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of citrus fruit or fruit products, for their own account, or when Respondents are the agents, representatives, or other intermediaries acting for or in behalf of, or are subject to the direct or indirect control of the buyer.

Mr. Cecil G. Miles for the Commission.

Martin, Tate & Morrow, by *Mr. George E. Morrow*, of Memphis, Tenn., for respondent Dale G. Snyder.

Initial Decision as to Respondent Dale G. Snyder by Abner E. Lipscomb, Hearing Examiner

The complaint herein was issued on May 7, 1958, charging Respondent Haines City Citrus Growers Association, a corporation, with paying, granting or allowing something of value as commission, brokerage or other compensation, or allowance or discount in lieu thereof, in connection with the sale of their citrus fruits to brokers buying on their own account, in violation of §2(c) of the Clayton Act as amended. The complaint further charges Respondent Dale G. Snyder, an individual doing business as D. G. Snyder Brokerage Co., with receiving and accepting such commission or brokerage, or allowance or discount in lieu thereof, from Respondent Haines City Citrus Growers Association, in violation of §2(c) of the Clayton Act as amended. This initial decision is concerned with the issues herein only insofar as they relate to Respondent Dale G. Snyder. Another initial decision relating to the remaining Respondents herein will be issued hereafter.

On April 25, 1960, Respondent Snyder, his counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director and the Associate Director of the Commission's Bureau of Litigation, and thereafter submitted to the Hearing Examiner for consideration.

The agreement identifies Respondent Dale G. Snyder as an individual doing business as D. G. Snyder Brokerage Co., under and by virtue of the laws of the State of Tennessee, with his office and principal place of business located at 198 S. Main Street, Memphis, Tennessee.

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

The agreement disposes of all of this proceeding only as to Respondent Dale G. Snyder.

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

This agreement is entered into subject to the condition that the effective date of the initial decision based thereon shall be stayed by the Commission and shall not become the decision of the Commission herein unless and until the Commission issues orders to cease and desist against the other Respondents named in this proceeding.

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 with respect to Respondent Dale G. Snyder. 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 Respondent Snyder and over his acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That Respondent Dale G. Snyder, an individual, doing business as D. G. Snyder Brokerage Co., and respondent's agents, representatives and employees, directly or through any corporate, partnership, or other device, in connection with the purchase of citrus fruit, or other fruit products, in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of citrus fruit or other fruit products for Respondent's own account, or where Respondent is the agent, representative, or other intermediary acting for or in behalf, or is subject to the direct or indirect control, of any buyer.

STIPULATION

It is hereby stipulated and agreed by and between Haines City Citrus Growers Association, one of the respondents herein, by its duly authorized officer and attorney and counsel supporting the complaint, as follows:

PARAGRAPH 1. Said respondent has expressed its willingness to withdraw its appeal by filing an appropriate motion of even date herewith directed toward the entry by the Commission of an order herein (1) allowing withdrawal of such appeal and (2) adopting the findings, conclusions and cease and desist order contained in said initial decision, with or without, as determined by the Commission, a statement of the reasons or bases for its action, provided: (a) that the present stipulation is by reference made a part of the findings and conclusions of the Decision of the Commission; and (b) that it is agreed that the intent of the parties hereto is that said cease and desist order contained in said initial decision of the hearing examiner shall be limited in its application to the specfic acts and practices set forth in PAR. 2 below and construed to cover only said acts and practices.

PAR. 2. The specific acts and practices complained of by the Commission in its complaint issued herein on the 7th day of May, 1958 and prohibited by said cease and desist order contained in said initial decision, are as follows:

First: Sales of fresh citrus fruit by said respondent to direct buyers, other than brokers, and the allowance or payment of a brokerage or commission, or a discount in lieu thereof, on said sales.

Second: Sales of fresh citrus fruit by said respondent to brokers and the allowance or payment of a brokerage or commission, or a discount in lieu thereof, on such sales. These practices include:

(a) Instances where such allowances or payments are separately made by check, or otherwise;

(b) Instances where the broker deducts said brokerage, commission, or allowance from the invoiced price before remitting payment therefor; or

(c) Instances where such allowances or payments are deducted from the sale price and the broker is given a net billing reflecting such brokerage or commission.

PAR. 3. Nothing herein contained shall be construed as prohibiting the industry trade practice custom and usage of said respondent giving or allowing other bona fide Florida fresh citrus fruit packers and shippers inter-packing house discounts or making interchanges for fruit with such packers and shippers. This paragraph is intended to be applicable only to those packers and shippers who are regularly engaged in the packing of fresh citrus fruit.

PAR. 4. The present stipulation shall (a) become a part of said respondent's said motion for leave to withdraw appeal and the Commission's order thereon, and shall be and remain a part thereof, and (b) be conclusive and binding upon the parties hereto for all purposes.

Dated this 16th day of January, 1961.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having come on to be heard by the Commission upon motion of respondent Haines City Citrus Growers Association, filed February 7, 1961, requesting leave to withdraw its appeal from the hearing examiner's initial decision, filed June 30, 1960, in disposition of this proceeding as to that respondent and respondents, E. B. Garrett Company, Inc., and Sam J. Bushala, provided a stipulation attached to and made a part of said motion is approved and adopted by the Commission; and

It appearing that no appeal has been taken from the aforesaid initial decision by the respondents, E. B. Garrett Company, Inc., and Sam J. Bushala, the effective date of said initial decision having been stayed as to those respondents by Commission order issued August 10, 1960; and

It further appearing that the hearing examiner filed an initial decision in this matter on May 27, 1960, accepting an agreement containing a consent order to cease and desist theretofore executed

by respondent Dale G. Snyder and by counsel supporting the complaint, which agreement specified, among other things, that the effective date of the initial decision based thereon shall be stayed by the Commission and shall not become the decision of the Commission in this matter unless and until the Commission issues orders to cease and desist against the other respondents named in this proceeding; and

It further appearing that the initial decision of May 27, 1960, the effective date of which was stayed by Commission order of June 16, 1960, is appropriate in all respects to dispose of this proceeding as to respondent Dale G. Snyder; and

It further appearing that the aforesaid stipulation dated January 16, 1961, and entered into by respondent Haines City Citrus Growers Association and counsel supporting the complaint is for the purpose of making clear the intent of the complaint and of the order to cease and desist contained in the initial decision as to that respondent; and

The Commission having considered the aforesaid stipulation and the record herein, and having determined that the order contained in the initial decision of June 30, 1960, as construed by the stipulation, constitutes an appropriate disposition of this proceeding as to the respondent Haines City Citrus Growers Association and that the order directed against the respondents E. B. Garrett Company, Inc., and Sam Bushala is appropriate in all respects to dispose of this proceeding as to those respondents:

It is ordered, That the motion of respondent Haines City Citrus Growers Association requesting leave to withdraw its appeal from the initial decision be, and it hereby is, granted.

It is further ordered, That the initial decision of June 30, 1960, be, and it hereby is, modified by incorporating therein the aforesaid stipulation as part of the findings of fact and conclusions of law.

It is further ordered, That the initial decision of the hearing examiner as to all respondents except Dale G. Snyder, filed June 30, 1960, as hereinabove modified, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the initial decision of the hearing examiner as to respondent Dale G. Snyder, filed May 27, 1960, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondents, Haines City Citrus Growers Association, E. B. Garrett Company, Inc., Sam Bushala, and Dale G. Snyder, 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 each of them has complied with the relevant order contained in the initial decision applicable to such respondent.

IN THE MATTER OF

KEEN FRUIT CORPORATION

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

Docket 7918. Complaint, June 3, 1960—Decision, May 19, 1961

Consent order requiring a packer of citrus fruit in Frostproof, Fla., to cease violating Sec. 2(c) of the Clayton Act by paying brokerage, or its equivalent, to customers making purchases for their own accounts for resale.

COMPLAINT

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

PARAGRAPH 1. Respondent Keen Fruit Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at Frostproof, Florida, with mailing address as Post Office Box 278, Frostproof, Florida.

PAR. 2. Respondent is now and for the past several years has been engaged in the business of packing, selling and distributing citrus fruit, such as oranges, tangerines and grapefruit, all of which are hereinafter sometimes referred to as citrus fruit or fruit products. Respondent sells and distributes its citrus fruit through brokers, as well as direct, to customers located in many sections of the United States. Respondent pays its brokers, when utilizing their services in making sales for it, a brokerage or commission, usually at the rate of 7 to 10 cents per 1⅗ bushel box, or equivalent. Respondent's annual volume of business in the sale and distribution of citrus fruit is substantial.

PAR. 3. In the course and conduct of its business over the past several years, respondent has sold and distributed and is now selling and distributing its citrus fruit in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, to buyers located

in the several states of the United States other than the State of Florida in which respondent is located. Respondent transports or causes such citrus fruit, when sold, to be transported from its place of business or packing plant, or other places, in the State of Florida to such buyers, or to the buyers' customers, located in various other states of the United States. Thus there has been at all times mentioned herein a continuous course of trade in commerce in said citrus fruit across state lines between said respondent and the respective buyers of such citrus fruit.

PAR. 4. In the course and conduct of its business as aforesaid, respondent has made substantial sales of citrus fruit to some, but not all, of its brokers and other direct buyers purchasing for their own account for resale, and on a large number of these sales respondent paid, granted, or allowed, and is now paying, granting or allowing to these brokers and other direct buyers on their purchases, a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof.

PAR. 5. The acts and practices of respondent, as above alleged and described, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13).

Mr. Cecil G. Miles and *Mr. Ernest G. Barnes* for the Commission.
Mr. David B. Higginbottom, of Frostproof, Fla., for respondent.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued June 3, 1960, charges the respondent Keen Fruit Corporation, a Florida corporation, located at Frostproof, Florida, with violation of Section 2(c) of the Clayton Act, as amended, in connection with packing, selling and distributing citrus fruit or fruit products.

After the issuance of the complaint, respondent entered into an agreement containing consent order to cease and desist with counsel in support of the complaint, disposing of all the issues in this proceeding, which agreement was duly approved by the Director and Associate Director of the Bureau of Litigation.

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

By the terms of said agreement, the respondent 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 respondent 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 it may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

Respondent 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 respondent named herein, and issues the following order:

ORDER

It is ordered, That the respondent, Keen Fruit Corporation, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the sale of citrus fruit or fruit products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

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

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 19th day of

May 1961, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

GROVELAND FRUIT COMPANY, INC.

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

Docket 7919. Complaint, June 3, 1960—Decision, May 19, 1961

Consent order requiring a Groveland, Fla., packer of citrus fruit to cease violating Sec. 2(c) of the Clayton Act by paying brokerage, or its equivalent, to customers making purchases for their own accounts for resale.

COMPLAINT

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

PARAGRAPH 1. Respondent Groveland Fruit Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at Groveland, Florida, with mailing address as Post Office Box 98, Groveland, Florida.

PAR. 2. Respondent is now and for the past several years has been engaged in the business of packing, selling and distributing citrus fruit, such as oranges, tangerines and grapefruit, all of which are hereinafter sometimes referred to as citrus fruit or fruit products. Respondent sells and distributes its citrus fruit through brokers as well as direct to customers located in many sections of the United States. When brokers are utilized in making sales for it, the respondent pays them for their services a brokerage or commission, usually at the rate of 10 cents per 1⅗ bushel box. Respondent's annual volume of business in the sale and distribution of citrus fruit is substantial.

PAR. 3. In the course and conduct of its business over the past several years, respondent has sold and distributed and is now sell-