is the price at which respondents have usually and customarily sold the merchandise in the recent regular course of business.

*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 this order.

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IN THE MATTER OF

## CARLSON PHARMACEUTICALS, INC., ET AL.

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

*Docket 8432. Complaint, June 16, 1961—Decision, Nov. 16, 1961*

Order issued in default requiring Detroit distributors to cease representing falsely in advertising that their drug preparation "ARTH-RITE" was an effective treatment and cure for all kinds of arthritis and rheumatism and contained sleep-inducing ingredients.

### 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 Carlson Pharmaceuticals, Inc., a corporation, and Frank Handler, Jr., Eugene Graye and Frank Handler, Sr., 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 Carlson Pharmaceuticals, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 4121 Puritan Avenue, in the City of Detroit, State of Michigan.

Respondent Frank Handler, Jr., Eugene Graye and Frank Handler, Sr. 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 have been for more than one year last past, engaged in the sale and distribution of a preparation

containing ingredients which come within the classification of drugs, as the term "drug" is defined in the Federal Trade Commission Act.

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

Designation: ARTH-RITE

Formula:

| | |
|---|---|
| Salicylamide | 324 mg. |
| Vitamin A (Fish Liver Oil) | 100 USP Units |
| Vitamin D (Irradiated Ergosterol) | 500 USP Units |
| Thiamine Mononitrate (Vitamin $B_1$) | 2 mg. |
| Ascorbic Acid (Vitamin C) | 30 mg. |
| Iron (from dessicated ferrous sulfate) | 19 mg. |
| Powdered Extract of Alfalfa | 130 mg. |

Directions: Take 1 or 2 Capsules before breakfast and at bedtime. Not more than 6 Capsules in one day.

IMPORTANT

For more severe or persistent conditions, consult your doctor.

CONTENTS 60 CAPSULES

PAR. 3. Respondents cause the said preparation, when sold, to be transported from their place of business in the State of Michigan 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 preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

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

PAR. 5. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth are the following:

ARTH-RITE

ARTH-RITE

USE ARTH-RITE

Get Blessed Relief From
ARTHRITIS
and RHEUMATISM

Get PROMPT Relief

Stop Suffering Start Sleeping

Now Only $5.85 For A Full
Months Supply of 60 Capsules

Money Back Unconditional

Contains No Opiates, Aspirins or Habit Forming Drugs

Carlson Pharmaceuticals, Inc.
4121 Puritan Dept. P10 Detroit 21, Mich.

(Picturization of an ARTH-RITE bottle to the right of the printed material and the word "ALFALFA" prominently featured on the bottle label with the legend "VIT. A, B, C, D & Extract of Alfalfa" printed above the top of the bottle.)

PAR. 6. Through the use of said advertisements, and others similar thereto not specifically set out herein, respondents have represented, and are now representing, directly and by implication:

1. That ARTH-RITE is an adequate, effective and reliable treatment for all kinds of arthritis and rheumatism;

2. That ARTH-RITE will arrest the progress of, correct the underlying causes of, and cure all kinds of arthritis and rheumatism;

3. That ARTH-RITE is an adequate, effective and reliable treatment for the symptoms and manifestations of all kinds of arthritis and rheumatism, and will afford immediate, complete and permanent relief of the symptoms and manifestations thereof;

4. That the vitamins, minerals and extract of alfalfa in said product are of therapeutic value in the treatment of all kinds of arthritis and rheumatism, and for the symptoms and manifestations thereof;

5. That said product contains sleep-inducing ingredients.

PAR. 7. The said advertisements were and are misleading in material respects and constituted and now constitute, "false advertise-

ments" as that term is defined in the Federal Trade Commission Act. In truth and in fact:

1. ARTH-RITE is not an adequate, effective or reliable treatment for any kind of arthritis or rheumatism;

2. ARTH-RITE will not arrest the progress of, correct the underlying causes of, or cure any kind of arthritis or rheumatism;

3. ARTH-RITE is not an adequate, effective or reliable treatment for the symptoms and manifestations of any kind of arthritis or rheumatism, and will not afford immediate, complete or permanent relief from any of the symptoms or manifestations thereof or have any therapeutic effect upon any of the symptoms or manifestations of any such conditions in excess of affording temporary relief of the minor aches or pains thereof;

4. The vitamins, minerals and extract of alfalfa in said preparation are of no therapeutic value in the treatment of any kind of arthritis or rheumatism or for any of the symptoms or manifestations thereof;

5. ARTH-RITE does not contain any sleep-inducing ingredients.

PAR. 8. The dissemination by the respondents of the false advertisements, as aforesaid, constitutes, and now constitutes, unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

*Mr. Michael J. Vitale* for the Commission.

No appearance for the respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on June 16, 1961, charging Respondents with violation of the Federal Trade Commission Act by the dissemination in commerce, as "commerce" is defined in said Act, of false advertisements concerning their drug preparation, designated "Arth-Rite."

Thereafter, on June 30, 1961, Respondents were duly served with a copy of the complaint herein, and failed to submit any answer or make any reply thereto. Accordingly, on August 9, 1961, notice was issued of a hearing to be held in the Federal Trade Commission Building, Washington, D.C., and was duly served upon Respondents on August 14, 1961.

Thereafter a hearing was held in accordance with the aforesaid notice, whereat Repsondents failed to appear, either in person or by counsel; whereupon counsel supporting the complaint moved that the Respondents be held in default, and submitted to the Hearing Examiner a proposed order to cease and desist. The motion was duly granted on the record.

The Hearing Examiner, exercising the authority conferred upon him by § 4.5(c) of the Commission's Rules Of Practice For Adjudicative Proceedings, now finds the facts to be as alleged in the complaint herein, and issues his initial decision, containing such findings, appropriate conclusions drawn therefrom, order to cease and desist, as follows:

## FINDINGS AS TO THE FACTS

1. Respondent Carlson Pharmaceuticals, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 4121 Puritan Avenue, in the City of Detroit, State of Michigan.

Respondents Frank Handler, Jr., Eugene Graye and Frank Handler, Sr. 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.

2. Respondents are now, and have been for more than one year last past, engaged in the sale and distribution of a preparation containing ingredients which come within the classification of drugs, as the term "drug" is defined in the Federal Trade Commission Act.

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

Designation: ARTH-RITE

Formula:

| | |
|---|---|
| Salicylamide | 324 mg. |
| Vitamin A (Fish Liver Oil) | 1000 USP Units |
| Vitamin D (Irradiated Ergosterol) | 500 USP Units |
| Thiamine Mononitrate (Vitamin $B_1$) | 2 mg. |
| Ascorbic Acid (Vitamin C) | 30 mg. |
| Iron (from desiccated ferrous sulfate) | 19 mg. |
| Powdered Extract of Alfalfa | 130 mg. |

Directions: Take 1 or 2 Capsules before breakfast and at bedtime. Not more than 6 Capsules in one day.

IMPORTANT

For more severe or persistent conditions, consult your doctor.

CONTENTS 60 CAPSULES

3. Respondents cause the said preparation, when sold, to be transported from their place of business in the State of Michigan 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 preparation in commerce, as "com-

merce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

4. In the course and conduct of their said business, Respondents have disseminated and caused the dissemination of certain advertisements concerning the said preparation by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in magazines and other advertising media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation; and have disseminated, and caused the dissemination of, advertisements concerning said preparation by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

5. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth the following:

ARTH-RITE
ARTH-RITE
Get Blessed Relief From
ARTHRITIS
and RHEUMATISM
Get PROMPT Relief
Stop Suffering Start Sleeping
Now Only $5.S5 For A Full
Months Supply of 60 Capsules
Money Back Unconditional
Contains No Opiates, Aspirins or Habit Forming Drugs
Carlson Pharmaceuticals, Inc.
4121 Puritan Dept. P10 Detroit 21, Mich.

(Picturization of an ARTH-RITE bottle to the right of the printed material and the word "ALFALFA" prominently featured on the bottle label with the legend "VIT. A, B, C, D & Extract of Alfalfa" printed above the top of the bottle.)

6. Through the use of said advertisements, and others similar thereto not specifically set out herein, Respondents have represented, and are now representing, directly and by implication:

1. That ARTH-RITE is an adequate, effective and reliable treatment for all kinds of arthritis and rheumatism;

2. That ARTH-RITE will arrest the progress of, correct the underlying causes of, and cure all kinds of arthritis and rheumatism;

3. That ARTH-RITE is an adequate, effective and reliable treatment for the symptoms and manifestations of all kinds of arthritis

and rheumatism, and will afford immediate, complete and permanent relief of the symptoms and manifestations thereof;

4. That the vitamins, minerals and extract of alfalfa in said product are of therapeutic value in the treatment of all kinds of arthritis and rheumatism, and for the symptoms and manifestations thereof;

5. That said product contains sleep-inducing ingredients.

7. The said advertisments were and are misleading in material respects and constituted and now constitute "false advertisements" as that term is defined in the Federal Trade Commission Act.

In truth and in fact:

1. ARTH-RITE is not an adequate, effective or reliable treatment for any kind of arthritis or rheumatism;

2. ARTH-RITE will not arrest the progress of, correct the underlying causes of, or cure any kind of arthritis or rheumatism;

3. ARTH-RITE is not an adequate, effective or reliable treatment for the symptoms and manifestations of any kind of arthritis or rheumatism, and will not afford immediate, complete or permanent relief from any of the symptoms or manifestations thereof or have any therapeutic effect upon any of the symptoms or manifestations of any such conditions in excess of affording temporary relief of the minor aches or pains thereof;

4. The vitamins, minerals and extract of alfalfa in said preparation are of no therapeutic value in the treatment of any kind of arthritis or rheumatism or for any of the symptoms or manifestations thereof;

5. ARTH-RITE does not contain any sleep-inducing ingredients.

CONCLUSIONS

1. The dissemination by the Respondents of the false advertisements, as aforesaid, constituted, and now constitutes, unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

2. The Commission has jurisdiction over the Respondents herein, and over their acts and practices as alleged in the complaint and hereinabove found.

3. This proceeding is in the public interest.

Accordingly,

*It is ordered*, That Respondents Carlson Pharmaceuticals, Inc., a corporation, and its officers, and Frank Handler, Jr., Eugene Graye and Frank Handler, Sr., 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 the preparation

designated ARTH-RITE, or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from, directly or indirectly:

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

(a) That said preparation is an adequate, effective or reliable treatment for any kind of arthritis or rheumatism;

(b) That said preparation will arrest the progress of, correct the underlying causes of, or cure any kind of arthritis or rheumatism;

(c) That said preparation is an adequate, effective or reliable treatment for the symptoms and manifestations of any kind of arthritis or rheumatism, or will afford immediate, complete or permanent relief of the symptoms or manifestations of such conditions in excess of affording temporary relief of the minor aches or pains thereof;

(d) That the vitamins, minerals or extract of alfalfa contained in said preparation will relieve pain, or have any other therapeutic value for the relief of any kind of arthritis or rheumatism, or for the symptoms or manifestations thereof;

(e) That said preparation contains any sleep-inducing ingredients;

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 4.19 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 16th day of November, 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

# KROYWEN COATS, INC., ET AL.

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

*Docket C-28. Complaint, Nov. 16, 1961—Decision, Nov. 16, 1961*

Consent order requiring two associated manufacturers in New York City to cease violating the Wool Products Labeling Act by labeling as "100% Cashmere" and "100% Pure Cashmere", ladies' coats which contained a substantial quantity of other fibers; by labeling such coats falsely with respect to the manufacturer or supplier; and by failing to disclose the the true generic names of fibers present and the percentage thereof.

## COMPLAINT

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

PARAGRAPH 1. Respondents Kroywen Coats, Inc., and Luxury Coats, Inc. are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their office and principal place of business located at 251 West 39th Street, New York, N.Y.

Individual respondent Ralph Miller is president of corporate respondent Kroywen Coats, Inc. and secretary of corporate respondent Luxury Coats, Inc. Individual respondent Sidney Goldman is secretary-treasurer of corporate respondent Kroywen Coats, Inc. Individual respondents Ralph Miller and Sidney Goldman formulate, direct and control the acts, practices and policies of the corporate respondent Kroywen Coats, Inc., including those hereinafter set forth. Individual respondent Ralph Miller formulates, directs and controls the acts, practices and policies of corporate respondent, Luxury Coats, Inc., including those hereinafter set forth. The ad-

dress and principal place of business of the individual respondents is the same as that of the corporate respondents.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since 1948, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, and offered for sale in commerce, as "commerce" is defined in said Act, wool products as "wool products" are defined therein.

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

Among such misbranded wool products were ladies coats labeled or tagged by respondents as "100% Cashmere" and "100% Pure Cashmere" whereas, in truth and in fact, said products contained a substantial quantity of fibers other than the hair or fleece of the Cashmere goat.

In addition, certain wool products, namely, ladies coats, were misbranded in that they were falsely or deceptively stamped, tagged, labeled or otherwise identified in such a manner as to misrepresent the name or identity of the manufacturer, supplier or source of fabric used in the manufacture of such ladies coats.

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

Among such misbranded wool products, but not limited thereto, were ladies coats with labels which failed: (1) to disclose the true generic names of the fibers present and (2) to disclose the percentage of such fibers.

PAR. 5. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

## DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Wool Prod-

ucts Labeling Act of 1939, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondents Kroywen Coats, Inc. and Luxury Coats, Inc. are corporations organized, existing and doing business under and by virtue of the laws of the State of New York with their office and principal place of business located at 251 West 39th Street, New York, New York.

Respondent Ralph Miller is an officer of Kroywen Coats, Inc. and Luxury Coats, Inc. and his address is the same as that of said corporate respondents.

Respondent Sidney Goldman is an officer of Kroywen Coats, Inc. and his address is the same as that of said corporate respondent.

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

ORDER

*It is ordered*, That respondents, Kroywen Coats, Inc., a corporation, and its officers, and Ralph Miller and Sidney Goldman, individually and as officers of said corporation, and Luxury Coats, Inc., a corporation, and its officers and Ralph Miller, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, of ladies' coats or other wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

2. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to name or identity of the manufacturer, supplier or source of the fabric used in such products.

3. Failing to securely affix to or place on each product, a stamp, tag, label or other means of identification showing in a clear and conspicuous manner, each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

4. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of fibers from the hair or fleece of the Cashmere goat.

*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 this order.

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IN THE MATTER OF

## HYMAN KAPLAN ET AL. TRADING AS STEWART AUTO UPHOLSTERING COMPANY ET AL.

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

*Docket 8222. Complaint, Dec. 16 1960—Decision, Nov. 21, 1961*

Order requiring Washington, D.C., distributors of automobile seat covers, convertible tops, and floor mats, among other items, to consumers and other retailers, to cease representing excessive prices as their usual retail prices through such practices as setting forth such prices after the designation "Reg.", "Regular", or "List", followed by a lower sale price; and representing certain of their convertible tops as offered "with written guarantee" when their guarantees contained limitations not set forth.

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 Hyman Kaplan and Morris Kaplan, individually and as copartners trading as Stewart Auto Upholstering Company, and Henry Kaplan, an individual, hereinafter referred to as respondents, have violated the provisions of said

Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Hyman Kaplan and Morris Kaplan are individuals and copartners trading as Stewart Auto Upholstering Company, with their office and principal place of business located at 2525 M Street, NW., in the City of Washington, District of Columbia. Respondent Henry Kaplan is manager of the partnership business. His address is the same as that of the partners.

PAR. 2. Respondents are now, and for some time last past have been engaged in advertising, offering for sale, sale and distribution, among other things, of automobile seat covers, convertible tops, and floor mats to the public and to retailers for resale to the public in the District of Columbia and maintain and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, and for the purpose of inducing the sale of their merchandise, respondents have made certain statements concerning said merchandise in newspapers of general circulation. Among and typical, but not all inclusive of such statements are the following:

"Diplomat" Plastiseal Seat Covers Reg. $18.95.

$13.77 Full set—Front and Rear.

"Diplomat" Plastiseal Auto Seat Covers—Regular $18.95, $13.95 with trade.

"Country Club" Nyspun Auto Seat Covers—Regular $22.95, $17.95 with trade.

Sensational Savings on Genuine "Rocket" Saran Seat Covers—Reg. $16.95—$12.77.

"Rocket" Saran Seat Covers Regular $16.95—Today & Sat. $12.87.

Two Day Super Special! Amazing Low Price! "Atlas" Saran Seat Covers Regular $17.95—$13.87.

Specially Priced! Deluxe 3-Ply convertible tops Vat Dyed Black or Tan—$29.95 with written guarantee.

Less than ½ price! Front and Rear 4-Pc. Floor Mat Set First time ever at this low price! Reg. $9.95—Monday Only $4.87.

(List for $7.95) Cushion Cap Cover $2.72.

PAR. 4. By means of the aforesaid statements, and others of the same import but not specifically set out, respondents have represented, directly or by implication:

1. That the higher prices listed under the designation "Reg.", "Regular" and "List" were the prices at which the advertised merchandise had been usually and customarily sold by respondents at retail in the recent regular course of business and that savings amounting to the differences between these higher prices and the lower sales price would result to purchasers.

2. Through the use of the terms "with written guarantee" that certain of their convertible tops are fully guaranteed.

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

1. The higher prices listed under the designation "Reg.", "Regular" or "List" were not the prices at which the advertised merchandise had been usually and customarily sold by respondents at retail in the recent regular course of business but were in excess of such prices, and savings amounting to the differences between such higher prices and the lower sales prices would not result to purchasers.

2. Respondents' convertible tops are not fully guaranteed but such guarantees contain terms and conditions not set forth in the advertisements.

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 automobiles seat covers, convertible tops and floor mats of the same general kind and nature as those sold by respondents.

PAR. 7. The use by respondents of the aforesaid false, deceptive and misleading statements and representations has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true, and to induce the purchase of substantial quantities of respondents' merchandise because of such erroneous and mistaken belief. As a result thereof, trade in commerce has been unfairly diverted to respondents from their competitors and injury has been done thereby 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.

*Mr. Ben Ivan Melnicoff*, Washington, D.C., for respondents (until September 8, 1961).

*Messrs. Hyman Kaplan, Morris Kaplan*, and *Henry Kaplan, pro se.*

INITIAL DECISION BY MAURICE S. BUSH, HEARING EXAMINER

The issue is whether the respondents have been engaged in unfair or deceptive acts or practices in commerce in violation of the pro-

visions of Section 5 of the Federal Trade Act Commission Act (a) through the listing of fictitious "regular" and "list" prices as former prices on merchandise in advertisements offering the merchandise for sale at sale prices, (b) through the advertisement of a "written guarantee" on certain merchandise when a full guarantee thereon was never intended to be made by respondents.

The proceeding was initiated by a complaint issued December 16, 1960, and was reassigned to the present examiner July 19, 1961, for hearing and the issuance of an initial decision therein. Hearing was held on July 25, to 28, 1961, inclusive, at Washington, D.C. On September 1, 1961, counsel for respondents, with due notice to respondents, filed a motion to withdraw his appearance in behalf of the respondents, which was granted. On September 15, 1961, respondents moved to withdraw their original answer to the complaint in the proceeding and to substitute therefor a "Substitute Answer." The concluding statement of the motion reads as follows: "Respondents further state that no successor attorney has been or will be appointed by them and that they now appear in this proceeding in their own behalf and without counsel." By order of the examiner dated October 2, 1961, a respondents' motion to withdraw their original answer and file a substitute answer was granted. Under the substitute answer, the respondents elect not to further contest the allegations set forth in the complaint, and, in accordance with Section 4.5(b)(2) of the Commission's revised rules of practice, admit all material allegations of the complaint to be true.

By stipulation filed September 15, 1961, the parties submitted a proposed order, which they deem appropriate in the premises, for the consideration of the examiner. The proposed order is adopted and set forth below.

The facts in this matter, as adduced by the pleadings, the testimony, and the documentary evidence, are these. Hyman Kaplan and Morris Kaplan, two of the three respondents, are individuals and copartners trading as Stewart Auto Upholstering Company, with office and principal place of business at 2525 M Street, N.W., in Washington, D.C. The third respondent, Henry Kaplan, of the same address, is manager of the partnership business. Respondents have at all times here pertinent been engaged in the sale and distribution of automobile seat covers, convertible tops, and floor mats, among other items, to consumers and other retailers in the District of Columbia in a substantial course of trade in "commerce" within the meaning of the Federal Trade Commission Act, and have been and are in substantial competition with other firms in the same lines of business in the same sales area.

From time to time in recent years, respondents ran advertisements on their merchandise in newspapers of general circulation in the area in which they operate. These advertisements, for the purpose of inducing purchases, contained certain statements with reference to the merchandise offered for sale, of which the following are typical:

(a) "Diplomat" Plastiseal Seat Covers Reg. $18.95. $13.77 Full set—Front and Rear.

(b) "Diplomat" Plastiseal Auto Seat Covers—Regular $18.95—$13.95 with trade.

(c) "Country Club" Nyspun Auto Seat Covers—Regular $22.95—$17.95 with trade.

(d) Sensational Savings on Genuine "Rocket" Saran Seat Covers Reg. $16.95—$12.77.

(e) "Rocket" Saran Seat Covers Regular $16.95—Today & Sat. $12.87.

(f) Two Day Super Special! Amazing Low Price! "Atlas" Saran Seat Covers Regular $17.95—$13.87.

(g) Specially Priced! Deluxe 3-Ply convertible tops Vat Dyed Black or Tan—$29.95 with written guarantee.

(h) Less than ½ price! Front and Rear 4-Pc. Floor Mat Set First time ever at this low price! Reg. $9.95—Monday Only $4.87.

(i) (List for $7.95) Cushion Cap Cover $2.72.

By means of the above-described newspaper advertisements and others of a similar or identical nature, respondents, directly or by implication, made certain representations which were in fact false, misleading and deceptive, to wit:

(1) That the higher prices listed under the designation "Reg.," "Regular" and "List" were the prices at which the advertised merchandise had been usually and customarily sold by respondents at retail in the recent regular course of business and that savings amounting to the differences between these higher prices and the lower sales price would result to purchasers.

(2) Through the use of the term "with written guarantee" that certain of their convertible tops are fully guaranteed.

Whereas in truth and fact:

(1) The higher prices listed under the designation "Reg.," "Regular" or "List" were not the prices at which the advertised merchandise had been usually and customarily sold by respondents at retail in the recent regular course of business but were in excess of such prices, and savings amounting to the differences between such higher prices and the lower sales prices would not result to purchasers.

(2) Respondents' convertible tops are not fully guaranteed, but such guarantees contain terms and conditions not set forth in the advertisements.

CONCLUSIONS

On the basis of the foregoing evidentiary findings of fact, the examiner concludes:

(1) That the use of the aforesaid false, deceptive and misleading statements and representations has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true, and to induce the purchase of substantial quantities of respondents' merchandise because of such erroneous and mistaken belief. As a result thereof, trade in commerce has been unfairly diverted to respondents from their competitors, and injury has been done thereby to competition in commerce.

(2) That the above-described acts and practices of the respondent 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 and in violation of the Federal Trade Commission Act.

ORDER

*It is ordered*, That respondents Hyman Kaplan and Morris Kaplan, individually and as copartners trading as Stewart Auto Upholstering Company, or any other name, and Henry Kaplan, an individual, 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 automobile seat covers, convertible tops, automobile floor mats or any other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication:

(*a*) That any price is respondents' usual retail price when it is in excess of the price at which the merchandise has been usually and customarily sold by respondents at retail in the recent, regular course of business.

(b) That the price at which respondents offer merchandise affords a savings to purchasers from the price at which said merchandise has been usually and customarily sold by respondents in the recent regular course of business unless such representation is true.

2. Misrepresenting in any mannner the amount of savings availble to purchasers of respondents' merchandise, or the amount by which the price of said merchandise is reduced from the price at

which it is usually and customarily sold by respondents in the normal course of business.

3. Using the words "Reg.," "Regular" or "List," or any other word of the same or similar import to designate prices unless they are the prices at which the merchandise has been usually and customarily sold by respondents in the recent, regular course of business.

4. Representing, directly or by implication, that any of their products are guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform are clearly disclosed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 4.19 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall on the 21st day of November 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.

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## IN THE MATTER OF

## THE VANDEVER COMPANY, INC.

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

*Docket C-29. Complaint, Nov. 21, 1961—Decision, Nov. 21, 1961*

Consent order requiring Tulsa, Okla., furriers to cease violating the Fur Products Labeling Act by advertising in newspapers which failed to disclose the names of animals producing the fur contained in fur products and that certain products contained artificially colored fur, and represented falsely, through such statement as "½ price fur sale," that prices were reduced in the stated percentage; and failing to maintain adequate records as a basis for price 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 the Vandever Company, Inc., a corporation, 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. Respondent The Vandever Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oklahoma, with its office and principal place of business located at 14 East Fifth Street, Tulsa, Oklahoma.

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

PAR. 3. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondent caused the dissemination in commerce, as "commerce" is defined in said Act, of certain newspaper advertisements, 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. 4. Among and included in the advertisements as aforesaid but not limited thereto, were advertisements of respondent which appeared in issues of the Tulsa Tribune, a newspaper published in the City of Tulsa, State of Oklahoma, 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, respondent falsely and deceptively advertised fur products in that said advertisement:

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

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

(c) Represented through percentage savings claims such as "½ price fur sale" that prices of fur products were reduced in direct proportion to the percentage of savings stated when such was not the fact in violation of Section (5) (a) (5) of the Fur Products Labeling Act.

PAR. 5. Respondent in advertising fur products for sale as aforesaid made claims and representations respecting prices of fur products. Said representations were of the type covered by subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act. Respondent in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based in violation of Rule 44(e) of said Rules and Regulations.

PAR. 6. 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.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act and the Fur Products Labeling Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, The Vandever Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oklahoma, with its office and principal place of business located at 14 East Fifth Street, in the City of Tulsa, State of Oklahoma.

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 The Vandever Company, Inc., a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and disist from:

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

A. Fails to disclose:

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

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

B. Represents directly or by implication, through percentage savings claims that the prices of the fur products are reduced in direct proportion to the percentage of savings stated when such is not the fact.

2. Making claims and representations of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act unless there are maintained by respondent full and adequate records disclosing the facts upon which such claims and representations are based.

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

Complaint

IN THE MATTER OF

# MICHAEL-LAWRENCE CO., INC., ET AL.

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

*Docket C-30. Complaint, Nov. 21, 1961—Decision, Nov. 21, 1961*

Consent order requiring Inglewood, Calif., manufacturers of their "Sincere" or "Outside White Paint" to cease representing falsely in letters and advertising literature mailed to purchasers that they offer limited amounts of distress merchandise at special reduced prices; and to cease misrepresenting the durability, quality, ingredients, and guarantee of their said paint.

## 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 Michael-Lawrence Co., Inc., a corporation, and Samuel Swimmer, 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 Michael-Lawrence Co., 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 535 North Eucalyptus, Inglewood, California.

Respondent Samuel Swimmer is president of respondent corporation and formulates, directs and controls its policies and practices. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for many years last past have been, engaged in the manufacture and sale of paint under the brand name of "Sincere", which they also describe as "Outside White Paint". Said paint is essentially composed of the following ingredients:

Pigment—(approximately 58% by weight) principally calcium carbonate, and to a considerably lesser extent, titanium dioxide;

Vehicle—(approximately 42% by weight) principally volatile hydrocarbon solvents and water, and to a considerably lesser extent, non-volatile matter including linseed oil, soaps, driers, etc.

PAR. 3. In the course and conduct of their business respondents ship, and have shipped, their said paint from their place of business

in the State of California to purchasers thereof located in that State and other States of the United States, and have also shipped said paint to public warehouses located in various states for storage and transhipment to purchasers thereof located in various States of the United States, and maintain and have maintained, a substantial course of trade in said paint, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents, in the course and conduct of their business, are engaged in substantial competition with corporations, firms and individuals engaged in the sale and distribution of paint.

PAR. 5. In the course and conduct of their business and for the purpose of inducing the purchase of said paints, it is, and has been, the practice of respondents to mail letters and advertising literature to purchasers and prospective purchasers located in various States of the United States and therein make statements with respect to the availability, price and quality of said products. Typical, but not all inclusive, of the statements so made are the following:

In storage near you, we are holding 192 gallons of our highest grade Outside White Paint, which bears our SINCERE BRAND label . . . This paint must be moved immediately, and we will accept $2.75 per gallon, delivered to your door. You may take all or any part of this lot . . . with the understanding that unless you are completely satisfied, material can be returned at no cost to you. Enclosed specification sheet fully describes this product. . . .

The specification sheet accompanying such form letters contains the following:

TYPE: An outside White Pure Linseed Oil and Titanium base paint, formulated for exceptional durability and protection. Will not crack, chip, peel or yellow even after long exposure on outside surfaces. Made to withstand adverse weather conditions. COVERAGE: Up to 650 sq. feet per gallon one coat, depending on the type and surface to be painted. . . . USES: All outside surfaces such as wood, metal, brick, concrete, stucco, trim and all general maintenance. Works equally well as a finish or prime coat over new or previously painted surfaces. . . . The combination of durable, high-hiding Titanium pigments, kettle bodied Pure Linseed Oil and finely ground selected extenders, gives this paint all those qualities necessary in every good exterior paint: DURABILITY, HIDING POWER and GLOSS RETENTION. As extra protection, fortified with anti-mold, mildew and fungus retardant.

Respondents also distribute point of sale brochures to be used in connection with the resale of their said paint by certain of their cutomers to members of the public located in various states. Typical, but not all inclusive, of the statements in said brochures, is the following:

THE TOUGH PAINT THAT ENDURES! . . . . Manufactured under a highly exclusive process—a combined sealing and hiding coat to produce

a completed finish in one operation: . . . It will not crack, chip or peel and will not yellow even after years of exposure under extreme climatic conditions. . . . Because of its Pure Titanium base, one gallon will cover up to 650 square feet solid in one coat on most surfaces. . . . Exceptionally resistant to dampness, mildew, smoke, chemical fumes, salt air and water. . . . especially formulated for DURABILITY. Remarkable results on old weather-beaten surfaces . . . Economical. Its unsurpassed HIDING POWER makes a little go a long way.

PAR. 6. Through the use and by means of the foregoing statements, and others of similar import and meaning not specifically set forth herein, respondents represented, and now represent, directly or by implication, that:

(a) Their said paint is being offered at a special reduced price of $2.75 (and, more recently, $2.85) a gallon.

(b) Said paint is distress merchandise and it is necessary to sell the designated quantity immediately.

(c) Only the quantity of paint set out in the advertisement is available for sale.

(d) Said paint is of excellent durability and provides excellent protection.

(e) Respondents sell more than one grade of exterior paint and their "Sincere" brand is their highest quality exterior paint.

(f) Satisfaction is guaranteed in that refunds will be made for unused cans of paint returned by the purchaser.

(g) One coat of said paint gives solid coverage.

(h) Said paint will not crack or yellow after years of exposure.

(i) Said paint is not subject to mildew.

(j) Titanium is a major ingredient in said paint.

PAR. 7. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact:

(a) The price of $2.75 (and, more recently, $2.85) a gallon is not a special or reduced price but said amount is the usual and customary price at which said paint is sold by respondents.

(b) Said paint is not distress merchandise, and it is not necessary for respondents to sell any quantity of said paint immediately or at any other time.

(c) The quantity of paint on hand or otherwise available for sale is frequently greatly in excess of the amount offered for sale.

(d) Said paint is not of excellent durability nor does it provide excellent protection.

(e) The paint sold by respondents under the brand name of "Sincere" is the only exterior paint sold by them.

(f) The guarantee of satisfaction that is given by respondents is limited and conditional, which limitations and conditions and the

manner in which respondents will perform thereunder are not set out in their advertisements.

(g) One coat of said paint will not give solid coverage at reasonable spreading rates when used as directed.

(h) Said paint will crack and yellow in a relatively short period of time.

(i) Said paint is subject to mildew.

(j) Titanium is only a minor ingredient of said paint.

PAR. 8. The use by respondents of the foregoing false and misleading statements, representations and practices has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that said statements and representations were, and are, true and to induce a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase said product.

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 methods of competition, in commerce, and unfair and deceptive acts and practices, in commerce, in violation of Section 5(a)(1) of the Federal Trade Commission Act.

## DISCUSSION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Michael-Lawrence Co., 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 busi-

ness located at 535 North Eucalyptus, in the City of Inglewood, State of California.

Respondent Samuel Swimmer is president of said corporation, and his business address is the same as that of said corporation.

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

ORDER

*It is ordered*, That respondents Michael-Lawrence Co., Inc., a corporation, and its officers, and Samuel Swimmer, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their "Sincere" brand of paint or any other paint of substantially the same composition or possessing substantially the same properties, whether sold under said name or any other name, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

(a) Any amount is a reduced price for their paint, unless it is less than the price at which respondents usually and customarily sell their paint in the normal course of business.

(b) Said paint is distress merchandise or that it is necessary to sell any designated quantity immediately, or at any other time.

(c) Only a limited or designated quantity of paint is available for sale.

(d) Said paint is of excellent durability or provides excellent protection; or that it possesses any degree of durability or provides any degree of protection that is not in accordance with the facts.

(e) Respondents sell more than one grade of paint.

(f) Such product is guaranteed, unless the terms and conditions of such guarantee and the manner and form in which the guarantor will perform are clearly set forth.

(g) One coat of said paint gives solid coverage or that one or any number of coats give coverage to any degree that is not in accordance with the facts.

(h) Said paint will not crack or yellow after years of exposure.

(i) Said paint is not subject to mildew.

(j) Titanium is a major ingredient in said paint.

*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 this order.

IN THE MATTER OF

# GRADY L. RUSHING
# DOING BUSINESS AS MARCEL COMPANY

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

*Docket 8138. Complaint, Oct. 12, 1960—Decision, Nov. 27, 1961*

Order requiring a New Orleans seller of correspondence courses on civil service preparation to cease making false job-assurance claims, representing falsely connection with the U.S. Civil Service, and simulating court summons and complaint to collect unpaid balances, among other unfair practices as set forth in detail in the order below.

As to the remaining respondent, Claude I. Woolwine doing business as Universal Training Service et al., the proceeding was disposed of by consent order Sept. 28, 1962, 61 F.T.C. —.

## 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 Claude I. Woolwine, doing business as Universal Training Service, and Grady L. Rushing, doing business as Marcel Company, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Claude I. Woolwine is an individual doing business as Universal Training Service, with his office and principal place of business located at 150 Powell Street, San Francisco, California.

Respondent Grady L. Rushing is an individual doing business as Marcel Company, with his office and principal place of business located at 8210 Hickory Street, New Orleans, Louisiana.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the sale and distribution of a course of study and instruction purporting to prepare purchasers thereof for United States Civil Service examinations and positions with the United States Government, which said course is pursued by correspondence through the United States mail. Respondent Grady L. Rushing, doing business as Marcel Company, has a contract with respondent Claude I. Woolwine, doing business as Universal Training Service, to supply said course of instruction to respondent Rushing's customers and for the grading of papers in connection

therewith. In the course and conduct of their said businesses, respondents cause said course to be transported from respondent Woolwine's place of business located in the State of California to purchasers from respondent Rushing who are located in other states.

There has been at all times mentioned herein a substantial course of trade in said course of instruction so sold and distributed by respondents in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In connection with the sale of said course of instruction, respondent Claude I. Woolwine participates and cooperates with respondent Grady L. Rushing in the promotion by respondent Rushing of the sale of the aforesaid course of instruction to perspective students in the several states in which said course is sold by him. Said participation and cooperation is by various means, including, but not limited to, the furnishing to respondent Rushing sample advertisements which have been used by him, in and by which statements are made in regard to said course and matters and things connected therewith. Typical of the statements made in said sample advertisements furnished and used, as aforesaid, are the following:

GET A CIVIL SERVICE JOB—Train Now, Exams coming up. Men and Women Ages 18-50—Many Opportunities—Good Pay—Vacation—Sick Leave, No Lay Offs—Retirement Benefits. For FREE brochure listing Job Salaries * * *.

In connection with the sale of said course of instruction, respondent Claude I. Woolwine furnishes copies of the brochure referred to in the aforesaid advertisement to respondent Grady L. Rushing, with other promotional material printed to his individual order, which brochure and other material have been and are used by respondent Rushing in soliciting the sale of said course. Among the typical, but not all inclusive, of the statements made in the said brochure and other material are the following:

Now is the most opportune time to start preparing for a Civil Service position. Written examinations will be held for many permanent Civil Service Jobs, and both veterans and non-veterans will be eligible for appointment.

* * *

THE BEST WAY TO GET AN APPOINTMENT IS TO PREPARE WITH OUR TRAINING SERVICE AND STAND AMONG THE HIGHEST ON THE GOVERNMENT EXAMINATION.

* * *

Whichever job you pick, we will coach you for it successfully * * *.

* * *

* * * A personal appointment is necessary to determine your qualifications. If you qualify, you will be accepted for training. * * *

* * * Check two or three positions before he (our field counselor) calls. He will let you know whether or not you can qualify.

Said brochure and other material list positions for which the course purports to train persons and the salaries for such positions.

Respondent Claude I. Woolwine further cooperates with respondent Grady L. Rushing by furnishing printed application blanks, with respondent Rushing's trade name printed thereon, which are used by respondent Rushing in connection with the sale of said course. Among and typical, but not all inclusive, of the statements appearing in said application blank, which is executed by the purchaser of said course, is the following:

CONTINUOUS TRAINING UNTIL I AM APPOINTED. Should I fail to pass the first examination taken, I am to receive, without further payment, training until *I RECEIVE MY APPOINTMENT*.

PAR. 4. By means of the statements appearing in the advertising material, brochure, application blank, and other promotional material, respondents have represented, and are representing, directly or by implication, that:

1. Civil Sevice examinations are imminent for all of the positions listed in the brochure, in the areas in which the advertisements set out in Paragraph Three are circulated.

2. The completion of the course of instruction offered by respondents will enable a person to pass the Civil Service examination for the job selected.

3. The school trains the applicant for the position or positions he selects.

4. The course is sold only to those who qualify.

5. The starting salaries for the positions listed are those set out in the brochure and other material.

6. The respondents will continue to instruct persons who have completed said course of instruction until they are appointed to a Civil Service position.

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

1. Civil Service examinations had not been announced for any of the positions listed in the brochure in many of the areas in which said advertisements were circulated.

2. The completion of the course of instruction offered by respondents by a purchaser of such course of instrution would not necessarily prepare him sufficently to pass a Civil Service examination.

3. Respondents have only one course, and it does not train persons for any particular position.

4. Respondents, in selling the course, have no requirement that any qualifications be met other than subscribing and paying for the course.

5. The salaries indicated are not the starting salaries for the positions listed.

6. Respondents do not continue to instruct those who have completed the course of instruction until they have been appointed to a Civil Service position.

PAR. 6. In the further course and conduct of the said business as aforesaid, respondent Grady L. Rushing and his sales agents and representatives have orally stated, represented and implied to prospective purchasers of said course of instruction that:

1. The purchasers of said course will be notified when and where examinations will be held.

2. The purchaser of said course will be trained specifically for such work as:

(a) Border Patrol;
(b) Livestock Inspector;
(c) Immigration Inspector; or
(d) Library Assistant.

3. Persons completing the course and passing a Civil Service examination are assured of obtaining United States Civil Service positions.

4. Respondent, his agents and representatives are connected with the United States Civil Service Commission or a branch thereof, or some other agency of the United States Government.

PAR. 7. The statements, representations and implications set out in Paragraph Six are exaggerated, false, misleading and deceptive. In truth and in fact:

1. Respondents do not notify the purchasers of the course of instruction when and where the examinations are being held.

2. The purchaser of the course is not trained for any specific type of work.

3. The completion of respondents' course and the passing of a Civil Service examination are no assurance of obtaining a United States Civil Service position.

4. Respondent Grady L. Rushing, his agents and representatives are not connected with the United States Civil Service Commission, a branch thereof, or any other agency of the United States Government.

PAR. 8. Respondent Grady L. Rushing, in the course and conduct of his business, and in an effort to enforce collection of claims arising out of the agreements entered into with the purchasers of the

said course of instruction, has devised and used a series of forms which have the capacity to mislead said purchasers into the mistaken belief that they were being sued for the outstanding balances allegedly due on their accounts, and cause such purchasers, in their mistaken belief, to pay such amounts. One of said forms, consisting of two pages, is attached hereto and marked Exhibit A–1 and A–2.

FINAL
NOTICE TO DEBTOR

COLLECTION—PROCEEDINGS

_____
CREDITOR

vs.

_____
DEBTOR

AMOUNT $_____

IMMEDIATE SETTLEMENT
OF THIS CLAIM
SAVES ADDITIONAL COST

Note: To settle this without further cost remit full amount direct to Creditor.

EXHIBIT A–1

FINAL
NOTICE TO DEBTOR

IN THE CLAIM OF
_____
CREDITOR
vs.
_____
DEBTOR

You are hereby advised, informed and notified that a VALID CLAIM against you for the sum of $_____ is substantiated by the following:

1. The contract which you signed states very clearly that this contract is not subject to cancellation by EITHER party.

2. This contract stipulates that how quickly or slowly you study or send in your lessons does not affect in ANY way your obligation to the CREDITOR.

3. This contract further stipulates that default in payment at any time will cause the ENTIRE UNPAID BALANCE to become due and payable.

Action will be held in abeyance for 5 DAYS, giving you an opportunity to pay IN FULL DIRECT TO THE CREDITOR.

Failure to respond will force procedure WITHOUT FURTHER NOTICE.

_____
CREDITOR OR AGENT

Subscribed and affirmed before me this _____ day of _____ 196___

_____
NOTARY PUBLIC OR WITNESS

CP2 EXHIBIT A2

PAR. 9. In the course and conduct of his business, respondent Claude I. Woolwine solicits salesmen to sell his course of instruction by advertising in various newspapers and nationally distributed magazines. Among and typical of such advertisements, but not all inclusive, is the following:

Educational Salesmen—$1200–$1800 average monthly earnings. Operate Home Study school. Details: * * *.

PAR. 10. By and through the statements in said advertisement, and others of like import and meaning not specifically set out, said respondent represented that a person can earn an average of $1200–$1800 a month in selling the course of instruction and that he will operate a home study school.

In truth and in fact, such earnings from the sale of respondent's course are not achieved by such salesmen and further, such salesmen do not operate home study schools.

PAR. 11. In the course and conduct of their business, the respondents are in substantial competition in commerce, with corporations, firms and individuals who sell correspondence courses similar to those sold by respondents.

PAR. 12. 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 a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true, and to induce a substantial number thereof to subscribe to and purchase said course of instruction, to pay for said course in the incorrect belief that they were being sued for said payment and to

become employed as salesmen, by reason of such erroneous and mistaken belief. As a consequence thereof, trade in commerce has been, and is being, unfairly diverted to the respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 13. 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. Harry E. Middleton, Jr.*, for the Commission.

*John E. Jackson & Baldwin J. Allen*, by *Mr. John E. Jackson, Jr.*, New Orleans, La., for respondents.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

By a complaint issued October 12, 1960, the Federal Trade Commission charged Claude I. Woolwine, doing business under the firm name and style of Universal Training Service, and Grady L. Rushing, doing business under the firm name and style of Marcel Company, with violating the Federal Trade Commission Act by engaging in unfair and deceptive acts and practices and unfair methods of competition in commerce in connection with the sale and distribution "of a course of study and instruction purporting to prepare purchasers thereof for United States Civil Service examination and positions with the United States Government."

Both duly appeared herein and were represented by counsel. Issue was joined by the filing of a separate answer on behalf of each. After a pretrial hearing, notice was issued directing that the case proceed to hearing at New Orleans, Louisiana, on the 15th day of May, 1961. Just prior to the time so scheduled, after all arrangements had been made, Woolwine suffered a series of heart attacks and, after motion made on his behalf, I issued an order severing the proceeding as to him and directing that it go forward against Rushing, who hereafter sometimes is referred to as the respondent. Consequently, this decision is concerned only with him, disposes only of the issues in which he is involved and leaves completely undisposed all charges affecting Woolwine. The hearing of the charges against respondent Rushing has been held. Requests to find and arguments in support thereof have been filed by both counsel. Opposition to these also has been filed. The case is now fully submitted.

Persons whose interest in obtaining employment in the United States Civil Service is aroused by the respondent necessarily will

form opinions about it. It is desirable and important that the Service be regarded with esteem and held in high regard. If the acts with which the respondent has been charged actually were committed and persons had been led to believe that he was associated with the Civil Service Commission, their regard and esteem for the Service would be adversely affected. For this, and other reasons, this proceeding is fraught with great public interest.

Many of the difficulties which respondent had with customers were caused, no doubt, by letters written by Woolwine (with whom the respondent had had a contract for the giving of the courses sold by him) after the termination of Woolwine's contract with respondent. In arriving at my ultimate findings and conclusions, I have taken into consideration these difficulties, but have concluded that the determinative facts involved in this proceeding do not rest upon these difficulties. I have concluded also that respondent Rushing could have taken measures for the solution of these difficulties but did not. Moreover, the matters in issue between Woolwine and Rushing, to the extent that they involve a personal controversy between them, are irrelevant to this proceeding and their respective merits are not at all involved herein.

Respondent asserts that he is engaged in the sale of education. Whether this is so depends to a large extent on what one regards as the meaning of education. His operation is not at all that of an educational institution. What he sells consists mainly of practice exercises or tests designed to refresh the user in the common branches and elementary skills. These exercises and tests are supplements with some text material and the entire product is reproduced by an office-type duplicating machine. Subscribers receive the so-called lessons in the mail in installments and they in turn, after completing the exercises or tests, send them back to the respondent. When they are returned to the respondent, they are graded according to keys or mechanical arrangement of multiple choices by ordinary clerical help. If the subscriber attains a "passing grade," the papers are returned to him and the next set of exercises or tests is sent at the same time. The process continues until the entire "course" has been completed in this manner. If this undefined "passing grade" is not attained, the papers are sent to an individual, who has no training in education, for transmission to the so-called Educational Director who may send supplemental material to the failing subscriber. There also is some "spot checking" of the initial grading. The subscriber works on the material sent to him at any place convenient to him—his home, or place of

employment or elsewhere. There is no supervision of the manner in which the work is performed and no one cares or is concerned. Whether the subscriber takes ten minutes or ten hours to perform a test or exercise, whether he does it relying solely on his own knowledge and the text material furnished or whether he gets assistance from others or by reference to source books and dictionaries does not appear and is not a factor in determining whether he has truly achieved a "passing grade."

The quality of the materials has not been made the subject of critical testimony or evaluation. A cursory examination of them persuades me to the conclusion, having in mind the testimony of the Commission's witnesses, an official of the United States Civil Service Commission, that the material could be of help to persons preparing to take Civil Service examinations. Although I make this observation, I do not find that the material does, in fact, prepare anybody to take and pass an examination or to qualify for a position.

Prior to September or October 1960, the material was prepared and distributed by Woolwine, as the so-called Instruction Department of the respondent's business. Following the breach between them, respondent hired the Educational Director. In determining the qualifications for that position, respondent specified no qualification in pedagogy. She had completed no courses in education and has had no experience in teaching. As a matter of fact, neither the respondent nor any of the so-called educational counsellors, the graders or anyone else in respondent's employ, has any qualifications in the field of education or any training to teach.

Salesmen in the field, that is to say, the representatives who, following inquiries induced by respondent's advertising, endeavor to sell the "courses" to the inquirers are called educational counsellors or counsellors. The fact is that they do not counsel at all. They know nothing about education. Their only objective is to sell respondent's courses and to get as large a down payment as possible because their commission and rate of compensation is dependent thereon. The training and instructions which these salesmen receive from the respondent will be indicated by material to be quoted below. Here it need be observed only that they are selected primarily because of their probable sales ability without regard to their educational qualifications either from the viewpoint of their own learning or their ability to instruct or counsel young people desiring to enter the Civil Service. Although, in his literature, respondent says that the qualifications of potential subscribers will be considered before they are permitted to enroll, these salesmen have no knowledge of the requirements for Civil Service positions and respondent provides

them with no information as to the qualifications necessary before a person is permitted to take any examination for employment in the Civil Service.

As will appear from the material to be quoted below, these salesmen are instructed practically to hypnotize potential buyers of the courses. In many cases, buyers do not, or are not permitted to, read the contract. If the contract is read to them, it is often read partially rather than *in toto* and the reading is quite rapid. Illustrative material supplied by the respondent containing assurances, inducements and glamorous descriptions of jobs in the Civil Service is referred to only in highlight fashion and carefully kept out of the physical reach of potential subscribers.

On the matter of examining potential subscribers as to their qualifications, reference may be made to the fact that respondent gets thousands of leads from answers to his advertisements and from lists of high school graduates. In preparation for the hearing, respondent culled through *ten thousand* salesmen's reports on leads which did not materialize in sales. He was able to turn up only about twelve leads which he offered in evidence. Those do not indicate that the rejections were because a lead was found not to be qualified to take a Civil Service examination (unless a rejection of one or two turned down because they were too old could be so regarded).

My findings concerned with the literature or materials used by the respondent are amply supported by documentary exhibits contained in the record. The ultimate meaning of the statements made in the exhibits coupled with the oral presentation by respondent's salesmen is not open to doubt. Neither is it open to doubt that persons solicited believed and were led by respondent's salesmen to believe the various promises and representations made to them. A question asked by respondent's counsel of one of his witnesses, the objection to which on the part of Commission counsel was sustained, suggested that the salesmen, in the heat of endeavoring to make a sale, very well might make representations and promises which were not true. (That this is and was a likely happening ought to be apparent from the material quoted below.) It is elementary that respondent cannot claim immunity from the representations made by the salesmen employed by him. To the extent that such salesmen made false representations and statements over and above and beyond those contained in the written materials supplied by respondent himself, the respondent is bound thereby.

Yet, when respondent was asked if any salesman ever had been discharged for misrepresenting, the answer was in the negative.

The assurance of continual training of subscribers until such time as they pass Civil Service examinations is completely misleading. Not only is no such continual training given, but respondent testified that he does not know how many subscribers, if any, ever obtained any Civil Service jobs.

Respondent's main concern and preoccupation is not education or the welfare of his customers. He is concerned primarily with the pushing of sales and the collection of payments. Nobody but the respondent or his wife has access to monies remitted. When payments come in they go directly to the respondent or his wife who takes possession thereof. Only the opened envelopes with notations as to the amounts of the payments and the payers are sent to a clerk who keeps a record thereof. The respondent's business is big. At the time of the hearing he had approximately 3,000 subscribers and the grand total of subscribers by then amounted to 15,000. He may deposit as much as $3,000 in his bank in a single day and deposits aggregate over $200,000 in a single year. The "course" itself sells for $199.50. For this $199.50, as noted above, the subscriber receives nothing but inexpensively duplicated tests and exercises supplemented by some text. In making his collections, respondent relies on scare techniques. He obtains payments in many cases because of the misunderstandings or fears of the debtors who are led to believe either that court actions are pending against them, that garnishment of their wages is pending or that the constable may come up and enforce payment. Although collection material and communications used by the respondent simulate court process and give the impression that court proceedings are pending or are imminent, respondent, when asked, stated that he had never sued any subscriber.

I shall not quote from the materials with respect to which I set forth findings of fact below. However, for the purpose of understanding better the findings and some of the remarks above made, I set forth in the footnote some bulletins or communications sent by respondent to his salesmen.[1]

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[1] Respondent's bulletin, May 16, 1960, CX 114:

"BULLETIN

"As you go through your pitch, be sure to watch every expression they make. Moving in their chair is an expression, crossing their legs or uncrossing them is an expression. Using a handcerchief [sic] or Kleenex is expression. Any movement is an expression. WHAT A PERSON DOES NOT say tells you MORE than what they say lots of times. Brushing the hair on their head, rubbing their face, head, or neck will give you expressions. Frown, of any kind will show you what you want to know. These are all signs they are

Considering this sort of pressure, it is not surprising that so many of the subscribers, called to give testimony herein, who obviously never should have been sold the courses, bought. Several were hopelessly and clearly not fitted for or capable to attain appointment in the Civil Service. On the other hand, they were particularly susceptible to the lures, blandishments and pressures utilized in inducing the sales.

In making my findings and conclusions I have not relied solely on the supporting references of Commission counsel. He could have set forth additional citations to the record. In addition to the testimony as reported and the exhibits, I rely also on my impressions of and judgments on the witnesses. At least two of the witnesses called by the Commission counsel were definitely, in my opinion, not reliable, but the overall weight and substance of all the testimony have persuaded me to make the findings below. Respondent's counsel criticizes Commission counsel's use of the Commission's press release in communications to witnesses prior to the hearing. While I am not satisfied that this is a desirable procedure, particularly since there were some very significant underlinings of portions of the releases transmitted, it was not brought out on the hearing and it does not appear that the witnesses whose testimony I have ac-

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giving you without realizing this at all. Be sure to not watch for them but recognize them when you see them. Then, do something about them. For instance, something you get a smile out of, REPEAT. Something you get a frown out of—shy away from. People like to hear good things so repeat them so they will be impressed. Stress or repeat will tend to put value on things. Knowing what to stress and when to stress it, will give you the sale. A salesman has to be alert at all times. A sale can be lost by the twinkle of the eye. A glance away from the prospect could cost you that sale. You can sell anybody if you are careful and watch the reactions you cause in a person. If you are not closing half of your calls, something is wrong. YOU CAN NOT SELL ON THE PHONE."

"HOW CAN I IMPROVE MYSELF?"

His bulletin of August 1, 1960, CX 115:

"First go through the 'Pitch' word for word. Do not add or take away a single word. This pitch is written in simple everyday language that is very meaningful. By adding more words you will confuse and give too much information. By taking a word off you don't give enough.

"Do not open your briefcase until you get to the part, 'Mrs. Jones, let me show you what you might qualify for'. Then bring out the opportunity sheet, and read to her exactly as outlined in the pitch—put the opportunity sheet up at once—DO NOT GIVE, OR LET THEM HAVE THIS AT ALL. This is the one and only time they see this. The next thing you bring out of your brief case is the enrollment agreement and read to them, 'There are to be—' Leave this out on the table or chair where they will be able to see it. When you tell her your job is to approve or disapprove her back to the school—MEAN THIS. From then on you talk of MONEY, FUTURE, FAMILIES FUTURE, BETTERING themselves. 'How close to $175.00 can you come Mrs. Jones?' will bring you lots of money. When she ask [sic] how does a person usually pay—tell her at once—Most pay cash when they are able—Thus saving $24.50. 'How close can you make it?' If she says $50.00 now, tell her to give you the $50.00 and a check for balance of $125.00. If she says she does not have a check account, then say—if you will give me $75.00, I'll make your payments $5.00 weekly. Every sale should have a different down payment. $75, $26, $56, $19, $11, $4, $2.50 or $1.50 should be what you get. If you always get $10, or $25 it shows us that you are only asking for that amount. Get EVERY PENNY down that you can. One out of 10 sales should be for cash, 3 or 4 out of 10 should be for $50 to $75 down, 3 or 4 should

cepted were influenced by these communications or that the testimony given by them was induced by the contents of the releases.

The various motions made on behalf of the respondent to dismiss the complaint are denied. I shall refer briefly to what is involved on these motions. In my opinion, the evidence to support the relief sought is substantial, reliable and probative. While some of the evidence reflects events which occurred after the filing date of the complaint, this evidence did not change the gravamen of the complaint. That was concerned not with particular *events but* with *practices.* The evidence was illustrative only of the practices against which complaint was made. It is significant that such practices continued even after service of the complaint. Respondent's counsel says that the evidence was given by persons with "unclean hands." At worst, some of the witnesses could be said not to have made the payments called for by their contracts, but this proceeding was not concerned with whether contracts had been performed by subscribers except to the extent that those facts came out because respondent either induced the contracts by false representations or failed to perform his obligations thereunder. In any event, the equity rule to which respondent's counsel refers is not correctly stated nor would it be applicable herein if it were. The Commission's practice of issuing press releases is not a basis for

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be between $25, and $50. Follow the above and you will find your fronts increasing daily. Do not get in a discussion about what the job consist [sic] of, nor what our course consist [sic] of. Tell them the Government trains them the way they want them trained after they get the appointment. We train for test only. Do not discuss when, where, and what job is going to be open—YOU ARE SELLING EDUCATION, first, last, and always. Follow the above, and put them on a weekly basis of about $5.00, starting within about 10 days from date of contract, telling them as you leave, 'Mrs. Jones if you are not going to study, tell me now because you will have to pay regardless of your rate of study,' and you will increase your income starting NOW. No matter what you have been doing follow this—it means MORE MONEY. We have the BEST setup for any salesperson in the country. Cooperate with us, and we will go all out to make your stay lasting and profitable."

His bulletin of September 19, 1960, CX 117:

"Every person you see will give you excuses as to why they 'Can't act now.' You will find that usually they fall into the same line of thought. 'I want this program because it is a wonderful program but I want to wait. I just don't have the money now but if you will come back in about a year, I'll be ready.' If you know ahead of time before you see them—that this will be their excuse, why not eliminate it before they are able to give you such? Would not this be the best idea? If you KNOEW [sic] somebody was going to hit you on the head every time you see them, would you prepare yourself for this? Sooner or later you would find a way to protect yourself. I'm SURE. You would keep practicing, planning, thinking of ways to keep from being hit. 'Self preservation is the first law of nature.' Protect yourself against excuses BEFORE you get them. Do not fall into this trap. Do not even listen to them. Eliminate each one BEFORE they are able to tell you. HOW!!! Very Simple. If you told them BEFORE THEY could even give you a single one, that your job is to call or weed out curiosity seeds, fly-by-niter, nosey people, sightseeers, lazy people, non-ambitious people, people trying to find an excuse to keep from improving themselves, people with no feeling for their family, and their future, people that want time to think it over, people people [sic] who don't know what they want and care less, people who dont't [sic] make much effort to get the money. Tell them this BEFORE they can give you ANY excuse. Let them know YOU are there to approve, or disapprove them. You are there to see if they qualify. You are ther[e] to see if MARCEL COMPANY

concluding that the respondent has been prejudiced thereby and thus has not received "a full and fair hearing." In addition to the reference heretofore made to the press release, it may be observed that the case was not heard on the basis of press releases but upon (a) documentary materials which emanated from the respondent; (b) oral testimony which was subject to cross-examination and contradiction; and (c) full opportunity to the respondent to offer whatever explanations or defenses he might have had both by way of his own testimony and by way of testimony of witnesses produced and selected by him. Finally, the trade practice rules to which respondent refers have no bearing on whether the respondent committed the acts with which he is charged herein.

To the extent that the findings hereinafter set forth do not follow those requested by counsel for the Commission, such requests are denied. For example, I am not at all satisfied that respondent has misrepresented the potential earnings in or starting salaries of Civil Service positions. Some of the findings made are not substantially at variance with some requested on the part of the respondent. However, other of the findings requested by respondent are irrelevant or are not supported by the evidence herein. Those findings and the proposed conclusions of law submitted on behalf of the respondent, not found in substance, are denied.

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'Wants' them. Tell them that you are the one to decide—not them,—whether you will approve or disapprove them. Tell them Marcel Co. does NOT want them if they have excuses. Your time is too valuable to waste on loafers, putter offers, excuse finders. You are ther[e] with a mission to do and a limited amount of time to accomplish it. Try this line of thinking and talking and see how it comes about. Try this and prove me wrong? Its worth it."

"WHAT IS YOUR EXCUSE?"

And his bulletin of February 27, 1961, CX 126, long after the filing of the complaint herein:

"WHY DON'T YOU MAKE MORE MONEY

"Upon entering a home, we should ALWAYS remember that the FIRST IMPRESSION is the LASTING IMPRESSION. Be sure you conduct yourself in a businesslike way. Get friendly enough to command respect then go to work. Be sure you have the right person on hand. Be sure you are talking to the person THAT CAN BUY. Do not waste a good lead by trying to make an easy sale just because you are there. Do not go through your pitch unless you have ALL the odds on your side. Trying to sell a minor alone, is wrong. You are not only cheapening yourself, and Marcel Co., but costing your family good money. Trying to make a sale at their place of business is wrong—wait until you can get things on your side. Wait until you have your way. If they have company or friends over, you should come back. Trying to sell there in front of OTHER people is wrong. Be courteous at all times. Be sure you COMMAND and not DEMAND. There is a great difference. Be a leader and not a dominating person. Be a good listener when it is their turn to talk—at first. Be a good talker when it is your turn—Be sure you don't DRIFT from your 'pitch'. Be sure you don't let them in the drivers seat. Be sure you keep control at all times. Be sure you are watching the faces of all. Be sure the RIGHT person is being sold. Be sure you stay on the subject. Be sure you know when to 'shut up', and ask for the money. Be sure you don't come down too fast on the money. Remember some people have the money, and can pay cash."

"ARE YOU ALWAYS ALERT?"

The following are my

FINDINGS OF FACT

1. The respondent, Grady L. Rushing, is an individual engaged in business under the firm name and style of Marcel Company, at 8210 Hickory Street, in the City of New Orleans, Louisiana. In the course and conduct of said business he utilizes a post office box for the receipt of mail and at the present time he is utilizing Post Office Box No. 1378, New Orleans, Louisiana.

2. The business so conducted by the respondent at the present time and for three years last past is the sale and distribution of materials which he represents will prepare purchasers thereof (a) to take and pass certain United States Civil Service examinations and (b) for employment in certain positions in the United States Civil Service.

3. The materials offered by respondent are distributed by him through the United States mails to subscribers therefor to be studied and worked on by them at their homes or other places convenient to them.

4. The materials are sold and distributed by the respondent in many states of the United States and he has conducted for that purpose substantial trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

5. For the purpose of promoting sale of said materials, the respondent hires and instructs a large number of sales persons, who in turn are organized into units or groups, supervised and assigned to district managers, also hired and instructed by him.

6. He has utilized and engaged in newspaper and radio advertising for the purpose of soliciting subscribers and to obtain "leads" to be solicited by the sales persons employed by him.

7. He has prepared or obtained contract forms and miscellaneous literature which he has furnished to sales persons for the purpose of assisting them in, and promoting, sales of such materials to persons who have been led by respondent's advertising to apply to the respondent for, and to request information about, Civil Service positions and training offered for such positions.

8. In and by such advertising, literature and contract forms, the respondent has represented and caused to be represented to persons solicited by him and by the sales persons employed by him for that purpose that:

(a) examinations are about to be given in the areas of solicitation for Civil Service positions listed therein;

(b) persons who complete the materials (called courses) offered

by him will be able to pass Civil Service examinations for the positions selected by them;

(c) he trains applicants for the positions selected by them;

(d) only persons found qualified for the positions selected by them will be permitted to subscribe for such training; and

(e) persons who subscribe for and complete "courses" will receive continual training until appointed to Civil Service positions.

9. The representations so made by the respondent are false, misleading and deceptive because:

(a) Civil Service examinations for many of the positions so set forth had not been announced in areas where such solicitation had been made;

(b) mere completion of so-called "courses" offered by the respondent does not assure that persons so doing will be able to pass Civil Service examinations for the positions represented by the respondent to be the subjects of such "courses";

(c) while some of the materials recently utilized by the respondent are aimed at particular skills in particular positions, such training as is and has been provided is and was in most instances purely general and does not provide training for any particular positions;

(d) in rare instances where the evidence discloses that sales persons employed by the respondent inquired of persons solicited as to their background, skills and education, such inquiries were perfunctory and not truly designed to determine qualifications for any particular position and, in fact, such sales persons were not informed of, did not know and were unable to inquire about the qualifications required for the positions which were represented as the objectives of the training offered, and did not ascertain or determine whether persons solicited had the qualifications required for such positions; and

(e) respondent did not provide continual training to subscribers until they were appointed to Civil Service positions.

10. The respondent, by sales persons employed by him, has stated, represented and led persons solicited by them to believe that:

(a) subscribers would be notified of the times and places when and where examinations for the positions selected by them would be held;

(b) subscribers would be specially trained for the positions selected by them;

(c) subscribers who completed the so-called "courses" selected by them and passed the Civil Service examinations for the positions so selected were assured of obtaining positions in the United States Civil Service; and

(d) the respondent and his sales persons were connected with the United States Civil Service Commission.

11. Such representations and the conduct and remarks which led the persons solicited so to believe were false, misleading and deceptive because respondent:

(a) did not notify and had no practice or facilities to notify subscribers of the times and places when and where any Civil Service examinations would be given;

(b) did not specially train subscribers for positions selected by them;

(c) no person is assured of a Civil Service position merely because he passes a Civil Service examination; and

(d) neither respondent nor any of the sales persons employed by him is employed by or connected with the United States Civil Service Commission.

12. In the course and conduct of his business, for the purpose of enforcing payment by subscribers for the materials sold by him, the respondent has devised and used miscellaneous forms and techniques which were calculated to and did tend to lead many such persons to believe that court proceedings were pending or had been completed for the compulsory collection of outstanding amounts sought to be collected by him when, in fact, no court proceedings were pending and none had been completed; one particular paper used by respondent having been made to simulate a summons and complaint and other papers and oral communications threatening garnishment of wages although no court action had been brought and no judgment obtained.

And, from the foregoing, and upon all the evidence herein, the following are my

CONCLUSIONS

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

2. This proceeding is in the public interest.

3. The respondent disseminated and caused to be disseminated false advertising in commerce and made and caused to be made false representations in connection with and for the purpose of promoting the sale of and selling of the materials offered by him. Such activity constitutes unfair and deceptive acts and practices in violation of the Federal Trade Commission Act.

I have given consideration, as above noted, to the fact that transmission or delivery of materials sold by respondent was interrupted because of his controversy with Woolwine and to the fact that re-

spondent has caused to be prepared a complete new set of materials now being offered by him. However, the nature of the representations made, the manner in which respondent always has conducted his business, his emphasis on indiscriminate sales without regard to the good which a purchaser might or could derive from the materials offered by him and his almost complete preoccupation with the collection of money claimed to be due from sales persuade me that the following order is necessary and appropriate.

ORDER

*It is ordered*, That respondent Grady L. Rushing, doing business as Marcel Company or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of any materials or course of instruction, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. Civil Service examinations for particular positions described orally or in any writing have been announced or are about to be given in or for any geographical or United States Civil Service area unless such examinations actually have been announced or are about to be given in or for such area and adequate time remains for the filing of applications to participate in such examinations.

2. The completion of any series of materials or course of instruction offered by the respondent in commerce will enable a person to pass the Civil Service examination for the position selected by such person.

3. Respondent's materials or course of instruction provide training for Civil Service positions.

4. Persons solicited to purchase respondent's materials or course of instruction are examined or screened as to their possession of qualifications for positions to be sought before they are permitted to purchase such materials or course.

5. Respondent will continue to train or instruct persons who have completed a purchased series of materials or course of instruction until they are appointed to a Civil Service position or misrepresenting in any manner the extent or nature of instruction that he gives to purchasers.

6. Representing directly or by implication:

(a) That purchasers of respondent's materials or course will be notified when or where examinations will be held:

(b) That persons completing said materials or course of instruction and passing a Civil Service examination are assured of or will obtain Civil Service positions; or

(c) That respondent or his agents or representatives are connected with the United States Civil Service Commission or any branch thereof or any other agency of the United States Government.

7. Using any document that simulates a court process in connection with the collection of accounts from debtors; or using any other document or practice which may suggest or imply that a debtor is being sued when such is not the fact.

ORDER DENYING PETITION OF RESPONDENT GRADY L. RUSHING, AND DECISION OF THE COMMISSION

The initial decision of the hearing examiner having been filed in this matter on September 29, 1961, and respondent Grady L. Rushing on October 30, 1961, having filed a petition for review of said initial decision apparently in the belief that such review would be governed by the requirements of § 4.20 of the Commission's amended and revised Rules of Practice, published July 6, 1961, and counsel supporting the complaint having filed an answer in opposition to said petition; and

It appearing that the reception of evidence was completed in this case prior to July 21, 1961, and that under F. R. Document 61-6766, published in the Federal Register on July 19, 1961, any appeal from the initial decision is governed by the Commission's Rules of Practice, published May 6, 1955 as amended, and that the amended and revised Rules of Practice, published July 6, 1961, are not applicable in any respect to the proceeding; and

It further appearing that the respondent has failed to file a notice of intention to appeal as required by § 3.22 of the applicable Rules of Practice, and that the petition for review, although filed within the time referred to in the amended and revised Rules of Practice, was not filed within the time permitted by the applicable rule for the filing of a notice of intention to appeal; and

The Commission having nevertheless determined that in the special circumstances a review of the entire proceeding in the light of the questions presented in the respondent's petition would be in the public interest; and

The Commission having made such review and having determined therefrom that no substantial grounds have been presented in the petition for modifying or setting aside the initial decision of the hearing examiner:

*It is ordered*, That respondent's petition, treated as an appeal, be, and it hereby is, denied.

*It is further ordered*, That the findings, conclusions, and order contained in the initial decision of the hearing examiner be, and they hereby are, adopted by the Commission.

*It is further ordered*, That respondent Grady L. Rushing 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 contained in the initial decision.

By the Commission, Commissioner Kern not participating.

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IN THE MATTER OF

## AUDIOGRAPHIC POTOMAC CORPORATION ET AL.

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

*Docket 8401. Complaint, May 18, 1961—Decision, Nov. 27, 1961*

Consent order requiring Silver Spring, Md., sellers of fire alarm systems to cease representing their salesmen as "Safety Counselors" and sales talks as "Fire Education Presentations"; informing prospects falsely that they were specially selected to participate in a "Consumer Referral Plan" and could earn a substantial part of the cost by submitting names of other prospects; and failing to fill in contracts with interest or carrying charges and to reveal to purchasers that the contracts would be discounted with a finance company or bank.

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 Audiographic Potomac Corporation, a corporation, and Lena Della Fera, Raymond M. Padgett, Constance D. Padgett, and Milton Gordon, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Audiographic Potomac Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 946 Sligo Avenue, Silver Spring, Maryland.

Respondents Lena Della Fera, Raymond M. Padgett, Constance D. Padgett, and Milton Gordan are individuals and are officers of the corporate respondent. They formulate, direct and control the policies, acts and practices of the said corporate respondent and their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the sale and distribution of fire alarm systems. In the course and conduct of their business respondents now cause, and have caused, the said fire alarm systems, when sold, to be transported from their place of business in the State of Maryland to purchasers thereof located in other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said fire alarm systems in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondents' volume of business in said commerce is and has been substantial.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents are now, and have been, in substantial competition with other corporations, firms and individuals likewise engaged in the business of selling and distributing fire alarm systems in commerce between and among the various States of the United States.

PAR. 4. In the course and conduct of their business as aforesaid, respondents have engaged in the following acts and practices:

1. Represented their salesmen as being "Safety Counselors."

2. Represented their salesmen's sales talk as being a "Fire Education Presentation."

3. Induced the sale of their fire alarm system by informing prospective purchasers that they have been specially selected to participate in respondents' "Consumer Referral Plan", by which plan purchasers can reasonably expect to earn a substantial portion of the purchase price of the said fire alarm system by submitting to respondents the names of other prospective purchasers.

4. Entering into contracts or "Purchase Orders" with purchasers of their fire alarm system which are filled in with the purchase price of the system but which do not set forth the amount or rate of interest or carrying charges the purchaser must pay. In some instances respondents' salesmen have led purchasers to believe that they will not be required to pay any interest or carrying charges even though the purchase price is to be paid over a number of months.

5. Failing to reveal to purchasers that their contract or note will be discounted with a finance company or bank.

PAR. 5. The aforesaid acts and practices of respondents are unfair and deceptive in the following respects:

1. By referring to their salesmen as "Safety Counselors" and to their sales talks as "Fire Education Presentations" respondents falsely represent that said "Safety Counselors" are not salesmen.

2. Purchasers to whom respondents "Consumer Referral Plan" is offered are not specially selected. Participation in said "Plan" is offered to a vast majority of respondents' customers.

3. Purchasers of respondents' fire alarm systems cannot reasonably expect to earn a substantial portion of the purchase price thereof by submitting the names of prospective purchasers to respondents pursuant to the said "Consumer Referral Plan".

4. Purchasers of respondents' fire alarm system who elect to pay for it over a period of months are required to pay interest or carrying charges, knowledge of which would have the tendency and capacity to keep them from entering into the contracts which they sign.

5. In the absence of being so advised purchasers of respondents' fire alarm system do not expect their contracts or notes to be discounted with a finance company or bank, they expect to make their payments to respondents, and knowledge thereof would have the tendency and capacity to keep them from entering into such contracts.

PAR. 6. The use by respondents of the unfair and deceptive acts and practices as above set forth has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public, and as a result thereof to purchase substantial quantities of respondents' fire alarm systems. Trade has thereby been unfairly diverted to respondents from their competitors, in consequence of which substantial injury has been, and is being done, by respondents to their competitors in commerce.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and to respondents' competitors and 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.

## DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and an agreement by and between respondents and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondents of all the jurisdictional facts alleged in the complaint, 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, and waivers and provisions as required by the Commission's rules, and further provides for the dismissal of the complaint as to Milton Gordon, individually and as an officer of the corporate respondent; and

The Commission having considered the agreement and order contained therein and being of the opinion that the agreement provides an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent Audiographic Potomac Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 946 Sligo Avenue, Silver Spring, Maryland.

Individual respondents Lena Della Fera, Raymond M. Padgett and Constance D. Padgett are officers of the corporate respondent and their address is the same as that of the corporate respondent.

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

ORDER

*It is ordered*, That respondents Audiographic Potomac Corporation, a corporation, and its officers, and Lena Della Fera, Raymond M. Padgett and Constance D. Padgett, 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 fire detection or fire alarm systems, or any other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner that salesmen are anything other than salesmen.

2. Representing that purchasers or prospective purchasers have been especially selected for any purpose.

3. Representing that purchasers can earn any amount of money, by the submission of names of prospective purchasers or otherwise, unless said amount of money is based upon the average amount paid by respondents to past purchasers under the same arrangement.

4. Representing, by failure to reveal or otherwise, that interest or carrying charges will not be added to a purchase price; or failing to reveal the amount of such interest or carrying charge.

5. Failing to reveal that contracts or promissory notes will be discounted or that purchasers will make their payments to others than respondents.

*It is further ordered*, That the complaint, insofar as it relates to respondent Milton Gordon, be, and the same hereby is, dismissed.

*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 this order.

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IN THE MATTER OF

## GRABLER MANUFACTURING CO., INC.

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

*Docket 7838. Complaint, Mar. 21, 1960—Decision, Nov. 29, 1961*

Consent order requiring a Cleveland manufacturer of pipe fittings and accessories to cease violating Sec. 2(d) of the Clayton Act by paying promotional allowances to some customers but not to all their competitors, such as payments of sums amounting to $3,400 to American Radiator and Standard Sanitary Corp. for promoting its products on television programs in trading areas of Dallas, Tex., St. Louis, Mo., New Orleans, La., and Pittsburgh, Pa.

### COMPLAINT

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

PARAGRAPH 1. Respondent Grabler Manufacturing Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 6565 Broadway, S.E., Cleveland, Ohio.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale and distribution of pipe fittings and accessories thereto.

Respondent sells its products of like grade and quality to a large number of customers located throughout the United States for use or resale therein. Respondent's sales of its products are substantial, exceeding $16,000,000 annually.

PAR. 3. Respondent, in the course and conduct of its business as aforesaid, has caused and now causes its said products to be shipped

and transported from the State or States of location of its various manufacturing plants, warehouses and places of business, to purchasers thereof located in states other than the State or States wherein said shipment or transaction originated. There has been at all time mentioned herein a continuous course of trade in commerce, as "commerce" is defined in the Clayton Act as amended.

PAR. 4. In the course and conduct of its business in commerce, since January 1, 1957, respondent has paid or contracted for the payment of something of value to or for the benefit of certain of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments have not been offered or otherwise made available on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products.

PAR. 5. For example, between May, 1957, and April, 1959, respondent contracted to pay, and periodically did pay, sums amounting to $3,400.00 to the American Radiator and Standard Sanitary Corporation for services and facilities furnished it by American Radiator and Standard Sanitary Corporation in promoting the sale of respondent's products through television programs sponsored by American Radiator and Standard Sanitary Corporation in the trading areas of Dallas, Texas; St. Louis, Missouri; New Orleans, Louisiana; and Pittsburgh, Pennsylvania. Such payments were not offered or otherwise made available on proportionally equal terms to all other customers competing with American Radiator and Standard Sanitary Corporation in the sale and distribution of products of like grade and quality purchased from respondent.

PAR. 6. The acts and practices of respondent as allleged herein, are in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson Patman Act.

## DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondent named in the caption hereof with violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, and an agreement by and between the respondent and its counsel and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondent of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated

the law as alleged in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having considered the agreement and order contained therein and being of the opinion that the agreement provides an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent is a corporation existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 6565 Broadway, S.E., in the City of Cleveland, State of Ohio.

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

ORDER

*It is ordered*, That respondent Grabler Manufacturing Company, Inc., a corporation, and its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of any of its products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

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

*It is further ordered*, That the respondent 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 this order.

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IN THE MATTER OF

## LOU LITTMAN & COMPANY ET AL.

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

*Docket C-31. Complaint, Nov. 29, 1961—Decision, Nov. 29, 1961*

Consent order requiring Detroit furriers to cease violating the Fur Products Labeling Act by failing to show on labels and invoices of fur products

when fur was artificially colored and the country of origin of imported furs; failing to show on invoices the true animal name of the fur used in a fur product; and failing to comply in other respects with labeling 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 Lou Littman & Company, a corporation, and Louis Littman, Robert Lee Littman, Isabelle Littman and Louis R. Miller, 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. Respondent Lou Littman & Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan. Individual respondents Louis Littman, Robert Lee Littman, Isabelle Littman and Louis R. Miller are President, Vice-President, Secretary, and Treasurer, respectively, of the corporate respondent. Said individual respondents cooperate in formulating, directing and controlling the acts, policies and practices of the corporate respondent including the acts and practices hereinafter referred to. All respondents have their office and principal place of business at 133 East Grand River Avenue, Detroit, Michigan.

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 has 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 falsely and deceptively labeled or otherwise falsely and deceptively identified with respect to the country of origin of the imported furs contained in the fur product, in violation of Section 4(1) of the Fur Products Labeling Act.

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

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed:

(1) To disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored, when such was the fact.

(2) To show the country of origin of the imported furs used in the fur product.

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

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

(b) The term "fur origin" preceding the name of the country of origin of the fur was not set forth as required in violation of Rule 12(e) of said Rules and Regulations.

(c) Labels affixed to fur products did not comply with the minimum size requirements of one and three-quarter inches by two and three-quarter inches, in violation of Rule 27 of said Rules and Regulations.

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

(e) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not completely set out on one side of labels, in violation of Rule 29(a) of said Rules and Regulations.

PAR. 6. 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 the Rules and Regulations promulgated under such Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were invoices pertaining to such fur products which failed:

(1) To show the true animal name of the fur used in the fur product.

(2) To disclose that the fur contained in the fur products were bleached, dyed, or otherwise artificially colored when such was the fact.

(3) To show the country of origin of the imported furs used in the fur product.

PAR. 7. The aforesaid acts and practices of the respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitutes unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Fur Products Labeling Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Lou Littman & Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business at 133 East Grand River Avenue, in the city of Detroit, State of Michigan.

Respondents Louis Littman, Robert Lee Littman, Isabelle Littman and Louis R. Miller are officers of said corporation, and their address is the same as that of said corporation.

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 Lou Littman & Company, a corporation, Louis Littman, Robert Lee Littman, Isabelle Littman and Louis R. Miller

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

1. Misbranding fur products by:

A. Failing to affix labels to fur products showing 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.

B. Falsely or deceptively labeling or otherwise identifying any such product as to the country of origin of the imported furs contained therein.

C. Failing to affix labels to fur products setting forth the term "fur origin" preceding the name of the country of origin of imported furs used in fur products.

D. Affixing to fur products labels that do not comply with the minimum size requirements of one and three-quarter inches by two and three-quarter inches.

E. Setting forth on labels affixed to fur products:

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

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

F. Failing to set forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations thereunder on one side of the label.

2. Falsely or deceptively invoicing fur products by failing to furnish invoices to purchasers of fur products showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

*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 this order.

IN THE MATTER OF

# LION CLOTHING COMPANY, INC., ET AL.

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

*Docket C-32. Complaint, Nov. 30, 1961—Decision, Nov. 30, 1961*

Consent order requiring a San Diego, Calif., furrier to cease violating the Fur Products Labeling Act by failing, on invoices, to show the true animal name of fur used in fur products, to disclose when fur was artificially colored, and to reveal the country of origin of imported furs; by advertising which represented prices as reduced without giving the time of the compared higher prices; and by failing to keep adequate records as a basis for such price and value claims.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Lion Clothing Company, Inc., a corporation, and Louis F. Overgard, 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. Respondent Lion Clothing Company, 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 Sixth and Broadway, San Diego, California.

Individual respondent Louis F. Overgard is president of the corporate respondent and controls, directs and formulates the acts, practices and policies of the corporate respondent. His 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 acting in cooperation and conjunction with Pacific Coast Fur Company, a corporation, and Venus Furs, a corporation, 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 has 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 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.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were invoices pertaining to such fur products which failed:

1. To show the true animal name of the fur used in the fur product.

2. To disclose that the fur contained in the fur products was bleached, dyed or otherwise artificially colored when such was the fact.

3. To show the country of origin of the imported furs used in the fur product.

PAR. 4. 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 such invoices failed to show that the fur products were composed in whole or in substantial part of flanks, when such was the fact, in violation of Rule 20 of said Rules and Regulations.

PAR. 5. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondents caused the dissemination in commerce, as "commerce", is defined in said Act, of certain newspaper advertisements, concerning said products, which were not in accordance with the provisions of Section 5(a) of the said Act and the Rules and Regulations promulgated thereunder; and which advertisements were intended to aid, promote and assist, directly or indirectly in the sale and offering for sale of said fur products.

PAR. 6. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in issues of the San Diego Evening Tribune and the San Diego Union, newspapers published in the City of San Diego, State of California, 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) Represented prices of fur products as having been reduced from previous higher prices without giving the time of such compared previous higher prices in violation of Rule 44(b) of said Rules and Regulations.

PAR. 7. Respondents in advertising fur products for sale as aforesaid made claims and representations respecting prices and values of fur products. Said representations were of the types covered by subsections (a), (b), (c), and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act. Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based in violation of Rule 44(e) of said Rules and Rugulations.

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.

## DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Fur Products Labeling Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed from of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Lion Clothing Company, 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 Sixth and Broadway, San Diego, California.

Respondent Louis F. Overgard is president of said corporation and his address is the same as that of said corporation.

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 Lion Clothing Company, Inc., a corporation, and Louis F. Overgard, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce, of fur products, or in connection with the sale, advertising, offering for sale, transportation or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur products" 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.

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

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. Uses previous higher prices as comparatives without giving the time of such higher compared prices.

3. Making claims and representations of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based.

*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 this order.

IN THE MATTER OF

# KORRICKS', INC., ET AL.

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

*Docket C-33. Complaint, Nov. 30, 1961—Decision, Nov. 30, 1961*

Consent order requiring furriers in Phoenix, Ariz., to cease violating the Fur Products Labeling Act by failing to show, on invoices and in advertising, the true names of animals producing the fur in fur products; failing, on invoices, to show when fur was dyed and to disclose the country of origin of imported furs; advertising prices as reduced without giving the time of the compared higher prices; and failing to keep adequate records as a basis for price and value claims.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Korricks', Inc., a corporation, and Abraham I. Korrick, 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. Korricks', Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Arizona with its office and principal place of business located at North First and East Washington Streets, Phoenix, Arizona.

Abraham I. Korrick is vice president and treasurer of the said corporate respondent and formulates, controls and directs 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 acting in cooperation and conjunction with Pacific Coast Fur Company, a corporation, and Venus Furs, a corporation, 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 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.

Among such falsely and deceptively invoiced fur products but not limited thereto, were invoices pertaining to such fur products which failed:

1. To show the true animal name of the fur used in the fur product.

2. To disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored when such was the fact.

3. To show the country of origin of the imported furs used in the fur product.

PAR. 4. 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. 5. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondents caused the dissemination in commerce, as "commerce" is defined in said Act, of certain newspaper advertisements, concerning said products, which were not in accordance with the provisions of Section 5(*a*) of the said Act and the Rules and Regulations promulgated thereunder and which advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

PAR. 6. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in issues of the Arizona Republic, a newspaper published in the City of Phoenix, State of Arizona, and having a wide circulation in said State and various other States of the United States.

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

(*a*) Failed to disclose the name or names of the animal or animals that produced the fur contained in the fur product as set forth in the

Fur Products Name Guide in violation of Section 5(*a*)(1) of the Fur Products Labeling Act.

(*b*) Represented prices of fur products as having been reduced from previous higher prices without giving the time of such compared higher prices in violation of Rule 44(*b*) of said Rules and Regulations.

PAR. 7. Respondents in advertising fur products for sale as aforesaid, made claims and representations respecting prices and values of fur products. Said representations were of the types covered by subsections (*a*), (*b*), (*c*) and (*d*) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act. Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based in violation of Rule 44(*e*) of said Rules and Regulations.

PAR. 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.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Fur Products Labeling Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Korricks', Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State

of Arizona with its office and principal place of business located at North First and East Washington Streets, Phoenix, Arizona.

Respondent Abraham I. Korrick is vice president and treasurer of said corporation and his address is the same as that of said corporation.

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 Korricks', Inc., a corporation, and its officers and Abraham I. Korrick, individually and as an officer of said corporation and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportion or distribution in commerce of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Falsely or deceptively invoicing fur products by:

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

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

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

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

B. Uses previous higher prices as comparatives without giving the time of such higher compared prices.

3. Making claims and representations of the types covered by subsections (a), (b), (c), and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based.

*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 this order.

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IN THE MATTER OF

## JOHN J. McKUNE & SONS CO., INC., ET AL.

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

*Docket C-34. Complaint, Nov. 30, 1961—Decision, Nov. 30, 1961*

Consent order requiring Chicago sellers of vending machines and supplies therefor to cease representing falsely in circulars, form letters, etc., that they would obtain profitable locations for machines bought from them, give purchasers exclusive territories, and repurchase the machines on terms favorable to buyers; exaggerating profits earned by the machines; substituting a different type and quality of machine from that displayed; and, through the use of the words "Factory" and "Manufacturers," representing falsely that they manufactured and designed their machines.

### 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 John J. McKune & Sons Co., Inc., a corporation, and John J. McKune, individually and as an officer of said corporation, and Philip A. Small and John J. McKune, individually and as former partners doing business as U.S. Commercial Products Company, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PAR. 1. Respondent John J. McKune & Sons Co., Inc. 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 7435 North Western Avenue, Chicago, Illinois.

Individual respondent John J. McKune is an officer of said corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

Respondent Philip A. Small and the aforesaid John J. McKune were formerly copartners, trading and doing business as U. S. Commercial Products Company, with their office and principal place of business the same as that of the corporate respondent. Their partnership was dissolved and the assets were transferred to the corporate respondent. The present address of respondent Philip A Small is 595 North Waukegan Road, Lake Forest, Illinois.

The corporate respondent and the aforesaid individuals cooperated and acted together in formulating, directing and controlling the acts and practices hereinafter set forth.

PAR. 2. The corporate respondent and individual respondent John J. McKune are now, and for some time last past have been, engaged in the advertising, sale and distribution of vending machines and vending machine supplies.

Respondents Philip A. Small and the said John J. McKune trading as U. S. Commercial Products Company, for a long time prior to dissolution and transfer of the assets to the corporate respondent, were engaged in the same type of business.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, said products, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States. Respondents 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 solicit persons to whom they sell their products by sending advertisements in the form of flyers, circulars, brochures and form letters. Enclosed with said advertisements is a self-addressed post card to be filled out and returned to respondents by the prospective purchasers if they are interested in respondents' products. The names of persons responding to said advertisements were then given by respondents to their sales representatives or agents, who called upon such persons and solicited the purchase of respondents' products.

PAR. 5. Through the use of the statements and representations appearing in their advertisements, sales material and purchase contracts, and by oral statements made their sales representatives or agents, respondents have represented, and are now representing, directly or indirectly, that:

1. Respondents, or their sales repesentatives or agents, will obtain satisfactory and profitable locations for vending machines purchased from them.

2. A person can reasonably expect to earn a net profit of $196 to $300 per machine a year on certain of their vending machines and a specified net profit on other types of vending machines.

3. Purchasers of machines will be given exclusive territory within which to locate their machines.

4. Respondents will repurchase the vending machine from the purchasers, in the event they desire to sell the same, at near cost, or at a profit to the purchasers if owned and operated for a year or more.

5. The purchase and use of respondents' vending machines requires no selling upon the part of the purchaser.

6. Prospective purchasers will receive a certain type and quality vending machine.

7. They manufacture and design their vending machines, through the use of the words "Factory" and "Manufacturers and Designers of Postage Stamp Machines".

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

1. Respondents, or their representatives or agents, seldom, if ever, obtain satisfactory and profitable locations for the vending machines purchased from them.

2. The net profit of $196 to $300 per machine a year on certain vending machines is greatly in excess of the profit that will accrue in a great majority of the cases, and the net profits specified on other types of their vending machines are greatly exaggerated in most instances.

3. Purchasers of respondents' machines are not given exclusive territory in which their machines may be located but, on the contrary, respondents sell their machines to anyone willing and able to purchase, for placement wherever the purchaser may desire.

4. Respondents do not repurchase for any amount the machines sold by them, regardless of the length of time the machines are owned or operated.

5. Persons purchasing said products were required to engage in extensive selling and soliciting in order to establish, operate and maintain locations for said products.

6. The vending machines received by purchasers are of a different type and quality than those actually displayed to prospective purchasers.

7. Respondents do not manufacture or design the vending machines sold by them.

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

petition, in commerce, with corporations, firms and individuals engaged in the sale of the same or similar products.

PAR. 8. 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 such erroneous and mistaken belief.

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 methods of competition in commerce and deceptive acts and practices in commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent John J. McKune & Sons Co., Inc., 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 7435 North Western Avenue, in the City of Chicago, State of Illinois. Respondent John J. McKune is an officer of said corporation and his address is the same as that of such corporate respondent.

Respondent Philip A. Small and respondent John J. McKune were formerly partners trading and doing business as U.S. Commercial Products Company, which partnership was dissolved. During such

partnership respondent John J. McKune was known as John E. McKune. The address of respondent Philip A. Small is 595 North Waukegan Road, Lake Forest, Illinois.

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

ORDER

*It is ordered*, That respondents John J. McKune & Sons Co., Inc., a corporation, and its officers, John J. McKune, individually and as an officer of said corporation, and Philip A. Small and John J. McKune, individually and as former partners trading and doing business under the name of U.S. Commercial Products Company, or under any other name or names, and their agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of vending machines and vending machines supplies, or any other products, 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 or their sales representatives will obtain or assist in obtaining satisfactory or profitable locations for products purchased from them.

(b) The earnings or profits derived from the purchase of respondents' products and engaging in business will be in any amount in excess of the earnings or profits usually and customarily earned in the operation of their products.

(c) Respondents grant exclusive territory in which the products purchased from them may be operated or located.

(d) Respondents will repurchase the products sold by them.

(e) Selling or soliciting is not required to establish, operate or maintain a route of said products.

(f) Respondents are the manufacturers or designers of any products sold by them, unless and until they own, operate or directly and absolutely control the manufacturing plant or factory where the products are manufactured or designed.

2. Substituting an inferior type, grade or quality product for the product displayed and represented as the product being sold to the purchaser.

*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 this order.

Complaint

IN THE MATTER OF

# PACIFIC COAST 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 C-35. Complaint, Nov. 30, 1961—Decision, Nov. 30, 1961*

Consent order requiring associated furriers in Los Angeles, Calif., to cease violating the Fur Products Labeling Act by failing, on invoices and labels, to show the true animal name of the fur used in fur products and to disclose when fur was dyed; failing to show the country of origin of imported furs and when fur products contained flanks, and falsely representing mink as from the Aleutian Islands, on invoices; by newspaper advertising which failed to disclose the names of the fur-producing animals, represented prices as reduced without giving the time of compared higher prices, and falsely represented "$200,000 worth of precious furs" offered for sale; failing to keep adequate records for price and value claims; and failing in other respects to comply with labeling and invoicing requirement.

## 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 Pacific Coast Fur Company, a corporation, and Venus Furs, a corporation, and Ralph J. Nymer, and Moe Basner, individually and as officers of the said corporations, and Milton Corb, individually and as general manager of the said corporations, 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. Pacific Coast Fur Company and Venus Furs are corporations organized, existing and doing business under and by virtue of the laws of the State of California with their office and principal place of business located at 706 South Hill Street, Los Angeles, California.

Ralph J. Nymer and Moe Basner are president and vice president, respectively, of the said corporate respondents. Milton Corb is general manager of the said corporate respondents. These individuals including the general manager control, formulate, and direct the acts, practices and policies of the said corporate respondents.

Their office and principal place of business is the same as that of the said corporate respondents.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952 respondents acting in cooperation and conjunction with Lion Clothing Company, Inc., a corporation located in San Diego, California, Korrick's, Inc., a corporation located in Phoenix, Arizona, E. Gotschalk & Company, Inc., a corporation, located in Fresno, California, L. Hart & Son Company, Inc., a corporation located in San Jose, California, and Florence Richards, an individual trading as Magic Eye, a proprietorship located in Las Vegas, Nevada, have been and are now engaged in the introduction into commerce and in the sale, advertising and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products; and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

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

Among such misbranded fur products but not limited thereto were fur products with labels which failed:

1. To show the true animal name of the fur used in the fur product.

2. To disclose that the fur contained in the fur products was dyed when such was the fact.

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

(a) The term "blended" was used as part of the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe the pointing, bleaching, dyeing or tip-dyeing of furs in violation of Rule 19(f) of said Rules and Regulations.

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

(c) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereun-

der was not set forth in the required sequence in violation of Rule 30 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.

Among such falsely and deceptively invoiced fur products but not limited thereto were invoices pertaining to such fur products which failed:

1. To show the true animal name of the fur used in the fur product.

2. To disclose that the fur contained in the fur products was dyed when such was the fact.

3. To show the country of origin of imported furs used in the fur product.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in that said invoices connoted a false geographic origin of Mink by representing that such Mink was from the Aleutian Islands when such was not the fact in violation of Section 5(b)(2) of the Fur Products Labeling Act and Rule 7 of said Rules and Regulations.

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

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

(b) Invoices failed to show that fur products were composed in whole or in substantial part of flanks, when such was the fact, in violation of Rule 20 of said Rules and Regulations.

PAR. 8. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondents caused the dissemination in commerce, as "commerce" is defined in said Act, of certain newspaper advertisements, concerning said products, which were not in accordance with the provisions of Section 5(a) of 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. 9. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in issues of the Fresno Bee, a newspaper published in the

City of Fresno, State of California, The San Jose Mercury, a newspaper published in the City of San Jose, State of California, The San Diego Evening Tribune and the San Diego Union, newspapers published in the City of San Diego, State of California, Las Vegas Review Journal, a newspaper published in the City of Las Vegas, State of Nevada, and the Arizona Republic, a newspaper published in the City of Phoenix, State of Arizona, and all the aforesaid newspapers having a wide circulation in said States and various other States of the United States.

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

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

(b) Represented prices of fur products as having been reduced from the previous higher prices without giving the time of such compared higher prices in violation of Rule 44(b) of said Rules and Regulations.

(c) Represented the volume of merchandise offered for sale to be $200,000 worth of precious furs when in truth and in fact the merchandise to be offered for sale was worth substantially less than $200,000 in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 10. Respondents in advertising fur products for sale as aforesaid made claims and representations respecting prices and values of fur products. Said representations were of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act.

Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based in violation of Rule 44(e) of said Rules and Regulations.

PAR. 11. 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.

## DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with

violation of the Federal Trade Commission Act and the Fur Products Labeling Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondents Pacific Coast Fur Company and Venus Furs are corporations organized, existing and doing business under and by virtue of the laws of the State of California with their office and principal place of business located at 706 South Hill Street, Los Angeles, California.

Respondents Ralph J. Nymer and Moe Basner are president and vice president, respectively, of the said corporate respondents, and respondent Milton Corb is general manager of the said corporate respondents. Their address is the same as that of the said corporate respondents.

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

ORDER

*It is ordered*, That Pacific Coast Fur Company, a corporation, and Venus Furs, a corporation, and Ralph J. Nymer and Moe Basner, individually and as officers of the said corporations and Milton Corb, individually and as general manager of the said corporations, 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 fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined

in the Fur Products Labeling Act do forthwith cease and desist from:

1. Misbranding fur products by:

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

B. Setting forth on labels affixed to fur products:

(1) The term "blended" as part of the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe the pointing, bleaching, dyeing or tip-dyeing of furs.

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

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

2. Falsely or deceptively invoicing fur products by:

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

B. Setting forth on invoices a false geographic origin of the animal that produced the fur.

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

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

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

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

B. Uses previous higher prices as comparatives without giving the time of such higher compared prices.

C. Represents, directly or by implication, that the volume of merchandise offered for sale is higher than is the fact.

4. Making claims and representations of the types covered by subsections (a), (b), (c), and (d) of Rule 44 of the Rules and Regula-

tions promulgated under the Fur Products Labeling Act unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based.

*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 this order.

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IN THE MATTER OF

## LIFETIME, INC., ET AL.

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

*Docket 7616. Complaint, Oct. 19, 1959—Decision, Dec. 1, 1961*

Order requiring two associated companies engaged in home construction and improvement in Philadelphia—acting as a sales and financing organization, and sub-contracting construction and installation work to other parties—to cease using bait advertising in newspapers and other publications to get leads to prospects, which made false representations as to the costs and quality of their services and materials, guarantees, their connections with well-known concerns, and professional status of their salesmen; and to cease securing purchasers' signatures to negotiable promissory notes deceptively.

### 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 Lifetime, Inc., a corporation, Youngstown Homes, Inc., a corporation, and Sam Leonard and Samuel Moskowitz, individually and as officers of each of said corporations, 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 Lifetime, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania. Youngstown Homes, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Respondents Sam Leonard and Samuel Moskowitz are individuals and are president and secretary-treasurer, respectively, of each of the said corporate respondents. Said corporate respondents are wholly-owned by the said individual

respondents. The said individual respondents formulate, direct and control the acts, practices and policies of each of the said corporate respondents. The office and principal place of business of the respondents is located at 3931 North Broad Street, Philadelphia 40, Pennsylvania.

PAR. 2. Respondents are now, and for several years last past, have been engaged in the advertising, offering for sale, sale and distribution, and the installation and construction of houses, garages, house building materials, including stone fronts, roofs, bathrooms, heating equipment and basement water proofing.

In the course and conduct of their businesses, said respondents cause their said products, when sold, to be shipped and transported from their place of business in the State of Pennsylvania to purchasers thereof located in the various other states of the United States and in the District of Columbia. Said respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products, in commerce, between and among the various states of the United States and in the District of Columbia.

Advertisements offering the aforesaid products for sale are contained in newspapers and other publications which are shipped and transported from the State of Pennsylvania to various other states of the United States, including the District of Columbia.

PAR. 3. Respondents' method of doing business is to advertise their aforesaid products and services for sale in newspapers and other publications. Certain of their advertisements are under respondents' own name. Certain other advertisements are carried under the name of Youngstown Industries. Youngstown Industries, Inc., is a corporation located at 8116 Old York Road, Philadelphia, Pennsylvania, and is wholly separate and apart from the respondents. Persons responding to the aforesaid advertisements are contacted by respondents' salesmen. Such salesmen show literature to the prospective purchasers and make numerous oral representations respecting the aforesaid products and services offered by respondents. Said salesmen induce purchasers to sign contracts and enter into various financial arrangements with the respondents. Respondents act largely as a sales and financing organization. For the most part, respondents enter into sub-contracts and agreements with other parties to perform such construction and installation work as may be required. At the time of the sale purchasers are induced to execute promissory notes and other documents necessary to finance the transaction. Said promissory notes are then sold by respondents to various financial institutions.

PAR. 4. In the course and conduct of their businesses, as aforesaid, and for the purpose of soliciting the sale of the aforesaid prod-

ucts and services, respondents make numerous representations in their aforesaid advertising and by the oral statements of their salesmen respecting prices, guarantees, business associations and affiliations, status of salesman, and the composition, characteristics and quality of the aforesaid products and services.

Typical and illustrative of the aforesaid acts and practices, but not all inclusive thereof, are the following:

Stop wet, damp, leaking basements. Basements made dry without digging . . . Basement sealed from outside under pressure . . . Written guarantee with every job . . . Jobs done low as $44.00.

. . . Youngstown Homes . . . "Completely erected . . . Including Foundations" . . . Complete shell homes erected on your lot for as low as $1995.00! Beautiful modern bathroom . . . Complete heating system . . . Stunning "hostess" Kitchen Cabinets and Sinks. (Pictured in connection therewith is a house of ample proportions with a divided bathroom, heating plant in large basement, ample kitchen with eating space, large picture window and other characteristics indicating that the house is of substantial size.)

Youngstown one and two-car garages . . . $300 delivered. (Pictured in connection therewith is a large, completely erected garage.)

Youngstown . . . glass-lined roofing guaranteed to out last any other roofing material.

Youngstown glass-lined roofing . . . $66.00. (Pictured in connection therewith is roofing being applied to an entire house top.)

Youngstown stone fashioned front section . . . sale price! Act now . . . for single, or row home. Jobs done low as $44.00. (Pictured in connection therewith is the entire front of a stone covered house.)

Home improvements . . . Modern bathroom . . . Jobs done low as $44. (Pictured in connection therewith is a completely installed bathroom.)

Genuine Youngstown Guaranteed Automatic Heat, Gas, Forced Air, delivered $139.00 complete with all equipment. $50.00 cash trade-in on your old furnace. (Pictured in connection therewith is a gas fired furnace with hot air ducts.)

Guaranteed. We at Youngstown Industries unconditionally and unequivocally guarantee in writing first class craftsmanship and materials. We further agree to furnish especially trained mechanics to assure proper installation. Absolute satisfaction shall be yours.

STONE Fashion Front Section. Save up to 50% over ordinary stone.

Youngstown smashes prices! . . . Youngstown Industries. 21st at Godfrey Avenue, Philadelphia 38, Pa.

New homes for old through the magic of Youngstown's products! . . . Youngstown Industries an American institution, 11200 Roosevelt Blvd., Phila., Penna.

Respondents' salesmen in the manner aforesaid have shown literature to prospective purchasers and made oral representations containing the foregoing and other statements. Said salesmen have also stated that they were sales managers, owners of Youngstown, engineers and presented themselves in various other capacities other than as salesmen.

PAR. 5. Through the use of the foregoing statements and the pictorial representations made in connection therewith, and others of similar import and meaning, but not specifically set out herein, made

by respondents or their representatives, agents or employees in advertising and promotional literature and in oral presentations to prospective purchasers, respondents have represented and do now represent, directly or indirectly, to a substantial portion of the purchasing public:

(a) That basements are made water-proof for $44.00, that large and substantial shell houses of the kind adequate to accommodate a three-compartmented bathroom, kitchen with eating space, large picture window and basement are sold for $1995.00, that completely erected garages are sold for $300, that glass-lined roofs are installed for $66.00, that genuine stone fronts are installed for $44.00 or 50% of the cost of stone, that complete bathrooms are installed for $44.00 and that gas forced air furnaces complete with ducts and all equipment necessary for the operation thereof are sold for $139.00;

(b) That the aforesaid products and services are unconditionally and unequivocally guaranteed;

(c) That respondents are a part of or affiliated with Youngstown Kitchens, a division of American Radiator and Standard Sanitary Corporation, 520 South Ellsworth Avenue, Salem, Ohio, and that they are a part of or affiliated with Youngstown Industries, Inc., of Philadelphia, Pennsylvania.

(d) That respondents' salesmen are sales managers, owners of Youngstown Kitchens, a division of American Radiator and Standard Sanitary Corporation, engineers or have other business or professional status different from that of salesman;

(e) That the so-called glass-lined roofing will outlast any other kind of roofing material;

(f) That the so-called "stone fashion front" is genuine stone;

(g) That damp and leaking basements will be made dry without digging;

(h) That all of the aforesaid products sold and services performed by respondents would be of the first grade and the highest quality.

PAR. 6. The foregoing representations are false, misleading and deceptive. In truth and in fact:

(a) Respondents do not and will not make a damp and leaking basement dry for $44, do not and will not sell a large and substantial shell home of the kind hereinabove described for $1995, do not and will not completely erect a garage for $300, do not and will not install a glass-lined roof for $66, do not and will not install a genuine stone front or a simulated stone front on a house for $44 or for 50% of the cost of natural stone, do not and will not install a complete bathroom, including fixtures, for $44 and do not and will not sell a gas forced air furnace complete with ducts and all equipment necessary for the operation thereof for $139. The aforesaid price amounts and other

price amounts not specifically set out herein were made by respondents for the purpose of inducing prospective purchasers to make inquiries respecting the said goods and services offered for sale. Upon contacting such prospective purchasers respondents, their salesmen, agents or representatives then undertake to sell such persons other and more expensive products and services.

(b) Respondents' aforesaid products and services are not unconditionally guaranteed. Such guarantees as may be given by respondents are subject to numerous restrictions with respect to time, material and services.

(c) Respondents are not a part of or in any manner affiliated with Youngstown Kitchens, a division of American Radiator and Standard Sanitary Corporation, 520 South Ellsworth Avenue, Salem, Ohio, nor are they a part of Youngstown Industries, Inc., of Philadelphia, Pennsylvania.

In truth and in fact, respondents have a kind of joint advertising arrangement with the said Youngstown Industries, Inc., of Philadelphia, wherein Youngstown Industries, Inc. specializes in one line of house building materials and repairs and respondents specialize in another type and kind of house building materials and repairs and construction.

(d) Respondents' salesmen are not sales managers or owners of Youngstown Kitchens or engineers, nor do they occupy any other business or professional status other than that of salesman.

(e) Respondents' glass-lined roofing will not outlast any other kind of roofing materials.

(f) The so-called stone offered for sale by respondents is not genuine stone in its natural state.

(g) Respondents are unable to make all basements dry without digging.

(h) All of the goods sold and services performed by respondents are not of first-class and high quality. Many of the products sold and the services performed by the respondents are deficient and defective. For example, roofs and stone fronts leaked, bathroom fixtures were not properly installed, heating units did not adequately perform, and various other deficiencies and defects characterized respondents' said products and services.

PAR. 7. Respondents' salesmen, in the manner aforesaid, have represented and implied that respondents did their own financing, and that respondents held the promissory notes executed by purchaser or that purchasers were signing a duplicate copy of the contract when in fact they were signing a negotiable promissory note and in other ways induced such purchasers without knowledge to sign negotiable promis-

sory notes providing for the payment of financing charges in amounts not agreed to by them. Subsequent to the receipt of said promissory notes, respondents have transferred said notes to various purchasers who take and hold said notes as bona fide holders for value without notice and demand payment thereof free from the agreements and obligations existing between respondents and said purchasers.

PAR. 8. Youngstown Kitchens is a division of American Radiator and Standard Sanitary Corporation, 520 Ellsworth Avenue, Salem, Ohio. The products of the said Youngstown Kitchens are nationally advertised and widely sold.

PAR. 9. Respondents, in the course and conduct of their business, as aforesaid, are in substantial competition in commerce with other corporations and with individuals, partnerships and others engaged in the sale and distribution of houses, garages and building materials, including stone fronts, roofs, bathrooms, heating equipment and basement water proofing.

PAR. 10. The use by respondents of the foregoing false, misleading and deceptive representations and statements has had and now has the tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that such representations and statements were and are true, and into the purchase of substantial quantities of respondents' said products and services because of such erroneous and mistaken beliefs. As a result thereof, trade has been unfairly diverted and is now being diverted to respondents from their competitors in commerce and substantial injury has been and is being done to competition in commerce.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and 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. Terral A. Jordan* for the Commission.

*Mr. Nathan L. Posner* of *Fox, Rothschild, O'Brien & Frankel*, Philadelphia, Pa., for respondents.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

Respondents are charged with violation of the Federal Trade Commission Act by using false, misleading, and deceptive representations and statements in the solicitation and sale of houses, garages, and building materials including stone fronts, roofs, bathrooms, heating equipment and basement waterproofing. Respondents filed answers, requesting dismissal of the complaint. Hearings were held in Phila-

delphia, Pennsylvania, and Cleveland, Ohio, following which proposed findings and conclusions were submitted by both counsel.

The hearing examiner has given consideration to the proposed findings and conclusions, and all findings of fact and conclusions of law proposed by the parties not hereinafter found or concluded are herewith rejected.

## FINDINGS OF FACT

1. Respondent Lifetime, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania. Respondent Youngstown Homes, Inc., is a corporation organized, existing and doing busines under and by virtue of the laws of the State of New Jersey. The office and principal place of business of respondent Lifetime, Inc., was formerly located at 3931 North Broad Street, Philadelphia, Pennsylvania, and was later moved to 6701 North Broad Street, Philadelphia, Pennsylvania.

2. Respondents Sam Leonard and Samuel Moskowitz are individuals and are president and secretary-treasurer, respectively, of each of the said corporate respondents. Each of the individual respondents own 50% of the stock of each of the corporate respondents. The said individual respondents formulate, direct and control the acts, practices and policies of each of the said corporate respondents including the acts, practices and policies hereinafter found to have been engaged in by each of the said corporate respondents. The office and principal place of business of the individual respondents is the same as that of the corporate respondents.

3. Respondents are now, and for several years last past have been, engaged in the advertising, offering for sale, sale and distribution, and in the installation and construction of houses, garages, house building materials, including simulated stone fronts, roofs, bathrooms, heating equipment, and basement waterproofing.

In the course and conduct of their business said respondents cause their said products, when sold, to be shipped and transported from their place of business to purchasers thereof located in the various other states of the United States. Said respondents maintain, and at all times mentioned herein have maintained a substantial course of trade in said products, in commerce, between and among the various states of the United States.

Advertisements offering the aforesaid products for sale are contained in newspapers and other publications which are shipped and transported from the State of Pennsylvania to various other states of the United States. Said newspaper advertisements have induced persons residing in states other than Pennsylvania to purchase the aforesaid goods and services offered for sale by respondents.

4. Respondents' method of doing business is to advertise their aforesaid products and services for sale in newspapers and other publications. Certain of their advertisements are under respondents' own names. Certain other advertisements are carried under the name of Youngstown Industries. Youngstown Industries, Inc., is a corporation located at 8116 Old York Road, Philadelphia, Pennsylvania, and is wholly separate and apart from respondents. Persons responding to the aforesaid advertisements are contacted by respondents' salesmen. Such salesmen show literature to the prospective purchasers and make numerous oral representations respecting the aforesaid products and services offered by the respondents. Said salesmen induce purchasers to sign contracts and enter into various financial arrangements with the respondents.

Respondents act largely as a sales and financing organization. For the most part, respondents enter into subcontracts and agreements with other parties to perform such construction and installation work as may be required. At the time of the sales, purchasers are induced to execute promissory notes and other documents necessary to finance the transaction. Said promissory notes are then sold by respondents to various financial institutions.

5. In the course and conduct of their businesses, as aforesaid, and for the purpose of soliciting the sale of the aforesaid products and services, respondents make numerous representations in their aforesaid advertising and by the oral statements of their salesmen respecting prices, guarantees, business associations and affiliations, status of salesmen, and the composition, characteristics and quality of the aforesaid products and services.

Typical and illustrative of the aforesaid acts and practices, but not all inclusive thereof, are the following:

a. Stop wet, damp, leaking basements. Basements made dry without digging . . . . Basement sealed from outside under pressure . . . . Written guarantee with every job . . . . Jobs done low as $44.00.

b. . . . Youngstown Homes . . . "Completely erected . . . Including Foundations" . . . Complete shell homes erected on your lot for as low as $1995.00! Beautiful modern bathroom . . . Complete heating system . . . Stunning "hostess" Kitchen Cabinets and Sinks. (Pictured in connection therewith is a house with a divided bathroom, heating plant in large basement, ample kitchen with eating space, large picture window and other characteristics indicating that the house is not of minimal size.)

c. Youngstown one and two-car garages . . . $300 and up delivered. (Pictured in connection therewith is a large, completely erected double-car garage.)

d. Youngstown . . . glass-lined roofing guaranteed to outlast any other roofing material.

e. Youngstown glass-lined roofing . . . $66.00. (Pictured in connection therewith is roofing being applied to an entire house top.)

f. Youngstown STONE fashion front section . . . sale price! Act now . . . for single, or row home. Jobs done low as $44.00. (Pictured in connection therewith is the entire front of a stone-covered house.)

g. Home improvements . . . Modern bathroom . . . Jobs done low as $44. (Pictured in conection therewith is a completely installed bathroom.)

h. Genuine Youngstown Guaranteed Automatic Heat, Gas, Forced Air, delivered $139.00 complete with all equipment. $50.00 cash trade-in on your old furnace. (Pictured in connection therewith is a gas-fired furnace with hot air ducts.)

i. Guarantee. We at Youngstown Industries unconditionally and unequivocally guarantee in writing first class craftsmanship and materials. We further agree to furnish especially trained mechanics to assure proper installation. Absolute satisfaction shall be yours.

j. STONE Fashion Front Section. Save up to 50% over ordinary stone.

k. Youngstown smashes prices! . . . Youngstown Industries, 21st at Godfrey Avenue, Philadelphia 38, Pa.

l. New homes for old through the magic of Youngstown's products! . . . Youngstown Industries an American institution, 11200 Roosevelt Blvd., Phila., Penna.

Respondents' salesmen in the manner aforesaid have shown literature to prospective purchasers and made oral representations containing the foregoing and other statements. Said salesmen have also stated that they were sales managers or owners of Youngstown, and presented themselves in various other capacities other than as salesmen.

6. Through the use of the foregoing statements and the pictorial representations made in connection therewith, and others of similar import and meaning, but not specifically set out herein, made by respondents or their representatives, agents or employees in advertising and promotional literature and in oral presentations to prospective purchasers, respondents have represented, directly or indirectly, to a substantial portion of the purchasing public:

(a) that all basements are made waterproof for $44.00; that large and substantial shell houses are the kind adequate to accommodate a three compartmented bathroom, kitchen with eating space, large picture window and basement and are sold for $1,995.00; that completely erected garages are sold for $300.00; that glass-lined roofs are installed for $66.00; that genuine stone fronts are installed for $44.00 or 50% of the cost of stone; that complete bathrooms are installed for $44.00; and that gas-fired air furnaces, complete with ducts and all other equipment necessary for the operation thereof are sold for $139.00;

(b) that the aforesaid products and services are unconditionally and unequivocally guaranteed;

(c) that respondents are a part of or affiliated with Youngstown Kitchens, a division of American Radiator and Standard Sanitary Corporation, 520 South Ellsworth Avenue, Salem, Ohio, and that they

are a part of or affiliated with Youngstown Industries, Inc., Philadelphia, Pennsylvania;

(d) that respondents' salesmen are sales managers or owners of Youngstown Kitchens, a division of American Radiator and Standard Sanitary Corporation, salesmen for Youngstown Industries, Inc., or have other business or professional status different from that of salesmen;

(e) that the so-called glass lined roofing will outlast any other kind of roofing material;

(f) that the so-called "STONE fashion front" is genuine stone;

(g) that damp and leaking basements will be made dry without digging;

(h) that all of the aforesaid products sold and services performed by respondents are of first class and highest quality;

7. The foregoing representations are false, misleading, and deceptive. In truth and in fact:

(a) Respondents do not and will not make damp and leaking basements dry for $44, do not and will not sell a large and substantial shell home of the kind hereinabove described for $1995, do not and will not completely erect a garage for $300, do not and will not install a glass-lined roof for $66, do not and will not install a genuine stone front or a simulated stone front on a house for $44, do not and will not install a complete bathroom, including fixtures, for $44, and do not and will not sell a gas-fired air furnace complete with ducts and all equipment necessary for the operation thereof for $139. The aforesaid price amounts and other price amounts not specifically set out herein were made by respondents for the purpose of inducing prospective purchasers to make inquiries respecting the said goods and services offered for sale. Upon contacting such prospective purchasers, respondents, their salesmen, agents or representatives then undertake to sell such persons other and more expensive products and services.

(b) Respondents' aforesaid products and services are not unconditionally guaranteed. Such guarantees as may be given by respondents are subject to numerous restrictions with respect to time, material and services.

(c) Respondents are not a part of or in any manner affiliated with Youngstown Kitchens, a division of American Radiator and Standard Sanitary Corporation, 520 South Ellsworth Avenue, Salem, Ohio, nor are they a part of Youngstown Industries, Inc., of Philadelphia, Pennsylvania.

In truth and in fact, respondents have a kind of joint advertising arrangement with the Youngstown Industries, Inc., of Philadelphia, wherein Youngstown Industries, Inc., specializes in one line of house

building materials and repairs and respondents specialize in another type and kind of house building materials and repairs and construction.

(d) Respondents' salesmen are not sales managers or owners of Youngstown Kitchens, nor do they occupy any other business or professional status other than that of salesman.

(e) Respondents' glass-lined roofing will not outlast all other kinds of roofing materials.

(f) The so-called stone offered for sale by respondents is not genuine stone in its natural state.

(g) Respondents are unable to make all basements dry without digging.

(h) Not all of the goods sold and services performed by respondents are of first-class quality. Many of the products sold and the services performed by the respondents are deficient and defective. For example, roofs and stone fronts leaked, bathroom fixtures were not properly installed, heating units did not adequately perform, and various other deficiencies and defects characterized respondents' said products and services.

8. Respondents falsely represented that they did their own financing and held the promissory notes executed by purchasers and that the purchasers were signing the contract or a duplicate copy thereof when in fact they were signing a promissory note; and in other ways induced the purchasers without knowledge to sign negotiable promissory notes which provided for the payment of financing charges in amounts and on conditions not agreed to by them.

9. Youngstown Kitchens is a division of American Radiator and Standard Sanitary Corporation, 520 Ellsworth Ave., Salem, Ohio. The products of the said Youngstown Kitchen are nationally advertised and widely sold.

10. Respondents, in the course and conduct of their business, as aforesaid, are in substantial competition in commerce with other corporations and with individuals, partnerships, and others engaged in the sale and distribution of houses, garages and building materials, including simulated stone fronts, roofs, bathrooms, heating equipment and basement waterproofing.

11. The use by respondents of the foregoing false, misleading and deceptive representations and statements has had and now has the tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that such representations and statements were and are true, and into the purchase of substantial quantities of respondents' said products and services because of such erroneous and mistaken belief. As a result thereof, trade has been unfairly diverted and is now being diverted to respondents from their

competitors in commerce and substantial injury has been and is being done to competition in commerce.

DISCUSSION

Respondent, Lifetime, Inc., urges the dismissal of the complaint, arguing that the charges have not been supported by evidence. In addition, it is argued that CX 14 was admitted into evidence erroneously; that the testimony of certain witnesses was improperly permitted concerning the similarity of the advertisements seen by them with those received in evidence and concerning the terms of a written contract without production of the contract.

There is no dispute that the questioned advertisements were made by respondent Lifetime, Inc. The corporation instead argues that these advertisements were not deceptive nor were they untrue.

The advertisement with respect to "basements made dry" contains no limiting qualification and, if read literally, must be construed to be an advertisement for the water-proofing of *all* basements, not just some. The advertisement of the shell home might be open to some difference in interpretation were it not for the illustration accompanying the advertisement, showing details which are usually associated with a house of substantial size. Similarly, the illustrations contained in the advertisements would lead the reader to assume that a double-car garage could be had, installed, for $300, a complete roofing job for $66, and an entire stone front for $44. The pictured bathroom jobs for $44 are clearly complete bathrooms if one is to place any reliance on the illustration acompanying that advertisement; and the $139 furnace "delivered complete" must be taken to include the hot air ducts which are clearly shown in the illustration for that advertisement. The use of "Youngstown Industries" in the advertisement is more than adequate as a representation that the products are those of Youngstown Industries. As respects the guarantee, the plain language requires no further explanation.

The consumer evidence adduced fully supports the meanings found for these advertisements. Appearance and general impressions are the governing criteria, and not the fine spun distinctions and arguments that may be made in excuse (*P. Lorillard Co.* v. *FTC*, 186 F. 2d 52, CA–4. 1950 [5 S. & D. 210]). Nor does it matter that many of the witnesses were finally persuaded to contract for one or more of the respondents' products are services at a price well in excess of the advertised price, nor that they have been well satisfied with the results at the higher price. The important thing is that they were under the impression, which was given by the advertisements and the statements of

the respondents' salesmen, that the products and services of the respondents were obtainable and at the advertised prices. The only issue that must be decided is whether, in fact, the products and services so advertised were actually obtainable and at the advertised prices.

At the outset it would be advisable to observe that actual deception of the public need not be shown in Federal Trade Commission proceedings. (See *Charles of the Ritz Dist. Corp.* v. *Federal Trade Commission*, 143 F. 2d 676, CA-2, 1944 [4 S. & D. 226]).

Respondent Leonard admitted that not all walls could be waterproofed for the advertised price of $44. No such qualifying conditions were contained or suggested in the advertisement. In a tabulation of waterproofing done by respondents betwen October 1, 1957, and April 30, 1958, there was one job for $150; all others ran from $500 to $1,000.

As respects the shell home advertised for $1,995, rsepondent Leonard made it quite clear that the dimensions of the house obtainable at that price provided living space 14 feet wide by 20 feet long. That area is entirely incompatible with the advertised illustration showing a compartmented bathroom, a kitchen with breakfast area and large picture window. Moreover, although the illustrated advertisement shows a furnace in a basement, the $1,995 shell home does not include a basement. During the period covered by the tabulation, one house was sold for $4,700; all the other 61 houses sold during that period ranged in price from $5,000 to over $9,000.

As respects the garage, respondent Leonard admitted quite freely that the $300 price was only for the lumber delivered to the premises, not for any installed garage. Again, during the tabulation period 24 garages were sold, the lowest price of which was over $1,000 and the highest price was over $2,000.

The advertised price of the roofing job which is illustrated appears to be the price for an entire roofing job. It is quite clear that the $66 price was completely fictitious. One witness was told by respondents' salesman that she could not get the work done for the advertised price; instead her roofing job was $688. Another customer testified that the respondents' salesman told her the stated price of the roofing was just advertising. During the period covered by the tabulation, 58 contracts for roofing were involved; one was for $97, a second for $100, and all of the others ranged in price from $175 to $700.

It is quite clear that the respondents had no intention of providing an entire stone front for anything like the advertising price of $44. Respondent Leonard testified that for that price only a doorway arch or window trim would be done. One witness who thought that the advertisement meant she would have an entire stone front for $49

(another advertised price) was told by the respondents' salesman that he didn't want to talk about the $49 job. During the tabulated period, there were only eight stone jobs, but the lowest price was $387 and the highest price almost $4,000.

Respondent Leonard testified that the price of $44, represented by the respondents to be the price for a complete bathroom, would actually cover only a half day's work to do odd jobs and was a minimum charge. The $44, testified Mr. Leonard, did not cover the cost of providing the fixtures and installation of a bathroom. During the period covered by the tabulation, there were 28 contracts involving a bathroom, the price ranging from a low of $617 to a high of over $1,600.

As respects the advertised price of $139 for a heating plant, Mr. Leonard testified that that price was only an arbitrary figure which did not cover any particular article of merchandise. Customers who dealt with the respondents under the impression that the heating plant was available at the advertised price, finally contracted for the service at a much higher figure. During the period covered by the tabulation, there were 91 heating contracts, six of which were for $179, $190, $195, $235, $259, and $295. All the others ranged upward in price to a maximum of over $1,800. There were none at the advertised price.

Although the respondents' guarantees were advertised to be unconditional and unequivocal, the respondents' answer admits that the products are not unconditionally guaranteed and are subject to certain limitations in time and amount. The standard form of contract used by respondents states:

> Contractor guarantees that all materials furnished by it will be of standard quality, free from defects, and will be installed or applied in a good and workmanlike manner for a period of one year from date of installation. The liability of the contractor for defective material or installation under this guarantee is hereby limited to the replacement or correction of said defective material and/or installation, and no other claims or demands whatsoever shall be made upon or required to be allowed by the contractor.

Respondent Leonard testified that the advertised expression "guaranteed heat" meant a guarantee of one year on the furnace and a guarantee of five years on the controls. He also testified that the roofing guarantee could be anywhere from one to 20 years depending upon what the salesman chose to insert in the contract. As for waterproofing, the guarantee varied from one to five years, again depending upon the salesman. In response to an inquiry from a customer as to the meaning of "lifetime guarantee," respondent Lifetime, Inc., stated it "covered one year free service on all equipment, controls and motors fully guaranteed for one year and balance of equipment guaranteed for five years." In other contracts there were no written or printed guarantees whatsoever. The representation of an uncondi-

tional and unequivocal guarantee falls in the realm of pure fiction in the light of these variations in guarantees, where in fact there were any guarantees whatever.

The advertisements of respondents appearing with the name "Youngstown Industries" and the representations by various of the respondents' salesman of a purported connection with Youngstown Industries are in fact, and admittedly so, entirely untrue. The same is true of the representations by the respondents' salesmen that they are sales managers or owners of Youngstown Kitchens.

The representations concerning the lasting qualities of the glass-lined roofing are admittedly incorrect. Respondent Leonard stated that this representation meant only that such glass-lined roofing would outlast ordinary paper built-up roofing. Inasmuch as there are many other types of roofing such as slate, copper, composition, etc., which this glass-lined roofing would not outlast, the advertised representation of outlasting any other roofing is patently false. An expert in the roofing industry testified without contradiction that the product is a maintenance material which must be renewed every five to seven years. Roofing having a greater life expectancy than five to seven years would obviously outlast the glass-lined roofing.

As respects the representation concerning the stone fronts, it is admitted that the stone offered for sale by respondents is not genuine stone in its natural state.

As respects the ability of respondents to make all basements dry without digging, respondent Leonard admitted that some basements would require digging.

Finally, as respects the quality of the work done by the respondents, the evidence in this case is most persuasive that the goods and services sold by the respondents were not always first-class quality, as advertised. Witness after witness testified about leaking roofs, defective furnaces, cracking joints, incomplete work, improper plumbing, loose knot holes in the lumber, leaking basement walls, etc.

In sum, it is obvious from the testimony of the respondents themselves, as well as from the customer witnesses, that the respondents had no intention of selling the advertised goods and services at the stated prices. The evidence of over $600,000 sales for the period between October 1957 and April 1958 together with the testimony of various witnesses concerning their inability to obtain the advertised product at the advertised price and the admissions of the respondents themselves, make it clear that the advertisements were just bait for the credulous and unsuspecting. The calloused statements of some of the salesmen that this was just "advertising" was undoubtedly the literal truth. The advertised representations, whether of price, per-

formance, quality, guarantee, or company affiliation, were false, misleading, and deceptive.

The same is true of the respondents' representations concerning financing. Many customers of the respondents testified that they were completely unaware that they had signed a promissory note in connection with their purchase from the respondents. This is understandable inasmuch as the customer copies of the contracts contained no copy of the promissory note which was found only on the original retained by the respondents. Statements made by some of the respondents' salesmen represented that the respondents did their own financing and extended the credit necessary to the customer. This was confirmed by the experience of some of the customers who found to their surprise that they had to deal with a bank when they desired to make full cash payments.

With the findings of unfair practices as described above, it follows logically that there has been injury to the public and loss of business to competitors (*Federal Trade Commission* v. *Raladam Company*, 316 U.S. 149, 152, 1941 [3 S. & D. 474]).

Respondent Lifetime, Inc., also objects to the admission of CX 14, which is the transcript of hearings conducted by an attorney-examiner of the Federal Trade Commission on September 3, 1958, prior to the issuance of the complaint herein. It contains the sworn testimony of respondent Sam Leonard who appeared with his attorney, the same attorney representing him in this proceeding. Respondents' counsel objected to the admission of this document "when it is not used for the purpose of attacking credibility, but is only used in the main case of the Commission." He cites, however, no authority in support of his argument; nor, indeed, do I believe he could. Counsel's objections regarding the impeachment of a witness are perfectly correct, but have no application here where the statements are those of a party in interest and constitute admissions. (See Wigmore on Evidence, Vol. 4, par. 1048 through 1052.) As respects counsel's objections to the testimony of some of the witnesses as to the contents of a contract or an advertisement without the production of such contract or advertisement, it should be noted that such testimony was adduced only after it was ascertained that the witness did not have a copy of the document. Oral testimony on the contents of a writing should be allowed where the writing has been lost or is missing or is otherwise not in court. Moreover, in this particular case very little depends upon the testimony of any witness regarding the terms or contents of a writing, be it a contract or an advertisement. As has been shown above, the reasonable meaning of the respondents' advertisements can be ascertained from the advertisements themselves. The terms

of the contracts entered into with the respondents, insofar as relevant to this proceeding, are ascertainable from the printed forms admittedly used by the respondents and from the explanations of these contracts given by respondent Sam Leonard.

Counsel for the respondents argues that the complaint should be dismissed as respects respondent Youngstown Homes because there is no proof that the respondent inserted advertising in the newspapers or is engaged in interstate commerce, or that it made any representations concerning its product. This argument has no substance. The individual respondents in this proceeding, Messrs. Moskowitz and Leonard, are the sole stockholders of both corporations. Contracts for shell homes are made with Youngstown Homes; contracts for other products and services are made with Lifetime, Inc. Lifetime, Inc., arranged for the advertising in newspapers, and, in that connection, advertised the Youngstown Homes for that corporate respondent. Salesmen following up leads generated by such advertisements represented both Lifetime, Inc., and Youngstown Homes in soliciting contracts. It must be concluded, therefore, that respondent Youngstown Homes does advertise in newspapers through Lifetime, Inc.; that it is engaged in interstate commerce in soliciting contracts within and without the State of New Jersey; that it uses salesmen in the sale of these products which salesmen make representations concerning its products. As counsel for the respondents stated, Youngstown Homes, Inc., is actively conducting a major portion of the business resulting from those advertisements; the stock of Youngstown Homes, Inc., is owned by the same stockholders as Lifetime, Inc., and for all intents and purposes they use Youngstown Homes for the major portion of their work today.

Finally, counsel for the respondents urges that the individual respondents, Samuel Moskowitz and Sam Leonard, have no personal responsibility for any of the charges made by the Commission. With this argument I cannot agree. In the Commission's case in chief it was developed that these respondents are the president and secretary-treasurer of the two corporate respondents, each owning 50% of the stock of each of the corporations. Mr. Mickelson of Youngstown Industries, Inc., who negotiated cooperative advertising arrangements with these corporations, testified that he dealt with these men. Mr. Leonard testified that he entered into the contract for advertising with Youngstown Industries as president of the corporate respondents. He further admitted that he and Mr. Moskowitz entered into contracts, consulted with subordinates, wrote checks, approved advertising, dealt with the advertising agency and signed checks for advertising. The supplier of the roofing materials testified that he

dealt with Mr. Leonard in connection with price, delivery and normal inter-company matters. In addition, several of the customer witnesses identified respondent Moskowitz as the man with whom they dealt.

Respondents were given every opportunity to present evidence in support of their case. Respondents called but two witnesses to the stand. One of them, Mr. Schorza, the general manager of Lifetime, Inc., testified that he was the general manager of the company and ran its affairs. He confirmed, however, that the individual respondents were actively engaged in the day-by-day business operations of the corporate respondents. He stated that Mr. Leonard determined the advertising budget, that respondent Moskowitz handled the complaint department, that Mr. Schorza would persuade Mr. Leonard to hire the salesmen; that Mr. Leonard worked out the advertising arrangements with Mr. Mickelson. Respondents' other witness, a Mr. Gold, who was with the advertising agency, confirmed Mr. Leonard's control of the advertising budget. After the examination of these two witnesses, which consumed less than one and one half hours, counsel for the respondents stated, "In view of what has happened here, sir, I am not going to call any more witnesses. I will rest at this point. I feel that we are in an inquisition, sir, rather than. * * *"

If the respondents had evidence to refute the charge of the Commission, their failure to produce such evidence warrants the justifiable inference that such evidence would be unfavorable to them and constitutes strong confirmation of the Commission's charges. Wild accusations of inquisition are no substitute for evidence.

## CONCLUSION

The aforesaid acts and practices 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.

Upon the foregoing findings of fact and conclusions of law, the following order is hereby entered:

## ORDER

*It is ordered*, That respondents Lifetime, Inc., a corporation, and its officers, and Youngstown Homes, Inc., a corporation, and its officers, and Sam Leonard and Samuel Moskowitz, individually and as officers of each of the said corporations, 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 houses, garages or building materials and supplies, including simu-

lated stone fronts, roofs, bathrooms, heating equipment and basement waterproofing or any other articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that merchandise is offered for sale when such offer is not a bona fide offer to sell the merchandise so offered, or that merchandise is offered for sale at a specified price unless the price so represented is in fact the price of the merchandise offered for sale;

2. Representing, directly or indirectly, that said products 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 and respondents do in fact fulfill all of their requirements under the terms of the said guarantee;

3. Representing, directly or indirectly, that respondents are a part of or affiliated with Youngstown Kitchens, a division of American Radiator and Standard Sanitary Corporation, or Youngstown Industries, Inc., a Pennsylvania corporation; or that respondents are a part of or affiliated with any other person, firm or corporation unless such is the fact;

4. Representing, directly or indirectly, that respondents' salesmen are sales managers or owners of Youngstown Kitchens, a division of American Radiator and Standard Sanitary Corporation; or that respondents' salesmen occupy any business or professional status other than is the fact;

5. Representing, directly or indirectly, that respondents' so-called "glass-lined roofing will outlast any other kind or form of roofing; or that any of the aforesaid products will outlast our out-perform any other product or kinds of products or will perform in a manner or to a degree or extent contrary to fact;

6. Representing, directly or indirectly, the respondents' "fashion stone" is natural stone; or that any of said products are of a certain grade, quality or composition unless such is the fact;

7. Representing, directly or indirectly, that respondents will or can make all basements waterproof from the exterior without digging; or that respondents will or can install or construct any of the aforesaid goods or products or perform any of the aforesaid services in a manner or to a degree or extent contrary to fact;

8. Representing, directly or indirectly, that the aforesaid products and services sold or performed by respondents are of first-class quality, unless such is the fact;

9. Procuring the signature of purchasers on negotiable promissory notes without revealing to such purchasers that they are signing a

negotiable promissory note and revealing the amount, terms and conditions of the promissory note; or representing, directly or indirectly, that respondents themselves finance the contractual indebtedness assumed by purchasers of the aforesaid goods and services unless such is the fact.

OPINION OF THE COMMISSION

By DIXON, Commissioner:

The complaint in this matter charges respondents with unfair methods of competition and unfair and deceptive acts and practices in violation of the Federal Trade Commission Act through misrepresentation with relation to prices, guarantees, business associations and affiliations, status of salesmen, and the composition, characteristics and quality of products and services offered or sold. It further alleges that respondents have induced purchasers without their knowledge to sign negotiable promissory notes providing for payment of financing charges in amounts not agreed to by them.

The hearing examiner, in his initial decision filed April 21, 1961, as amended to correct a typographical error by his order of May 15, 1961, found that all the charges in the complaint had been sustained by the evidence. His decision contains an order to cease and desist the practices so found to be illegal.

Respondents have appealed from the initial decision. They have presented the issues in the following terms: (1) whether the complaint should be dismissed for alleged failure in the proof of the charges and (2) whether in any event, the complaint should be dismissed as to Youngstown Homes, Inc., and as to Sam Leonard and Samuel Moskowitz, individually, because of the alleged failure to show responsibility of these respondents for the practices charged.

Respondents are Lifetime, Inc., a Pennsylvania corporation, Youngstown Homes, Inc., a New Jersey corporation, and individuals, Sam Leonard and Samuel Moskowitz. The individual respondents each own 50% of the stock of the corporate respondents, and they are the corporations' sole officers. Sam Leonard and Samuel Moskowitz are, respectively, president and secretary-treasurer, of the corporate concerns.

The business of the respondents is in the home improvement and home construction fields.* Respondents have engaged in advertising, offering for sale, and selling, and in the installation and construction of houses, garages and home building materials including simulated

*In this outline of the facts we use the term "respondents" to mean those respondents found by the examiner to be responsible for the acts and practices charged, but we reserve the question of the sufficiency of the evidence to sustain the charges as to certain of the respondents for later discussion and determination.

stone fronts, roofs, bathrooms, heating equipment and basement waterproofing.

The method of business employed is to advertise such products and services for sale in newspapers and other publications. Some of the advertisements were under respondents' own names; others were carried under the name of Youngstown Industries. The latter company is Youngstown Industries, Inc., a concern separate from the respondents and not involved in this proceeding. Youngstown Industries and the respondents jointly advertised their separate products and services and shared the expenses of such advertisements. Under the arrangement, telephone inquiries to the numbers listed in the advertisements, which were generally telephone answering services, would be relayed to the company whose products were concerned, i.e., Lifetime, Inc., and Youngstown Homes, Inc., on the one hand, or Youngstown Industries on the other.

Persons responding to the advertisements were contacted by salesmen of the respondents. These salesmen would show literature to the prospects and would make oral representations concerning the goods and services offered, and they would induce purchasers to sign contracts and enter into financial arrangements with respondents.

*The Issue on the Substantiality of the Evidence.*

As to the charge dealing with false representations on prices and offers to sell, the hearing examiner found that, contrary to their representations, respondents do not and will not make damp and leaking basements dry for $44.00, do not and will not sell a large and substantial shell home of a kind adequate to accommodate a three compartmented bathroom, kitchen with eating space, large picture window and basement for $1,995.00, do not and will not completely erect a garage for $300.00, do not and will not install a glass-lined roof for $66.00, do not and will not install a genuine stone front or a simulated stone front on a house for $44.00, do not and will not install a complete bathroom including fixtures for $44.00, and do not and will not sell a gas-forced air furnace complete with ducts and all equipment necessary for the operation thereof for $139.00. He further found that such price amounts were advertised for the purpose of inducing inquiry and that thereafter respondents undertook to sell the prospective purchasers other and more expensive products and services.

Respondents do not contend in most of the instances, as we understand their argument, that the products and services, as found to be represented, were available at the advertised prices. Their principal objection is to the examiner's interpretation of their advertisements. Respondents say that the examiner has ignored qualifying

expressions in the various contested representations such as "for as low as" in reference to the shell house for $1,995; "$300 and up" and "delivered" as to the garage advertisement; "Additions, Repairs, Remodeling, Alterations", "No job too large or small", and "Jobs done low as" referring to the home improvements advertisement; and other similar qualifying statements. Such qualifications in the various advertisements do not make the representations truthful.

The advertisements of shell houses provide a good example for consideration. No shell house of the dimensions and quality represented was available for $1,995.00. This the respondents do not deny but claim that a small shell frame (apparently a 16′ x 20′ structure, not including porch) would be built for the stated amount and that the expression "for as low as" in conjunction with the advertised price sufficiently demonstrated it to be the minimum price. In this instance, however, the house as represented, i.e., a substantial shell home adequate to accommodate a three compartmented bathroom, kitchen with eating space, large picture window and basement, was not available at the minimum price. This advertisement was no mere exaggeration; it illustrated a completely different structure from that which could be obtained at the advertised price. To that extent it was false and deceptive. Respondents' reliance on *Ostermoor & Co., Inc.* v. *Federal Trade Commission*, 16 F. 2d 962 (2d Cir. 1927) [1 S. & D. 589], to justify or defend this and other pictorial deceptions is misplaced. The Court's holding in the case that there was no basis for the Commission's finding that substantial numbers of purchasers had been misled and deceived would distinguish it from this proceeding. We also note that the case in certain respects appears not to be in accord with more recent developments in the law in this area, but we find no necessity for a discussion here of such considerations.

Respondents' garage advertisement offers a further example. No erected garage, as pictorially represented, would be sold for the price of $300. For that price respondents would deliver materials to construct the garage. The advertisement is false even though the words "and up" appear because no garage would be built for the minimum. The word "delivered" would fail in our opinion to instruct a prospective purchaser to expect only the materials for a garage.

As a further example for discussion we refer to the advertisement relating to bathrooms. Respondents assert that no one would be misled to believe they would receive a modern bathroom for $44.00, the price quoted in a typical advertisement, because it contains the words "Additions, Repairs, Remodeling, Alterations", "No job too large or small" and "Jobs done low as". In this instance it is the over-all impression received from the advertisement which creates the decep-

tion. The words "Modern Bathrooms" in large block letters so connect the illustration of a modern bathroom with the price of $44.00 that the effect is to convey the impression that the offer is a modern bathroom for $44.00. The added language fails to dispel such an impression. Several witnesses testified that they believed from the advertisement that they could get a bathroom installed for the quoted price. No bathroom was available for such price, a fact not in dispute.

We have examined the other contested advertisements and have considered the evidence as to dry basements, glass-lined roofing, stone fronts, and automatic gas heat and conclude that in each case the advertisements, by illustration and otherwise, promise to provide at a certain low price merchandise and service which was not available at such price. We note, however, that on the advertisements for a dry basement the hearing examiner has construed such to mean that *all* basements are made waterproof. We do not believe that interpretation is correct and will amend the initial decision in this respect.

That the goods or services offered were not available for the prices stated is clear from all the evidence including a tabulation of over $600,000.00 of respondents' sales made between October 1957 and April 1958 covering 388 contracts. In that period it does not appear that even one sale was made of any of the above mentioned products and services at the prices advertised. Moreover, the testimony of various purchasers-witnesses makes clear that respondents did not seek to sell products and services at the low prices mentioned, but, through salesmen, advised prospective purchasers that the goods were not available or that they would not want them. We concur in the examiner's findings on this question. Respondents' exceptions, therefore, to the substantiality of the evidence on the above discussed charge are rejected.

We note that in *Better Living, Inc., et al.* v. *Federal Trade Commission*, 259 F. 2d 271 (3d Cir., 1958) [6 S. & D. 453], the Third Circuit Court of Appeals affirmed per curiam the Commission's order which included a prohibition against representing that articles are offered for sale at a certain price or under certain conditions when such offer is not a bona fide offer to sell the articles so, and as, offered.

We have considered the points raised by the respondents on the hearing examiner's findings as to the other specific charges, and we are satisfied that in each instance these findings are supported by substantital evidence.

Among such charges is one that respondents have falsely represented that their products sold and services performed would be of the first grade and the highest quality. The hearing examiner found this allegation supported by the record, to which finding respondents take exception. They say they have not so represented: that their repre-

sentation of "first class" is a customary claim of American suppliers and artisans and is no more than puffing.

Respondent's advertising representations as to quality of work and materials include this statement:

> We at Youngstown Industries [meaning Lifetime, Inc.] unconditionally and unequivocally guarantee in writing first class craftsmanship and materials. We further agree to furnish especially trained mechanics to assure proper installation. Absolute satisfaction shall be yours.

The Commission is satisfied that this would be read by many prospective purchasers as assuring them that the job and the materials used would be of the first grade and highest quality. Such an absolute assurance of quality in a field in which grade and quality distinctions can be and are made and where quality is of prime importance to prospective purchasers cannot be regarded in the category of puffing. This is especially so when consideration is given to the form in which the representation appears, that is, a guarantee of the premium nature of the work and materials.

The examiner found that not all of the goods sold and services performed by respondents were of first class quality, and the record contains substantial evidence to support such finding. Respondents' contentions on this and the questions as to other specific charges here considered are rejected.

*Responsibility of Youngstown Homes, Inc., and individuals.*

Sam Leonard and Samuel Moskowitz each own 50% of the stock in Lifetime, Inc., a Pennsylvania Corporation, and Youngstown Homes, Inc., a New Jersey corporation, the corporate respondents. They are, respectively, president and secretary-treasurer of both corporations. All formulation of policy, direction and control of the corporations is in their hands. There are no other officers. In 1956 Sam Leonard and Samuel Moskowitz signed Stipulation No. 8807 with the Federal Trade Commission for Lifetime, Inc., agreeing not to engage in certain unfair and deceptive acts and practices. We believe that the examiner's findings as to the responsibility of the individuals are fully supported by the record.

Moreover, the individuals charged have done business through one corporation after another. Lifetime, Inc., incorporated sometime in 1952, ceased its active operations in October 1959, about the same time as the complaint in this proceeding was issued, and the business thereafter was largely continued through Youngstown Homes, Inc. Respondents Leonard and Moskowitz each own 25% of the stock of another corporation, Standard American, Inc., with offices at 6701 North Broad Street, Philadelphia, Pennsylvania, the same address as that used by Lifetime, Inc. The record shows that Sam Leonard is president and that Samuel Moskowitz is treasurer of Standard

American, Inc., and that such corporation is engaged in advertising and selling items relating to home improvement, repairs and alterations, including certain of the products involved in this proceeding.

To make the order in this matter fully effective in preventing the unfair practices as charged and found, it is essential that respondents Leonard and Moskowitz be individually included in such prohibition. The cases clearly sustain the Commission's authority in this connection. *Federal Trade Commission* v. *Standard Education Society, et al.*, 302 U.S. 112, 120 (1937) [2 S. & D. 429]; *Steelco Stainless Steel, Inc., et al.* v. *Federal Trade Commission*, 187 F. 2d 693, 697 (7th Cir., 1951) [5 S. & D. 265]. See also the Commission decision in *Trans-Continental Clearing House, Inc., et al.*, Docket No. 7146 (October 20, 1959) and cases cited therein.

Respondents also contend that there is no evidence of the complicity of Youngstown Homes, Inc., in the practices charged to be illegal. It is apparent from respondents' answer to the complaint that respondent Youngstown Homes, Inc., shares the responsibility for the unfair practices alleged and proved. For example, respondents admit in Paragraph Three of their answer that the corporate respondents have caused products sold and services rendered by them to be advertised in newspapers and other publications appearing under the name Youngstown Industries and that salesmen contact customers on behalf or corporate respondents. Another example is contained in Paragraph Six of the answer where respondents admit in part "that the advertising, as in all advertising, was placed by *corporate respondents* for the purpose of having prospective purchasers make inquiries respecting said goods and services offered for sale." (Emphasis supplied.)

We conclude from the admissions and from the evidence that the business of the two corporations was so interwoven as to make both corporations responsible for the acts and practices herein charged and proved. The contentions regarding the responsibility of Youngstown Homes, Inc., and the individual respondents are rejected.

We note that the order is inappropriate in several respects. The findings on certain items cover both products and services whereas the order on some such items is restricted to merchandise. Paragraph 6 of the order in referring to "fashion stone" does not appear to conform to the finding on the subject. Certain of the prohibitions use the phrase "unless such is the fact" or similar expressions which should be eliminated. The initial decision will be modified as to these matters.

Additionally, the initial decision in part (c) of paragraph 7 thereof will be modified to make clear that respondents are not affiliated with Youngstown Industries, Inc., except that these parties engage in a joint advertising activity.

Respondents' appeal is denied. It is directed that the initial decision be modified in conformity with the views herein expressed and that, thereafter, the initial decision, as so modified, be adopted as the decision of the Commission. An appropriate order will be entered.

FINAL ORDER

This matter having been heard by the Commission upon respondents' appeal from the hearing examiner's initial decision, and upon briefs and oral argument in support thereof and in opposition thereto; and

The Commission, for the reasons stated in the accompanying opinion, having denied the respondents' appeal, and having directed that the initial decision be modified to conform to its views expressed in the opinion, and that, thereafter, such decision, as modified, be adopted as the decision of the Commission:

*It is ordered*, That the first line in part (a) of paragraph 6 of the Findings of Fact contained in the initial decision be, and it hereby is, modified to read as follows:

(a) that basements are made waterproof for $44.00;

*It is further ordered*, That the first sentence of part (c) of paragraph 7 of the Findings of Fact contained in the initial decision be, and it hereby is, modified to read as follows:

(c) Respondents are not a part of or in any manner affiliated with Youngstown Kitchens, a division of American Radiator and Standard Sanitary Corporation, 520 South Ellsworth Avenue, Salem, Ohio, nor are they a part of, or affiliated with, Youngstown Industries, Inc., of Philadelphia, Pennsylvania, except that as to the latter there is a joint activity.

*It is further ordered*, That the order contained in the initial decision be, and it hereby is, modified to read as follows:

*It is ordered*, That respondents Lifetime, Inc., a corporation, and its officers, and Youngstown Homes, Inc., a corporation, and its officers, and Sam Leonard and Samuel Moskowitz, individually and as officers of each of the said corporations, 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 houses, garages or building materials and supplies, including simulated stone fronts, roofs, bathrooms, heating equipment and basement waterproofing or any other articles of merchandise is commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that merchandise or service is offered for sale when such offer is not a bona fide offer to sell the merchandise or service so offered, or that merchandise or service is

offered for sale at a specified price unless the price so represented is in fact the price of the merchandise or service offered for sale;

2. Representing, directly or indirectly, that said products or services 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 and respondents do in fact fulfill all of their requirements under the terms of the said guarantee;

3. Representing, directly or indirectly, that respondents are a part of or affiliated with Youngstown Kitchens, or Youngstown Industries, Inc., a Pennsylvania corporation; or misrepresenting respondents' connection or affiliation with any other person, firm or corporation;

4. Representing, directly or indirectly, that respondents' salesmen are sales managers or owners of Youngstown Kitchens, or otherwise misrepresenting the business or professional status which respondents' salesmen occupy;

5. Representing, directly or indirectly, that respondents' so-called "glass-lined" roofing will outlast any other kind or form of roofing; or otherwise misrepresenting the lasting or performance qualities of the aforesaid products in relation to any other product or kinds of products or misrepresenting the performance qualities of said products in any other manner;

6. Representing, directly or indirectly, that respondents' simulated or so-called stone is natural stone; or otherwise misrepresenting the grade, quality or composition of any of said products;

7. Representing, directly or indirectly, that respondents will or can make all basements waterproof from the exterior without digging;

8. Representing, directly or indirectly, that respondents' products or services which are defective or deficient sold or performed by respondents are of first-class quality;

9. Procuring the signature of purchasers on negotiable promissory notes without revealing to such purchasers that they are signing a negotiable promissory note and revealing the amount, terms and conditions of the promissory note; or representing, directly or indirectly, that respondents themselves finance the contractual indebtedness assumed by purchasers of the aforesaid goods and services.

*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 contained in the initial decision as modified.