Inc., H. P. Hood & Sons, Inc., directly or through their subsidiaries, have engaged in the practice of granting loans or sums of money to frozen dairy products retailers upon the condition that the recipients will deal exclusively with said respondents, or their subsidiaries, and while, as aforesaid, this record will not support a finding that these practices have produced the requisite degree of competitive injury to support an order to cease and desist, nevertheless, the Commission, under such circumstances, should safeguard the public interest by continuing close scrutiny of respondents' operations with a view toward reopening or taking such other action as may be warranted.

It is ordered, That the appeal of counsel supporting the complaints be, and it hereby is, denied.

It is further ordered, That the complaints be, and they hereby are, dismissed.

Commissioner Kern not participating and Commissioner MacIntyre dissenting in H. P. Hood & Sons, Inc., docket 6425, not participating in the other cases.

IN THE MATTER OF

R. C. MYRICK ET AL. TRADING AS CAREY SURGICAL APPLIANCE CO., ETC.

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

Docket 7806. Complaint, Mar. 3, 1960—Decision, May 24, 1962

Order requiring an individual with offices in Los Angeles and San Francisco, Calif., engaged in selling hernia trusses both in his offices and on the road, to cease making a variety of false claims for his said devices in advertising in newspapers, as in the order below 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 R. C. Myrick, an individual trading as Carey Surgical Appliance Co. and Allied Surgical Appliance Co., and Dorothy M. Myrick, 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. Respondent R. C. Myrick is an individual trading as Carey Surgical Appliance Co. and Allied Surgical Appliance Co., his Post Office address being Box 846, Camden, N.J. Respondent Dorothy M. Myrick, an individual, participates in the acts and practices hereinafter set forth. Her address is also Post Office Box 846, Camden, N.J.

PAR. 2. Respondents are now, and have been for more than one year last past, engaged in the sale and distribution of a device, as "device" is defined in the Federal Trade Commission Act.

Said device is designated as "Hernia Guard", "Vacumatic Hernia Guard", "Vacuum Pad" and "Pneumatic Pad". The device is a hernia truss consisting of two semi-pneumatic rubber pads mounted on metal bases attached to the ends of a plastic covered steel spring rod shaped in a semicircle to fit around the body of the wearer. One of the pads has a rounded elevation in the center designed to plug a hernial opening. The other pad is flat and is intended to rest on the back of the wearer. The pads, which tilt up or down, are held in position by tension of the steel spring rod.

PAR. 3. In the course and conduct of their said business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said device 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 newspapers and other advertising media; and have disseminated and caused the dissemination of, advertisements concerning said device 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 device in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth are the following:

RUPTURED

A FREE demonstration will be given by a certified Hernia Technologist direct from the factory of the NEW NO BELT, NO STRAP, NO BULB VACUMATIC PAD for men, women and children, AT OUR OFFICE . . .

This is the finest appliance ever offered. NO BELT to cut off circulation. NO STRAP to chafe. NO BULB to spread the opening. It helps nature correct the defect. You are protected all the time. AS THE VACUMATIC PAD IS WATERPROOF AND RUST-PROOF it is worn in the bath and swimming. Many have gotten relief and comfort they never dreamed possible. It's so

light and easy to wear. This ad is worth a dollar on a NEW VACUUM PAD these dates only!

. . . CAREY SURGICAL APPLIANCE CO.

. . . 54 West Randolph St., Rm. 907,

Woods Bldg. Chicago

RUPTURED

(Picture showing two hands holding a round pad)

This Vacumatic Pad is the Secret to the Success of the HERNIA GUARD for proper RUPTURE CONTROL!

NO BELTS

NO STRAPS

NO HARNESS

Leading physicians and thousands of wearers endorse the Hernia Guard as the most revolutionary and satisfactory hernia-control since the invention of the truss. SWIM IN IT. BATHE IN IT. It offers almost unbelievable security and comfort and a new way to a more active and pleasant life for men, women and children. It helps nature to correct the defect in many cases.

PAR. 5. 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. Through the use of the expression "Certified Hernia Technologist", that respondent R. C. Myrick and his salesmen and fitters are medically trained and expert in the field of hernias.

2. That said device is new in principle and revolutionary in character and provides benefits not afforded by other trusses.

3. That it controls all hernias.

4. That the device has no bulb in the sense in which bulbs are used in trusses.

5. Through the use of the name Vacumatic, as a part of the name of the device, that it operates on the principle of a vacuum and for this reason is beneficial for hernias.

6. That it helps nature correct hernias.

7. That it protects wearers by retaining hernias at all times.

8. That it give extraordinary relief and comfort, and is easier to wear than other trusses generally.

9. Through the use of the name "Vacumatic" and the picture of the so-called vacumatic pad and the statements, "no belts", "no straps" and "no harness", that the entire device consists of the pad.

10. That leading physicians have endorsed the device as the most revolutionary and satisfactory hernia control since the invention of the truss.

PAR. 6. 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. Neither respondent R. C. Myrick nor his salesmen or fitters are medically trained or experts in the field of hernias.

2. Respondents' device is not new in principle or revolutionary in character as it is not essentially different from other spring-type trusses. It will not provide benefits beyond those of other spring-type trusses.

3. Respondents' device will not control hernias other than reducible hernias.

4. The pressure pad on respondents' device is not essentially different and serves the same function as the bulb or pad on other trusses.

5. The pad on respondents' device does not operate on the vacuum principle. If it did, such action would be more harmful than beneficial to persons suffering from hernias.

6. Respondents' device will not help nature correct a hernia or have any effect upon a hernia other than to prevent its protrusion.

7. Respondents' device will not protect the wearer at all times as it will not hold a hernia under all conditions of activity and strain.

8. Respondents' device affords no greater relief than other trusses which retain a hernia that would otherwise protrude, nor is it easier to wear than many other trusses.

9. Respondents' device consists of more than a pad as set out in paragraph 2 hereof.

10. Respondents' device has not been endorsed by leading physicians as the most revolutionary and satisfactory hernia control since the invention of the truss.

PAR. 7. 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.

Mr. Charles W. O'Connell supporting the complaint.

Mr. Raymond R. Dickey, *Mr. Marshal Miller* and *Mr. Robert F. Rolnick of Danzansky & Dickey* of Washington, D.C., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding charges R. C. Myrick, an individual trading as Carey Surgical Appliance Co. and Allied Surgical Appliance Co., and Dorothy M. Myrick, an individual, with false advertising in violation of the Federal Trade Commission Act. The

individual respondent R. C. Myrick, through counsel, answered and denied in substantial part, the allegations in the complaint. After several hearings, counsel for the Commission completed the presentation of evidence in support of the allegations of the complaint. Thereafter, before offering any evidence on behalf of respondent Myrick, counsel for respondent Myrick moved for leave to withdraw as his counsel by reason of respondent Myrick's failure to cooperate with his counsel, such as failing to advance necessary costs for investigation preparatory for hearing, reimburse counsel for certain expenses incurred by counsel on behalf of respondent Myrick and failure to pay attorneys' fees which the respondent Myrick had previously agreed to do. Upon the basis of these representations, the hearing examiner announced that said counsel would be permitted to withdraw. Thereafter, a further hearing was scheduled for January 16, 1962, in Washington, D.C., to afford respondent Myrick an opportunity to employ other counsel, and to present evidence and testimony in his own behalf, should he so desire. A notice of said scheduled hearing was mailed to Mr. Myrick at his last known address in Los Angeles and San Francisco, California. However, Mr. Myrick did not appear at said hearing nor did anyone appear in his behalf. Accordingly, the respondent R. C. Myrick will be considered in default for failure to appear at said hearing and offer evidence and testimony in his own behalf. Proposed findings of fact, conclusions of law and order have been filed by counsel supporting the complaint. Upon the basis of the entire record the undersigned hearing examiner makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. The individual respondent R. C. Myrick, for approximately two years prior to October, 1958, traded as Carey Surgical Appliance Co., Woods Building, 54 West Randolph Street, Chicago, Ill., with a branch office in the Maison Blanche Building, 930 Canal Street, New Orleans, La. In October, 1958, the individual respondent R. C. Myrick sold all of his interest in Carey Surgical Appliance Co. to one J. J. Todd. At the time of the hearing held in this proceeding on June 21, 1960, the Carey Surgical Appliance Co. was no longer in business.

2. The individual respondent, Dorothy M. Myrick, formerly the wife of respondent R. C. Myrick, was only an employee of Carey Surgical Appliance Co. as a receptionist, and never owned an interest therein. She and the respondent R. C. Myrick are now divorced.

3. Subsequent to October, 1958 and prior to the issuance of the complaint herein on March 3, 1960, the individual respondent R. C. Myrick began doing business under the trade name of Allied Surgical Appliance Co., with an office located at 55 West 42d Street, New York, N.Y. On June 21, 1960, the residence address of respondent R. C. Myrick was 116 West 45th Street, New York, N.Y. Subsequent to Mr. Myrick's divorce from Dorothy M. Myrick, he was married to another woman.

4. At some time subsequent to the date of the initial hearing held in Washington, D.C., on June 21, 1960, the individual respondent R. C. Myrick moved to the State of California and is now doing business under the trade name of Abbot Surgical Appliance Co., Suite 815, 542 South Broadway, Los Angeles, Calif., with another office located in Room 215, 516 Sutter Street, San Francisco, Calif.

5. The respondent R. C. Myrick is now, and has been for more than one year last past, engaged in the sale and distribution of a device, as "device" is defined in the Federal Trade Commission Act. Said device is a hernia truss. The truss is sold both in the office and on the road by the respondent R. C. Myrick and his employees. Advertisements are placed in newspapers for the purpose of inducing the sale of said trusses in commerce, as "commerce" is defined in the Federal Trade Commission Act. When trusses are sold on the road the respondent Myrick places advertisements in local newspapers advertising the trusses and announcing that he or his salesmen representative will be at a specified hotel in a specified city at a specified time for the purpose of demonstrating, fitting and selling said trusses. CX–10 is one of the types of trusses sold by the respondent R. C. Myrick. Other trusses sold by Mr. Myrick are of the same general construction as CX–10 except for some variance in the gauge of steel in the torsion bar which surrounds one side of the body of the wearer or a variance in the size and circumference of the pads attached to the ends of the torsion bar.

6. Some of the advertisements which the respondent R. C. Myrick inserted in newspapers are the following:

RUPTURED

(Picture showing two hands holding a round pad)

This Vacumatic Pad is the Secret to the Success of the HERNIA GUARD for proper RUPTURE CONTROL!

NO BELTS

NO STRAPS

NO HARNESS

Leading physicians and thousands of wearers endorse the Hernia Guard as the most revolutionary and sastifactory hernia-control since the invention of the truss. SWIM IN IT. BATHE IN IT. It offers almost unbelievable security and comfort and a new way to a more active and pleasant life for men, women and children. Helps nature to correct the defect in many cases. Carey Surgical Appliance Co., 54 W. Randolph, Woods Bldg., Suite 907.

The above advertisement appeared in the *Chicago Daily Tribune* on Monday, August 26, 1957, and was received in evidence as CX–1. A similar advertisement appeared in the *Chicago Daily Tribune* on Tuesday, September 3, 1957. This advertisement, CX–2, contained the same language as that quoted in CX–1 above.

7. Another newspaper advertisement inserted by the respondent R. C. Myrick in the *Chicago Daily Tribune* on Monday, September 9, 1957, was CX–3. This advertisement is as follows:

RUPTURED

A FREE demonstration will be given by a Certified Hernia Technologist direct from the factory of the NEW NO BELT, NO STRAP, NO BULB VACUMATIC PAD for men, women and children, AT OUR OFFICE . . .

This is the finest appliance ever offered. NO BELT to cut off circulation. NO STRAP to chafe. NO BULB to spread the opening. It helps nature correct the defect. You are protected all the time. AS THE VACUMATIC PAD IS WATERPROOF AND RUST-PROOF it is worn in the bath and swimming. Many have gotten relief and comfort they never dreamed possible. It's so light and easy to wear. This ad is worth a dollar on a NEW VACUUM PAD these dates only! . . . CAREY SURGICAL APPLIANCE CO. . . . 54 West Randolph St., Rm. 907, Woods Bldg. Chicago

8. CX–5 is an advertisement placed by the respondent R. C. Myrick in the *Chicago Daily News*, of June 14, 1958, similar to CX–3 quoted above. CX–8 is an advertisement which Mr. Myrick placed in *The Times-Picayune*, New Orleans, Louisiana, on Monday, June 30, 1958. The wording in this advertisement is the same as in CX–3 except that in CX–8, the office listed was 921 Canal Street, Room 1024, Maison Blanche Bldg., New Orleans, Louisiana, instead of Woods Bldg., Chicago, Illinois.

9. Through the use of said advertisements, the respondent R. C. Myrick represented directly and by implication:

(1) By using the term "Certified Hernia Technologist", that he and his salesmen fitters are medically trained and experts in the field of hernias, whereas neither he nor his salesmen fitters are medically trained or experts in the field of hernias;

(2) That said device is new in principle and revolutionary in character and provides benefits not afforded by other trusses, whereas said device is not new in principle or revolutionary in character since it

is not essentially different from other spring-type trusses. It will not provide benefits beyond those of other spring-type trusses.

(3) That it controls all hernias, whereas said truss will not control hernias other than reducible hernias.

(4) That the device has no bulb in the sense in which bulbs are used in trusses, whereas the pressure pad on the respondent Myrick's truss is not essentially different and serves the same function as the bulb or pad on other trusses.

(5) By using the word "Vacumatic," that the truss operates on the principle of a vacuum and for this reason is beneficial for hernias, whereas the pad on the respondent's truss does not operate on the vacuum principle.

(6) That it helps nature correct hernias, whereas said truss will not help nature correct hernias or have any effect upon a hernia other than to prevent its protrusion.

(7) That it protects the wearer by retaining hernias at all times, whereas said truss will not protect the wearer at all times as it will not stay in place and prevent a hernia from protruding under all conditions of activity and body movement.

(8) By using the name "Vacumatic" and the picture of the so-called vacumatic pad and the statements, "no belts", "no straps", and "no harness", that the entire device consists of the pad, whereas the truss consists of more than a pad.

(9) That leading physicians have endorsed the device as the most revolutionary and satisfactory hernia control since the invention of the truss, whereas said device has not been endorsed by leading physicians as the most revolutionary and satisfactory hernia control since the invention of the truss.

(10) The said advertisements were and are misleading in material respects and constitute "false advertisements", as that term is defined in the Federal Trade Commission Act.

CONCLUSION

The dissemination by the respondent R. C. Myrick of the false advertisements, as found herein, constitutes unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent R. C. Myrick, an individual trading under his own name or as Carey Surgical Appliance Co., Allied Surgical Appliance Co., or under any other name or trade designation,

and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of a device designated as Hernia Guard, Vacumatic Pad and Vacuum Pad, or any product or device of substantially similar construction or design, whether sold under the same names or any other name, do forthwith cease from directly or indirectly:

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

a. Which represents directly or by implication:

(1) That respondent's device operates upon a principle which is new, revolutionary or different from that employed by other trusses in common use.

(2) That respondent's device provides any benefits other than retaining a hernia, or affords benefits beyond those afforded by other trusses in common use.

(3) That respondent's device controls hernias unless expressly limited to reducible inguinal hernias.

(4) That said device is not equipped with a bulb in the sense in which bulbs are used in trusses.

(5) That the use of said device will help nature correct a hernia or have any beneficial effect on a hernia other than to prevent its protrusion.

(6) That said device will retain a hernia at all times and under all circumstances.

(7) That it will give greater relief than other trusses or is easier or more comfortable to wear than trusses in general use.

(8) That respondent's device consists of only a pad.

(9) That respondent's device has been endorsed by physicians as the most revolutionary or satisfactory hernia control, or misrepresenting in any manner the nature or extent of any endorsement of said device.

b. Which uses the words "vacuum" or "vacumatic" or any other word or term of similar import in connection with said device, or represents in any other manner that said device operates on the vacuum principle.

c. Which uses the expression "Certified Hernia Technologist" or any other words or expression of similar import, in reference to respondent, his agents, representatives or employees, or representing in any other manner that respondent, his agents, representatives or

employees are medically trained or qualified to properly diagnose and treat hernias.

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

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to respondent Dorothy M. Myrick.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 4.19 of the Commission's Rules of Practice, effective July 21, 1961, the initial decision of the hearing examiner shall, on the 24th day of May 1962, become the decision of the Commission; and, accordingly:

It is ordered, That respondent R. C. Myrick, an individual trading under his own name or as Carey Surgical Appliance Co., Allied Surgical Appliance Co., or under any other name or trade designation, shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist.

IN THE MATTER OF

ALLENTON MILLS, INC., ET AL.

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

Docket 8451. Complaint, Nov. 9, 1961—Decision, May 24, 1962

Order requiring three affiliated family corporations and their officers to cease violating the Wool Products Labeling Act by such practices as labeling as "All wool", fabrics which contained 50% or 25% reprocessed wool, and by failing in other respects to comply with labeling requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Allenton Mills, Inc., Scots Mills, Inc., and Maine Mills, Inc., corporations, and Benjamin Furman, Fanny

Furman and Max Furman, individually and as officers of said corporations, 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 Allenton Mills, Inc., and Maine Mills, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Rhode Island with their principal place of business in Allenton, R.I. Respondent Scots Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its principal place of business in Uxbridge, Mass. Individual respondents Benjamin Furman, Fanny Furman and Max Furman are officers of the corporate respondents. Said individual respondents cooperate in formulating, directing and controlling the acts, policies and practices of the corporate respondents including the acts and practices hereinafter referred to. The addresses of the individual respondents are the same as that of Allenton Mills, Inc., and Maine Mills, Inc.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since approximately the two years last past, 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 or tagged with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products were certain interlining materials labeled or tagged by respondents as "100% wool" or "All Wool" whereas, in truth and in fact, said products contained a substantial quantity of reprocessed or reused wool.

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 certain interlining materials with labels which failed: (1) to disclose reprocessed wool or reused wool present, and (2) to disclose the percentage of such reprocessed wool or reused wool.

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.

Mr. Edward B. Finch, supporting the complaint.

Mr. Sydney Silverstein, *Higgins & Silverstein*, of Woonsocket, R.I., for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

This is a proceeding brought against several family corporations and the members of the family controlling them for alleged violation of the labeling provisions of the Wool Products Labeling Act.

The principal question presented is whether the test for reused or reprocessed wool is adequate to support a finding of mislabeling where the label on wool interlinings reads "all wool", and credible expert testimony adduced by the Commission described a test method which disclosed the presence of substantial amounts of reprocessed wool. Also at issue is the propriety of issuing an order against several corporations controlled by the same family on the proof presented.

The Pleadings

By its complaint issued November 9, 1961, the Commission alleged that respondents, one Maine and two Rhode Island corporations and three officers common to each, who direct their activities, engaged in commerce as defined in the Wool Products Labeling Act. It was further charged that respondents misbranded certain interlining materials by labeling them "all wool"; whereas, "in truth and in fact, said products contained a substantial quantity of reprocessed or reused wool". General charges of mislabeling and failure to label were also made

Answering November 29, 1961, respondents admitted the formal facts concerning their corporate status and the responsibility of the individual respondents. They also admitted that they are engaged

in commerce. They denied the allegations of the complaint charging violations.

Pre-Hearing Procedures

Pre-hearing procedures were commenced by issuance of an order dated November 17, 1961 for a conference December 15, 1961. This conference was postponed at the request of respondents' counsel until December 28, 1961.

At the pre-hearing conference, counsel supporting the complaint submitted a pre-hearing memorandum, under Rule 4.8, at the hearing examiner's request. This set forth counsel's position on each of the subparagraphs of that rule on which he desired to take a position, and it formed the basis for a demand to admit. Excellent cooperation was given by counsel for both parties at the pre-hearing conference, and a summary of the matters agreed upon is included in Pre-Hearing Order No. 1 dated December 29, 1961.

Thereafter, in accordance with Pre-Hearing Order No. 1, counsel for respondents notified counsel supporting the complaint that he would not admit the facts concerning which an admission was sought. Depositions were then taken of three of the four persons from whom attorneys for the Commission had secured samples of respondents' interlining materials. These depositions later were stipulated into the record at the initial hearing as exhibits, neither party pressing objection to any of the questions asked or answers given, and the samples identified were received in evidence at the same hearing.

The Record

The initial hearing was held on January 15, 1962, the date set by the complaint, in Boston, Massachusetts, a place found reasonably convenient for all parties and witnesses.

Respondents commenced their case (pursuant to the revised rules of the Commission) immediately following the close of the Commission's case.

Proposed findings, conclusions and briefs were submitted March 5, 1962 and counterproposals March 12, 1962.

On the basis of the entire record and in reliance upon his observation of the demeanor of the witnesses who appeared before the hearing examiner, the following findings of fact and conclusions therefrom are made. All proposed findings of fact and conclusions not expressly found, either in terms or in substance, are denied as erroneous or immaterial.

FINDINGS OF FACT

1. The following respondent corporations are incorporated in the State or Commonwealth and have their principal office and place of business as set forth opposite their respective names:

Name	State or Commonwealth	Principal Office
ALLENTON MILLS, INC.	Rhode Island	Allenton, R.I.
MAINE MILLS, INC.	Rhode Island	Allenton, R.I.
SCOTS MILLS, INC.	Massachusetts	Uxbridge, Mass.

2. The individual respondents, Benjamin Furman, Fanny Furman and Max Furman, are officers of each of the corporate respondents, and they cooperate with each other in formulating, directing and controlling the acts, policies and practices of the corporate respondents, including the acts and practices hereinafter referred to. The addresses of the individual respondents are at the principal offices of Allenton Mills, Inc., and Maine Mills, Inc.

3. Benjamin Furman and Max Furman are partners in a concern known as Ace Woolens which is not named a respondent as a separate business entity. As such partners, Benjamin Furman and Max Furman purchase the raw materials for the woolen mills operated by Allenton Mills, Inc., and Scots Mills, Inc. Fanny Furman is the wife of Max Furman and the mother of Benjamin Furman. All three individual respondents are directors of each of the corporate respondents. Max Furman, as the father of the family, is regarded as the head of the family group, but all individual respondents participate in the activities.

4. Pine State Mills, also a non-respondent, is a sales organization which has an office at 450 Seventh Avenue, New York, N.Y. It is controlled by Max Furman and Benjamin Furman, and its name is used on the order blanks reflecting sales made by the corporate respondents.

5. The corporate respondents, together with Ace Woolens and Pine State Mills, are all operated as a single family enterprise of the individual respondents. Raw material, or stock, as it is called in the trade, is purchased by Ace Woolens; this, in general, goes to Scots Mills, Inc., where it is opened by picking machines. Some of this partly-processed raw material goes to Allenton Mills, Inc., for further processing and weaving, and some remains at Scots Mills, Inc. Maine Mills, Inc., has at present no weaving facilities of its own. It was previously engaged in the manufacture of wool blankets, and its name is used on fabrics produced by either Scots Mills, Inc., or Allen-

ton Mills, Inc. The three names, in fact, are used interchangeably regardless of what mill actually weaves the fabric. However, a product which is to be factored by Textile Banking Corporation is invoiced under the name Allenton Mills, Inc., and the names Scots Mills, Inc., and Maine Mills, Inc., are used on invoices where the product is to be factored by Rusch & Co., no matter which mill weaves the fabric. When invoices are made by one corporate respondent, as a matter of bookkeeping, no other corporate respondent is credited with an interest in the proceeds. The factoring concerns, in factoring, purchase without recourse, the receivables resulting from the sales made by corporate respondents after retaining a fee or commission for their services. The samples of fabric produced here were each invoiced by Allenton Mills, Inc., and the labels showing fiber content bore the name Maine Mills, Inc.

6. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and particularly during the last two years, 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.

7. Certain of said wool products were misbranded by respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act and the rules and regulations promulgated thereunder, in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein, as hereinafter more fully set forth.

8. Certain of said wool products were 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 prescribed by the rules and regulations promulgated under said Act, as hereinafter more fully set forth.

9. During a routine investigation in the spring of 1961, Robert Scott of the Federal Trade Commission called upon respondents and was informed by Max Furman that respondents did not keep adequate records from which the constituent fibers of their interlining products could be established because it was too expensive to do so.

10. At about the same time, Frederick Nash of the Federal Trade Commission secured samples of cloth from the following persons: Samuel Benjamin, 17 East Broadway, New York, New York; Samuel Levy, President of Big Three Textile Corporation at 256 West 38th Street, New York, New York, and from Joseph Klein, President of Makel Textile Company, 225 West 37th Street, New York, New York.

These persons later testified on deposition that the cloth from which samples were taken had been purchased from one of respondent corporations. Each of said samples was cut from a bolt which had been in its original wrapping by Nash and the purchaser acting together. The tag on the bolt was transferred to the sample; then the sample with the tag and a copy of the invoice from the respondent corporation were placed by Nash in the hands of Robert Scott, his superior. Nash first replaced the original label with one in his handwriting showing where he got the cloth and the piece number.

11. About the same time, Frederick Nash secured a similar sample from Bernard Tannenbaum, another purchaser of cloth whose testimony could not be secured on deposition. Said sample was obtained and treated in the same manner as the samples obtained from the other purchasers. Respondents produced a copy of an invoice and shipping memorandum which contains a lot number identical with the lot number on the tag attached to the bolt and transferred to the sample, as well as Tannenbaum's firm name. The sample, moreover, bears a tag which appears identical to tags on fabrics identified as stated in Finding No. 10. Accordingly, the hearing examiner infers that said sample, tag and invoice secured by Frederick Nash from Tannenbaum originated from respondents.

12. Following the receipt of said samples from Frederick Nash, Robert Scott placed a label in his handwriting containing the file number and the piece number opposite the label affixed by Nash on each sample, separated the cloth between the labels and forwarded the pieces of the samples containing the label in his handwriting to Dr. Samuel J. Golub by mail, together with a covering letter requesting that Dr. Golub test the fabric for fiber content under the Wool Products Labeling Act.

13. There was no indication placed on the samples forwarded to Dr. Golub by which he was informed of the names of the persons by whom the fabric was manufactured. He placed his own tag on each fabric sample when tested with a number corresponding to the report number of the results obtained.

14. Dr. Golub tested the samples submitted to him with chemical and microscopic tests. The chemical tests determined quantitatively the character of fibers, i.e., wool, nylon, acrylic, etc. The microscopic test determined qualitatively but not quantitatively the presence and approximate amount of reprocessed wool.

15. The chemical tests performed are well-recognized and determined the character of the fibers by successively dissolving out fibers with chemicals. By carefully weighing the entire sample—then the

sample minus each of the dissolved fibers—the precise weight of each of the fibers was obtained and its percentage of the weight of the entire sample calculated.

16. The microscopic test applied by Dr. Golub determines the presence of reprocessed wool by counting, in a prescribed manner, under a microscope, the number of characteristic breaks in a sampling of wool fibers chosen from portions of the fabric and then calculating from the number counted the percentage of breakage. The percentages are then compared with percentages of characteristic breaks founds in test samples where the percentage of reprocessed wool is known.

17. The characteristic breaks referred to in Finding No. 16 are believed by experts for both parties to be caused by the impact of the sharp wires used in picking, garnetting, and combing machinery which process fibers preparatory to spinning and weaving.

18. It is common ground among the experts that the tighter the wool fibers are held together, the greater is the percentage of characteristic breaks which can be anticipated.

19. Dr. Golub, the expert called by the Commission, received his doctorate in Biology at Harvard University after doing both graduate and undergraduate work in the same field. He has had long experience in fiber and cellular structure studies, is a competent microscopist and has performed extensive research in wool fiber construction and identification. He has had practical commercial experience in the field of fiber identification and is active in association work and in the adoption and perfection of standards for textile identification. He personally performed or supervised the tests on the fabrics in question in this proceeding. He based his opinion on both his studies of the experiments of others and on experiments and observations made by himself.

20. Mr. Francis K. Burr, the expert called by respondents, majored in chemistry at Wesleyan University where he received a B.S. and M.S. Degree. He has had extensive practical experience in the textile field in chemical finishing, quality control and fiber identification. His experience with a microscope has been more limited than has that of Dr. Golub, and he, at no time, questioned the accuracy of Dr. Golub's microscopic observations. He has not himself performed experiments in the identification of wool fibers by the tests conducted by Dr. Golub and did not testify on any microscopic examination of the fabrics received in evidence. He based his opinion on his general knowledge of the textile business and on his experience in general.

21. Dr. Golub's test findings with respect to mislabeling of wool products by reason of inadequate designation of other fibers are as follows:

Exhibit No.	Piece No.	Label	Test Finding
11	6197	80% Reprocessed wool 20% rayon	87.6% wool. 7.4% nylon. 3.7% acrylic. 1.0% polyester. 3% rayon and acetate.
15	5722	80% Reprocessed wool 20% rayon	88.2% wool. 7.6% nylon. 3.0% acrylic. 1.2% various. Including rayon, modacrylic, and polyester.
10	5627	90% wool 10% undetermined	93.6% wool. 3.1% nylon. 3.3% various. Including rayon acetate and acrylic traces of four fibers mixed in wool.

22. No evidence was offered by respondent in opposition to the test findings of Dr. Golub described in Finding No. 21, and they are hereby adopted.

23. Dr. Golub's test findings with respect to mislabeling of wool products by reason of the fact that they contained reprocessed fibers when designated as all wool or 90% wool are as follows:

Exhibit No.	Piece No.	Label	Test Finding
10	5627	90% wool 10% undetermined.	At least 50% reprocessed wool.
12	6269	All wool	98.7% wool fiber, 1.3% man-made fiber. At least 25% reprocessed wool.
13	4341	-----do	94% wool fiber, 4.6% nylon, 1.4% mixed man-made fiber. At least 50% reprocessed wool.
14	6284	-----do	98.2% wool fiber, 1.8% mixed man-made fiber. At least 25% reprocessed wool.

24. In making such test findings, Dr. Golob assumes that the sample of cloth received by him is characteristic of the bolt of cloth and that the sample of fiber separated by him from the sample is also characteristic. He has cross-checked his findings which are made by the use of a sampling test method originated by Dr. Werner Von Bergen, utilizing some 600 long fibers picked from threads and laid across a microscope slide vertically. This cross-checking was accomplished by using a sampling method devised by himself which cuts from the cloth short segments of fibers. These short fibers are stirred and then laid upon the microscope slide in varying directions. The results from the two sampling methods correlated closely except in one instance, and, in that instance, Dr. Golob reported on the lower of the percentages of breaks observed, thus taking the result most favorable to respondents. Dr. Golob also concludes, based on his

experience, that the characteristic break damage caused by the reprocessing of wool which has been woven into a fabric at any time will always be substantially greater than break damage caused by reworking of wool fiber which has not been woven at any time. Dr. Golub reaches the last conclusion, based on his experiments, the study of experiments of others and on his opinion, that characteristic break damage is not as great on wool fibers which have not been woven because fabrics not woven are less subject to damage. He also concludes, based on his experiments and experience, that continued reworking of wool fibers which have not been woven will not substantially increase the number of characteristic breaks to the extent that will be the case when woven fabric is reprocessed. He reaches this conclusion because the fiber weakened by previous breakage will tend to separate at the weakened spot and thus remove evidence of a previous characteristic break. He testified also that processing and finishing would not increase the count substantially.

25. Mr. Francis K. Burr, respondents' expert, based his testimony on his general knowledge of textiles and his study of the reported experiments of Mr. Werner Von Bergen. While he does not attack in any way the characteristic break count of Dr. Golub, he contends that it is possible for wool fiber, although not woven at any time, to receive a greater number of breaks than wool fiber which has been woven loosely. He also contends that the number of breaks in wool fiber would tend, if plotted on a graph, to increase on a straight line basis for each reprocessing. Dr. Golub's opinion was that the number of characteristic breaks would tend to form a curve, if plotted, because the percentage of breaks would not increase proportionally to the number of times processed. Mr. Burr further contended that in the absence of knowledge of the type and quality of the wool and the dyeing processes through which it had passed, it was not possible to determine conclusively whether wool was reprocessed, as defined by the Act, or simply reworked without weaving or felting, thus remaining "wool" as the term is used under the Act.

26. The examiner finds that Dr. Golub's tests and his opinions drawn from them are reliable and substantial evidence of the existence of reprocessed wool in the samples submitted (which are tabulated in Finding No. 23) to at least the extent to which he testified. In making this finding, the examiner has considered: the experience of the two experts; the logical probabilities from the reasoning of each; their respective experience in experimental observations; the fact that Mr. Burr did not perform tests on the fabric in question and that the respondents as producers of the fabric offered no credible proof con-

cerning the fibers which formed the raw stock for the particular pieces involved.

27. Uncontradicted testimony established that respondents were probably not motivated by profit in misbranding the fabrics because the fibers represented to have been contained in the fabrics could have been purchased in certain instances more cheaply than the fibers actually present. The hearing examiner, however, regards this circumstance as wholly immaterial on the question whether the fabric was in fact misbranded. (See *Smithline Coats, etc.*, 45 F.T.C. 79 (1948).)

CONCLUSIONS

1. The findings of fact were made on the basis of substantial and reliable evidence and the proceeding is in the public interest, in that it seeks to prevent misbranding of wool fabrics.

2. The chemical tests conducted were adequate to determine quantitatively the amounts of wool and of other fibers contained in samples of fabric produced by respondents. (*Hunter Mills Corporation, et al.* v. *F.T.C.*, 284 F. 2d 70 (2d Cir. 1960) cert. den. 366 U.S. 903.) The sampling of bolts of cloth was properly made and is adequate as representative of respondents' products. (*Milwaukee Allied Mills, Inc., et al.*, 55 F.T.C. 1530 (1958); *Smithline Coats, etc.*, 45 F.T.C. 79 (1948).)

3. The microscopic tests, both as described by Mr. Werner Von Bergen and as practiced by Dr. Samuel J. Golub, are reasonably reliable qualitative tests for the presence of reprocessed wool and for the approximation of the proportions thereof when performed by a qualified miscroscopist, having had a substantial experimental background in wool fabric identification of known fiber proportions.

4. The testimony of Dr. Samuel J. Golub, as to the approximate percentages of reprocessed wool in the samples of fabric manufactured by the respondents, constituted substantial and reliable proof that said samples contained at least the amounts of reprocessed fibers to which he testified. Thus, counsel supporting the complaint sustained the burden of proof.

5. It is not essential that a test be capable of determining quantitatively the precise amount of a particular fiber. It is sufficient that the test under proper conditions when undertaken by a qualified expert, determines the approximate amount within reasonable limits.

6. The testimony, both expert and lay, introduced by respondents, failed to cast doubt on the validity of the test findings made by the expert who testified for the Commission.

7. The testimony of the deponents and the employees of the Commission established that the samples tested by the expert for the Commission were samples of fabric manufactured by respondents.

8. Respondent corporations are mere extensions of the Furman family. The officers and directors of each are the family. Moreover, the labeling practices disclose that there is no real distinction, in practice, between the corporations. Labels of one corporation are sometimes used when the weaving has been done by another, depending on the availability of the labels. Similarly, regardless of the plant in which the weaving is done, the invoice will invariably be drawn by one or another of the respondent corporations, depending upon which factoring concern is to finance the sale. It is accordingly deemed both necessary and proper to issue an order against all of the corporate respondents, even though the samples of cloth received in evidence were invoiced by only one and labelled by another. (See *Luckenback SS Co.* v. *W. R. Grace & Co.*, 267 Fed. 676, 680 (4th Cir. 1920).) On the facts established, it is found that the corporate respondents were merely names used to cloak the sales activities of the Furman family so that their corporate identities were a fiction. To recognize that fiction would not be justified on the facts here disclosed.[1] (Compare *National Lead Co.* v. *F.T.C.*, 227 F. 2d 825 (7th Cir. 1955), Reversed 252 U.S. 419 (1957), Modified 244 F. 2d 312.) Similarly, each of the individual respondents, though looking for guidance primarily to Max Furman, cooperated in the operation of the business of each corporate respondent and actively participated therein. An order against each individual and each corporation is deemed necessary to be fully effective to prevent continuation of the unfair practices. (*F.T.C.* v. *Standard Education Society*, 302 U.S. 112 (1937).)

9. The acts and practices of the respondents as found 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 within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents, Allenton Mills, Inc., Scots Mills, Inc., Maine Mills, Inc., corporations, and their officers, and Benjamin Furman, Fanny Furman, and Max Furman, individually and as officers of said corporations, their agents, representatives and employees, directly or through any corporate or other device, in connec-

[1] For a recent review of the considerations involved in piercing the corporate veil, see *Labor Board* v. *Deena Artware, Inc.*, 361 U.S. 398 at 403 (1959).

tion with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, distribution or delivery for shipment in commerce, of wool fabrics 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 of such products by:

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 4.19 of the Commission's Rules of Practice, effective July 21, 1961, the initial decision of the hearing examiner shall, on the 24th day of May 1962, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

THE L. R. OATEY COMPANY ET AL.

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

Docket C-141. Complaint, May 24, 1962—Decision, May 24, 1962

Consent order requiring Cleveland, Ohio, distributors to cease representing falsely in price lists, circulars, and otherwise, that certain of their wire solders contained new and special metals and additives which made them more effective than competing products, and that their plastic metal mender "Bond-Tite" was non-toxic and would not cause itching; and requiring them to label containers of the "Bond-Tite" cream hardener and putty with conspicuous warning of dangers in their use.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal

Trade Commission, having reason to believe that The L. R. Oatey Company, a corporation, and Robert L. Oatey and Alan R. Oatey, 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, The L. R. Oatey Company, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 4700 West 160th Street, in the city of Cleveland, State of Ohio.

Respondents Robert L. Oatey and Alan R. Oatey are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of, among other things, wire solders designated #50 and #40 to manufacturers for their use and to jobbers for resale to plumbers, and a plastic metal mender designated "Bond-Tite" to jobbers and agents for resale to autobody repair shops.

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

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their wire solders designated #50 and #40, respondents have made certain statements and representations in price lists and circulars, and by other media, of which the following are typical:

SPECIAL SOLDER (Contains Miracle Metals) No. 50 (Better than other 50/50 solders) No. 40 (Better than other 40/60 solders)

Oatey #50 wire solder* Better Than Any Other 50/50 Solder . . . especially formulated with new miracle metals containing silver additives . . . *Also available in #40 Solder.

New #50 wire solder "Better than other 50/50 Solders" * * * especially formulated with new miracle metals containing special additives.

A solder product * * * called Oatey No. 50 solder * * * it is formulated with metals containing silver additives, and offers the "same advantages as given by regular 50/50 solder."

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import but not specifically set forth herein, respondents represented directly or by implication:

That their wire solders designated #50 and #40 contain new and special metals and additives and, therefore, are more effective than other 50/50 and 40/60 solders, respectively.

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

Their wire solders designated #50 and #40 do not contain new and special metals and additives which make them more effective than 50/50 and 40/60 solders, respectively.

PAR. 7. In the course and conduct of their business, and for the purpose of inducing the sale of their plastic metal mender designated "Bond-Tite", respondents have made certain statements and representations in advertisements in magazines of national circulation, in pamphlets and catalogue sheets and on labels, and by other media, of which the following are typical:

Safe
Harmless
Non-Toxic
NON-TOXIC CREAM HARDENER
Gee, How I used to hate those rough hands * * * if I had to put up with * * * itching skin * * * of those other plastic fillers. * * * Non-toxic.
Things sure have changed 'round here since I've used Bond-Tite Plastic Filler. I've * * * eliminated * * * itching skin.

PAR. 8. By and through the use of the aforesaid statements and representations, and others of similar import but not specifically set forth herein, respondents represented, directly or by implication:

(1) That the cream hardener is non-toxic.

(2) That the plastic metal mender will not cause itching and is non-toxic, safe and harmless.

PAR. 9. The aforesaid statements and representations were, and are, false, misleading and deceptive. In truth and in fact:

(1) The cream hardener is not non-toxic and may cause itching or skin irritation as it contains benzoyl peroxide, which is a primary irritant and sensitizer to the skin.

(2) The cream hardener must be combined with the putty to make the plastic metal mender and when this is done the product resulting therefrom may cause itching or skin irritation and is not non-toxic, safe and harmless under all conditions of use.

PAR. 10. The label on the respondents' cream hardener contains only a cautionary statement as to the flammability of the product. However, the benzoyl peroxide contained in the cream hardener may through prolonged or repeated contact with the skin irritate or sensitize the skin and, therefore, in case of contact should be flushed from the skin. Because it contains benzoyl peroxide, the cream hardener is toxic if taken internally and, therefore, should be kept out of reach of children. The label on the respondents' cream hardener is misleading in that it fails to reveal these material facts with respect to the consequences which may result from the use of said product as directed on the label for the putty and with respect to conditions of storage of the cream hardener. The label on the respondents' putty is misleading in that it fails to reveal the material fact that after it is mixed with the cream hardener the product resulting therefrom may through prolonged or repeated contact with the skin irritate or sensitize the skin and, therefore, in case of contact should be flushed from the skin.

PAR. 11. In the conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of solders and plastic metal menders of the same general kind and nature as those sold by the respondents.

PAR. 12. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices and failure to warn the purchasing public on the labels of the products composing the plastic mender designated "Bond-Tite" of the dangers attendant to the use of the products have had, and now have, 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 that there is no danger in use of the products composing the metal mender designated "Bond-Tite", and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken beliefs.

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 the 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.

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 to issue herein, 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 such 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 L. R. Oatey Company, is a corporation organized, 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 4700 West 160th Street in the city of Cleveland, State of Ohio.

Respondents Robert L. Oatey and Alan R. Oatey 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 respondent, The L. R. Oatey Company, a corporation, and its officers, and respondents Robert L. Oatey and Alan R. Oatey, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of solders, or a plastic metal mender designated "Bond-Tite", or any other product of similar composition or possessing substantially similar properties, under whatever name sold, do forthwith cease and desist from:

1. Representing, directly or by implication, that any of their solders contain a metal or an additive which is new, special or unique or which makes the solder more effective than other solders.

2. Representing, directly or by implication:

(a) That the cream hardener is non-toxic or will not cause itching or skin irritation.

(b) That the plastic metal mender is non-toxic, safe or harmless or will not cause itching or skin irritation.

3. Using a label on the container for the cream hardener which does not set forth in a clear and conspicuous manner the following statements.

"CAUTION: Keep away from heat or flame. Keep out of reach of children. If taken internally, induce vomiting; consult physician. Avoid prolonged or repeated contact with skin. In case of contact, flush skin with water."

4. Using a label on the container for the putty which does not set forth in a clear and conspicuous manner the following statement: "CAUTION: After mixing with cream hardener, avoid prolonged or repeated contact with skin. In case of contact, flush skin with water."

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

MILFUR, INC., ET AL.

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

Docket C-142. Compaint, May 29, 1962—Decision, May 29, 1962

Consent order requiring Milwaukee, Wis., manufacturers of garments, gloves, moccasins, and other leather products to order from hides furnished by hunters and others, to cease representing falsely in magazines of national circulation and in their catalog that they custom-tanned raw hides sent in by customers and made the leather products ordered by the customers from the raw hides so furnished; to cease representing falsely in their catalog and order blank that their leather products and services were of highest quality when actually many were defective, that adjustments would be made when they were found unsatisfactory, and that they were unconditionally guaranteed; and to make deliveries within periods specified.

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 Milfur, Inc., a cor-

poration, and Sidney Krasno, alias W. L. Hudson, and Marion Krasno, 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 Milfur, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 106 North Water Street, in the city of Milwaukee, State of Wisconsin.

Respondents Sidney Krasno, alias W. L. Hudson, and Marion Krasno are officers of the corporate respondent. They formulate the policies and direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacturing, advertising, sale and distribution of various items of leather apparel and leather accessories, and in the performance, advertising and sale of cleaning and alteration and repair services for leather garments. A substantial part of respondents' business consists of manufacturing garments, gloves, moccasins and other leather products to order from hides furnished by hunters and others.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their products, when sold, or garments upon which said services have been performed, to be shipped from their place of business in the State of Wisconsin to purchasers thereof located in various other states of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in the aforesaid products and services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business and for the purpose of soliciting the sale of their said products and services, respondents have made statements regarding the nature of their business and their services in magazines of national circulation and in their catalog, of which the following are typical.

DEER HUNTERS

Send us your DEERHIDES

We are specialists in deerskin tanning and manufacturing of garments, gloves, hats, bags, moccasins, etc.

Leather garment cleaning, repairing, alterations

BIG new FREE catalog . . . .

SEND RAW SKINS FOR CUSTOM-TANNING

We tan raw hides of Deer, Elk, Antelope, Moose, Cow and Calf and custom fashion them for you into any item in this catalog. Or if you wish we will tan and return them to you for future use.

MILFUR'S custom tanning and manufacturing

Meticulously tanned by our expert craftsmen . . . .

If you wish to have hides tanned and are not ready to order merchandise to be made, send the hides to us. They will be tanned and returned to you

PAR. 5. Through the use of the aforesaid statements respondents represented, directly or indirectly:

1. That they tan raw hides.

2. That they own and operate tanning facilities wherein raw hides are tanned by their own expert craftsmen.

3. That raw hides sent in by customers are custom-tanned.

4. That raw hides sent in by customers are tanned and returned to them if so requested.

5. That the raw hides furnished to respondents by customers are made into the leather products ordered by such customers.

PAR. 6. Said statements and representations were false, misleading and deceptive. In truth and in fact:

1. Respondents do not tan raw hides.

2. Respondents do not own and operate tanning facilities, and tanning is not done by respondents' employees.

3. Raw hides sent in by customers are not custom-tanned.

4. The raw hides sent in by customers are not tanned and returned to them, even when requested, but are retained by respondents and customers are given "credit certificates" instead.

5. Leather products ordered by customers are not made from the raw hides which are furnished respondents by such customers.

PAR. 7. There is a preference on the part of a substantial portion of the purchasing public sending in raw hides for tanning to do business directly with the tannery processing such hides.

PAR. 8. In their catalog and order blank respondents used such statements as: "If for any reason any item you buy does not give you 100% satisfaction we will either repair or replace it for you or refund your money in cash. You can order with confidence from Milfur"; "Our aim is to give you the greatest variety of quality products and services at the lowest prices consistent with top quality"; "Order with assurance—Milfur's manufacturing facilities are the finest available"; "Guarantee—Milfur offers only quality leathers, Quality Craftsmanship, Quality Merchandise"; "Deal with Confidence—highest standard of workmanship . . . quality materials, fine

Craftsmanship"; "Satisfaction Guaranteed"; thereby respresenting directly or indirectly:

1. That all of the leather products sold and services performed by respondents are of the highest quality.

2. That unless respondents' products and services are satisfactory to purchasers, adjustments will be made.

3. That respondents' products and services are unconditionally guaranteed.

PAR. 9. Said statements and representations referred to in paragraph 8 were false, misleading and deceptive. In truth and in fact:

1. All leather products sold and services performed by respondents are not of the highest quality. Many of the products and services performed by respondents are defective in material, workmanship or in other respects.

2. In many instances when purchasers find respondents' products or services unsatisfactory and request adjustments, respondents ignore such requests or arbitrarily refuse to make any adjustment.

3. Respondents' products and services are not unconditionally guaranteed. Their guarantees are subject to limitations and conditions not set forth in the advertisements.

PAR. 10. Respondents have engaged in the practice of failing to make deliveries of products and of failing to perform services within the period of time specified in their catalog.

PAR. 11. 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 leather products and services of the same general kind and nature as 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 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 and services by reason of said erroneous and mistaken belief.

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 methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 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 to issue herein, 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 such 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, Milfur, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin with its office and principal place of business located at 106 North Water Street, in the city of Milwaukee, State of Wisconsin.

Respondents Sidney Krasno, alias W. L. Hudson, and Marion Krasno 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 the public interest.

ORDER

It is ordered, That Milfur, Inc., a corporation, and its officers, and Sidney Krasno, alias W. L. Hudson, or any other name, and Marion Krasno, 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 leather products or services in connection therewith, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or indirectly that respondents tan raw hides.

2. Representing directly or indirectly that they own and operate facilities for tanning raw hides unless and until respondents own and operate or directly and absolutely control the plant wherein said hides are tanned.

3. Representing directly or indirectly that raw hides sent in by customers are custom-tanned or that such hides will be tanned and returned to customers if requested.

4. Representing directly or indirectly that leather products ordered by customers are made from the raw hides furnished by such customers.

5. Representing directly or indirectly that respondents' products or services which are defective in material, workmanship or in other respects are of high quality.

6. Representing directly or indirectly that purchasers will be satisfied with respondents' products or services unless respondents make satisfactory adjustment, voluntarily and promptly when apprised by a purchaser that said products or services are not satisfactory.

7. 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.

8. Failing to make deliveries of products or perform services within the period of time specified by respondents.

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

CAMERA SPECIALTY COMPANY, INC., DOING BUSINESS AS EXAKTA CAMERA COMPANY

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

Docket C-143. Complaint, May 29, 1962—Decision, May 29, 1962

Consent order requiring Bronxville, N.Y., distributors to retailers of cameras manufactured in Russian-occupied Germany to cease selling the cameras without conspicuous disclosure on containers of the fact of manufacture in U.S.S.R. territory, and to cease advertising falsely that every major hospital in the U.S. used the cameras.

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 Camera Specialty Company, Inc., a corporation, doing business as Exakta Camera Company, and Max Wirgin and Wolf Wirgin, 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 Camera Specialty Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 705 Bronx River Road, in the city of Bronxville, State of New York.

Respondents Max Wirgin and Wolf Wirgin are officers of the corporate respondent. They formulate, direct, and control the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of cameras to retailers for resale to the public.

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

PAR. 4. When merchandise, including cameras, is offered for sale to the purchasing public and such merchandise is not marked, or is not adequately marked showing that it is of foreign origin, such purchasing public understands and believes that such merchandise is of domestic origin.

PAR. 5. Certain of the cameras sold by respondents are imported into the United States from that part of Germany occupied by the U.S.S.R. Respondents have failed to so mark these said cameras, or the containers in which they are sold, as to adequately and clearly disclose the country of origin of said cameras.

PAR. 6. A substantial portion of the purchasing public prefers products, including cameras, which are not manufactured in the U.S.S.R., or in territory occupied by the U.S.S.R., or in countries which are a part of the Soviet Bloc.

PAR. 7. By the aforesaid practice, respondents place in the hands of retailers a means and instrumentality by and through which the retailers may mislead the public as to the origin of said cameras.

PAR. 8. In addition, in the course and conduct of their business, and for the purpose of inducing the sale of their cameras, respondents have made certain statements in magazines of national circulation, of which the following is typical:

Every major hospital in the United States uses the Exakta because of its performance and reliability.

PAR. 9. Through the use of the aforesaid statement, respondents represented that their said camera was used in every major hospital in the United States.

PAR. 10. Said statement and representation was false, misleading and deceptive. In truth and in fact, said camera was not used in every major hospital in the United States.

PAR. 11. 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 cameras of the same general nature as those sold by respondents.

PAR. 12. The use by respondents of the aforesaid acts 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 cameras, manufactured in territory occupied by U.S.S.R., are manufactured in a territory not so occupied and that the aforesaid statement and representation was, and is, true and into the purchase of substantial quantities of said cameras by reason of such erroneous and mistaken belief.

PAR. 13. The aforesaid acts and practices, 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 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 respondents of all the jurisdictional facts set forth in the complaint to issue herein, 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 such 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, Camera Specialty Company, Inc., doing business as Exakta Camera Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 705 Bronx River Road, in the city of Bronxville, State of New York.

Respondents Max Wirgin and Wolf Wirgin 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 respondents, Camera Specialty Company, Inc., a corporation trading and doing business as Exakta Camera Company, and its officers, and Max Wirgin and Wolf Wirgin, 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 cameras or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale, selling or distributing products which are in whole, or in substantial part, manufactured in the U.S.S.R. or in territory occupied by the U.S.S.R. or in countries which are a part of the Soviet Bloc, without clearly and conspicuously disclosing on such products and on any packages or containers in which the said products may be enclosed for display purposes, and in such manner that the words cannot readily be obliterated, that such products are manu-

factured in whole or in part in the U.S.S.R. or in territory occupied by the U.S.S.R., or in countries which are a part of the Soviet Bloc.

2. Representing directly or indirectly, that all major hospitals use respondents' cameras.

3. Misrepresenting in any manner the number or identity of users of their products.

4. Furnishing or otherwise placing in the hands of retailers or dealers in said products the means and instrumentalities by and through which they may mislead or deceive the public in the manner or as to the things hereinabove prohibited.

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

HERTER'S, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACTS

Docket C-144. Complaint, May 29, 1962—Decision, May 29, 1962

Consent order requiring sellers in Waseca, Minn., to cease violating the Textile Fiber Products Identification Act by falsely labeling, invoicing, and advertising as "Nylodown", sleeping bags which did not contain either nylon or down, and failing to set forth in advertising "Nylodown", "duck", and "flannel" sleeping bags the required information as to fiber content.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Herter's, Inc., a corporation, and George L. Herter, Berthe E. Herter, Clara Howald and Howard W. Herbst, 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 Textile Fiber Products Identification 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 Herter's, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at Rural Route One, Waseca, Minnesota.

Individual respondents George L. Herter, Berthe E. Herter, Clara Howald and Howard W. Herbst, are President, Vice President, Secretary-Treasurer and Assistant Secretary, respectively, of said corporate respondent and formulate, direct and control the acts, practices and policies of the corporate respondent, including those hereinafter set forth. The address and principal place of business of the individual respondents is the same as that of the corporate respondent.

PAR. 2. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondents have been and are now engaged in the introduction, delivery for introduction, sale, advertising and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products; as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 3. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised or otherwise identified as to the name or amount of constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were sleeping bags which were falsely and deceptively labeled as "Nylodown" when, in truth and in fact, the product or portion thereof so described did not contain either "nylon" or "down."

Also among such misbranded textile fiber products were sleeping bags which were falsely and deceptively advertised in Herter's Catalog No. 71, Spring, Summer 1961, pages 416 and 417, which catalog is published and distributed by Herter's, Inc., in the State of Minnesota, and has a wide circulation in said State, and various other States of the United States, in that such sleeping bags were advertised

in said catalog as being made in whole or in part of "Nylodown" when, in truth and in fact, the textile fiber product or portion thereof so described did not contain either "nylon" or "down."

PAR. 4. Certain of said textile fiber products were falsely and deceptively labeled in that respondents used words, symbols, or depictions which constitute or imply the name or designation of a fiber or fibers which are not present in the product, in violation of Rule 18 of the Rules and Regulations under the Textile Fiber Products Identification Act.

Among such misbranded textile fiber products were sleeping bags which were falsely and deceptively labeled as "Nylodown" when, in truth and in fact, the product did not contain either "nylon" or "down."

PAR. 5. Certain of said textile fiber products were falsely and deceptively advertised in that respondents in making disclosures or implications as to the fiber content of such textile fiber products in written advertisement used to aid, promote, and assist directly or indirectly in the sale or offering for sale of said products, failed to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Fiber Products Identification Act and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such falsely and deceptively advertised textile fiber products, but not limited thereto, were sleeping bags which were advertised in Herter's Catalog No. 71, Spring, Summer 1961, pages 416 and 417, which catalog is published by Herter's, Inc., in the State of Minnesota, and has wide circulation in said State and various other States of the United States, in that such sleeping bags were advertised by use of such terms as "Nylodown", "duck" and "flannel" without setting forth the information as to fiber content required to be disclosed by Section 4(c) of the Act.

PAR. 6. The acts and practices of respondents, as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute unfair methods of competition and unfair and deceptive acts or 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 Textile Fiber Products Identification 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 to issue herein, 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 such 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, Herter's, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at Rural Route One, in the city of Waseca, State of Minnesota.

Respondents George L. Herter, Berthe E. Herter, Clara Howald, and Howard W. Herbst, 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 respondents Herter's, Inc., a corporation, and its officers, and George L. Herter, Berthe E. Herter, Clara Howald and Howard W. Herbst, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising or offering for sale, in commerce, or the transportation or causing to be transported, in commerce, or the importation into the United States of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce"

and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by falsely or deceptively stamping, tagging, labeling, invoicing, advertising or otherwise identifying such products:

1. As to the name or amount of constituent fibers contained therein.

2. By using the term "Nylodown" or words or terms of similar import to describe textile fiber products or portions of textile fiber products which are not composed of nylon and down.

B. Misbranding textile fiber products by falsely or deceptively stamping, tagging or labeling such products by the use of words, symbols or depictions which constitute or imply the name or designation of a fiber which is not present in the product.

C. Making any representations by disclosure or by implication of the fiber content of any textile fiber product in any written advertisement which is used to aid, promote, or assist directly or indirectly in the sale or offering for sale of such textile fiber product unless the same information required to be shown on the stamp, tag, label or other means of identification under Section 4(b) (1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, except that the percentages of the fibers present in the textile fiber product need not be stated.

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

LIVINGSTON BROS., INC.

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

Docket C-145. Complaint, May 29, 1962—Decision, May 29, 1962

Consent order requiring a San Francisco furrier to cease violating the Fur Products Labeling Act by such practices as advertising in newspapers which represented prices of fur products as reduced from regular prices which were in fact fictitious, and as reduced from higher prices without giving the time of such compared higher prices; and which represented falsely that fur products offered for sale were the stock of a business in liquidation.

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 Livingston Bros., 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 Livingston Bros., 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 on Grant Avenue at Geary Street, San Francisco, Calif.

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

PAR. 3. Certain of said fur products were falsely or deceptively advertised in that said fur products were not advertised as required under the provisions of Section 5(a) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

Said advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondent, which appeared in issues of the San Francisco Examiner, a newspaper published in the city of San Francisco, State of California, and having a wide circulation in said State and various other States of the United States.

PAR. 4. In advertising fur products for sale as aforesaid, respondent represented prices of fur products as having been reduced from regular or usual prices where the so-called regular or usual prices were in

fact fictitious in that they were not the prices at which said merchandise was usually sold by respondent in the recent regular course of business, in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of said Rules and Regulations.

PAR. 5. In advertising fur products for sale as aforesaid respondent 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. 6. In advertising fur products for sale as aforesaid respondent represented that fur products offered for sale were the stock of a business in a state of liquidation, when such was not the fact, in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(g) of said Rules and Regulations.

PAR. 7. The aforesaid acts and practices of respondent, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices 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 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 to issue herein, 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 such 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 Livingston Bros., 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 on Grant Avenue at Geary Street, San Francisco, Calif.

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

ORDER

It is ordered, That respondent Livingston Bros., 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 any fur product; or in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product, which is made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

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

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

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

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

D. Represents directly or by implication that fur products offered for sale are the stock of a business in a state of liquidation, when such is not the fact.

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.

IN THE MATTER OF

WESCO PRODUCTS COMPANY, INC.

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

Docket C-146. Complaint, May 29, 1962—Decision, May 29, 1962

Consent order requiring Chicago distributors of automotive repair or replacement parts to cease discriminating in price in violation of Sec. 2(a) of the Clayton Act by classifying some favored jobbers as warehouse distributors and thus allowing them higher discounts than competing jobbers who paid the regular jobber prices.

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 (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Wesco Products Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 2300 South Parkway, Chicago 16, Illinois. Prior to January 1, 1961, the business was operated as a partnership under the name Western Automotive Company. Since January 1, 1961, the business has been operated as a corporation under the name Wesco Products Company, Inc. Wesco Products Company, Inc., is engaged in the sale and distribution of automotive repair or replacement parts, specifically universal joints and components thereof. Wesco Products Company, Inc., currently has a yearly sales volume of approximately $2,000,000.

Respondent Wesco Products Company, Inc., in the course and conduct of its business as aforesaid, has caused, and now causes, the said automotive parts to be shipped and transported from the state of location of its principal place of business to the purchasers thereof located in states other than the state wherein said shipments originated. Said parts have been, and are, sold to different purchasers for use or resale within the United States and the District of Columbia. In the sale of said parts, respondent has been, at all times relevant herein, engaged in commerce, as "commerce" is defined in the Clayton Act.

PAR. 2. Purchasers of respondent's automotive replacement parts are classified by respondent generally within two separate classifications, namely, "jobbers" and "warehouse distributors". Respondent extends and sets terms and conditions of sale for each such classification as follows:

Jobbers—A purchaser classified as a "jobber" is normally engaged in reselling replacement parts to automotive vehicle fleets, garages, gasoline service stations, and others in the automotive repair trade serving the general public. Jobbers purchase from respondent's published jobber price lists less a discount of 15%. Respondent sells to jobber purchasers located throughout the United States.

Warehouse Distributors—A purchaser classified as a "warehouse distributor" normally resells only to jobbers. A warehouse distributor purchases from respondent's published jobber prices less discounts of 20% and 10%, which results in a total warehouse distributor discount of 28%, from respondent's published jobber prices. Respondent sells to warehouse distributors located throughout the United States.

PAR. 3. Respondent, in the course and conduct of its business as aforesaid, has been, and now is, discriminating in price between different purchasers of its automotive replacement parts of like grade and quality by selling said parts at higher and less favorable prices to some purchasers than the same are sold to other purchasers, many of whom have been, and now are, in competition with the purchasers paying the higher prices.

For example, among respondent's customers are a number of jobbers, who resell as jobbers, which have been classified by respondent as warehouse distributors. Respondent's classification of such jobbers as warehouse distributors results in the granting of higher and more favorable price discounts to these jobbers than are granted to respondent's jobber customers who purchase at respondent's regular jobber prices and do not receive the discounts available to respondent's warehouse distributor classification.

PAR. 4. The effect of respondent's aforesaid discriminations in price between the said different purchasers of its said products of like grade and quality, sold in manner and method and for purposes as aforestated, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which the aforesaid favored purchasers are engaged, or to injure, destroy, or prevent competition with said favored purchasers.

PAR. 5. The aforesaid acts and practices of respondent constitute violations of the provisions of subsection (a) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of subsection (a) of Section 2 of the Clayton Act, as amended, 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 to issue herein, 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 such 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 Wesco Products Company, 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 2300 South Parkway, in the city of Chicago, State of Illinois.

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

ORDER

It is ordered, That the respondent Wesco Products Company, Inc., a corporation, and said respondent's officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale and distribution of automotive repair or replacement parts, in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from discriminating in the price of such products of like grade and quality:

By selling to any one purchaser at net prices higher than the net prices charged to any other purchaser who, in fact, competes with the purchaser paying the higher price in the resale and distribution of respondent's said products.

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

AMERICAN METAL PRODUCTS COMPANY ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SECS. 2(a) AND 2(f) OF THE CLAYTON ACT

Docket 7365. Complaint, Jan. 22, 1959—Decision, June 8, 1962

Order vacating initial decision and dismissing for mootness, complaint charging manufacturers of plumbing supplies with, respectively, granting and receiving discriminatory prices in the sale of porcelain-on-steel sanitary ware, since the grantor no longer manufactured the product and the recipient no longer purchased it from any source, having purchased the assets of the former manufacturing subsidiary of the grantor which was then dissolved.

COMPLAINT

The Federal Trade Commission, having reason to believe American Metal Products Company, a corporation, and AllianceWare, Inc., a corporation, have violated and are now violating the provisions of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., Title 15, Sec. 13), and that Crane Co., a corporation, has violated and is now violating the provisions of subsection (f) of Section 2 of said amended Clayton Act, hereby issues its complaint, stating its charges with respect thereto as follows:

COUNT I

PARAGRAPH 1. American Metal Products 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 located at 5959 Linsdale Avenue, Detroit 4, Mich. American Metal Products Company's total sales in 1957 exceeded $65,000,000.

On or about April 30, 1955, American Metal Products Company acquired complete ownership and control of AllianceWare, Inc., an Ohio corporation, and without changing its name reincorporated it under the laws of the State of Delaware. Said Delaware corporation, respondent AllianceWare, Inc., herein, has since its formation been under the domination, direction and control of respondent American Metal Products Company. The acts, policies and practices in which respondent AllianceWare, Inc., has engaged as hereinafter alleged were pursued with the knowledge, approval and at the behest of respondent American Metal Products Company.

PAR. 2. Respondent AllianceWare, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the

State of Delaware with its principal office and place of business located at Alliance, Ohio. It is the wholly-owned subsidiary of respondent American Metal Products Company.

AllianceWare, Inc., is principally engaged in the manufacture, distribution and sale of porcelain-on-steel sanitary ware, including bathtubs, lavatories and sinks. AllianceWare's total sales for the year ending December 31, 1957, exceeded $7,000,000.

AllianceWare, Inc., manufactures its products in several plants located throughout the United States and sells and ships said products to approximately 850 plumbing supplies wholesalers located in each of the States of the United States. Included among AllianceWare's 850 plumbing supplies wholesaler customers is the respondent, Crane Co. AllianceWare, Inc., in the sale of said products as described has been and is now in commerce, as "commerce" is defined in the amended Clayton Act.

PAR. 3. Respondent Crane Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office located at 836 South Michigan Avenue, Chicago 5, Ill. Crane Co.'s total sales in 1957 exceeded $378,000,000.

Crane Co. is a manufacturer of plumbing supplies, including porcelain coated cast iron sanitary ware, and a wholesale distributor of porcelain-on-steel sanitary ware which it purchases from respondent AllianceWare, Inc. Crane Co. owns and operates approximately 150 branches through which it distributes and sells at the wholesale level, both the plumbing supplies manufactured by Crane and those purchased from respondent AllianceWare, Inc.

Crane Co.'s purchases from AllianceWare, Inc., are purchases in commerce, as "commerce" is defined in the Clayton Act. The products purchased are shipped between and among the several States of the United States from the respective states wherein the AllianceWare, Inc., factories are located to the respective different states wherein the approximately 150 Crane branches are located.

PAR. 4. In the sale and distribution of porcelain-on-steel sanitary ware, respondent AllianceWare, Inc., is in substantial competition with other sellers of similar products.

In many trade areas respondent AllianceWare's plumbing supplies wholesaler customers, including the Crane Co., are in substantial and direct competition with each other and with the plumbing supplies wholesaler customers of other manufacturers of similar products.

PAR. 5. In the course and conduct of its business in commerce, the respondent AllianceWare, Inc., has been and is now discriminating in price in the sale of its products of like grade and quality by selling

them to the Crane Co. at substantially lower prices than it sells them to its other plumbing supplies wholesaler customers who compete with the Crane Co. in the resale of said products.

Among the methods which respondent AllianceWare, Inc., has utilized in effecting said discrimination in price is the method hereinafter described.

(1) During the period commencing on or about March 1, 1947, and ending on or about March 1, 1957, the Crane Co. was granted net prices which were 5 percent less than the net prices charged to all other customers. This discrimination was effected pursuant to a formal contract entered into on April 24, 1947, which provided, *inter alia:*

* * * the prices for the various items of steel sanitary ware sold by Alliance to Crane under the terms of this agreement shall be the lowest prices then current for the article to other purchasers in effect at the time Crane's order is received by Alliance, less discounts as follows: (a) As to all deliveries made by Alliance to Crane . . . the discount shall be 5%, . . .

(2) During the period commencing on or about March 1, 1957, and ending on or about March 1, 1958, the Crane Co. was granted net prices which were first 12½ percent and subsequently 15 percent less than the net prices charged to all other customers. This discrimination was effected pursuant to a formal contract dated March 1, 1957, which provided, *inter alia:*

Alliance agrees to manufacture and sell and Crane agrees to buy for the duration of this agreement "Crane steel ware" as hereinbefore defined at the then generally prevailing current net price of Alliance to wholesalers for the same or comparable steel ware items less twelve and one-half percent (12½%) until the first twenty thousand (20,000) bathtubs have been produced by Alliance and sold to Crane or until the expiration of six (6) months, whichever first occurs, and thereafter less fifteen percent (15%) from said net price.

(3) During the period commencing on or about March 1, 1958, and continuing to the present time the Crane Co. has been granted net prices which are 12½ percent on bathtubs and 7½ percent on sinks and lavatories less than the net prices charged to other customers. This discrimination is being effected pursuant to a formal contract dated March 1, 1958, which provides, *inter alia:*

(a) Alliance agrees to manufacture and sell and Crane agrees to buy for the duration of this agreement "Crane steel ware" as hereinbefore defined at the then generally prevailing current net price of Alliance to wholesalers for the same or comparable steel ware items. With regard to bathtubs defined herein under Paragraphs 4(a) and 4(b), the current net price shall be less ten percent (10%) until the first twenty-four thousand (24,000) bathtubs have been produced by Alliance and sold to Crane; then less eleven and one-quarter percent (11¼%) until the next six thousand (6,000) bathtubs have been produced by Alliance and sold to Crane; then less twelve and one-half percent (12½%) until the next

six thousand (6,000) bathtubs have been produced by Alliance and sold to Crane. On all bathtubs over thirty-six thousand (36,000) produced by Alliance and sold to Crane, the current net price shall be less twelve and one-half percent (12½%) except that if thirty-six thousand (36,000) bathtubs or more are produced by Alliance and sold to Crane during the twelve (12) months period, March 1, 1958 to March 1, 1959, such current net price as diminished above shall be less an additional two and one-half percent (2½%) on the first twenty-four thousand (24,000) bathtubs and in addition thereto less one and one-quarter percent (1¼%) on the next six thousand (6,000) bathtubs.

(b) With regard to lavatories and sinks defined herein under Paragraph 4(c), the current net price shall be less seven and one-half percent (7½%).

PAR. 6. In the course and conduct of its business in commerce, the respondent, AllianceWare, Inc., has discriminated in price in the sale of its products of like grade and quality by selling them to some of its wholesaler customers at higher net prices than are charged to other customers who compete with the wholesaler customers charged the higher net prices.

Among the methods which respondent AllianceWare, Inc., has utilized in effecting said discriminations is the method hereinafter described.

Since 1956, and continuing to the present time, AllianceWare has in several trading areas designated one or two of its wholesaler customers as "stocking jobbers." Said designated customers are granted a 5 percent discount or rebate from list prices. The remainder of respondent AllianceWare's customers within each such trading area are required to pay list prices without the benefit of discount or rebate. Thus, the wholesaler customers not designated as "stocking jobbers" are required to pay net prices which are approximately 5 percent higher than the net prices afforded to the so-called "stocking jobbers" with whom they compete.

PAR. 7. The effect of respondent AllianceWare's discriminations in price, as above alleged, may be substantially to lessen, injure, destroy, or prevent competition between respondent AllianceWare, Inc., and competing sellers of similar products; between respondent Crane Co., and all other AllianceWare wholesaler customers; and between and among the AllianceWare "stocking jobber" wholesaler customers and all other wholesaler customers.

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

COUNT II

PAR. 9. Paragraphs 1 through 5 of Count I are hereby incorporated by reference and made a part of this charge as fully and with the same effect as though here again set forth verbatim.

PAR. 10. Respondent Crane Co., in purchasing porcelain-on-steel sanitary ware from respondent AllianceWare in the manner and at the prices as above alleged, has knowingly induced and knowingly received unlawful discriminations in price. Respondent Crane Co. knows, or has reason to know, that the prices it has induced and received are lower than the prices which respondent AllianceWare, Inc., charges to its other wholesaler customers who compete with the Crane Co. in the resale of AllianceWare, Inc., manufactured products and knows, or has reason to know, that said favorable prices constitute discriminations in price prohibited by subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

PAR. 11. The effect of the knowing inducement and receipt by respondent Crane Co. of the discriminations in price, as above alleged, has been and may be substantially to lessen, injure, destroy, or prevent competition between respondent AllianceWare, Inc., and other manufacturers of sanitary ware; and between respondent Crane Co. and the wholesaler customers of AllianceWare, Inc., and other manufacturers of similar products.

PAR. 12. The foregoing alleged acts and practices of respondent Crane Co., in knowingly inducing or receiving discriminations in price prohibited by subsection (a) of Section 2 of the amended Clayton Act, are in violation of subsection (f) of Section 2 of said Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., Title 15, Sec. 13).

Mr. William W. Rogal, *Mr. S. Brockman Horne*, and *Mr. Stanley M. Lipnick* for the Commission.

Mr. W. Robert Chandler, of *Cook, Beake, Miller, Wrock & Cross*, of Detroit, Mich., for respondents American Metal Products Company and AllianceWare, Inc.

Mr. Edward R. Johnston and *Mr. Edward H. Hatton*, of *Thompson, Raymond, Mayer, Verner & Bloomstein*, of Chicago, Ill., for respondent Crane Co.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint issued by the Commission on January 22, 1959, AllianceWare, Inc., and its corporate parent, American Metal Products Company, are charged with violation of subsection (a) of Sec-

tion 2 of the Clayton Act as amended and Crane Co. is charged with violation of subsection (f) of Section 2 of said amended Clayton Act. At times herein the said respondents will be referred to as AW, AMP and Crane, respectively.

The complaint alleges in part:

PARAGRAPH FIVE:

* * * * * * *

Among the methods which respondent AllianceWare, Inc., has utilized in effecting said discrimination in price is the method hereinafter described.

(1) During the period commencing on or about March 1, 1947, and ending on or about March 1, 1957, the Crane Co. was granted net prices which were 5 percent less than the net prices charged to all other customers. This discrimination was effected pursuant to a formal contract entered into on April 24, 1947,

* * * * * * *

(2) During the period commencing on or about March 1, 1957, and ending on or about March 1, 1958, the Crane Co. was granted net prices which were first 12½ percent and subsequently 15 percent less than the net prices charged to all other customers. This discrimination was effected pursuant to a formal contract dated March 1, 1957,

* * * * * * *

(3) During the period commencing on or about March 1, 1958, and continuing to the present time the Crane Co. has been granted net prices which are 12½ percent on bathtubs and 7½ percent on sinks and lavatories less than the net prices charged to other customers. This discrimination is being effected pursuant to a formal contract dated March 1, 1958,

PARAGRAPH SIX:

* * * * * * *

Since 1956, and continuing to the present time, AllianceWare has in several trading areas designated one or two of its wholesaler customers as "stocking jobbers." Said designated customers are granted a 5 percent discount or rebate from list prices. The remainder of respondent AllianceWare's customers within each such trading area are required to pay list prices without the benefit of discount or rebate. Thus, the wholesaler customers not designated as "stocking jobbers" are required to pay net prices which are approximately 5 percent higher than the net prices afforded to the so-called "stocking jobbers" with whom they compete.

The answers of AMP and AW were in the nature of a general denial and affirmatively advanced a cost justification defense. They

also alleged that the discounts to stocking jobbers were made in good faith to meet the equally low price of competitors. The answer of Crane was of like import but further denied that it had induced or received discounts which it knew or had reason to know to be illegal.

The hearing examiner has given consideration to the proposed findings filed by the parties hereto, and all findings of fact and conclusions not hereinafter specially found or concluded are herewith rejected. Upon consideration of the entire record herein, which is contained in a transcript of 2163 pages and approximately 1,000 exhibits, the hearing examiner makes the following findings of fact and conclusions:

American Metal Products Company, established in 1917, was incorporated under the laws of the State of Michigan in 1928 and its principal office and place of business is located at 5959 Linsdale Avenue, Detroit, Michigan. The business of AMP is the manufacture and fabrication of formed, welded steel, tubular parts, tubular and stamped assemblies; wire assemblies; and stampings which are sold to the automotive and aircraft industries. In addition to respondent AllianceWare, Inc., it has the following wholly owned subsidiaries:

Burroughs Manufacturing Co., Kalamazoo, Michigan, acquired October 28, 1950, produces metal office furniture, map racks, steel shelving, steel storage equipment, and parts bins;

Tube Reducing Corporation, Wellington, New Jersey, acquired February 1, 1954, produces "Rockrite" tubing for use in ball and roller bearings, hydraulic and pneumatic cylinders, helicopter spars, and airplane propellers; and

General Spring Products, Ltd., Kitchener, Ontario, acquired November 1, 1954, produces tubular, stamped, and wire seat spring assemblies, and other parts for the Canadian automotive industry.

AllianceWare, Inc., was incorporated on April 27, 1955 under laws of the State of Delaware and is a wholly-owned subsidiary of AMP. It is engaged in the manufacture of steel sanitary ware, washing machine tubs and other products and its principal office and place of business is located at Alliance, Ohio. It also has plants at Colton, California, Kilgore, Texas, and Evansville, Indiana, and warehouse space is leased in Tampa, Florida, and Miami, Florida. The steel sanitary ware products, which consist of porcelain enameled steel bathtubs, sinks and lavatories, are sold to plumbing wholesalers for resale to plumbers and plumbing contractors and to national distributors of plumbing supplies such as Crane Co. These products account for approximately fifty percent of AW's total sales. Its net sales for

the calendar year of 1957 were $7,007,549.66, it is among the top five producers of porcelain on steel plumbing fixtures and probably ranks ninth among all producers of plumbing fixtures.

Crane Co. is an Illinois corporation with its principal office located at 836 South Michigan Avenue, Chicago, Illinois. It is a manufacturer and distributor of varied lines of produts, as well as water heaters, pipe and other related industrial products. Crane is now and for many years has been a manufacturer of cast iron enamel ware such as bathtubs and other plumbing fixtures. The distribution system of Crane consists of branch houses engaged in the sale and distribution of a wide variety of products either manufactured by Crane or products manufactured by others, and a large number of Crane appointed independent wholesale distributors. Crane at the time of filing of the complaint in this proceeding, and for a period of at least 12 years prior thereto, had as many as 140 branches located throughout the country. During this period of time it also distributed products manufactured by it or produced for it by others through Crane designated plumbing wholesalers, which in numbers amounted to more than the number of Crane branches. However, since that time, up to September 28, 1960, Crane has disposed of the vast majority of its branch houses, leaving the company as of the foregoing date with 58 branch houses. The company, during the foregoing period of time, has increased substantially the number of its designated wholesalers to the extent that there are now between 300 to 400 such wholesalers. Although Crane is a substantial producer of cast iron enamelware, it has never manufactured steel enamelware.

The stationary, permanently installed, bathtub was first introduced into this country about 1870 and was manufactured from wood, metal, ceramic ware, tile, cement, soapstone and in fact almost anything that would hold water. The various types of bathtubs were later followed by the manufacture of heavy cast iron tubs.

In 1927, The Steel Sanitary Company, an Ohio corporation, was organized and began engineering development work on the use of drawn and stamped steel shapes for bathtubs and other sanitary ware. C. J. Rodman was one of the organizers of that company and its president. It long had been recognized that, because of its physical qualities, steel offered advantages over cast iron and other competing materials. The development work of said company extended over a period of five years, during which time it leased and equipped a plant; secured a number of design and process patents and carried the development of fabricating steel sanitary ware to a point where

it was believed actual manufacture could be placed on a practical basis in the relatively near future. In 1932, however, owing to the generally depressed financial condition of the country and the accompanying inactivity in the building and plumbing trades, the company ceased active operations.

The Alliance Porcelain Products Company was incorporated under the laws of the State of Ohio on April 24, 1934. In September, 1944, its corporate name was changed to "AllianceWare, Inc." At times herein said corporation will be referred to as Alliance-Ohio. In 1934, certain properties owned and leased by the Steel Sanitary Company were acquired by Alliance-Ohio. Steel Sanitary continued as a patent holding company with Alliance-Ohio as its only licensee. This arrangement continued until the patents and remaining assets of Steel Sanitary were purchased by C. J. Rodman in January 1947. All of such patents, patents pending, and all other patents owned by Mr. Rodman, were acquired by Alliance-Ohio.

On April 30, 1955, all of the property and assets of Alliance-Ohio, including its business and good will, and the right to the use of the trade name "Alliance Ware" in the United States, were sold to American Metal Products Company. To facilitate the use of the trade name by the purchaser, Alliance-Ohio, just prior to the transaction, changed its name to Alliance SteelWare Co. After sale of its properties and the distribution of its assets to its shareholders, Alliance-Ohio was dissolved. Approximately 75 percent of the purchased assets were transferred by AMP to its newly formed subsidiary, AllianceWare, Inc., the Delaware corporation.

After the end of World War II in 1945, Alliance-Ohio was in a position to manufacture and distribute a line of steel ware which might be marketed competitively to cast iron. It was new to the plumbing field and was faced with the lack of acceptability of steel sanitary ware. The company, during the time it first sought to enter the plumbing market and in the succeeding years, maintained a very limited sales force. Alliance-Ohio and AW since it came into existence, in selling steel sanitary ware to plumbing wholesalers, used the services of 20 to 25 independent manufacturers' representatives or sales agents who operated under contracts wherein each were assigned specific exclusive territories throughout the country. Such representatives were not employees of the seller and generally acted as sales agents for others. They were compensated by payment of 5% of the net sales made to plumbing wholesalers in their assigned areas. The representatives' contract had a provision "that the Manufacturer hereby reserves the right to sell and ship * * * to any national dis-

tributor, any railroad or governmental agency * * * at any location in the United States without obligation on the part of the Manufacturer to pay to the Sales Agency any compensation whatsoever, and such sales are hereby specifically exempted from this Agreement." Crane was a national distributor account and under the agreement Alliance-Ohio and AW were without obligation to pay its sales agents on sales made to Crane. No commissions were paid to the sales agents on Crane sales for the period from March 1, 1947 to January 1, 1952. However, from January 1, 1952 to approximately March 1, 1957 the Alliance corporations paid sales agents on all sales within their assigned territory, including Crane, at a reduced rate of 3%. After March 1, 1957, no commissions were paid on Crane sales and the rate of commission reverted back to 5%.

Although Crane had been engaged in the production and sale of cast iron plumbing fixtures for many years, it was not until 1947 when it began selling steel sanitary ware and became the first old-line cast iron manufacturer to distribute steel plumbing fixtures. On April 24, 1947, Crane and Alliance-Ohio entered into agreement whereby the former was appointed a distributor of steel sanitary ware manufactured by the latter, without any restriction as to territory. The agreement reads in part:

In view of benefits to Alliance, including those flowing from Crane's policies and facilities for advertising, warehousing and distribution, Crane's credit standing, the contemplated sales volume, and the forward buying procedure herein described, the prices for the various items of steel sanitary ware sold by Alliance to Crane under the terms of this agreement shall be the lowest prices then current for the article to other purchasers in effect at the time Crane's order is received by Alliance, less discounts as follows: (a) as to all deliveries made by Alliance to Crane prior to the date the additional production facilities are put into operation, as hereinbefore set forth, the discount shall be 5 percent, (b) as to all deliveries made by Alliance after the additional production facilities have been put into operation, as hereinbefore set forth, the amount of such discount shall be 10 percent.

The agreement recited that Alliance was providing additional manufacturing facilities intended to increase its productive capacity for steel sanitary ware by approximately 100% and it was anticipated that such facilities would be completed and placed in operation by September 1, 1947.

Shortly after the April 24, 1947 agreement was entered into, Crane invested $600,000 in certain authorized but unissued stock of Alliance-Ohio and the proceeds were used for the enlargement of the facilities of Alliance-Ohio.

The 10% rebate provision of contract became operative July 1, 1949 and rebates were made at this rate from that date to December 12, 1950. By mutual consent of the parties, the rebates reverted back to 5% on the latter date.

The contract of April 24, 1947 was in effect on April 30, 1955 when the respondent American Metal Products Company acquired the assets and business of Alliance-Ohio and the respondent AllianceWare, Inc., the Delaware corporation came into existence. AW continued to do business with Crane on the basis of the agreement (as modified—5% rebate) until March 1, 1957 when a new agreement was entered into.

From March 1, 1947 to March 1, 1957 the steel sanitary ware which was sold to Crane was, with one exception, identical with that sold by the Alliance corporation to plumbing wholesalers and were identified and sold as AllianceWare brand products. The exception was the Ohio bathtub which was introduced in 1948 and was especially designed for Crane by Henry Dreyfuss, a well-known industrial designer who had been employed by Crane for this purpose, and which was manufactured for and sold exclusively to Crane.

After taking on the steel line, Crane did a considerable amount of advertising. It undertook an aggressive sales campaign with its own sales organization and then with its dealers. A sales team out of the main office held meetings with every salesman and every branch manager in the United States. The branches were provided with sales literature, bulletins and other types of advertising material and meetings with plumbing dealers and contractors were held in some 140 to 150 places in the United States. This was not done only once but was done periodically.

At the inception of the contract of April 24, 1947, and at all times thereafter, the Crane branches were billed by the Alliance corporations at the prevailing price to plumbing wholesalers. The discounts paid pursuant to the agreement of April 24, 1947 (as well as the subsequent contracts) were accumulated monthly and the aggregate amount was transmitted directly to the general office of Crane at Chicago. The branches of Crane were not informed of the discount arrangement and this information was restricted to a few in the main office. The discounts allowed to Crane by Alliance and other manufacturers were credited to the branches monthly in a manner that the source of the discount could not be determined. At the same time branches were debited in one lump sum for overhead, advertising and other related debits. The debits charged to the various branches at all times exceeded the credits.

At the annual meeting of the stockholders of Alliance-Ohio, held on September 19, 1950, the board of directors was increased from seven members to nine, and Carter Pollock and Earl Wyatt, both officials of Crane, were elected to the board. Their election was at the request of Mr. C. J. Rodman who was not only the predominant shareholder of Alliance-Ohio but was president of that company from the time of its organization until it was dissolved. Mr. Rodman continued as president of the respondent AW until August 6, 1956 when he was replaced by Mr. Paul Corp.

In January 1956 Crane initiated negotiations for a program whereby AW would produce a new Crane exclusive steel ware line. Crane made studies of the expenditures which it would be required to bear in connection with such a program, arrived at tentative cost estimates and was of the opinion, on the basis of the figures, that a discount of 17% would be reasonable. From time to time discussions were had by respresentatives of the two companies and at a meeting held at Chicago on August 28, 1946 the parties adopted a proposal made by the President of AW whereby AW would manufacture for Crane a line of steel ware all to be identified by the Crane name or mark. It was understood that the discounts being extended Crane were to be for the home office only and must not be extended to field outlets. The matters agreed upon are contained in a formal agreement dated March 1, 1957 whereby the steel ware was to be sold to Crane at a discount of 12½% off the published base price for a period of 6 months or 20,000 bathtubs, whichever may occur first and thereafter less 15%. As an incident to this agreement, the commission theretofore paid to AllianceWare manufacturer agents on sales to Crane was discontinued, and the agent's commission was returned to the previously existing 5%.

The new Crane line of steel tubs was designed by the Henry Dreyfuss organization. New tooling was required to produce the distinctively designed models. Crane undertook the preparation of the elaborate, extensive, and intensive promotional campaign to market, promote, advertise, and sell the Crane "Crestmont" line of steel ware. Elaborate and detailed brochures and pamphlets were prepared and distributed to Crane branches, plumbing wholesalers, plumbing contractors, and architects. For example, a 24-page brochure in color entitled "New Crane Crestmont Fixtures" was distributed to in excess of 25,000 plumbing contractors. Consumer advertisements appeared in the April issues of "American Home" and "House and Garden". Illustrated catalogs were prepared and disseminated to Crane branch personnel, plumbing wholesalers, plumbing contractors, and builders.

Sales meetings were held, not only of Crane branch and sales personnel, but plumbing contractors and Crane full line wholesalers. Between March 1, 1957, and September 4, 1957, figures compiled reflected that Crane had expended directly $68,438 in advertising steel ware, whereas the Crane's total discount credited and returned to it during the same period amounted to $57,167. Included in the advertising expenses were the direct cost for individual ads appearing in national consumer magazines such as "House and Garden," and direct cost of ads in trade publications, cooperative advertising in local newspapers, the production of catalogs on steel ware, the production of mailing pieces on steel ware, and the production of brochures on the Crane line of steel ware—known as Crane "Crestmont" line.

During the period March 1, 1957 through February 28, 1958, Crane purchased $1,150,507 worth of steel ware from AW on which Crane received rebates totaling $155,759 or 13.54% of its purchases.

The volume anticipated under the 1957 contract was not realized during the first year of operation and AW initiated negotiations with Crane which resulted in a new agreement dated March 1, 1958. Thereunder the discount on sinks and lavatories was fixed at 7½% and on bathtubs as follows: On the first 24,000, 10%; on the next 6,000, 11½%; on the next 6,000, 12½%. If Crane purchased 36,000 bathtubs or more during the 12-month period, a discount of 12½% was to be allowed on all bathtubs purchased during such period.

During the first year of the 1958 contract, Crane made purchases from AW totaling $1,291,979 on which it received rebates totaling $118,860.92, or 9.22%.

Since March 1, 1957, the branch house cost of the Crane line continued to be the same as the wholesale price list published by AW for sales of comparable AllianceWare brands of sanitary steel ware to plumbing wholesalers. The accounting, billing and rebate procedures which had been employed under the 1947 contract remained the same. The 1958 contract was in effect at the time of the filing of the complaint herein, and currently is in effect.

With the exception of one bathtub model—the "Ohio" tub—all items sold to Crane during the ten years prior to March 1, 1957, were identical in all details to the fixtures sold by both AllianceWare corporations to wholesalers competing with Crane. Since March 1, 1957, all the items purchased by Crane, with the exception of six "Crestmont" bathtubs, were identical to those sold by AW to independent wholesalers. The six "Crestmont" bathtubs, including the "Ohio" tub, were similar and comparable to like models sold under the brand name of AllianceWare, differing only in the design of

apron affixed to them. AW in billing Crane on the "Crestmont" tubs employed its wholesale price list of comparable AllianceWare brands of sanitary steel ware to plumbing wholesalers. The record herein establishes that the Crane "Crestmont" line of fixtures is of like grade and quality with the line of fixtures marketed by AW under its own trade and brand names.

Plumbing wholesalers and contractors from Cleveland, Toledo, Cincinnati, Louisville, and Detroit were called and used as witnesses by counsel in support of the complaint. Their testimony reflects that competition at the plumbing wholesale level is very keen; that the customers to whom they sold were price conscious and a small reduction of price by a competitor may shift business to the competitor; that a lower buying price afforded to one of their competitors may have an injurious effect upon their business or a favored competitor may have an advantage; that the percentage of net profit realized by a plumbing wholesaler on a year's operation is very low, that is: 3½%, 2 to 3%, 3%, 5.61%, 5%, less than 1%, 1¼ to 1½%, a fraction over 1%; that it was important to the successful operation of their business to take advantage of 2% cash discounts when offered by a supplier. The general characteristics of the plumbing supply industry were also covered by the testimony of the witnesses. Large residential housing jobs represent the major market for steel ware products. Steel ware is in direct competition with cast iron. Although cast iron has been normally associated with custom design housing, it has always retained a strong acceptance by consumers and builders even for low to medium price housing developments. Within the steel lines, themselves, there are many producers of acceptable tubs and related product lines. These many producers sell at prices approximately similar for comparable lines. In addition, manufacturers, as a matter of competitive custom, grant price concessions to wholesalers in order to meet local competitive conditions. Necessarily, the amount of such concessions will vary from job to job, depending upon the competitive situation. Also, there is relative ease of access by any established wholesaler to the product lines of any manufacturer.

The testimony and documentary evidence relating to bidding by plumbing wholesalers discloses that customarily wholesalers bid on a bathroom unit, not on separate components. Thus, it is generally accepted practice for plumbing contractors, in seeking bids from plumbing wholesalers, to request that the bid include all elements of a complete bathroom unit. This would include pipe, fittings, closets, tub, and lavatories. Additionally, of course, direct labor costs, over-

head burden, and a margin for profit would be determined by the plumbing wholesaler.

There is no evidence in the record showing or tending to show that Crane used the discounts which it received to sell at a lower price than a competitor, nor is there evidence in the record to establish that there has been an actual, substantial lessening of competition, injury, or that a degree of monopoly has been created by the acts of the respondents. It is recognized that the statute does not require that the discriminations must in fact have harmed competition, but only that there is a reasonable probability that they may have such effect. Under the facts in the instant case, it cannot be inferred that the discounts allowed Crane had the requisite effect on competition to establish a violation of the statutes involved. The obligations assumed and performed by Crane in consideration of the discounts granted it under the three contracts did not give Crane an advantage in price as against its competitors. The cost to Crane branches of steel sanitary ware purchased from the AllianceWare corporations was at all times no less than the price charged to competing wholesalers for the same or like products. The testimony that monthly debits charged to each of the branches for overhead, advertising and other related debits at all times exceeded the lump sum credits for quantity discounts is without contradiction.

There is also the charge in the complaint that AW granted unlawful discriminatory discounts of 5% to certain wholesale customers designated as "stocking jobbers". Some time in 1957 AW initiated a program of appointing stocking jobbers which is explained by the testimony of one of its officials:

> A stocking jobber, a sales procedure that is initiated initially on advice from a particular city or territory in which our prevailing price is not competitive. That starts it. The procedure, however, has an additional concept; that is, that it is a selection by the size, the credit responsibility, the competitive reputation and normal factors that you would take into consideration in determining a good wholesale customer, in which an effort is made on the part of the company to somewhat throw in its lot with a customer whom they believe will do the best job of representing the company in their particular area and one who, by consequence of maintaining an inventory, will pick up smaller sales in the area that we, the company, would likely miss if a stock wasn't maintained in that area by one of our customers.

The stocking jobbers were allowed a 5% discount on some of their purchases from AW but the record is not clear as on what items the discount is allowed. The evidence does not give a picture that would support a finding that there was competitive injury resulting from the granting of stocking jobber discounts.

The failure to establish the necessary competitive injury required to constitute an illegal price discrimination within the meaning of Section 2(a) of the Robinson-Patman Act is sufficient to cause a dismissal of charges of the complaint against the respondents American Metal Products Company and Crane Co., as well as AllianceWare, Inc. However, phases of the record pertaining to other defenses of the respondents will be discussed and findings made thereon.

There was received in evidence a study offered by AW which was prepared by Ernst & Ernst, a reputable certified accounting firm, entitled "Cost Factors In Support of Selling Price Differentials Between Independent Jobbers Sales and Crane Company Contract Sales" for the year ended February 28, 1959 (the first year under the 1958 contract), together with various working papers used in its preparation. The year involved in the study is representative of the cost savings for the period subsequent to March 1, 1957. The cost study was prepared from books and records of AW by Mr. Jerry Dice, a certified public accountant and an audit staff supervisor of Ernst & Ernst. Mr. Dice was familiar with the methods employed by AW in keeping its books and records in that he had been responsible for the performance of its annual audit and various tax returns prepared by his firm during the three or four years before the study was made. The work papers and report were reviewed in the Canton office of Ernst & Ernst by the manager thereof and were subsequently reviewed by the district supervisor in the management services division and by a partner in that division. The report reflects that during the year ended February 28, 1959, AW's advertising, selling and distribution costs were 12.74% per dollar of sales less with respect to Crane sales than with respect to sale to plumbing wholesalers. An arithmetical error made in one of the supporting work sheets reduces the differential by 0.05% to 12.69%. The report indicates additional areas of cost, such as manufacturing, storage, order and billing, shipping, and executive salaries, not included in the study, on further investigation and analysis, would possibly show further savings on Crane sales. Professor Herbert F. Taggert, Professor of Accounting at the School of Business Administration of the University of Michigan and a recognized authority and expert in the field of cost justification, testified that he was retained by AllianceWare and he consulted with Mr. Heacock and others in the AllianceWare office with respect to the preparation of cost justification study. After Ernst & Ernst were called in to make the study, he discussed the matter with Mr. Dice and made recommendations in regard to the methods of allocation and other matters relating to the preparation of the study. Professor Taggert

further testified that he was familiar with the report and he was of the opinion that the methods of allocation and distribution of costs were proper. A copy of the report was furnished to counsel supporting the complaint about four months before it was introduced in evidence and an accountant of the Commission was given full access to the books and records of AW at the offices of AW. The Commission's accountant testified that as a result of his review and the investigation he had conducted into the background of the exhibit, he had formed an opinion that certain items in the study were not properly allocated and the price differences on the bathtubs and sinks and lavatories should have been calculated separately rather than averaged as was done in the study. In the year ended June 30, 1958, sinks and lavatories constituted 20.87% of AW's sales to plumbing wholesalers and 21.09% of its sales to Crane. The record shows that steelware is primarily used in tract or project homes and a plumbing wholesaler in making bids and sales for such purpose usually prices his wares for entire bathroom units including bathtubs, lavatories, valves, pipe fittings and other plumbing components used in a residence. Under these circumstances, it would seem proper to use an average discount for comparison. The Commission's accountant expressed the opinion that the items of $21,016 for advertising in trade publications and $27,367 for displays and exhibits cannot be allocated in their entirety to the independent jobbers and he based such a conclusion on the assumption that there was general knowledge in the trade that Crane products are produced by AllianceWare and some of this advertising would benefit products sold to Crane. The record indicates that plumbing wholesalers generally had knowledge that Crane's steelware line was manufactured by AW, but there is nothing to indicate that Crane would benefit from such advertising. If it should be inferred that the advertising did rub off on Crane, it would also have to be inferred that Crane's advertising, which was more extensive, would benefit AW. An objection by counsel supporting the complaint which would materially affect the result is to the inclusion of commissions paid to manufacturers' representatives as a cost of selling to plumbing wholesalers. It is counsel's position that as a matter of law the commissions paid to manufacturers' agents cannot be utilized in a cost justification. No cases arising under Section 2(a) of the Act are cited but cases invoking violations of Section 2(c) of the Act are relied upon. Reasoning of counsel seems to be that every reduction in price, coupled with a failure to pay brokerage, automatically compels the conclusion that an allowance in lieu of brokerage has been granted. The Supreme Court in *FTC* v. *Henry Broch & Co.*, 363 U.S. 166, stated:

This is not to say that every reduction in price, coupled with a reduction in brokerage, automatically compels the conclusion that an allowance "in lieu" of brokerage has been granted. As the Commission itself has made clear, whether such a reduction is tantamount to a discriminatory payment of brokerage depends on the circumstances of each case. *Main Fish Co., Inc.*, 53 F.T.C. 88. Nor does this "fuse" provisions of Section 2(a), which permits the defense of cost justification, with those of Section 2(c) which does not; it but realistically interprets the prohibitions of Section 2(c) as including an independent broker's allowance of a reduced brokerage to obtain a particular order. (363 U.S. 175–176)

None of the respondents have been charged with a violation of 2(c) so it is not necessary to answer the question whether such section has been violated. As has been pointed out heretofore, AW in its contracts with its manufacturers' agents is not required to pay commissions on certain accounts. Under the circumstances of the instant case where the services of such agents is not required, there is no logical reason why such savings in cost may not be passed on to Crane. It is the opinion of the hearing examiner that proper methods of allocation and distribution of costs were followed in the preparation of the cost study and it reasonably reflects the difference between AW's costs in selling to Crane and its costs in selling to plumbing wholesalers. The percentage cost differential (12.69%) exceeds the average discount granted to Crane during the year ending February 28, 1959 (9.22%) by 3.47%. The discounts granted to Crane the previous year of 13.54% were justified within 0.85%. Under the holdings of the Commission in *U.S. Rubber Company*, 46 F.T.C. 998, an unjustified price difference in such amount would not warrant the issuance of a cease and desist order.

It is contended that the respondent American Metal Products Company is responsible for the acts of its subsidiary, AllianceWare, Inc., the Delaware corporation. The evidence shows that AMP owns all the stock of AW and the AW's board of directors is elected by the board of directors of AMP. Nine of the eleven members of the AW's board in 1955 were likewise members of the AMP board. Counsel supporting complaint dwells upon one incident to establish AMP's responsibility. In June of 1956, Mr. F. C. Matthaei, Chairman of AMP's board of directors, Mr. Kent Chandler, member of the AMP board of directors, and Mr. J. D. Judge, President of the AMP subsidiary, Tube Reducing Corporation, and a member of the AMP board, personally called upon the AW customer, Crane Co., at Chicago, to discuss contract negotiations then under way. Mr. Matthaei was also chairman and Mr. Chandler a member of the AW board. Mr. Rodman, President of AW, in a prior meeting with Crane people had indi-

cated a lack of interest in supplying Crane with a complete line of steelware as it desired. It may be inferred that this information reached AMP officials and, Crane being AW's most important customer, prompted the visit to Crane by the three named gentlemen. At the meeting they said they, owning AllianceWare, were interested in doing everything they could to retain the relationship and more firmly to establish the relationship they had with Crane Co. They further stated that they were interested in further studying the Crane Co. needs for a line of steelware and on departing indicated there would be further contact on the part of AllianceWare representatives to discuss the situation with Crane. Thereafter Crane was contacted by Mr. Paul Corp who succeeded Mr. Rodman as President of AW in August 1956, which resulted in the 1957 contract. A document, offered by Commission counsel and received in evidence, which sets forth a description and function of the boards and officers of the AMP corporation organization, recites in part:

Article VIII—*PRESIDENTS OF SUBSIDIARIES*

The Presidents of AMP's subsidiaries are responsible for the operation of their companies within the framework of the objectives, policies, plans and budgets established by their own Board of Directors. Within this framework, the President of an AMP subsidiary has the same duties and responsiblities as the president of a separate company. It is his responsibility to make the decisions relating to the development, manufacture, and marketing of the products of his company. As each subsidiary has its own budgets, controls and quotas, the president is both responsible and accountable for the successful operation of its business.

The record indicates that AW and its Presidents functioned as required by the provisions of the cited article and there is no evidence to establish AMP's responsibility for the acts of its subsidiary AW. The factual situation here is similar to the case of *Press Co.* v. *N.L.R.B.*, 118 F. 2d 937, where the U.S. Court of Appeals for the District of Columbia held that a parent corporation's ownership of stock of subsidiary, and identity of officers of parent and subsidiary, do not create agency relations so as to make parent responsible for act of subsidiary, but there must be such control by parent as to show that subsidiary is being used as the instrument of the parent. The *Press Co.* case was followed by U.S. Court of Appeals for the Seventh Circuit, October term, 1955, in the case of the *National Lead Company, et al.* v. *Federal Trade Commission*, 227 F. 2d 825, wherein the opinion of the Court states: "* * * To come within the applicable rule, there must be evidence of such complete control of the subsidiary by the parent as to render the former a mere tool of the latter, and to compel

the conclusion that the corporate identity of the subsidiary is a mere fiction." The hearing examiner is not unmindful of the findings of the Commission *In the Matter of The American News Company*, Docket 7396, January 10, 1961, but in that case there is an entirely different factual situation from the instant case and in the opinion it is stated: "We feel that these facts are more than adequate to satisfy even the criterion of complete control applied in the *National Lead* case and conclude that American is responsible for and does control the activities of its subsidiary, Union."

It is contended by counsel in support of the complaint that Crane has always known or had reason to know that the prices it paid for AllianceWare products were not cost justified. To support such a conclusion reference is made to the fact that certain employees of Crane served on the AllianceWare Board of Directors and thus gained knowledge of the affairs of AllianceWare. There was nothing that took place at the board meetings that would in any way indicate that the discounts allowed (Crane) under the contract might be illegal under the Robinson-Patman Act. In proposed findings in support of complaint it is stated: "Crane Co. was directly notified by the Alliance-Ware Vice President Butt that the 10% rebate paid in 1949 and 1950 was not cost justified." Such a conclusion is a distortion of the record. Mr. Butt in a memorandum dated October 16, 1950, wherein he urged some change in the existing Crane-AllianceWare setup, stated: "* * * our net recovery profit-wise is actually over 6% of our dollar sales less on sales to Crane than to our own distribution." In the same memorandum he added: "While I do not question that the 10% rebate can be maintained legally, * * *." Additionally Mr. Butt when called as a witness by counsel in support of complaint testified that he never had expressed an opinion that the discounts were not legal.

There was received in evidence a copy of a four-page letter dated January 27, 1954, addressed to Alliance-Ware, Inc., attention—Mr. C. J. Rodman, from the law offices of Blumensteil, Strong & Blumensteil, signed by Mr. J. B. Blumensteil, Alliance-Ohio's local corporate attorney. The letter gives consideration to the validity of 1947 agreement as modified in 1950 (reducing the discount to 5%) and deals generally with the provisions of the Robinson-Patman Act insofar as it relates to price differentials. The document is of no import to the respondents AMP and AW (AMP did not acquire the assets of Alliance-Ohio until 1955) and is only relevant to the extent that it bears upon knowledge by Crane of the alleged illegality of the 1947 contract. Mr. Rodman, who was used as a witness in support of the complaint, was visibly hostile to the respondents and his testimony herein cannot

be regarded as credible. He stated that he requested the opinion with reference to the 1947 contract in 1954 because he was very much concerned about the legality of the five percent discount. He testified that the latter was discussed at AllianceWare board meeting on March 15, 1954, but in the detailed minutes of such meeting there is no mention of the letter. Messrs. Wyatt, Pollack, and Butt, who were directors and in attendance at the mentioned meeting of the board, testified that they had never seen the letter nor had heard it discussed at any time. Furthermore, the letter deals with facts not disclosed, discusses generally the provisions of the Robinson-Patman Act insofar as it relates to price differentials and does not contain an absolute opinion that the contract involved was illegal. The concluding paragraph of the letter reads: "We, of course, are only in possession of the facts as presented by you and for that reason we have quoted the statute at length in this opinion as perhaps you will find some other justification for continuation of your discount arrangement with the Crane Company, under the permissive cost and accounting references contained in the statute. If you fail to do so, however, it would be our recommendation that you consider negotiations with the Crane Company for an early termination of this discount arrangement." Mr. Rodman in his testimony speaks of another opinion obtained in 1950 from the same law firm which he says was destroyed at the request of then President of Crane. The record does not reveal the contents of the opinion and it will serve no purpose to discuss the same.

The record shows that Crane, as well as Alliance-Ohio and the respondent AW, in entering into the contracts which are the subject of this controversy, was always concerned in any pricing structure to be within all regulatory laws. A letter (RX 2A–D) written on April 17, 1947 to Mr. C. J. Rodman, President, AllianceWare, Inc., by Mr. J. L. Holloway, President of Crane, is illustrative of the situation. The letter reveals that in connection with the negotiations of the 1947 contract Crane had employed outside counsel to discuss the Robinson-Patman phase of the contract with its home counsel, and such outside counsel was of the opinion that there should be little or no trouble under the Robinson-Patman Act with a 10% discount. The letter sets forth a cost study made by Crane based upon its experience and using its records for the years 1936-1940 as a base, indicating an 11% cost saving to Alliance-Ohio. It further suggested and offered the assistance of a senior accountant of Crane to collaborate with AllianceWare's Mr. Heacock in the matter. Attached to the letter was a detailed table which was prepared at the direction of Mr. Holloway by a Mr. E. E. Wyatt who at that time was Assistant Comptroller of

Crane, showing the manner in which the 11% figure was arrived at. Mr. Wyatt testified that only the very direct and easy of measuring costs were employed and the percentage did not include many indirect costs nor did it give consideration to the 5% commission paid by Alliance-Ohio to its sales representatives. Mr. Wyatt discussed with Mr. Heacock the results of his estimates of Alliance-Ohio savings and was advised by Mr. Heacock that the Crane estimate of 11% "was low compared to theirs, in relation to sales." Mr. Rodman testified that Mr. Kreger, the general counsel of Alliance-Ohio, was in on the making and formulating of the 1947 contract and he gave an opinion that it was legal.

In January of 1956 discussions started between Crane and AW in connection with the proposed complete line of Crane steelware. Crane had made studies of the situation and on the bases of cost estimates respecting expenditures it would be required to make, it submitted to Mr. Rodman a preliminary figure of 17 percent as a discount to profitably accomplish what it was seeking to do. Mr. Paul Corp, who succeeded Mr. Rodman as President of AW on August 6, 1956, carried on the negotiations on behalf of AW which resulted in the 1957 contract. Two meetings were held between Mr. Corp and representatives of Crane and the schedule of discounts proposed by Mr. Corp at the second meeting for the production of the Crane steel ware line was accepted by Crane. The discounts granted to Crane under the 1957 contract had been predicated on an assumed volume of sales which did not materialize and Mr. Corp thereafter on behalf of his company initiated negotiations for a reduction of the discounts which resulted in the 1958 agreement. The evidence of record leads to the conclusion that the parties to the three agreements at all times considered the discount provisions thereof to be lawful and that Crane neither knew nor had reason to know that the difference in price accorded to it was not or could not be cost justified.

Although it is pleaded in the complaint that the alleged discriminations in price may be substantially to lessen, injure, destroy or prevent competition between respondent AllianceWare, Inc., and competing sellers of similar products, there was no attempt to establish injury in the primary line.

For the reasons hereinbefore stated, the hearing examiner finds that the record fails to establish a violation of the Robinson-Patman Act; Therefore,

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

ORDER VACATING INITIAL DECISION AND DISMISSING COMPLAINT

Counsel supporting the complaint, by their motion filed May 23, 1962, request the Commission to vacate the initial decision of the examiner in this proceeding and to dismiss the complaint on the ground of mootness. This motion, and the responses and affidavits filed in answer thereto by all respondents, show that on or about August 3, 1961, respondent American Metal Products Company sold substantially all of the assets of respondent AllianceWare, Inc., to respondent Crane Company; that AllianceWare, Inc., has since been dissolved; that Crane Company no longer purchases porcelain-on-steel sanitary ware from any source; and that American Metal Products Company does not now manufacture or sell porcelain-on-steel sanitary ware, and does not own the entire or majority interest in any company which does manufacture or sell such products. On the basis of these facts it appears that the issues raised by the allegations of the complaint in this proceeding, *viz.*, that respondents AllianceWare, Inc., and American Metal Products Company granted discriminatory prices in the sale of porcelain-on-steel sanitary ware to respondent Crane Company in violation of Section 2(a) of the Clayton Act, and that respondent Crane Company induced and received such discriminatory prices in violation of Section 2(f) of said Act, are now moot, and that for this reason any further action by the Commission in this proceeding would not be in the public interest. Accordingly,

It is ordered, That the initial decision of the hearing examiner be, and it hereby is, vacated and the complaint be, and it hereby is, dismissed for mootness and not on the merits.

IN THE MATTER OF

SUE BRETT, INC., ET AL.

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

Docket C-147.—Complaint, June 8, 1962—Decision, June 8, 1962

Consent order requiring New York City manufacturers to cease violating the Flammable Fabrics Act by selling dresses so highly flammable as to be dangerous when worn.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested

in it by said Acts, the Federal Trade Commission, having reason to believe that Sue Brett, Inc., a corporation, and Jack Baker and Florence Baker, 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 Flammable Fabrics Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Sue Brett, Inc., is a corporation duly organized, existing, and doing business under and by virtue of the laws of the State of New York. Respondents Jack Baker and Florence Baker are President and Secretary-Treasurer, respectively, of the corporate respondent. The individual respondents formulate, direct and control the policies, acts and practices of the said corporate respondent. The business address of all respondents is 1400 Broadway, New York, N.Y.

PAR. 2. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have manufactured for sale, sold and offered for sale, in commerce; have imported into the United States; and have introduced, delivered for introduction, transported and caused to be transported, in commerce; and have transported and caused to be transported for the purpose of sale or delivery after sale in commerce; as "commerce" is defined in the Flammable Fabrics Act, articles of wearing apparel, as the term "article of wearing apparel" is defined therein, which articles of wearing apparel were, under Section 4 of the Flammable Fabrics Act, as amended, so highly flammable as to be dangerous when worn by individuals.

Among the articles of wearing apparel mentioned above were dresses.

PAR. 3. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have manufactured for sale, sold and offered for sale, articles of wearing apparel made of fabric which was, under Section 4 of the Act, as amended, so highly flammable as to be dangerous when worn by individuals, and which fabric had been shipped and received in commerce, as the terms "article of wearing apparel," "fabric" and "commerce" are defined in the Flammable Fabrics Act.

Among the articles of wearing apparel mentioned above were dresses.

PAR. 4. The acts and practices of respondents herein alleged were and are in violation of the Flammable Fabrics Act and the Rules and Regulations promulgated thereunder and as such constitute unfair

and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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 Flammable Fabrics 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 to issue herein, 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 such 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 Sue Brett, Inc., is a corporation duly organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Jack Baker and Florence Baker are President and Secretary-Treasurer, respectively, of said corporation. The business address of all respondents is 1400 Broadway, New York, N.Y.

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

ORDER

It is ordered, That respondent Sue Brett, Inc., a corporation, and its officers, and respondents Jack Baker and Florence Baker, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

(1) (a) Importing into the United States; or

(b) Manufacturing for sale, selling, offering for sale, introducing, delivering for introduction, transporting or causing to be transported, in commerce, as "commerce" is defined in the Flammable Fabrics Act; or

(c) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce;

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

2. Manufacturing for sale, selling, or offering for sale any article of wearing apparel made of fabric, which fabric has been shipped or received in commerce, and which, under Section 4 of the Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

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

WALTHAM WATCH COMPANY ET AL.

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

Docket 7997. Complaint, June 24, 1960—Decision, June 15, 1962

Order requiring a Chicago importer of clocks from West Germany—actually a successor by a "spin-off" in reorganization of the original Waltham Watch Company of Massachusetts to certain rights to use the "Waltham" trade name—and the sole distributor of the clocks, to cease using the word "Waltham" without clear notice that their products were not manufactured by the well-known Waltham Watch Co. of Waltham, Mass. (presently in business under another name); and requiring said distributor to cease making numerous false claims in connection with its franchise distributor plan whereby it sold "Waltham" clocks, together with display cases, to operators for resale to the public, including claims of exaggerated profits and misrepresentations of refund and return policies and guarantees, as in the order below more specifically 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 Waltham Watch Company, a corporation, and Harry Aronson and Lawrence Aronson, individually and as officers of said corporation, and David Singer, an individual, trading as Time Industries, and Muriel Singer, indi-

* As amended July 10, 1961.