IN THE MATTER OF

ARCHIE COMIC PUBLICATIONS, INC., ET AL.

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

Docket C-176. Complaint, July 18, 1962—Decision, July 18, 1962

Consent order requiring three New York City publishers of comic books—including "Archie", "Jughead", "Pep", "Betty and Veronica", "Katy Keene", "Laugh", "The Fly", and "Katy Keene Pinup"—and their common officers, to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act by paying promotional allowances to certain retail customers—some of whom operated chain retail outlets in railroad, airport, and bus terminals, and outlets in hotels and office buildings, and others of whom furnished services in connection with the handling of respondents' publications such as taking purchase orders and distributing, billing, and collecting—while not making such payments available on proportionally equal terms to their competitors, including drug chains, grocery chains, and other newsstands.

COMPLAINT

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

PARAGRAPH 1. Respondent Archie Comic Publications, Inc., is a corporation organized and doing business under the laws of the State of New York with its office and principal place of business located at 241 Church Street, New York, N.Y. Said respondent, among other things, has been engaged and is presently engaged in the business of publishing and distributing various publications including comic books under copyrighted titles including "Archie", "Jughead", and "Pep". Said respondent's total sales of publications during the calendar year 1960 exceeded one million dollars.

PAR. 2. Respondent Close Up, Inc., is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 241 Church Street, New York, N.Y. Said respondent, among other things, has been engaged and is presently engaged in the business of publishing and distributing various publications including comic books under copy-

righted titles including "Betty and Veronica", "Katy Keene", and "Laugh".

PAR. 3. Respondent Radio Comics, Inc., is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 241 Church Street, New York, N.Y. Said respondent, among other things, has been engaged and is presently engaged in the business of publishing and distributing various publications including comic books under copyrighted titles including "The Fly" and "Katy Keene Pinup".

Said respondents operate and do business jointly under the trade name and style of Harvey Comic Group.

PAR. 4. Respondents Louis H. Silberkleit, John L. Goldwater and Maurice Coyne, all individuals, are president, vice president and secretary-treasurer, respectively, of each of the above-named corporations. They formulate, direct and control the acts and practices of said corporate respondents and their addresses are each the same as that of the corporate respondents.

PAR. 5. Publications published by the corporate respondents named herein are distributed by said respondents to customers through their national distributor, Publishers Distributing Corporation, hereinafter referred to as PDC.

PDC has acted and is now acting as national distributor for the publications of several independent publishers including said corporate respondents. PDC, as national distributor of publications published by said respondents and other independent publishers, has performed and is now performing various services for these publishers. Among the services performed and still being performed by PDC for the benefit of these publishers are the taking of purchase orders and the distributing, billing and collecting for such publications from customers. PDC has also negotiated promotional arrangements with the retail customers of publishers it represents, on behalf of and with the knowledge and approval of said publishers, including respondent publishers.

In its capacity as national distributor for said corporate respondents, in dealing with the customers of said respondents, PDC served and is now serving as a conduit or intermediary for the sale, distribution and promotion of publications published by said respondents.

PAR. 6. The corporate respondents named herein, through their conduit or intermediary, PDC, have sold and distributed and now sell and distribute their publications in substantial quantities in commerce, as "commerce" is defined in the Clayton Act, as amended, to

competing customers located through various States of the United States and in the District of Columbia.

PAR. 7. In the course and conduct of their business in commerce, the corporate respondents named herein have paid or contracted for the payment of something of value to or for the benefit of some of their customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale, or offering for sale of publications sold to them by said respondents. Such payments or allowances were not made available on proportionally equal terms to all other customers of said respondents competing in the distribution of said publications.

PAR. 8. As an example of the practices alleged herein, respondents have made payments or allowances to certain retail customers who operate chain retail outlets in railroad, airport and bus terminals, as well as outlets located in hotels and office buildings. Such payments or allowances were not offered or otherwise made available on proportionally equal terms to all other customers (including drug chains, grocery chains and other newsstands) competing with the favored customers in the sale and distribution of the publications of respondent publishers. Among the favored customers receiving payments in 1960 which were not offered to other competing customers in connection with the purchase and sale of respondent's publications were:

ARCHIE COMIC PUBLICATIONS, INC.

Customer:	*Approximate Amount Received*
Union News Co., New York, N.Y.	$581.19
Garfield News Co., New York, N.Y.	621.00
ABC Vending Corp., Long Island City, N.Y.	582.00
Greyhound Post Houses, Forest Park, Ill.	2,484.00

CLOSE UP, INC.

Greyhound Post Houses, Forest Park, Ill.	429.00
Fred Harvey, Chicago, Ill.	[1] 178.00
Barkalow Bros., Omaha, Nebr.	[1] 40.00

RADIO COMICS, INC.

Greyhound Post Houses, Forest Park, Ill.	275.00
ABC Vending Corp., Long Island City, N.Y.	55.00

Respondents made said payments to their favored customers on the basis of individual negotiations. Among said favored customers such payments were not made on proportionally equal terms.

[1] Received in 1961.

PAR. 9. The acts and practices of said respondents as alleged above are in violation of the provisions of subsection (d) of Section 2 of the Clayton Act, as amended.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of subsection (d) of Section 2 of the Clayton Act, as amended, 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, Archie Comic Publications, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 241 Church Street, in the city of New York, State of New York.

Respondent, Close Up, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 241 Church Street, in the city of New York, State of New York.

Respondent, Radio Comics, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 241 Church Street, in the city of New York, State of New York.

Respondents, Louis H. Silberkleit, John L. Goldwater and Maurice Coyne are officers of said corporations, and their address is the same as that of said corporations.

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

ORDER

It is ordered, That respondents Archie Comic Publications, Inc., Close Up, Inc., Radio Comics, Inc., all corporations, their respective officers, and Louis H. Silberkleit, John L. Goldwater and Maurice Coyne, individually and as officers of said corporations, and respondents' employees, agents and representatives, directly or through any corporate or other device, in connection with the distribution, sale or offering for sale of publications including comic books in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from:

> Paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any customer as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, offering for sale, sale or distribution of publications including comic books published, sold or offered for sale by respondents, unless such payment or consideration is affirmatively offered and otherwise made available on proportionally equal terms to all of their customers competing with such favored customer in the distribution of such publications including comic books.

The word "customer" as used above shall be deemed to mean anyone who purchases from a respondent, acting either as principal or agent, or from a distributor or wholesaler where such transaction with such purchaser is essentially a sale by such respondent, acting either as principal or agent.

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

BY-LINE PUBLICATIONS, INC., ET AL.

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

Docket C-177. Complaint, July 18, 1962—Decision, July 18, 1962

Consent order requiring the New York City publishers of "Confidential" and "Whisper" magazines to cease discriminating in price in violation of Sec.

2(d) of the Clayton Act by paying promotional allowances to certain retail customers—some of whom operated chain retail outlets in railroad, airport, and bus terminals, and outlets in hotels and office buildings, and others of whom furnished services in connection with the handling of respondents' publications such as taking purchase orders and distributing, billing, and collecting—while not making such payments available on proportionally equal terms to their competitors, including drug chains, grocery chains, and other newsstands.

COMPLAINT

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

PARAGRAPH 1. Respondent By-Line Publications, Inc., is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 152 West 42nd Street, New York, N.Y. Said respondent, among other things, has been engaged and is presently engaged in the business of publishing and distributing various publications including magazines under copyrighted titles including "Confidential" and "Whisper". Respondent's sales of publications during the calendar year 1960 exceeded seven hundred fifty thousand dollars.

PAR. 2. Respondent Hy Steirman, an individual, is the president of respondent By-Line Publications, Inc. Respondent Hy Steirman formulates, controls and directs the acts, practices and policies of respondent By-Line Publications, Inc., and his address is the same as that of said corporation.

PAR. 3. Publications published by respondent By-Line Publications, Inc., are distributed by said respondent to customers through its national distributor, Publishers Distributing Corporation, hereinafter referred to as PDC.

PDC has acted and is now acting as national distributor for the publications of several independent publishers, including respondent publisher. PDC, as national distributor of publications published by respondent and other independent publishers, has performed and is now performing various services for these publishers. Among the services performed and still being performed by PDC for the benefit of these publishers are the taking of purchase orders and the distributing, billing and collecting for such publications from customers.

PDC has also negotiated promotional arrangements with the retail customers of the publishers it represents, on behalf of and with the knowledge and approval of said publishers, including respondent publisher.

PAR. 4. Respondent By-Line Publications, Inc., through its conduit or intermediary, PDC, has sold and distributed and now sells and distributes its publications in substantial quantitites in commerce, as "commerce" is defined in the Clayton Act, as amended, to competing customers located throughout various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of its business in commerce, respondent By-Line Publications, Inc., has paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale, or offering for sale of publications sold to them by respondent. Such payments or allowances were not made available on proportionally equal terms to all other customers of respondent competing in the distribution of such publications.

PAR. 6. As an example of the practices alleged herein, respondent By-Line Publications, Inc., has made payments or allowances to certain retail customers who operate chain retail outlets in railroad, airport and bus terminals, as well as outlets located in hotels and office buildings. Such payments or allowances were not offered or otherwise made available on proportionally equal terms to all other customers (including drug chains, grocery chains and other newsstands) competing with the favored customers in the sale and distribution of the publications of respondent publisher. Among the favored customers receiving payments in 1960 which were not offered to other competing customers in connection with the purchase and sale of respondent's publications were:

Customer:	*Approximate Amount Received*
Union News Co., New York, N.Y.	$8,103.20
Greyhound Post Houses, Forest Park, Ill.	2,187.12
ABC Vending Corp., Long Island City, N.Y.	483.96
Barkalow Bros., Omaha, Nebr.	755.92
Fred Harvey, Chicago, Ill.	535.50

Respondent made said payments to its favored customers on the basis of individual negotiations. Among said favored customers such payments were not made on proportionally equal terms.

PAR. 7. The acts and practices of respondents as alleged above are in violation of the provisions of subsection (d) of Section 2 of the Clayton Act, as amended.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of subsection (d) of Section 2 of the Clayton Act, as amended, 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 By-Line Publications, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 152 West 42nd Street, in the city of New York, State of New York.

Respondent Hy Steirman is an officer of said corporation, and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents By-Line Publications, Inc., a corporation, its officers, and Hy Steirman, individually and as an officer of said corporation, and respondents' employees, agents and representatives, directly or through any corporate or other device, in connection with the distribution, sale or offering for sale of publications including magazines in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from:

Paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any customer as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, offering for sale, sale or distribution of publications including magazines published, sold or offered for sale by respondents, unless such payment or consideration is affirmatively offered and otherwise made available on proportionally equal terms to all of their other customers competing with such favored customer in the distribution of such publications including magazines.

The word "customer" as used above shall be deemed to mean anyone who purchases from a respondent, acting either as principal or agent, or from a distributor or wholesaler where such transaction with such purchaser is essentially a sale by such respondent, acting either as principal or agent.

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

STANLEY PUBLICATIONS, INC., ET AL.

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

Docket C-178. Complaint, July 18, 1962—Decision, July 18, 1962

Consent order requiring the New York City publishers of "All-Man", "Fresh and Salt Water Fishing", "Guns and Games", "Real Men", "Man's Adventure", "Picture Spotlight", "Popular Screen", "Popular TV", "Battle Cry", and "Conflict" magazines, to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act by paying promotional allowances to certain retail customers—some of whom operated chain retail outlets in railroad, airport, and bus terminals, and outlets in hotels and office buildings, and others of whom furnished services in connection with the handling of respondents' publications such as taking purchase orders and distributing, billing, and collecting—while not making such payments available on proportionally equal terms to their competitors, including drug chains, grocery chains, and other newsstands.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, have violated and are now vio-

lating the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Stanley Publications, Inc., is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 261 Fifth Avenue, New York, N.Y. Said respondent, among other things, has been engaged and is presently engaged in the business of publishing and distributing various publications including magazines under copyrighted titles including "All-Man", "Fresh and Salt Water Fishing", "Guns and Games", "Real Men", "Man's Adventure", "Picture Spotlight", "Popular Screen", "Popular TV", "Battle Cry", and "Conflict". Said respondent's sales of publications during the calendar year 1960 exceeded nine hundred thousand dollars.

PAR. 2. Respondents Stanley P. Morse and Michael Morse, both individuals, are president and secretary, respectively, of Stanley Publications, Inc. They formulate, direct and control the acts and practices of said corporate respondent and their address is the same as that of the corporate respondent.

PAR. 3. Publications published by respondent Stanley Publications, Inc., are distributed by said respondent to customers through its national distributors, Publishers Distributing Corporation, hereinafter referred to as PDC, and Kable News Company, hereinafter referred to as Kable.

PDC and Kable have acted and are now acting as national distributors for the publications of several independent publishers, including said respondent publisher. PDC and Kable, as national distributors of publications published by respondent and other independent publishers, have performed and are now performing various services for these publishers. Among the services performed and still being performed by PDC and Kable for the benefit of these publishers are the taking of purchase orders and the distributing, billing and collecting for such publications from customers. PDC and Kable also had participated in the negotiation of various promotional arrangements with the retail customers of said publishers, including said respondent.

In their capacity as national distributors for respondent, Stanley Publications, Inc., in dealing with the customers of said respondent, PDC and Kable served and are now serving as conduits or intermediaries for the sale, distribution and promotion of publications published by said respondent.

PAR. 4. Respondent, Stanley Publications, Inc., through its conduits or intermediaries, PDC and Kable, has sold and distributed and now sells and distributes its publications in substantial quantities in commerce, as "commerce" is defined in the Clayton Act, as amended, to competing customers located throughout various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of its business in commerce, respondent, Stanley Publications, Inc., has paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale, or offering for sale of publications sold to them by said respondent. Such payments or allowances were not made available on proportionally equal terms to all other customers of said respondent competing in the distribution of such publications.

PAR. 6. As an example of the practices alleged herein, respondent, Stanley Publications, Inc., has made payments or allowances to certain retail customers who operate chain retail outlets in railroad, airport and bus terminals, as well as outlets located in hotels and office buildings. Such payments or allowances were not offered or otherwise made available on proportionally equal terms to all other customers (including drug chains, grocery chains and other newsstands) competing with the favored customers in the sale and distribution of the publications of said respondent publisher. Among the favored customers receiving payments in 1960, which were not offered to other competing customers in connection with the purchase and sale of said respondent's publications were:

Customers:	*Approximate Amount Received*
Union News Co., New York, N.Y.	$2,054.00
Greyhound Post Houses, Forest Park, Ill.	516.20
ABC Vending Corp., Long Island City, N.Y.	85.49

Respondent made said payments to its favored customers on the basis of individual negotiations. Among said favored customers such payments were not made on proportionally equal terms.

PAR. 7. The acts and practices of respondents as alleged above are in violation of the provisions of subsection (d) of Section 2 of the Clayton Act, as amended.

DECISION AND ORDER

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

subsection (d) of Section 2 of the Clayton Act, as amended, 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 Stanley Publications, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 261 Fifth Avenue, in the city of New York, State of New York.

Respondents Stanley P. Morse and Michael Morse 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.

ORDER

It is ordered, That the respondents Stanley Publications, Inc., a corporation, its officers, and Stanley P. Morse and Michael Morse, individually and as officers of Stanley Publications, Inc., and respondents' employees, agents and representatives, directly or through any corporate or other device, in connection with the distribution, sale or offering for sale of publications including magazines in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from:

Paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any customer as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, offering for sale, sale or distribution of publications including magazines published, sold or offered for sale by respondents,

unless such payment or consideration is affirmatively offered and otherwise made available on proportionally equal terms to all of their other customers competing with such favored customers in the distribution of such publications including magazines.

The word "customer" as used above shall be deemed to mean anyone who purchases from a respondent, acting either as principal or agent, or from a distributor or wholesaler where such transaction with such purchaser is essentially a sale by such respondent, acting either as principal or agent.

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

PETERSEN PUBLISHING COMPANY ET AL.

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

Docket C-179. Complaint, July 18, 1962—Decision, July 18, 1962

Consent order requiring Los Angeles publishers of magazines and paperback books—including "Motor Trend", "Hot Rod", "Car Craft", "Guns and Ammo", "Pro-Football", "Custom Cars", "Model Railroad", "Sport Car Specials", "Motor Life", and "'Teen"—to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act by paying promotional allowances to certain retail customers—some of whom operated chain retail outlets in railroad, airport, and bus terminals, and outlets in hotels and office buildings, and others of whom furnished services in connection with the handling of respondents' publications such as taking purchase orders and distributing, billing, and collecting—while not making such payments available on proportionally equal terms to their competitors, including drug chains, grocery chains, and other newsstands.

COMPLAINT

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

PARAGRAPH 1. Respondent Petersen Publishing Company is a corporation organized and doing business under the laws of the State of California, with its office and principal place of business located at 5959 Hollywood Boulevard, Los Angeles, Calif. Said respondent, among other things, has been engaged and is presently engaged in the business of publishing and distributing various publications including magazines and paperback books under copyrighted titles including "Motor Trend", "Hot Rod", "Car Craft" and "Guns and Ammo".

PAR. 2. Respondent Trend Books, Inc., a corporation organized and doing business under the laws of the State of California, having its office and principal place of business located at 5959 Hollywood Boulevard, Los Angeles, California, is a subsidiary of respondent Petersen Publishing Company. Respondent Trend Books, Inc., among other things, has been engaged and is presently engaged in the business of publishing and distributing various publications including magazines and paperback books under copyrighted titles including "Pro-Football", "Custom Cars", "Model Railroad" and "Sport Car Specials".

PAR. 3. Respondent Quinn Publications, Inc., a corporation organized and doing business under the laws of the State of California, having its office and principal place of business located at 5959 Hollywood Boulevard, Los Angeles, Calif., is a subsidiary of respondent Petersen Publishing Company. Respondent Quinn Publications, Inc., among other things, has been engaged and is presently engaged in the business of publishing and distributing various publications including magazines under copyrighted titles including "Motor Life".

PAR. 4. Respondent 'Teen Publications, Inc., a corporation organized and doing business under the laws of the State of California, having its office and principal place of business located at 5959 Hollywood Boulevard, Los Angeles, Calif., is a subsidiary of respondent Petersen Publishing Company. Respondent 'Teen Publications, Inc., among other things, has been engaged and is presently engaged in the business of publishing and distributing various publications including magazines under copyrighted titles including " 'Teen".

PAR. 5. Respondent Robert E. Petersen, an individual, is the president of each of the corporations named as respondents herein. He formulates, directs and controls the acts and practices of each of said respondent corporations, and his address is the same as that of each of the respondent corporations.

PAR. 6. Publications including magazines and paperback books published by each of the corporations named as respondents herein are sold and distributed by said respondents to customers through their na-

tional distributor, Independent News Company, Inc., hereinafter referred to as Independent News.

Independent News has acted and is now acting as national distributor for the publications of several independent publishers, including each of the corporations named as respondents herein. Independent News, as national distributor of publications published by said respondents and other independent publishers, has performed and is now performing various services for these publishers. Among the services performed and still being performed by Independent News for the benefit of these publishers are the taking of purchase orders and the distributing, billing and collecting for such publications from customers. Independent News also had participated in the negotiation of various promotional arrangements with the retail customers of said publishers, including said respondents.

In its capacity as national distributor for each of the corporations named as respondents herein, Independent News has served and is now serving as a conduit or intermediary for the sale, distribution and promotion of publications by said respondents.

PAR. 7. Respondents Petersen Publishing Company, Trend Books, Inc., Quinn Publications, Inc., and 'Teen Publications, Inc., through their conduit or intermediary, Independent News, have sold and distributed and now sell and distribute their publications in substantial quantities in commerce, as "commerce" is defined in the Clayton Act, as amended, to competing customers located throughout various States of the United States and in the District of Columbia. Total sales of publications of the corporations named as respondents herein for the calendar year 1960 exceeded five million dollars.

PAR. 8. In the course and conduct of their business in commerce, respondents Petersen Publishing Company, Trend Books, Inc., Quinn Publications, Inc., and 'Teen Publications, Inc. have paid or contracted for the payment of something of value to or for the benefit of some of their customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale, or offering for sale of publications including magazines and paperback books sold to them by said respondents. Such payments or allowances were not made available on proportionally equal terms to all other customers of said respondents competing in the distribution of such publications.

PAR. 9. As an example of the practices alleged herein, respondents Petersen Publishing Company, Trend Books, Inc., Quinn Publications, Inc., and 'Teen Publications, Inc. have made payments or allow-

ances to certain retail customers who operate chain retail outlets in railroad, airport and bus terminals, as well as outlets located in hotels and office buildings. Such payments or allowances were not offered or otherwise made available on proportionally equal terms to all other customers (including drug chains, grocery chains, and other newsstands) competing with the favored customers in the sale and distribution of the publications of said respondents. Among the favored customers receiving payments in 1960, and during the first six months of 1961, which were not offered to other competing customers in connection with the purchase and sale of publications from said respondent were:

	Approximate Amount Received	
PETERSEN PUBLISHING COMPANY		
Customer:	*1960*	*1961 (Jan.–June)*
Greyhound Post Houses, Forest Park, Ill	$1,112.91	$1,839.46
ABC Vending Corp., Long Island City, N.Y	147.68	121.69
Fred Harvey, Chicago, Ill	866.06	489.27
Union News Co., New York, N.Y	13,434.40	7,488.51
TREND BOOKS, INC.		
Interstate Hosts, Los Angeles, Calif	11.62	0
Fred Harvey, Chicago, Ill	214.93	76.53
QUINN PUBLICATIONS, INC.		
Greyhound Post Houses, Forest Park, Ill	594.15	494.75
Fred Harvey, Chicago, Ill	186.60	95.50
Garfield News, New York, N.Y	262.12	88.62
Union News Co., New York, N.Y	3,837.91	1,756.05
'TEEN PUBLICATIONS, INC.		
Greyhound Post Houses, Forest Park, Ill	814.38	874.64
Garfield News, New York, N.Y	430.28	170.96
Fred Harvey, Chicago, Ill	223.36	138.76
Union News Co., New York, N.Y	2,676.55	1,637.60

Said respondents made said payments to their favored customers on the basis of individual negotiations. Among said favored customers such payments were not made on proportionally equal terms.

PAR. 10. The acts and practices of respondents as alleged above are in violation of the provisions of subsection (d) of Section 2 of the Clayton Act, as amended.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of subsection (d) of Section 2 of the Clayton Act, as amended, 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, Petersen Publishing Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 5959 Hollywood Boulevard, in the city of Los Angeles, State of California.

Respondent, Trend Books, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 5959 Hollywood Boulevard, in the city of Los Angeles, State of California.

Respondent, Quinn Publications, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 5959 Hollywood Boulevard, in the city of Los Angeles, State of California.

Respondent, 'Teen Publications, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 5959 Hollywood Boulevard, in the city of Los Angeles, State of California.

Respondent, Robert E. Petersen, is an officer of each of said corporations, and his address is the same as that of said corporations.

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

ORDER

It is ordered, That respondents Petersen Publishing Company, Trend Books, Inc., Quinn Publications, Inc., and 'Teen Publications,

Inc., all corporations, their respective officers, and Robert E. Petersen, individually and as an officer of said corporations, and respondents' employees, agents and representatives, directly or through any corporate or other device, in connection with the distribution, sale or offering for sale of publications including magazines and paperback books in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from:

Paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any customer as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, offering for sale, sale or distribution of publications including magazines and paperback books published, sold or offered for sale by respondents, unless such payment or consideration is affirmatively offered and otherwise made available on proportionally equal terms to all of their other customers competing with such favored customer in the distribution of such publications including magazines and paperback books.

The word "customer" as used above shall be deemed to mean anyone who purchases from a respondent, acting either as principal or agent, or from a distributor or wholesaler where such transaction with such purchaser is essentially a sale by such respondent, acting either as principal or agent.

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

E. C. PUBLICATIONS, INC.

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

Docket C-180. Complaint, July 18, 1962—Decision, July 18, 1962

Consent order requiring a New York City publisher of magazines and comic books—including "Mad", "Worst From Mad", and "More Trash From Mad"—to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act by paying promotional allowances to certain retail customers—some of whom operated chain retail outlets in railroad, airport, and bus terminals, and outlets in hotels and office buildings, and others of whom furnished services

in connection with the handling of respondent's publications such as taking purchase orders and distributing, billing, and collecting—while not making such payments available on proportionally equal terms to their competitors, including drug chains, grocery chains, and other newsstands.

COMPLAINT

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

PARAGRAPH 1. Respondent E. C. Publications, Inc., is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 850 Third Avenue, New York, N.Y. Said respondent, among other things, has been engaged and is presently engaged in the business of publishing and distributing various publications including magazines and comic books under copyrighted titles including "Mad", "Worst From Mad", and "More Trash From Mad". Respondent's sales of publications during the calendar year 1960 exceeded two million dollars.

PAR. 2. Publications published by respondent are distributed by respondent to customers through its national distributor, Independent News Co., hereinafter referred to as Independent News.

Independent News has acted and is now acting as national distributor for the publications of several independent publishers, including respondent publisher. Independent News, as national distributor of publications published by respondent and other independent publishers, has performed and is now performing various services for these publishers. Among the services performed and still being performed by Independent News for the benefit of these publishers are the taking of purchase orders and the distributing, billing and collecting for such publications from customers. Independent News also had participated in the negotiation of various promotional arrangements with the retail customers of said publishers, including said respondent.

In its capacity as national distributor for respondent in dealing with the customers of respondent, Independent News served and is now serving as a conduit or intermediary for the sale, distribution and promotion of publications published by respondent. The "Mad" series of publications are the most popular and widely circulated publications of their type in the United States and are distributed throughout

various States by Independent News through local distributors to retail outlets.

PAR. 3. Respondent, through its conduit or intermediary, Independent News, has sold and distributed and now sells and distributes its publications in substantial quantities in commerce, as "commerce" is defined in the Clayton Act, as amended, to competing customers located throughout various States of the United States and in the District of Columbia.

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

PAR. 5. As an example of the practices alleged herein, respondent has made payments or allowances to certain retail customers who operate chain retail outlets in railroad, airport and bus terminals, as well as outlets located in hotels and office buildings. Such payments or allowances were not offered or otherwise made available on proportionally equal terms to all other customers (including drug chains, grocery chains and other newsstands) competing with the favored customers in the sale and distribution of the publications of respondent publisher. Among the favored customers receiving payments in 1960, and during the first six months of 1961, which were not offered to other competing customers in connection with the purchase and sale of respondent's publications were:

	Approximate Amount Received	
Customer:	*1960*	*1961 (Jan.–June)*
Greyhound Post Houses, Forest Park, Ill	$4,027.00	$3,541.05
Interstate Hosts, Los Angeles, Calif	260.31	431.32
Union News Co., New York City, N.Y	12,057.16	10,851.28

Respondent made said payments to its favored customers on the basis of individual negotiations. Among said favored customers such payments were not made on proportionally equal terms.

PAR. 6. The acts and practices of respondent as alleged above are in violation of the provisions of subsection (d) of Section 2 of the Clayton Act, as amended.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of subsection (d) 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, E. C. Publications, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 850 Third Avenue, in the city of New York, State of New York.

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

ORDER

It is ordered, That respondent E. C. Publications, Inc., a corporation, its officers, employees, agents and representatives, directly or through any corporate or other device, in connection with the distribution, sale or offering for sale of publications including magazines and comic books in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from:

> Paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any customer as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, offering for sale, sale or distribution of publications including magazines and comic books published, sold or offered for sale by respondent, unless such payment or consideration is affirmatively offered and otherwise made available on proportionally

equal terms to all of its other customers competing with such favored customer in the distribution of such publications including magazines and comic books.

The word "customer" as used above shall be deemed to mean anyone who purchases from E. C. Publications, Inc., acting either as principal or agent, or from a distributor or wholesaler where such transaction with such purchaser is essentially a sale by such respondent, acting either as principal or agent.

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

PUBLICATION MANAGEMENT CORPORATION ET AL.

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

Docket C-181. Complaint, July 18, 1962—Decision, July 18, 1962

Consent order requiring the New York City publishers of magazines including "Tempo", "TV Girls and Gags", "Man's Point of View", "Bold", and "Chicks and Chuckles", to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act by paying promotional allowances to certain retail customers—some of whom operated chain retail outlets in railroad, airport, and bus terminals, and outlets in hotels and office buildings, and others of whom furnished services in connection with the handling of respondents' publications such as taking purchase orders and distributing, billing, and collecting—while not making such payments available on proportionally equal terms to their competitors, including drug chains, grocery chains, and other newsstands.

COMPLAINT

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

PARAGRAPH 1. Respondent Publication Management Corporation is a corporation organized and doing business under the laws of the State

of New York, with its office and principal place of business located at 11 East 17th Street, New York, N.Y. Said respondent, among other things, has been engaged and is presently engaged in the business of publishing and distributing various publications including magazines under copyrighted titles including "Tempo", "TV Girls and Gags", "Man's Point of View", "Bold", and "Chicks and Chuckles". Respondent's sales of publications during the calendar year 1960 exceeded one hundred ninety thousand dollars.

PAR. 2. Respondents Jules J. Warshaw and Arthur Warshaw are the president and secretary, respectively, of Publication Management Corporation. They formulate, direct and control the acts and practices of said corporate respondent, and their address is the same as that of the corporate respondent.

PAR. 3. Publications published by respondent Publication Management Corporation are distributed to customers through its national distributor, Kable News Company, hereinafter referred to as Kable.

Kable has acted and is now acting as national distributor for the publications of several independent publishers, including said respondent Publication Management Corporation. Kable, as national distributor of publications published by said respondent and other independent publishers, has performed and is now performing various services for these publishers. Among the services performed and still being performed by Kable for the benefit of these publishers are the taking of purchase orders and the distributing, billing and collecting for such publications from customers. Kable also had participated in the negotiation of various promotional arrangements with the retail customers of said publishers, including said respondent.

In its capacity as national distributor for respondent Publication Management Corporation in dealing with the customers of said respondent, Kable served and is now serving as a conduit or intermediary for the sale, distribution and promotion of publications published by said respondent.

PAR. 4. Repondent, Publication Management Corporation, through its conduit or intermediary, Kable, has sold and distributed and now sells and distributes its publications in substantial quantities in commerce, as "commerce" is defined in the Clayton Act, as amended, to competing customers located throughout various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of its business in commerce, respondent Publication Management Corporation has paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or

facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale, or offering for sale of publications sold to them by said respondent. Such payments or allowances were not made available on proportionally equal terms to all other customers of said respondent competing in the distribution of such publications.

PAR. 6. As an example of the practices alleged herein, respondent Publication Management Corporation has made payments or allowances to certain retail customers who operate chain retail outlets in railroad, airport and bus terminals, as well as outlets located in hotels and office buildings. Such payments or allowances were not offered or otherwise made available on proportionally equal terms to all other customers (including drug chains, grocery chains and other newsstands) competing with the favored customers in the sale and distribution of the publication of said respondent publisher. Among the favored customers receiving payments in 1960, and during the first six months of 1961, which were not offered to other competing customers in connection with the purchase and sale of said respondent's publications were:

	Approximate Amount Received	
Customers:	*1960*	*1961 (Jan.–June)*
Greyhound Post Houses, Forest Park, Ill	$190.68	$95.34
Interstate Hosts, Los Angeles, Calif	63.60	31.80
ABC Vending Corp., Long Island City, N.Y	162.01	92.72
Union News Co., New York City, N.Y	4,525.96	817.66

Respondent made said payments to its favored customers on the basis of individual negotiations. Among said favored customers such payments were not made on proportionally equal terms.

PAR. 7. The acts and practices of said respondents as alleged above are in violation of the provisions of subsection (d) of Section 2 of the Clayton Act, as amended.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of subsection (d) of Section 2 of the Clayton Act, as amended, 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 com-

plaint 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, Publication Management Corporation, 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 11 East 17th Street, in the city of New York, State of New York.

Respondents Jules J. Warshaw and Arthur Warshaw 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.

ORDER

It is ordered, That respondents Publication Management Corporation, a corporation, its officers and Jules J. Warshaw and Arthur Warshaw, individually and as officers of Publication Management Corporation, and respondents' employees, agents and representatives, directly or through any corporate or other device, in connection with the distribution, sale or offering for sale of publications including magazines in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from:

> Paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any customer as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, offering for sale, sale or distribution of publications including magazines published, sold or offered for sale by respondents, unless such payment or consideration is affirmatively offered and otherwise made available on proportionally equal terms to all of their other customers competing with such favored customer in the distribution of such publications including magazines.

The word "customer" as used above shall be deemed to mean anyone who purchases from a respondent, acting either as principal or agent, or from a distributor or wholesaler where such transaction with

such purchaser is essentially a sale by such respondent, acting either as principal or agent.

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

HARVEY PUBLICATIONS, INC., ET AL.

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

Docket C-182. Complaint, July 28, 1962—Decision, July 18, 1962

Consent order requiring the five New York City corporations with the same address and officers, publishers of comic books including (1) "Blondie", "Dagwood", "Mutt & Jeff", "Sad Sack", "Dick Tracy", "Joe Palooka"; (2) "Harvey Hits", "Sad Sack and the Sarge", "Sad Sack's Funny Friends"; (3) "Hot Stuff", "Hot Stuff Sizzler"; (4) "Little Dot", "Richie Rich", "Mutt & Jeff Jokes"; and (5) "Little Lotta", "Playful Little Audrey", and "Wendy", to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act by paying promotional allowances to certain retail customers—some of whom operated chain retail outlets in railroad, airport, and bus terminals, and outlets in hotels and office buildings, and others of whom furnished services in connection with the handling of respondents' publications such as taking purchase orders and distributing, billing, and collecting—while not making such payments available on proportionally equal terms to their competitors, including drug chains, grocery chains, and other newsstands.

COMPLAINT

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

PARAGRAPH 1. Respondent Harvey Publications, Inc., is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 1860 Broadway, New York, New York. Said respondent, among other things, has been engaged and is presently engaged in the business of publishing and distributing various publications including comic books

under copyrighted titles including "Blondie", "Dagwood", "Mutt & Jeff", "Sad Sack", "Dick Tracy", and "Joe Palooka".

PAR. 2. Respondent Harvey Hits, Inc., is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 1860 Broadway, New York, N.Y. Said respondent, among other things, has been engaged and is presently engaged in the business of publishing and distributing various publications including comic books under copyrighted titles including "Harvey Hits", "Sad Sack and the Sarge", and "Sad Sack's Funny Friends".

PAR. 3. Respondent Illustrated Humor, Inc., is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 1860 Broadway, New York, N.Y. Said respondent, among other things, has been engaged and is presently engaged in the business of publishing and distributing various publications including comic books under copyrighted titles including "Hot Stuff" and "Hot Stuff Sizzler".

PAR. 4. Respondent Harvey Enterprises, Inc., is a corporation organized and doing business under the laws of the State of New York, having its office and principal place of business located at 1860 Broadway, New York, N.Y. Said respondent, among other things, has been engaged and is presently engaged in the business of publishing and distributing various publications including comic books under copyrighted titles including "Little Dot", "Richie Rich" and "Mutt & Jeff Jokes".

PAR. 5. Respondent Harvey Picture Magazines, Inc., is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 1860 Broadway, New York, N.Y. Said respondent, among other things, has been engaged and is presently engaged in the business of publishing and distributing various publications including comic books under copyrighted titles including "Little Lotta", "Playful Little Audrey" and "Wendy".

PAR. 6. Respondents Alfred Harvey, Leon Harvey and Robert Harvey are the sole officers of each of the corporations named as respondents above. They formulate, direct and control the acts and practices of each corporate respondent, and their address is the same as that of each corporate respondent named herein.

PAR. 7. Publications published by all corporations named as respondents herein are distributed by said respondents to customers through their national distributor, Publishers Distributing Corporation, hereinafter referred to as PDC.

PDC has acted and is now acting as national distributor for the publications of several independent publishers, including the corporations named as respondents herein. PDC, as national distributor of publications published by said respondents and other independent publishers, has performed and is now performing various services for these publishers. Among the services performed and still being performed by PDC for the benefit of these publishers are the taking of purchase orders and the distributing, billing and collecting for such publications from customers. PDC also has negotiated various promotional arrangements with the retail customers of such publishers, with the knowledge and approval of said publishers, including said respondents.

In its capacity as national distributor for said respondents, PDC served and is now serving as a conduit or intermediary for the sale, distribution and promotion of publications published by respondents.

PAR. 8. Respondents, through their conduit or intermediary, PDC, have sold and distributed and now sell and distribute their publications in substantial quantities in commerce, as "commerce" is defined in the Clayton Act, as amended, to competing customers located throughout various States of the United States and in the District of Columbia.

PAR. 9. In the course and conduct of their business in commerce, respondents have paid or contracted for the payment of something of value to or for the benefit of some of their customers as compensation or in consideration for services and facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale or offering for sale of publications sold to them by respondents. Such payments or allowances were not made available on proportionally equal terms to all other customers of respondents competing in the distribution of such publications.

PAR. 10. As an example of the practices alleged herein, respondents have made payments or allowances to certain retail customers who operate chain retail outlets in railroad, airport and bus terminals, as well as outlets located in hotels and office buildings. Such payments or allowances were not offered or otherwise made available on proportionally equal terms to all other customers (including drug chains, grocery chains and other newsstands) competing with the favored customers in the sale and distribution of the publications of respondents. Among the favored customers receiving payments in 1960 which were not offered to other competing customers in connection with the purchase and sale of respondents' publications were:

HARVEY PUBLICATIONS, INC.

Customer:	*Approximate Amount Received*
Greyhound Post Houses, Forest Park, Ill	$2,244.92
ABC Vending Corp., Long Island, N.Y	411.48
Barkalow Bros., Omaha, Nebr	117.54
Fred Harvey, Chicago, Ill	371.58

HARVEY HITS, INC.

Greyhound Post Houses	421.14
ABC Vending Corp	151.38

ILLUSTRATED HUMOR, INC.

Greyhound Post Houses	140.38
ABC Vending Corp	104.88

HARVEY ENTERPRISES, INC.

ABC Vending Corp	38.28

HARVEY PICTURE MAGAZINES, INC.

Greyhound Post Houses	421.08
ABC Vending Corp	39.96

Respondents made said payments to their favored customers on the basis of individual negotiations. Among said favored customers such payments were not made on proportionally equal terms.

PAR. 11. The acts and practices of respondents as alleged above are in violation of the provision of subsection (d) of Section 2 of the Clayton Act, as amended.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of subsection (d) of Section 2 of the Clayton Act, as amended, 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, Harvey Publications, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1860 Broadway, in the city of New York, State of New York.

Respondent Harvey Hits, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1860 Broadway, in the city of New York, State of New York.

Respondent Illustrated Humor, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1860 Broadway, in the city of New York, State of New York.

Respondent Harvey Enterprises, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1860 Broadway, in the city of New York, State of New York.

Respondent Harvey Picture Magazines, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1860 Broadway, in the city of New York, State of New York.

Respondents Alfred Harvey, Leon Harvey and Robert Harvey are officers of said corporations, and their address is the same as that of said corporations.

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

ORDER

It is ordered, That respondents Harvey Publications, Inc., Harvey Hits, Inc., Illustrated Humor, Inc., Harvey Enterprises, Inc., and Harvey Picture Magazines, Inc., all corporations, their respective officers, and Alfred Harvey, Leon Harvey and Robert Harvey, individually and as officers of said corporations, and respondents' employees, agents and representatives, directly or through any corporate or other device, in connection with the distribution, sale or offering for sale of publications including comic books in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from:

Paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any customer as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, offering for sale, sale or distribution of publications including comic books published, sold or offered for sale by respondents, unless such payment or consideration is affirmatively offered and otherwise made available on proportionally equal terms to all of their other customers competing with such favored customer in the distribution of such publications including comic books.

The word "customer" as used above shall be deemed to mean anyone who purchases from a respondent, acting either as principal or agent, or from a distributor or wholesaler where such transaction with such purchaser is essentially a sale by such respondent, acting either as principal or agent.

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

POPULAR PUBLICATIONS, INC.

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

Docket C-183. Complaint, July 18, 1962—Decision, July 18, 1962

Consent order requiring the New York City publisher of "Argosy" and "Railroad" magazines to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act by paying promotional allowances to certain retail customers—some of whom operated chain retail outlets in railroad, airport, and bus terminals, and outlets in hotels and office buildings, and others of whom furnished services in connection with the handling of respondent's publications such as taking purchase orders and distributing, billing, and collecting—while not making such payments available on proportionally equal terms to their competitors, including drug chains, grocery chains, and other newsstands.

COMPLAINT

The Federal Trade Commission having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsection (d) of Section 2 of the Clayton Act

(U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Popular Publications, Inc., is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 205 East 42nd Street, New York, N.Y. Said respondent, among other things, has been engaged and is presently engaged in the business of publishing and distributing various publications including magazines under copyrighted titles including "Argosy" and "Railroad". Respondent's sales of publications published by it during the calendar year 1960 exceeded one million seven hundred thousand dollars.

PAR. 2. Publications published by respondent are sold and distributed throughout various States and the District of Columbia by respondent through local wholesalers to retail outlets.

Each local wholesaler whose services are used by respondent has acted and is now acting as wholesaler for the publications of several independent publishers, including respondent publisher. These wholesalers, in dealing with the retailer customers of respondent, have served and are now serving as conduits or intermediaries for the sale, distribution and promotion of publications published by respondent. "Argosy" is one of the most popular and widely circulated magazines in the United States and is sold and distributed throughout various States by respondent through local wholesalers to retail customers.

PAR. 3. Respondent, through its conduits or intermediaries the local wholesalers, has sold and distributed and now sells and distributes its publications in substantial quantities in commerce, as "commerce" is defined in the Clayton Act, as amended, to competing customers located throughout various States of the United States and in the District of Columbia.

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

PAR. 5. As an example of the practices alleged herein, respondent has made payments or allowances to certain retail customers who operate chain retail outlets in railroad, airport and bus terminals, as well as outlets located in hotels and office buildings. Such payments or

allowances were not offered or otherwise made available on proportionally equal terms to all other customers (including drug chains, grocery chains and other newsstands) competing with the favored customers in the sale and distribution of the publications of respondent. Among the favored customers receiving payments in 1960, and during the first six months of 1961, which were not offered to other competing customers in connection with the purchase and sale of respondent's publications were:

Customer:	*Approximate Amount Received (Jan.–June) 1960–1961*
Airport Canteen Service, Chicago, Ill	$142.23
Fred Harvey, Chicago, Ill	1,145.03
Union News Company, New York, N.Y	6,901.56
Sky Chefs, New York, N.Y	442.02
ABC Vending Corp., Long Island City, N.Y	133.88
Greyhound Post Houses, Forest Park, Ill	1,327.00

Respondent made such payments to its favored customers on the basis of individual negotiations. Among said favored customers such payments were not made on proportionally equal terms.

PAR. 6. The acts and practices of respondent as alleged above are in violation of the provisions of subsection (d) of Section 2 of the Clayton Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of subsection (d) 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 sets 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 Popular Publications, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of

the State of New York, with its office and principal place of business located at 205 East 42nd Street, in the city of New York, State of New York.

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

ORDER

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

> Paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any customer as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, offering for sale, sale or distribution of publications including magazines, published, sold or offered for sale by respondent, unless such payment or consideration is affirmatively offered and otherwise made available on proportionally equal terms to all of its other customers competing with such favored customer in the distribution of such publications including magazines.

The word "customer" as used above shall be deemed to mean anyone who purchases from Popular Publications, Inc., acting either as principal or agent, or from a distributor or wholesaler where such transaction with such purchaser is essentially a sale by such respondent, acting either as principal or agent.

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

PUBLISHERS DISTRIBUTING CORPORATION

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

Docket C-184. Complaint, July 18, 1962—Decision, July 18, 1962

Consent order requiring a New York City corporation acting as national distributor of magazines, comic books, and paperback books for several independent

728-122—65——10

publishers, to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act by paying promotional allowances to certain retail customers—some of whom operated chain retail outlets in railroad, airport, and bus terminals, and outlets in hotels and office buildings, and others of whom furnished services in connection with the handling of respondent's publications such as taking purchase orders and distributing, billing, and collecting—while not making such payments available on proportionally equal terms to their competitors, including drug chains, grocery chains, and other newsstands.

COMPLAINT

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

PARAGRAPH 1. Respondent Publishers Distributing Corporation is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 1841 Broadway, New York, N.Y. Said respondent, among other things, has been engaged and is presently engaged in the business of selling and distributing various publications including magazines, comic books and paperback books under copyrighted titles. Respondent's total sales of publications during the calendar year 1961 exceeded seventeen million dollars.

Said respondent has acted and is now acting as national distributor for the publications of several independent publishers. As national distributor, respondent has performed and is now performing various services for the benefit of such publishers including the taking of purchase orders and the distributing, billing and collecting for such publications from customers. Respondent also has participated and now participates in the negotiations of various promotional and display arrangements with the retail customers of the publishers it represents.

While dealing with the customers of the publishers it represents in its capacity as national distributor, respondent has served and is now serving as a conduit or intermediary for the sale, distribution and promotion of publications published by said publishers.

PAR. 2. In its capacity as national distributor for publications of various independent publishers, respondent is in charge of the newsstand sales of all such publications. Respondent has distributed and now distributes such publications to retail outlets through local whole-

salers. These local wholesalers have served and are now serving as conduits or intermediaries for the sale, distribution and promotion of the publications for which respondent serves as national distributor.

Par. 3. Respondent has sold and distributed and now sells and distributes its publications in substantial quantities in commerce, as "commerce" is defined in the Clayton Act, as amended, to competing customers located throughout various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, respondent has paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with the handling, sale or offering for sale of publications including magazines, comic books and paperback books sold to them by respondent. Such payments or allowances were not made available on proportionally equal terms to all other customers of said respondent competing in the distribution of such publications.

PAR. 5. As an example of the practices alleged herein, respondent Publishers Distributing Corporation has made payments or allowances to certain retail customers who operate chain retail outlets in railroad, airport and bus terminals, as well as outlets located in hotels and office buildings. Such payments or allowances were not offered or otherwise made available on proportionally equal terms to all other customers (including drug chains, grocery chains and other newsstands) competing with the favored customers in the sale and distribution of the publications of said respondent. Among the favored customers receiving payments in 1960 which were not offered to other competing customers in connection with the purchase and sale of respondent's publications were:

Customer:	*Approximate Amount Received*
Greyhound Post Houses, Forest Park, Ill	$22,352.36
ABC Vending Corp., Long Island City, N.Y	2,408.87
Fred Harvey, Chicago, Ill	4,834.27
Barkalow Bros., Omaha, Nebr	1,824.28
Interstate Hosts, Los Angeles, Calif	1,306.77
Sky Chefs, New York, N.Y	481.18
Garfield News, New York, N.Y	918.40

Respondent made such payments to its favored customers on the basis of individual negotiations. Among such favored customers such payments were not made on proportionally equal terms.

PAR. 6. The acts and practices of respondent as alleged above are in violation of the provisions of subsection (d) of Section 2 of the Clayton Act, as amended.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of subsection (d) 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, Publishers Distributing Corporation, 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 1841 Broadway, in the city of New York, State of New York.

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

ORDER

It is ordered, That respondent Publishers Distributing Corporation, a corporation, its officers, employees, agents and representatives, directly or through any corporate or other device, in connection with the distribution, sale or offering for sale of publications including magazines, comic books and paperback books in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from:

Paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any customer as compensation or in consideration for any services or facilities fur-

nished by or through such customer in connection with the handling, offering for sale, sale or distribution of publications including magazines, comic books and paperback books, distributed, sold or offered for sale by respondent, unless such payment or consideration is affirmatively offered and otherwise made available on proportionally equal terms to all of its other customers competing with such favored customer in the distribution of such publications including magazines, comic books and paperback books.

The word "customer" as used above shall be deemed to mean anyone who purchases from Publishers Distributing Corporation, acting either as principal or agent, or from a distributor or wholesaler where such transaction with such purchaser is essentially a sale by such respondent, acting either as principal or agent.

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

ALPIN, INC., DOING BUSINESS AS CINCINNATI FOOD SERVICE & APPLIANCE COMPANY ET AL.

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

Docket C-185. Complaint, July 18, 1962—Decision, July 18, 1962

Consent order requiring Cincinnati sellers of freezers and food freezer plans to the public to cease using false pricing, savings, and guarantee claims and other misrepresentations in advertising, including radio and television broadcasts, to sell their freezers and freezer food plans, as in the order below more fully set out.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Alpin, Inc., a corporation trading and doing business as Cincinnati Food Service & Appliance Company, and Milton Pinsky and Daniel J. Allen, 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 Alpin, Inc., trading and doing business as Cincinnati Food Service & Appliance 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 3612 Montgomery Road in the city of Cincinnati, State of Ohio.

Respondents Milton Pinsky and Daniel J. Allen are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the act 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 freezers, food and food freezer plans to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, freezers and food, 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 maintain, and at all times mentioned herein have maintained, a substantial course of trade in said freezers and food in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and 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 freezers, food and food freezer plans.

PAR. 5. In the course and conduct of their business, respondents have disseminated, and caused the dissemination of, certain advertisements by the United States mails and by various means in commerce, including but not limited to radio and television broadcasts, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of food, as the term "food" is defined in the Federal Trade Commission Act, and have disseminated, and caused the dissemination of, advertisements by various means including those aforesaid, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of food in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. By means of advertisements disseminated, as aforesaid, and otherwise, respondents have represented, directly or by implication:

(a) That respondents' principal business is the sale of food;

(b) That purchasers of respondents' freezer food plan will receive all of their food and a freezer for $6.20 or $7.70 per week;

(c) That purchasers of respondents' freezer food plan are thereby able to purchase their food for less money than they would otherwise have to pay;

(d) That purchasers of respondents' freezer food plan save from $200.00 to $300.00 a year on their food purchases;

(e) That respondents are giving away various free gifts;

(f) That purchasers of respondents' freezers food plan are required to pay no money for two months, and that the total amount such purchasers pay is the aggregate of either $6.20 or $7.70 per week for 24 months;

(g) That $6.20 per week for respondents' freezer food plan is a reduced price;

(h) That the freezers sold by respondents are unconditionally guaranteed for variously stated periods of time or for a lifetime.

PAR. 7. The advertisements disseminated as aforesaid, were and are misleading in material respects and constituted and now constitute "false advertisements" as that term is defined in the Federal Trade Commission Act, and the aforesaid statements and representations were and are false, misleading and deceptive. In truth and in fact:

(a) Respondents' principal business is that of selling freezers and not the selling of food;

(b) The purchasers of respondents' freezer food plan do not receive all of their food and a freezer for either $6.20 or $7.70 per week;

(c) Purchasers of respondents' freezer food plan are not thereby enabled to purchase their food for less than they would otherwise have to pay;

(d) Purchasers of respondents' freezer food plan do not save from $200.00 to $300.00 a year on their food purchases;

(e) Respondents do not give away free gifts. Such gifts are received only upon the purchase of respondents' freezer food plan;

(f) Purchasers of respondents' freezer food plan are required to make a down payment at the time of purchase and still pay approximately $6.20 or $7.70 per week for 24 months, thus respondents' have misrepresented the purchase price of their freezer food plan;

(g) The price of $6.20 per week for respondents' freezer food plan is not a reduced price;

(h) The freezers sold by respondents are not unconditionally guaranteed for a lifetime or for the variously stated periods of time.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements and representations 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 freezers and freezer food plans from respondents by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, including the dissemination by respondents of the false advertisements, as aforesaid were and are all to the prejudice and injury of the public and of respondents' competitors, and constituted and now constitute unfair and deceptive acts and practices in commerce, in violation of Sections 5 and 12 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, Alpin, Inc., is a corporation organized, existing and doing business as Cincinnati Food Service & Appliance Company, under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 3612 Montgomery Road, in the city of Cincinnati, State of Ohio.

Respondents Milton Pinsky and Daniel J. Allen 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

PART I

It is ordered, That respondents Alpin, Inc., a corporation, and its officers, and Milton Pinsky and Daniel J. Allen, individually and as officers of said corporation, and respondents' agents, representatives and employees directly or through any corporate or other device in connection with the offering for sale, sale or distribution of freezers, food or freezer-food plans, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication:

(a) That respondents' principal business is the sale of food.

(b) That purchasers of a freezer food plan from respondents will for any stated price receive all of their food or any amount of food in excess of the amount actually received and a freezer;

(c) That by purchasing a freezer food plan from respondents, purchasers are thereby able to purchase food for less money than they would otherwise have to pay;

(d) That purchasers of a freezer food plan from respondents save from $200.00 to $300.00 a year on their food purchases, or will save any other stated or specified amount of money;

(e) That respondents give away free gifts;

(f) That purchasers of a freezer food plan from respondents are required to pay no money for any stated period of time;

(g) That a customary or usual price is a reduced price;

(h) That any freezer or part thereof is unconditionally guaranteed or is guaranteed in any manner unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

2. Misrepresenting in any manner the savings realized by purchasers of a freezer food plan.

3. Misrepresenting in any manner the purchase price of any such freezer, food, or freezer food plan.

PART II

It is further ordered, That respondents Alpin, Inc., a corporation, and its officers, and Milton Pinsky and Daniel J. Allen, individually

and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of any food or any purchasing plan involving food, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations or misrepresentations prohibited in paragraphs 1, 2 and 3 of Part I of this Order.

2. Disseminating or causing the dissemination of any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of any food, or any purchasing plan involving food in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations or misrepresentations prohibited in paragraphs 1, 2 and 3 of Part I of this Order.

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

HOUSE OF GOOD FOODS, INC., ET AL.

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

Docket C-186. Complaint, July 18, 1962—Decision, July 18, 1962

Consent order requiring two affiliated sellers of freezers and foods by means of a "freezer food plan", located in Pennsauken, N.J. and Philadelphia, Pa., to cease making false claims in advertising in newspapers, circulars, by radio broadcasts, etc., to sell their products, as set out in the order below.

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 House of Good Foods, Inc., a corporation, House of Good Foods of Pennsylvania, Inc., a corporation, and Morris J. Salis, individually and as an officer

of said corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent House of Good Foods, Inc., is a corporation organized, existing and doing business under and by the virtue of the laws of the State of New Jersey with its principal office and place of business located at Route 73 and Route 130, Pennsauken, N.J.

Respondent House of Good Foods of Pennsylvania, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with its principal office and place of business located at 5210 Pennway Street, Philadelphia 24, Pa.

Respondent Morris J. Salis is an officer of said corporations. He participates in the formulation, direction, and control of the policies, acts and practices of the said corporate respondents. His address is the same as that of respondent House of Good Foods of Pennsylvania, Inc.

PAR. 2. Respondents are, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of freezers and food by means of a so-called freezer food plan.

PAR. 3. Respondents cause the said freezers and food, when sold, to be transported from warehouses in the State of Pennsylvania to purchasers located in the State of New Jersey. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said freezers and food in commerce, as "commerce" is defined in the Federal Trade Commission Act. Their volume of business in such commerce is, and has been, substantial.

PAR. 4. In the course and 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 freezers, food and freezer food plans.

PAR. 5. In the course and conduct of their business, respondents have disseminated and caused the dissemination of certain advertisements concerning the said food and freezer food plan, 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, brochures, circulars and letters and by radio broadcasts by stations having sufficient power to carry such broadcasts across state lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of food as the term "food" is defined in the Federal Trade Commission

Act; and have disseminated and caused the dissemination of advertisements by various means, including those aforesaid, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of food and freezers in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. By means of advertisements disseminated as aforesaid and by the oral statements of sales representatives, respondents have represented, directly or by implication:

1. That "Home Economists" or trained food consultants will assist purchasers of the aforesaid freezer food plan in planning their food orders.

2. That purchasers receive a free "Breadwinner Life Insurance" policy for the duration of their contract.

3. That because purchasers of their freezer food plan can buy their food from respondents at wholesale or reduced prices, such purchasers can purchase their food requirements and a freezer for the same or less money than they have been paying for food alone.

4. That purchasers of respondents' freezer food plan will save enough money on the purchase of their food to pay for the freezer.

5. That the contracts of purchasers of the aforesaid freezer food plan will be financed through banks.

6. That purchasers of the aforesaid freezer food plan are required to pay only the price of the freezer, food, and the tax.

7. That the freezer and the food represent the total security required under the contract.

8. That purchasers of the aforesaid freezer food plan can purchase their note in advance at a substantial reduction in price.

9. That respondents will erect metal shelves for storing of food.

10. That the freezer and food are fully and unconditionally guaranteed or insured under the contract.

11. That the terms and conditions of the sale are as agreed upon and and as disclosed at the time of the sale.

PAR. 7. In truth and in fact:

1. The individuals sent to help purchasers of the aforesaid freezer food plan in planning their food orders are not "Home Economists" or trained food consultants. They have not had sufficient or proper training to warrant calling them "Home Economists" or trained food consultants;

2. Purchasers of the aforesaid freezer food plan do not receive a free life insurance policy;

3. The prices charged for food by respondents are not wholesale prices, nor are respondents' prices reduced to such an extent that pur-

chasers of their freezer food plan can purchase their food requirements and a freezer for the same or less money than such purchasers have been paying for food alone;

4. Purchasers of respondents' freezer food plan do not save enough money on the purchase of their food to pay for the freezer;

5. In many instances the contracts of purchasers of the aforesaid freezer food plan are financed through financial institutions other than banks;

6. Purchasers of the aforementioned freezer food plan are required to pay interest or finance charges in addition to the price of the freezer, food and tax;

7. The freezer and the food do not represent the total security required under the contract. The purchasers of the aforesaid food plan are often required, unknown to them at the time, to subject their homes to mortgage liens;

8. Purchasers are not allowed to purchase their note in advance at a substantial reduction in price;

9. Respondents do not erect metal shelves for the storing of foods, but merely supply the shelves for erection by the purchasers of the aforesaid freezer food plan;

10. The freezer and the food are not fully or unconditionally guaranteed or insured under the contract;

11. All of the terms and conditions of the sale are not always disclosed at the time of the sale, and in many instances contracts are not completely filled in at the time of a sale and when later filled in the terms or conditions are not the same as previously agreed to by the purchaser.

Therefore, the advertisements referred to in paragraph 5 were, and are, misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act, and the statements and representations referred to in paragraph 6 were, and now are, false, misleading and deceptive.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of freezers, food and freezer food plans from the respondents by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, including the dissemination by respondents of false adver-

tisements as aforesaid, 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, within the intent and meaning of the Federal Trade Commission Act, and in violation of Sections 5 and 12 of said 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, House of Good Foods, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its office and principal place of business located at Route 73 and Route 130 in the city of Pennsauken, State of New Jersey.

Respondent, House of Good Foods of Pennsylvania, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennslyvania with its office and principal place of business located at 5210 Pennway Street, in the city of Philadelphia, State of Pennsylvania.

Respondent Morris J. Salis is an officer of said corporations, and his address is the same as that of corporate respondent House of Good Foods of Pennsylvania, Inc.

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

PART I

It is ordered, That respondents House of Good Foods, Inc., a corporation, House of Good Foods of Pennsylvania, Inc., a corporation, and their officers and Morris J. Salis, individually and as an officer of said corporations, and respondents' agents, representatives, and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of freezers, food or a freezer food plan in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication that:

(a) Such products or any parts thereof are guaranteed in any manner unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in immediate conjunction with any such representation;

(b) "Home Economists", trained food consultants or other qualified individuals will assist purchasers of the aforesaid freezer food plan in planning their food orders;

(c) Purchasers receive a free life insurance policy;

(d) Purchasers of a freezer food plan will receive the same or any amount of food, and a freezer for the same or less money than they have been paying for the food alone;

(e) Purchasers of their freezer food plan can save enough money on the purchase of their food to pay for the freezer;

(f) Purchasers of a freezer food plan will have their contracts financed through banks unless such contracts are in fact financed through banks.

(g) Certain charges constitute the total amount purchasers are required to pay when such amount is not the total amount purchasers are required to pay;

(h) Certain items constitute the total security required under a contract when in fact other security is required;

(i) Purchasers of the aforesaid freezer food plan can purchase their note in advance at a reduction in price;

(j) Respondents will erect shelves or other facilities for storing food;

(k) The freezer or food are fully insured or fully or unconditionally guaranteed under the contract.

(l) Respondents sell food at wholesale prices.

2. Obtaining purchasers' signatures on sales contracts, negotiable or non-negotiable notes or other instruments or mortgage agreements or any other type of agreements unless said contracts, notes or agreements contain at that time all of the terms and conditions of said contracts, notes or agreements and unless such purchasers are fully apprised of the nature and contents of the contracts, notes or agreements.

3. Misrepresenting in any manner the extent to which respondents' prices are reduced prices or the savings realized by purchasers of a freezer food plan.

PART II

It is further ordered, That respondents House of Good Foods, Inc., a corporation, House of Good Foods of Pennsylvania, Inc., a corporation, and their officers and Morris J. Salis, individually and as an officer of said corporations and respondents' agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of any food or any purchasing plan involving food, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations or misrepresentations prohibited in paragraphs 1 and 3 of Part I of this Order.

2. Disseminating or causing the dissemination of any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly the purchase of any food, or any purchasing plan involving food in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations or misrepresentations prohibited in paragraphs 1 and 3 of Part I of this Order.

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

Complaint

IN THE MATTER OF

PYRAMID PUBLICATIONS, INC.

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

Docket C-187. Complaint, July 18, 1962—Decision, July 18, 1962

Consent order requiring a New York City publisher of magazines and paperback books, including "Man's Magazine", to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act by paying promotional allowances to certain retail customers—some of whom operated chain retail outlets in railroad, airport, and bus terminals, and outlets in hotels and office buildings, and others of whom furnished services in connection with the handling of respondent's publications such as taking purchase orders and distributing, billing, and collecting—while not making such payments available on proportionally equal terms to their competitors, including drug chains, grocery chains, and other newsstands.

COMPLAINT

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

PARAGRAPH 1. Respondent Pyramid Publications, Inc. (formerly known as Almat Publishing Corp.), is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 444 Madison Avenue, New York, N.Y. Said respondent, among other things, has been engaged and is presently engaged in the business of publishing and distributing various publications including magazines and paperback books under copyrighted titles including "Man's Magazine". Respondent's sales of publications during the calendar year 1960 exceeded one million eight hundred thousand dollars.

PAR. 2. Publications published by respondent are distributed by said respondent to customers through its national distributors, Publishers Distributing Corporation, hereinafter referred to as PDC, and MacFadden Publications, Inc., hereinafter referred to as MacFadden.

PDC and MacFadden have acted and are now acting as national distributors for the publications of several independent publishers including respondent publisher. PDC and MacFadden, as national distributors of publications published by said respondent and other

independent publishers, have performed and are now performing various services for these publishers. Among the services performed and still being performed by PDC and MacFadden for the benefit of these publishers are the taking of purchase orders and the distributing, billing and collecting for such publications from customers. PDC and MacFadden have also negotiated promotional arrangements with the retail customers of the publishers they represent, on behalf of and with the knowledge and approval of said publishers, including respondent publisher.

In their capacity as national distributors for said respondent, in dealing with the customers of said respondents, PDC and MacFadden served and are now serving as conduits or intermediaries for the sale, distribution and promotion of publications published by said respondent.

PAR. 3. Respondent Pyramid Publications, Inc., through its conduits or intermediaries, PDC and MacFadden, has sold and distributed and now sells and distributes its publications in substantial quantities in commerce, as "commerce" is defined in the Clayton Act, as amended, to competing customers located throughout various States of the United States and in the District of Columbia.

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

PAR. 5. As an example of the practices alleged herein, respondent Pyramid Publications, Inc., has made payments or allowances to certain retail customers who operate chain retail outlets in railroad, airport and bus terminals, as well as outlets located in hotels and office buildings. Such payments or allowances were not offered or otherwise made available on proportionally equal terms to all other customers (including drug chains, grocery chains and other newsstands) competing with the favored customers in the sale and distribution of the publications of said respondent. Among the favored customers receiving payments in 1960 which were not offered to other competing customers in connection with the purchase and sale of respondent's publications were:

Customers:	*Approximate Amount Received*
Union News Co., New York, N.Y.	$3,199.00
Greyhound Post Houses, Forest Park, Ill.	1,343.00
ABC Vending Corp., Long Island City, N.Y.	88.00

Respondent made such payments to its favored customers on the basis of individual negotiations. Among said favored customers such payments were not made on proportionally equal terms.

As a further example of the practices alleged herein, respondent, during 1960 and the first six months of 1961, paid a total of four hundred and forty dollars for cooperative newspaper advertising to Kroch's & Brentano's of Chicago, Illinois. Such payments were not expressly offered or otherwise made available on proportionally equal terms to all other customers of respondent competing with Kroch's & Brentano's in the purchase, sale and distribution of respondent's publications.

PAR. 6. The acts and practices of respondent as alleged above are in violation of the provisions of subsection (d) of Section 2 of the Clayton Act, as amended.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of subsection (d) 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 Pyramid Publications, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business

located at 444 Madison Avenue, in the city of New York, State of New York.

ORDER

It is ordered, That respondent Pyramid Publications, Inc., a corporation, its officers, employees, agents and representatives, directly or through any corporate or other device, in connection with the distribution, sale or offering for sale of publications including magazines and paperback books in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from:

Paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any customer as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, offering for sale, sale or distribution of publications including magazines and paperback books published, sold or offered for sale by respondent, unless such payment or consideration is affirmatively offered and otherwise made available on proportionally equal terms to all of its other customers competing with such favored customer in the distribution of such publications including magazines and paperback books.

The word "customer" as used above shall be deemed to mean anyone who purchases from Pyramid Publications, Inc., acting either as principal or agent, or from a distributor or wholesaler where such transaction with such purchaser is essentially a sale by such respondent, acting either as principal or agent.

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

LEEDS TRAVELWEAR, INC., ET AL.

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

Docket 8140. Complaint, Oct. 12, 1960—Decision, July 20, 1962

Order requiring a New York City distributor of luggage and golf and bowling bags to cease deceptively pricing its products, by such practices as showing higher amounts than the prevailing retail prices in the trade areas concerned on price tickets on golf bags sold in department and specialty stores, and

in catalog sheets furnished to catalog house customers which carried a "retail" price and a substantially lower "coded" price at which the product was sold.

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 Leeds Travelwear, Inc., a corporation, and Irving L. Braverman, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Leeds Travelwear, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and place of business located at 185 Madison Avenue, New York, N.Y.

Individual respondent Irving L. Braverman is an officer of the corporate respondent and of its wholly owned subsidiary corporations. He participates in the formulation, direction and control of the acts and practices of said corporate respondent and of its wholly owned subsidiaries. His address is also 185 Madison Avenue, New York, N.Y.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, sale and distribution of various types of luggage, golf bags and bowling bags to retail stores and jobbers for resale to the public. Such business is carried on by the respondent corporation and through various wholly owned subsidiary corporations.

In the regular and usual course and conduct of their said business, respondents cause, and have caused, said products, when sold, to be transported to purchasers thereof located in various States of the United States other than the State in which such shipments originate.

Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, said respondents have engaged in the practice of using fictitious retail prices of their said luggage and other products of various types sold under several trade names, including but not limited to the following methods:

The respondents attach, or caused to be attached, price labels or tickets to their luggage or other products thereby representing, directly or by implication, that the price figures so attached are the

regular and usual retail prices for said luggage and other products. Respondents also distribute to jobbers and retailers, who sell by catalog, catalog sheets to be inserted in the catalogs of said jobbers and retailers. Said catalog sheets contain thereon pictures and descriptions of various types of luggage and other products with prices listed in connection therewith as the retail prices thereof. Respondents also distribute their own catalogs to jobbers and retailers, in which retail prices are set out.

Respondents by the aforesaid practices represented, and now represent, directly or by implication, that the price figures so attached and so used are the regular and usual retail prices for said luggage and other products in the trade area or areas where the representations are made; when, in truth and in fact, the said price figures are not the usual and retail prices for said luggage and other products in the trade area or areas where the said representations are made but are fictitious and exaggerated prices.

By such acts and practices respondents place in the hands of retailers and jobbers means and instrumentalities by and through which they may deceive and mislead the purchasing public as to the usual and customary retail prices of said luggage and other products.

PAR. 4. Respondents, in the course and conduct of their business, are in substantial competition in commerce with other corporations, firms and individuals likewise engaged in the sale and distribution of luggage, golf bags and bowling bags.

PAR. 5. The aforesaid acts and practices of respondents had, and now have, the capacity and tendency to mislead and deceive members of the purchasing public with respect to the usual and customary retail prices of their luggage, golf bags and bowling bags and into the purchase of their said products as the result thereof. As a consequence thereof, trade has been unfairly diverted to respondents from their competitors and substantial injury has thereby been done, and is being done, to competition in commerce.

PAR. 6. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Garland S. Ferguson supporting the complaint.

Mr. Alfred W. Putnam, and *Mr. E. Brooks Keefer, Jr.*, of Philadelphia, Pa., for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

This proceeding was brought under Section 5 of the Federal Trade Commission Act by the issuance of a complaint on October 12, 1960, charging the corporate respondent and the individual respondent, one of its officials, with unfair acts and practices in the pricing of luggage, golf bags, and bowling bags. Paragraph 3 of the complaint charges specifically that respondents issue catalogs or catalog sheets showing "retail" prices and preticket the products sold to jobbers and retailers by affixing a tag showing "retail" prices. These prices are allegedly fictitious and exaggerated, and are not the usual retail prices in the trade area in which the products are sold. It is further charged that members of the purchasing public tend to be deceived and that trade has been unfairly diverted to respondents from their competitors. The allegations of the complaint containing the specific charge have been placed in issue by the answer, but the formal allegations concerning the identity of the respondents, the character of their business, the existence of jurisdiction because of interstate commerce, and the existence of substantial competition are either admitted in terms or admitted in substance.

Respondents' first line of defense appears to be that unfair acts and practices cannot be established by proof of fictitious pricing where injury to competition is also not established. In respondents' view, such injury cannot be established when all of respondents' competitors engage in pricing practices of the same character. Respondents' reserve lines of defense are: that it has not been proved that prices in the trade area were lower than the preticketed prices, that the Commission's evidence with respect to bowling bags is non-existent and that pertaining to luggage is limited to catalog sales by catalog houses to incidental retail customers. Respondents claim that department store sales of luggage are customarily made at preticketed prices; hence, that any order issued should be limited in scope to the sale of golf bags if any order at all is to be issued.

Hearings were held at the instance of counsel supporting the complaint in Philadelphia, Pa., on February 27 and 28, 1961, and at New York, New York, March 1, 1961. Hearings at respondents' request were held at Washington, D.C., April 24 and 25, 1961; at New York, New York, June 27 and 28, 1961, and at Philadelphia, Pa., August 21, 1961. At the Philadelphia hearing, counsel supporting the complaint called an attorney examiner for the Commission in rebuttal. Proposed findings of fact and conclusions of law were filed September 20, 1961.

Counsel for respondents submitted a motion to dismiss in writing on April 24, 1961, and a substantial brief in support thereof. The matter was argued at the hearing in Washington, D.C. on that date and ruling was reserved. The motion is now denied.

The cooperation of counsel in the authentication of documents and in the stipulation of statistical data was excellent and materially shortened the presentation.

As the evidence developed at the hearings, it became clear that there were in reality two different classes of alleged illegal pricing charges relating to luggage. This circumstance deserves some preliminary discussion.

The first class dealt with luggage sold to catalog houses. This luggage was not preticketed but was advertised in jobbers catalogs (made up with respondents' assistance) which were made available to industrial customers, their employees and to incidental retail customers as well as to smaller retail dealers. These catalogs contained a "retail" price and a lower "coded" price. Merchandise was sold at the coded price to all comers, dealers, industrial customers, employees of industrial customers and some customers who came "right off the street." This luggage was not identical to the "regular" line and was not preticketed.

The second class of luggage was that sold to substantial retailers such as department stores. This luggage was preticketed, and it was also included in a Leeds catalog which showed a "retail" price identical to the preticketed price. Except in a few special cases or where there was a close-out, this luggage was generally sold at the preticketed price.

There was no such differentiation shown in the case of sales of golf bags distributed by Leeds under the Fairway name, all bags were preticketed, and the bags were generally sold or offered for sale at a price lower than the preticketed price which was identical to the catalog "retail" price.

The evidence concerning the trade areas involved also deserves some preliminary discussion. From the sampling of catalog houses called, for example, it would seem that these establishments sell by catalog nationally and also sell at their stores in Philadelphia. The retail trade at the stores is relatively small. These catalog houses have their stores in an area not described as a good retail area but which is within easy walking distance of some of Philadelphia's largest stores. Viewed from the standpoint of the Camden, New Jersey commuter into Philadelphia, his workaday market area includes these stores and the large department stores. Viewed from the department store exec-

utives point of vantage, the market area may extend as far as 100 miles. Viewed from the catalog house, its competition is primarily another catalog house and their trade areas are co-extensive. However, viewed from the point of view of the Commission, which was created to prevent unfair acts and practices affecting commerce, the area would seem to include any point where there are any reasonable number of merchants seeking the same customer's trade, and where, by unfair practices, one merchant could divert trade by false and misleading tactics. Hence, the issues concerning trade areas, while perhaps crucial in other situations, are here of much less significance.

On the basis of the entire record, the hearing examiner makes the following findings of fact, conclusions therefrom, and order. All findings and conclusions not specifically found or concluded in terms or in substance are disallowed as erroneous or immaterial.

FINDINGS OF FACT

1. Respondent, Leeds Travelwear, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and place of business located at 185 Madison Avenue, New York, N.Y.

2. Individual respondent, Irving L. Braverman, is an officer of the corporate respondent and of its wholly owned subsidiary corporations. He participates in the formulation, direction and control of the acts and practices of said corporate respondent and of its wholly owned subsidiaries. His address is also 185 Madison Avenue, New York, N.Y.

3. Respondents are now, and for some time last past, have been engaged in the manufacture, sale and distribution of various types of luggage to jobbers and to various types of retail stores for resale to the public. They also distribute golf bags made to their order to jobbers and to retail stores. Such business is carried on by the respondent corporation and through various wholly owned subsidiary corporations.

In the regular and usual course and conduct of their business, respondents cause, and have caused, said products, when sold, to be transported to purchasers thereof located in various States of the United States other than the State in which such shipments originate.

Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act. During the year 1959, the volume of sales was in excess of seven million dollars, and in 1960 approximately nine million dollars.

The corporate respondent describes itself as the world's largest manufacturer of zippered luggage.

4. Respondents, in the course and conduct of their business, are in substantial competition in commerce with other corporations, firms and individuals likewise engaged in the sale and distribution of luggage, golf bags and bowling bags.

5. For several years prior to and up to the time of filing of the complaint herein, the corporate respondent (hereinafter sometimes referred to as Leeds) has affixed tickets showing the "retail" price of its regular luggage line, its bowling bags and its golf bags to such products prior to shipment of such products to purchasers for resale. Its promotional and jobbers line of luggage was not preticketed, nor were its lines made up for sale under private label of others.

6. During such period, Leeds has supplied catalog sheets (for jobbers and catalog houses who preferred to compile their own catalogs), material from which catalog sheets could be printed (for jobbers and catalog houses who preferred to print up their own catalogs), and in addition has supplied its own catalogs to many other customers or prospective customers who purchased Leeds' merchandise for resale. In 1959, some 4,000,000 sheets were printed for distribution to 130 to 140 accounts.

7. The catalogs or catalog sheets and material from which catalog sheets could be printed all contained "retail" prices. The "retail" price for each article described in the catalog was identical to the price on the tag affixed to the article by Leeds prior to shipment where such article was preticketed. In addition to the "retail" price, a wholesale price, coded price, or dealer's cost price (hereinafter referred to as "coded" price) was also specified in catalog house catalogs. This "coded" price was less than the "retail" price but greater than the price which Leeds charged its jobber customers and listed on a confidential jobbers price sheet or the confidential store price sheet which was furnished to department stores who handled Leeds' "regular" line.

8. Among Leeds' customers are: catalog houses, discount houses, chain stores, department stores, industrial customers, and specialty stores (sporting goods or luggage). Sales are also made to military and naval Post Exchanges and to surplus stores.

9. Catalog houses are generally in the wholesale business. They are, however, in the retail business to this extent. They sell to industrial customers who do not sell but give away the products as awards or presents, and they also sell to identified employees of industrial

customers. Some catalog houses will sell indiscriminately to anyone who seeks to buy from them. However, indiscriminate retail sales are relatively infrequent and the volume of such sales is small in comparison to sales to dealers and to industrial customers and their employees.

10. A number of catalog houses located in the center of Philadelphia sell to all classes of customers Leeds' luggage (made for jobbers), bowling bags and golf bags at the coded price which is less than the "retail" price.

11. Department stores in Washington, D.C., in the Philadelphia area and in the New York area generally sell Leeds' regular luggage at the preticketed "retail" price except for discontinued, promotional, or irregular items.

12. The price at which sales of Leeds' luggage is made by luggage specialty stores in the New York and Philadelphia areas has not been established. In Washington, D.C., according to uncontradicted testimony, a witness testified that his luggage and gift shop sold Leeds' luggage at the preticketed price.

13. Sporting goods stores, discount houses, and certain department stores in the New York area sell Leeds' products at prices lower than the preticketed prices or catalog "retail" price.

14. The catalog houses located in Philadelphia, whose representatives testified in support of the complaint in this proceeding that sales of Leeds' merchandise were made at retail at less than the "retail" price, purchased approximately $31,484.69 worth of merchandise in the year 1960, out of total sales in Philadelphia amounting to $306,154.35. In the preceding year, such accounts purchased $21,045.83 out of total sales of $297,261.82. Hence such purchases amounted to approximately seven percent of respondents' sales in Philadelphia in 1959 and ten percent in 1960.

15. The organizations located in the New York area, whose representatives testified in support of the complaint that sales of Leeds' merchandise were made at retail at less than the preticketed price, purchased $156,041.07 worth of Leeds' merchandise in the calendar year 1960, out of a total of $675,205.65. The same accounts purchased $230,445.35 worth of merchandise in the year 1959, out of total sales in New York City of $1,011,937.66. Hence the sales in New York by such firms for both years were approximately twenty-three percent of the total sales in that area.

16. Certain but not all of respondents' competitors utilized preticketing in the sale of their golf bags and luggage.

17. The presence of the price tickets on merchandise constitutes a representation of the merchant making the sale that such price is the usual and regular price at which he sells the merchandise.

18. The individual respondent and the corporate respondent, because of his knowledge, were aware that merchandise so preticketed was not being sold currently at the preticketed price by merchants who sold it at retail.

19. The respondents preticketed the merchandise at the factory and placed the preticketed article in cartons which in many instances were not opened until they were displayed by the retailer to the customer.

20. This method of preticketing and packing the merchandise had a tendency to insure that the preticketing would not be disturbed until the merchandise reached the hands of the retailer.

21. While pricing practices in the sale of luggage differ from the pricing practices utilized in the sales of sporting goods, respondents' control and method of utilization of preticketing and of catolog preparation showing "retail" prices is substantially the same with respect to both prices in both instances, except that some luggage is not preticketed.

22. No special circumstances other than claimed industry practice have been established indicating reasons why respondents should price sporting goods merchandise in a manner different from luggage.

23. The prices of golf bags in both the Philadelphia area and the New York area were generally lower than the "retail" prices contained in Leeds' catalog and catalog sheets.

24. The prices of Leeds' regular luggage in department stores in the Philadelphia and New York areas were generally the same as the preticketed prices and the "retail" prices contained in the Leeds catalog. The prices of Leeds' jobber luggage in catalog houses in the Philadelphia area were generally substantially below the "retail" prices contained in the material or catalog sheets prepared by Leeds for inclusion in catalog house catalogs.

25. While the services rendered by department stores differ materially from the services rendered by catalog houses to incidental customers, and some of the witnesses from department stores did not regard them as competition, the physical propinquity of the department stores and the catalog houses in the Philadelphia area indicate that certain of the customers are common to both types of establishment.

26. There was no proof of actual divergence of trade.

27. The use of "retail" price in a catalog had a tendency to make the customer believe that he was securing a bargain, not generally

available, when he was permitted to make purchases at the "coded" rather than the "retail" price; although in most instances, where the "coded" prices were made available to customers, the "coded" price was the regular price at which the article was sold by the establishment making the sale.

28. The affixing of tickets listing the "retail" price to merchandise placed in the hands of the distributor who was selling at the "coded" price or the supplying of catalog sheets showing "retail" and coded prices were instrumentalities for misrepresentation.

29. The downtown section of Philadelphia constitutes a competitive area insofar as persons whose offices are located in that area are concerned; hence, customers would tend to go to both department stores and catalog stores in that area. The use of unfair and misleading practices would tend to divert customers from one store to another.

30. Catalog houses customarily sold products at the coded price rather than at the "retail" price.

31. Sale at such coded price in the presence of price tickets or catalog sheets showing the higher "retail" price has a tendency to deceive purchasers unto believing that they are securing a saving from the usual and customary price of the person making the sale or from the usual and customary price at which similar goods are sold in the trade area by merchants of a similar class.

32. There was no saving from the usual and customary prices charged by the catalog house concerned or by other catalog houses in the sale of luggage, all customarily selling to all comers at the "coded" price.

33. The "coded" price, insofar as luggage was concerned, represented a saving from the price usually charged by department stores.

34. The "retail" price for golf bags is an entirely theoretical price at which golf bags were never, or almost never, sold. It was customary to sell golf bags below that price.

35. Respondents ceased preticketing golf bags with "retail" price tags following the commencement of the investigation into this matter, and after the complaint was filed.

36. Other manufacturers of luggage and of golf bags have supplied catalog sheets and material for catalogs to catalog houses and they have also preticketed luggage and golf bags from time to time.

37. Respondent Braverman testified that respondent Leeds attached tickets only to merchandise where "we can influence the moral aspect of the price we put on our merchandise." This indicates that he was aware that the catalog houses were not following the "retail"

prices in their catalogs in making sales at retail. Clearly, however, Braverman was referring to luggage items only as his later testimony showed. The physical evidence and testimony from both Commission and respondents' witnesses demonstrates that Leeds' price tickets were attached to golf bags offered for sale at less than the preticketed price until recently. The attorney examiner who conducted the investigation of this matter testified that Braverman had told him that the prices represented on the price tickets did not represent the usual and regular selling price for the golf bags. The price represented a higher price than the merchandise generally sold for. This practice was also known to Addis, the Eastern Sales Manager of respondent Leeds.

CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction of the person of the respondents and of the subject matter of this proceeding. Respondents are engaged in commerce as "commerce" is defined in the Federal Trade Commission Act, and the acts and practices hereinafter referred to take place in commerce within the meaning of such Act. The proceeding is in the public interest.

2. The findings of fact heretofore made have been made on the basis of substantial and reliable evidence.

3. The use by respondents of "retail" prices in preticketing operations and in catalogs where it is known that such prices are not the usual or customary "retail" price is an unfair method of competition in commerce. *The Clinton Watch Company et al.* v. *F.T.C.*, June 19, 1961 (7th Cir.), (F.T.C. Docket 7434); *Niresk Industries, Inc.* v. *F.T.C.*, 278 F. 2d 337, 340 (7th Cir. 1960), *cert. denied*, 364 U.S. 883; *Harsam Distributors, Inc.* v. *F.T.C.*, 263 F. 2d 396, 397 (2d Cir. 1959), and *Consumer Sales Corporation* v. *F.T.C.*, 198 F. 2d 404 (2d Cir. 1952).

4. The use by respondents of preticketing and the listing of "retail" prices in catalogs, material for catalogs or catalog sheets places in the hands of retailers and catalog houses the means of misleading members of the purchasing public into the erroneous belief that the "retail" price or preticketed price is the price at which purchasers from respondents' customers sell their product and that the purchasing public is realizing a saving. The use of preticketing and the labeling of a "retail" price in catalogs distributed in the circumstances present in this case, are accordingly unfair or deceptive acts or practices in commerce. *Chicago Board Co.* v. *F.T.C.*, 253 F. 2d 78 (7th Cir. 1958) and *Winsted Hosiery* v. *F.T.C.*, 258 U.S. 483 (1922).

5. It is unnecessary to establish that there has been any divergence of trade because there is a natural tendency, by reason of the inherent character of respondents' acts and practices, that commerce will be diverted. *F.T.C.* v. *Winsted Hosiery Co.*, 258 U.S. 483 (1922); *Charles of the Ritz* v. *F.T.C.*, 143 F. 2d 676 (2d Cir. 1944); *Rudin & Roth et al.*, 53 F.T.C. 207 (1956), and *The Orloff Co., Inc., et al.*, 52 F.T.C. 709 (1956).

6. The fact that others in the industry may be engaged in activities which are substantially similar does not justify respondents' adopting a similar illegal method or practice. *F.T.C.* v. *A. E. Staley Mfg. Co., et al.*, 324 U.S. 746 (1945) and *International Art Co. et al.* v. *F.T.C.*, 109 F. 2d 393, *cert. denied*, 310 U.S. 632.

7. The preticketing, showing the "retail" price, has a tendency to mislead the purchaser into believing that the reduced price which he is securing from the catalog house is a reduction from the prevailing price for the product elsewhere in the same trade area, and it is immaterial that in other places and in stores of another character the preticketed price may be charged. *The Baltimore Luggage Company, et al.*, Docket No. 7683, March 15, 1961.

8. It is immaterial that the corporate respondent does not preticket all classes of its merchandise, or that all of its preticketed merchandise is not regularly and customarily sold at less than the preticketed price. It is sufficient to justify issuance of an order that the respondents with knowledge that certain of their dealers or jobbers are utilizing the preticketed merchandise of a particular class in a manner calculated to deceive retail customers into the belief that such retail customers are securing a bargain price not available to all retail customers, continue to supply preticketed merchandise to such dealers or jobbers.

9. It is sufficient to justify the issuance of an order that the respondents, with knowledge that their catalog house customers are selling to retail customers at less than the "retail" price stated in their catalogs continue to supply to such catalog houses catalog sheets and material for catalogs which have been used as instrumentalities tending to mislead retail customers into the mistaken belief that such retail customers are securing a bargain price, when, in fact, they are securing the regular catalog house price.

10. It is not necessary to establish actual sales made to particular customers of the catalog houses; the testimony of proprietors as to the prices charged on sales is adequate for the purpose of establishing such prices.

11. The cessation of the practice of preticketing golf bags does not constitute abandonment in the circumstances of this proceeding. *F.T.C.* v. *Wallace*, 75 F. 2d 733, 738 (8th Cir. 1935); *F.T.C.* v. *Goodyear Tire & Rubber*, 304 U.S. 257 (1938); *Hershey Chocolate Corporation* v. *F.T.C.*, 121 F. 2d 968 (3d Cir. 1941), and *Stanley Laboratories, Inc.* v. *F.T.C.*, 138 F. 2d 388 (9th Cir. 1943).

12. The doctrine of *de mininis* has no application to this proceeding. *Consumer Sales Corp.* v. *F.T.C.*, 198 F 2d 404 (2d Cir. 1952).

13. In the absence of special circumstances justifying different treatment (cf. *Swanee Paper Corporation* v. *F.T.C.* (2d Cir. June 22, 1961), Matter of Quaker Oats, Docket 8119), an order sufficiently broad to prevent fictitious pricing of all products is proper, even though in its regular line of luggage respondents' preticketing was not utilized for purposes of misleading retailers customers. It is sufficient that preticketing in the golf bag line was used in a manner tending to mislead retail customers, and that respondents assisted in the preparation of catalog house catalogs which also had a tendency to mislead customers into a mistaken belief that they were making savings from the catalog houses' regular retail prices. *F.T.C.* v. *Ruberoid*, 343 U.S. 470, 473 (1952) and *Niresk Industries et al.* v. *F.T.C.* 278 F. 2d 337 (7th Cir. 1959).

14. The individual respondent's continuation of the misleading practices for which he had responsibility with knowledge of their misleading character fully justifies the issuance of an order against him personally, as well as in his capacity as an officer of the corporate respondent. *Consumer Sales Corp.* v. *F.T.C.*, 198 F. 2d 404 (2d Cir. 1952).

ORDER

It is ordered, That Leeds Travelwear, Inc., a corporation, and Irving L. Braverman, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of luggage, golf bags, bowling bags, or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

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

3. Putting into operation any plan through the use of which retailers or others may misrepresent the usual and customary retail price of merchandise.

OPINION OF THE COMMISSION

By Dixon, *Commissioner:*

The complaint in this matter charges respondents with misrepresenting retail prices in their sale of luggage, golf bags and bowling bags in violation of Section 5 of the Federal Trade Commission Act. In his initial decision, the hearing examiner found that the allegations of the complaint were sustained by the evidence and ordered respondents to cease and desist from this practice. The matter is before the Commission upon exceptions to the initial decision filed by respondents.

Respondents manufacture and distribute three different lines of luggage, a regular line, a jobber line and a special or so-called "promotional" line. Their golf bags are manufactured for them on a contract basis in substantially the same three separate lines. It is undisputed that luggage and golf bags in their regular line, which is sold to retail outlets such as department stores and chain stores, are preticketed with an amount which purports to be the retail price of the article. Although the hearing examiner concluded that the luggage in respondents' regular line was generally sold at retail at the preticketed price, he found that the generally prevailing prices for golf bags in respondents' regular line were substantially below the prices set forth on the tickets attached to such items. Respondents contend that the evidence does not support this finding.

Six witnesses from New York City testified as to their retail sales of respondents' regular line of golf bags. Without exception, these witnesses stated that they always sell these products to the public at less than the prices set forth on respondents' tickets.

Respondents introduced evidence showing that their sales of golf bags to the six New York witnesses in 1960 amounted to about $14,000, whereas their total sales of these items in New York City in the same year were about $75,000. Thus, they argue that the volume of sales by these six witnesses is not sufficient to establish a pattern of retail sales of golf bags below the preticketed price. We think that it is. Moreover, other evidence of record leaves no doubt that the preticketed prices on respondents' golf bags were in excess of the

generally prevailing prices for these items not only in the New York City area but in all trade areas in which these products were sold.

Respondents' own witnesses, testifying as to their experiences in the sale of respondents' golf bags in department and specialty stores in Philadelphia and New York City, stated that they always sold these items at prices lower than the preticketed price. Mr. Addis, respondents' sales manager, acknowledged that this was generally the case in his sales territory which includes New York City, Philadelphia, Baltimore, Washington, D.C., and New Jersey. Moreover, there is evidence in the nature of an admission by individual respondent, Mr. Irving L. Braverman, that the preticketed prices were higher than the prices at which respondents' golf bags were usually and regularly sold. Respondents' argument on this issue must be rejected.

Respondents next argue that no violation of law has been established since the record contains no evidence of actual injury to competition as a result of the preticketing practice. In substance, they contend that since the misrepresentation here involves prices rather than the nature or character of a product, it is incumbent upon counsel supporting the complaint to prove competitive injury. This argument is without merit. As we stated in our opinion in *The Baltimore Luggage* case,[1] a representation that a product is being offered for sale at a reduced price is an important factor in effecting the sale of that product. We think it clear that such a representation may well induce a person to purchase a product. It is well settled that the use of a fictitious and excessive price on a ticket or tag attached to a product has a tendency to deceive the public as to the usual and customary retail price of the product and as to the savings afforded by the purchase thereof.[2] Section 5 of the Federal Trade Commission Act declares such deceptive practices unlawful without regard to their actual effect on competition. Moreover, the courts have repeatedly held that injury to competition may be inferred from the use of such practices.[3] Respondents' further contention that such an inference cannot be made here for the reason that the preticketing practice is generally followed in the golf bag industry is also without substance. This same argument was rejected by the court in the *International Art Co.* case,[4] wherein it stated that "It is also immaterial that competitors employ the same or similar methods. If such be the case, it

[1] In the Matter of *The Baltimore Luggage Company,* Docket No. 7683 (1961), 296 F. 2d 608 (4th Cir. 1961).

[2] *The Clinton Watch Company* v. *Federal Trade Commission,* 291 F. 2d 838 (7th Cir. 1961).

[3] *Federal Trade Commission* v. *Winsted Hosiery Co.,* 258 U.S. 483 (1922); *Federal Trade Commission* v. *Raladam Co.,* 316 U.S. 149 (1942).

[4] *International Art Co.* v. *Federal Trade Commission,* 109 F. 2d 393 (7th Cir. 1940).

would afford the basis for an argument that such competitors should be dealt with likewise, not that petitioners should escape."

The evidence clearly establishes that respondents have misrepresented the retail prices of the golf bags in their regular line and by their preticketing practice have placed a means of deception in the hands of their dealers.

We turn next to a consideration of respondents' sales of their jobber line of merchandise. The testimony of respondents' witnesses discloses that those customers which respondents designate as jobbers are principally, if not exclusively, catalog houses. The products in this line, which include luggage, golf bags and bowling bags, have certain differences in construction from those in the regular line and are specially produced exclusively for these jobbers. The catalog house jobbers distribute their catalogs and resell respondents' products, along with those of other manufacturers, to four general classes of purchasers, i.e., industrial accounts which distribute the items as premiums or as incentive awards; individual employees of industrial firms; small retailers, and persons who "just walk in off the street."

Respondents furnish many of their catalog house customers with pages or sheets advertising Leeds' products for insertion in the customers' catalogs. For each item offered on these sheets there is an amount, placed there by respondents, which is designated as the "Retail" price. In addition, respondents set forth a "coded" price for each article. This "coded" price is actually a combination of the identification or stock number of the item with certain price figures. In an example taken from one of respondents' catalog sheets in evidence, the designation "30J1350" in connection with an item means that the identification number is 30J and the price amount is $13.50. This "coded" price is always substantially lower than the "Retail" price for an item. In the example just given, the advertised "Retail" price is $22.50. The catalog houses are furnished a confidential price list by respondents and purchase at less than the "coded" price.

In 1960, respondents distributed approximately 2,300,000 insert sheets, advertising all three of their jobber line products, to about 130 catalog house customers throughout the country. The testimony of record discloses that these catalog houses distribute as many as 25,000 catalogs yearly and that all four classes of customers to whom they sell had access to and used these catalogs in making their purchases.

Representatives from six of respondents' catalog house customers located in the city of Philadelphia testified in this proceeding. Five of these six use catalog insert sheets supplied by respondents. It appears from their testimony that the line of luggage which these customers purchase from respondents is not preticketed. However,

one of these witnesses testified that the golf bags which he purchased from respondents were preticketed by respondents with a price which was the same as the "Retail" price given on the catalog insert sheet furnished by respondents for the same item.

It is the testimony of each of the six catalog house witnesses that they always sell the products offered in their catalogs at the "coded" price. Respondents contend, however, that these catalog houses are wholesalers and, therefore, the prices at which they sell are not determinative of retail prices. A review of the testimony of these six witnesses leads to a contrary conclusion. Two of these witnesses testified that approximately fifty per cent of their sales are at retail, a third estimated his volume of retail sales at forty per cent, and of the remaining three, one estimated twenty-five per cent and the other two made no estimate.

A small percentage of the sales which these witnesses classified as being at retail are to that class of customer which they identified as persons who "just walk in off the street." The largest part of their retail sales are to employees of industrial firms. These persons have been issued identification cards by their employers pursuant to an arrangement with the catalog houses. Each such employee is thereby entitled to make individual purchases for his own use directly from the catalog house. The fact that such a person is required to have a means of identification in order to make the purchase obviously does not mean that such a sale is not a retail, as respondents seem to argue.

As we have previously noted, the catalog houses in addition to their retail sales, sell to industrial concerns and to small dealers. This, however, constitutes only a small percentage of their over-all sales, estimated by one witness as ranging from twelve per cent to eighteen per cent of his sales. Thus, the fact that there is no evidence in this record from which it can be determined whether or not these dealers resell at the "Retail" prices represented on respondents' catalog sheets is immaterial.

In contrast with their volume of sales to dealers, all six witnesses testified that a substantial portion of their total sales are made to industrial accounts for use as premiums or as incentive awards. As to these sales, respondents strongly urge that they are wholesale transactions, citing in support of their argument the court's definition of a wholesaler in the *L. & C. Mayers* case.[5] This argument likewise is

[5] "A wholesaler * * * is one who sells to the trade for resale and seldom, if ever, to the purchasing public, with the exception that sales to industrial concerns, public utilities, banks, and other similar organizations, which purchase in quantity lots, i.e., simultaneous sales of more than one of a given item, not for resale, but for use by such organizations, are considered as wholesale transactions. (*L. & C. Mayers Co., Inc.* v. *Federal Trade Commission*, 97 F. 2d 365 (2nd Cir. 1938)).

of no avail to respondents. In our view, it makes no difference whether these sales are treated as wholesale or retail sales. The point at issue here is whether or not the items offered in respondents' catalog sheets which are sold at retail are usually and regularly sold at the represented "Retail" price. Considering the fact that a large percentage of sales by catalog houses are made at retail, and the further fact that all such sales admittedly are made at the "coded" prices, the conclusion is inescapable that the generally prevailing retail price of respondents' catalog house merchandise is substantially less than that represented by respondents on their catalog sheets as the "Retail" price. In this connection, it is to be noted that the individual respondent, Mr. Braverman, acknowledged that respondents have no way of knowing and no way of controlling the ultimate selling price to the public of the merchandise they sell to catalog houses. Be this as it may, it is nevertheless clear that by furnishing insert sheets to the catalog houses, respondents have provided these customers with a means of deceiving the public as to the usual and regular retail price of the line of products which respondents designate as their jobber line. As we stated in the *Rayex* case,[6] respondents may not so casually and indifferently place a tool of deception at the disposal of their dealers.

The complaint charges that the retail price amounts on respondents' catalog sheets are not the usual and regular prices for the items in the trade area or areas where the representations are made. To sustain this charge, it is not necessary to limit the trading area to the downtown section of Philadelphia, as did the hearing examiner. As we have previously noted, the products which respondents sell to catalog houses differ in construction from those in their regular line and are specially made for the catalog houses. The two lines are sold to entirely different classes of purchasers. The evidence supports a finding that the represented "Retail" prices of respondents' catalog house merchandise were not the usual and regular prices of such merchandise in the Philadelphia trading area and the initial decision will be modified in this respect.

The final issue presented by respondents relates to the scope of the order. They contend that the hearing examiner's order is too broad in that it prohibits price misrepresentation in the sale of all of their products. It is their position that an order limited to the golf bag aspect of their business is adequate to protect the public interest. In view of our finding that in the insert sheets furnished to catalog houses, respondents have misrepresented the retail prices of their lug-

[6] In the Matter of *Rayex Corporation*, Docket No. 7346 (1962).

gage and bowling bags as well as their golf bags, this argument must be rejected.

Respondents in this case are shown to have engaged in the unfair trade practice of price misrepresentation, thereby placing a means of deception in the hands of others. Specifically, respondents have misrepresented the usual and regular retail price of the golf bags in their regular line and the golf bags, luggage and bowling bags in the line which they sell to catalog houses. It is settled law that where a respondent has been shown to have engaged in an illegal practice in the sale of one product, the Commission may prohibit the future use of that practice in the sale of all of the respondent's products.[7] We think that such a remedy is appropriate and necessary here. We recognize, of course, that such an order would encompass respondents' regular line of luggage which is preticketed with a retail price which has not been shown to be deceptive. However, our order is not directed against preticketing in and of itself, but is intended to prevent the use of tickets bearing prices which are in excess of the generally prevailing retail prices of the items. This is the practice which the Commission is authorized to prohibit.[8] From the standpoint of public interest, having once established that respondents have engaged in that practice, a separate suit should not be necessary should respondents in the future misrepresent the retail price on the tickets attached to the luggage in their regular line.[9]

We have determined that the hearing examiner's order is appropriate in scope. However, we believe that certain revisions in form are necessary to more clearly delineate the practices proscribed. Our order will contain the necessary modifications.

The hearing examiner concluded that respondents knew that their represented retail prices were excessive. While we agree that the evidence supports this conclusion, such knowledge is not necessary in order to establish a violation of Section 5. We have found that both the tickets and the catalog sheets are prepared and furnished by respondents for the purpose of being displayed to members of the purchasing public to induce the purchase of respondents' products. The amounts set forth on the tickets and the amounts designated as "Retail" in the catalog sheets constitute respondents' representation to the public that these are the generally prevailing retail prices for the articles in the trade area or areas where used. Where, as here, such amounts are in excess of the generally prevailing retail prices, the prac-

[7] *Niresk Industries, Inc.* v. *Federal Trade Commission*, 278 F. 2d 337 (7th Cir. 1960).
[8] 15 U.S.C. § 45(b).
[9] In the Matter of *Colgate-Palmolive Company*, Docket No. 7736 (1961).

tice has a tendency or capacity to deceive. This is the test of legality under Section 5. Knowledge on the part of respondents is not a material consideration under these circumstances.

In view of the foregoing, respondents' exceptions to the initial decision are denied. As modified in accordance with this opinion, the initial decision will be adopted as the decision of the Commission.

FINAL ORDER

This matter having been heard by the Commission upon respondents' exceptions to the initial decision and upon briefs and oral argument in support thereof and in opposition thereto, and the Commission having ruled on said exceptions, and having determined that the initial decision should be modified to conform with the views expressed in the accompanying opinion:

It is ordered, That the initial decision be modified by striking therefrom the second sentence of finding number 24 on page 160.

It is further ordered, That the initial decision be modified by striking therefrom finding number 25 on page 160 and substituting the following:

> 25. Luggage, golf bags and bowling bags are included in respondents' jobber line of merchandise which they sell to catalog houses. The products in this line differ in construction from those in respondents' regular line and are specially made for the catalog houses. The two lines are separate and distinct from each other and are sold by respondents to entirely different classes of customers. A substantial portion of the retail sales of respondents' special line of catalog house merchandise in the Philadelphia area is made by the catalog houses at the "coded" price. The represented retail prices in catalog sheets furnished by respondents to catalog house customers in the Philadelphia area for display to retail purchasers are substantially in excess of the generally prevailing retail prices of the products in that line of merchandise in that area.

It is further ordered, That the initial decision be modified by striking therefrom finding number 29 on page 161 and finding number 33 on page 161 and by renumbering the remaining paragraphs accordingly.

It is further ordered, That the order contained in the initial decision be, and it hereby is, modified to read as follows:

> *It is ordered*, That Leeds Travelwear, Inc., a corporation, and Irving L. Braverman, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection

with the offering for sale, sale or distribution of luggage, golf bags, bowling bags, or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. The act or practice of preticketing merchandise at an indicated retail price when the indicated retail price is in excess of the generally prevailing retail price for such merchandise in the trade area or when there is no generally prevailing retail price for such merchandise in the trade area.

2. Supplying to, or placing in the hands of, any distributor, dealer or other purchaser, catalog sheets or other materials which are displayed to the purchasing public and which contain an indicated retail price for respondents' merchandise when the indicated retail price is in excess of the generally prevailing retail price for such merchandise in the trade area or when there is no generally prevailing retail price for such merchandise in the trade area.

3 Furnishing to others any means or instrumentality by or through which the public may be misled as to the generally prevailing retail prices of respondents' merchandise.

4. Putting into operation any plan through the use of which retailers or others may misrepresent the generally prevailing retail price of respondents' merchandise.

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

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

IN THE MATTER OF

SWIFT & COMPANY

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

Docket 8304. Complaint, Mar. 6, 1961—Decision, July 20, 1962

Order dismissing—following the dismissal of a group of related cases by orders issued May 23, 1962, and determination that it would be equitable and in the

public interest to conduct further proceedings on an industry-wide basis—complaint charging a large manufacturer with offering costly and unfair inducements to retailers to handle its ice cream and other frozen products.

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 corporation listed above in the caption hereof and more particularly described and referred to hereinafter as respondent, has violated the provisions of Section 5 of the said Act (U.S. Title 15, Sec. 45) 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 Swift & Company is an Illinois Corporation with its principal office and place of business at 4115 S. Packers Street, Chicago, Ill. Respondent is one of the Nation's large corporations. Its sales for the year 1958 totaled $2,647,925,000 and its working capital for that year was $212,316,000.

PAR. 2. Respondent is engaged in several lines of commerce including that of producing, purchasing, processing, manufacturing, selling and distributing, at wholesale, dairy and related food products among which are ice cream, ice milk, mellorine, sherbets and other similar frozen products hereinafter collectively referred to as frozen products. Respondent maintains and operates approximately 40 frozen products processing plants in various states of the United States. It sells and distributes its frozen products to retailers and dealers who sell frozen products at retail such as drug, grocery and confectionery stores, restaurants, hotels, filling stations, ice cream parlors and institutions, and, is in competition with other firms, partnerships, corporations and individuals in this manufacturer-wholesaler line of commerce.

PAR. 3. Respondent in connection with its frozen products business is engaged in commerce within the meaning of the Federal Trade Commission Act (15 USC 41, et seq.) in that it purchases and produces ingredients which are used in the manufacture of frozen products and causes some of such ingredients to be shipped across state lines to the states of manufacture of such frozen products; it sells and distributes frozen products across state lines, and, in connection therewith, supplies facilities and sells, leases, and loans facilities, sends and receives orders, information, signs, advertising material, and other material and equipment, relating to respondent's frozen products business. Respondent's frozen products business is conducted as an

entity or whole on an interstate basis. Essential elements of the business such as financing and management are centralized in corporate officials at company headquarters, only a limited control over local operational matters being delegated to plant managers within particular states.

PAR. 4. Since World War II the United States has consumed upwards of 500 million gallons of frozen products per year. The great bulk of this whole is produced and sold by manufacturer-wholesalers who sell to retail outlets. Over 50% of this wholesale market volume is done by 10 manufacturer-wholesalers of which the respondent herein is one. These ten operate on a nation-wide basis. In addition to these ten manufacturer-wholesalers, who operate on a "nation-wide" basis, there are a number of intermediate size manufacturer-wholesalers in interstate commerce in frozen products who operate upon what may be termed as a "regional" basis. This group varies in number in accordance with the definition given to the word "regional". A third group of manufacturer-wholesalers exists which consists of those who might be termed "local" or "home-town" manufacturer-wholesalers. In 1947 this latter group consisted of some 3000 to 3500 companies. By 1959 there were less than 1500 such enterprises. In 1947 the combined market share of this latter group and intermediate or "regional" group was between 55% and 60% of the total wholesale market. The first group, of which the respondent is one, did the remainder or from 40% to 45% of the whole. By 1959 the respondent and others in the "nation-wide" group were doing from 55% to 60% of the total volume in the manufacturer-wholesalers line of commerce and the other two groups had the remainder. This increase in concentration in the hands of the respondent and other large manufacturer-wholesalers has resulted in part from the impact of the use of the methods of competition and acts and practices by respondent as described hereinafter in paragraph 6. Small business entities in this industry have been and are forced to attempt to meet respondent's methods, acts and practices, but because of lack of capital, many have had to sell out to larger corporations including respondent Swift & Company, while others have been forced to discontinue operations.

PAR. 5. Because of the nature of frozen products, it is necessary for retailers and dealers to have a cabinet or refrigeration unit of some sort designed and manufactured for use in connection with the storage, display, and sale of frozen products to the purchasing public. Such equipment is hereinafter referred to as facilities. The cost of facilities needed by retailers and other handlers ranges from approximately $500 to $5,000.

Most retailers and other handlers have limited floor space for facilities in their places of business. Accordingly, by placing its equipment in dealers' places of business, respondent monopolizes outlets or markets. The placement by a frozen products manufacturer of facilities on the premises of a retailer or handler with or without an agreement, condition, or understanding that only the frozen products of said manufacturer shall be stored therein or sold therefrom, is tantamount to an exclusive requirements contract.

PAR. 6. For more than two years last past and continuing up to the present time, Respondent, in carrying on its business of manufacturing, selling and attempting to sell frozen products, has attempted to induce and has induced retail dealers and prospective retail dealers and other handlers of frozen products to handle, store and sell Respondent's products by doing, engaging in, and carrying out various acts, methods and practices including the following:

1. Respondent supplies dealers with facilities at its expense.

2. Respondent finances dealers in several ways, (a) by loans of money, (b) by financing and assisting in the financing of the purchase of facilities, (c) by advancing sums of money to be earned later as discounts for quantity purchases, (d) by transferring cash to dealers directly or under one guise or another such as in the form of an advertising allowance, and (e) by investing capital in dealers' places of business or prospective places of business.

3. Respondent offers dealers miscellaneous inducements, (a) in the form of services of value and gratuities, e.g., it services dealer-owned equipment—soda fountains and refrigerated cases—used for other products, (b) moves and arranges store equipment, (c) assists dealers to obtain equipment at reduced prices, (d) supplies signs or parts of signs not in the normal range of standard advertising practice, and (e) makes gifts to dealers of things of value, e.g., clocks, back bars, bains-marie and other items.

4. Respondent sells "off list," i.e., it sells to some purchasers at prices below its current published prices which are in effect at the time as to other purchasers.

5. Respondent sells and delivers some of its frozen products as "fighting", "traffic" or "competitive" brands, or as private label products, at prices below the cost to the respondent of manufacturing, selling, shipping and delivering said products.

PAR. 7. The effect and result of the use of the aforesaid acts, practices and methods by respondent have been and now are to unduly and substantially injure, restrain and suppress competition between respondent and its competitors. The use of these acts, practices and

methods by respondent contributes to the monopolization of the frozen products industry in the hands of a few. It is prejudicial to small business concerns with limited resources. It tends to destroy the freedom of retailers and other handlers of frozen products to select frozen products pursuant to customer demands or by their own free will. It is prejudicial to the growth and development of the frozen products industry from the standpoint of competition and from the standpoint of the public interest in products of high quality at fair prices. The use by respondent of the aforesaid acts, practices and methods tends to put a premium upon the availability of capital in the competitive race in the frozen products industry and to detract from the importance of the ability to compete on price, quality and service. It focuses competition on cabinets and other gifts and gratuities and reduces the competitive importance of price, quality and service. Said acts, practices and methods are all to the prejudice and injury of the public. They are adverse to the public interest and constitute unfair methods of competition and unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

Dissenting Opinion

By MacIntyre, *Commissioner:*

The Commission issued its complaint in this matter on March 6, 1961. In that complaint it was alleged that respondent is engaging in certain acts and practices in connection with its sale of ice cream in interstate commerce. In paragraph 7 of the complaint it was alleged that:

"The effect and result of the use of the aforesaid acts, practices and methods by respondent have been and now are to unduly and substantially injure, restrain and suppress competition between respondent and its competitors. The use of these acts, practices and methods by respondent contributes to the monopolization of the frozen products industry in the hands of a few. It is prejudicial to small business concerns with limited resources. It tends to destroy the freedom of retailers and other handlers of frozen products to select frozen products pursuant to customer demands or by their own free will. It is prejudicial to the growth and development of the frozen products industry from the standpoint of competition and from the standpoint of the public interest in products of high quality at fair prices. The use by respondent of the aforesaid acts, practices and methods tends to put a premium upon the availability of capital in the competitive race in the frozen products industry and to detract from the importance of the ability to compete on price, quality and service." * * *

On June 2, 1962 respondent filed a motion seeking postponement of hearings previously postponed to June 11, 1962. It is clear that one of the purposes for the requested postponement was to permit respondent to appeal to the Commission to dismiss the complaint herein. Also, it is clear that respondent would be seeking dismissal of the complaint herein because the Commission, on May 23, 1962, had dismissed complaints in other cases (Federal Trade Commission Dockets 6172–79, 6424) in which respondents in those cases allegedly were using acts and practices in connection with the interstate sale of ice cream in violation of Section 5 of the Federal Trade Commission Act. Although the Commission dismissed the complaints in Federal Trade Commission Dockets 6172–79 and 6424, it does not appear that the Commission absolved the practices challenged in those complaints. Instead, the dismissals were for the stated reason that the records in those cases lacked *proof of injury.*

In this case the action of the majority in dismissing the complaint at this time precludes counsel representing the public interest from presenting evidence from which it could be determined whether the injury alleged in paragraph 7 of the complaint and heretofore quoted in this Opinion actually occurred. It should be emphasized that the majority in dismissing the complaint in this case did so without a record of evidence before the Commission. Instead, the majority in its order of dismissal has stated that this matter was "examined * * * in the light of its disposition of a group of related cases." That was in accordance with the request of the respondent. It had stated that it, in effect, was tried when the Commission tried the other cases. Such contention perplexes me. It is certain that if the Commission had found parties in the other cases guilty it could not have, by virtue of that fact, found respondent guilty in this case.

Moreover, according to the information before us this proceeding was authorized by the Commission subsequent to the initial decision of the hearing examiner in Federal Trade Commission Dockets 6172–79, 6424. Therefore, the Commission in authorizing the complaint in this case was on notice that the hearing examiner in the other cases had determined that there was lack of proof of injury in those cases. Also, when the majority acted to dismiss the complaint in this case, it was on notice that counsel representing the public interest was contending that the evidence to be offered in this proceeding would be substantially different from that offered and received in the records of the Federal Trade Commission Dockets 6172–79, 6424.

The Administrative Procedure Act provides the public interest with no remedy when the Commission acts to dismiss a complaint with no

record of evidence before it. Appropriately that Act does preclude the Commission from issuing an order to cease and desist against a respondent without a record of evidence.

The order of the majority dismissing the complaint in this case points to its action of May 23, 1962 in dismissing the complaints in other cases and the direction for continuing close scrutiny of acts and practices in the Frozen Dairy Products Industry which may lessen competition or tend towards monopoly. In that connection it was stated that it had been determined it would be in the public interest that any further proceedings by the Commission in regard to such acts and practices should, so far as practicable, be conducted on an industry-wide basis. Perhaps anti-competitive, unlawful and unfair acts and practices are so widespread in the sale and distribution of ice cream in interstate commerce that industry-wide proceedings by this Commission would be in the public interest. Requests from representatives of the industry have been filed and are continuing to be filed with the Commission for such industry-wide proceedings, but they have not been initiated.

In view of the foregoing the majority, with its dismissal of the proceedings in this case, has wiped its slate clean of all proceedings undertaken by it directed against acts and practices in connection with the interstate sale and distribution of ice cream which the Commission has alleged to be to the prejudice of the public. In this latest action it did so in a formal proceeding *without evidence on the record* supporting or disproving allegations made by the Commission on March 6, 1961 that the acts and practices of the respondent are to the prejudice and injury of the public.

From the action of the majority, I dissent.

Order Dismissing Complaint

This matter having been considered by the Commission upon the appeal by the respondent from the hearing examiner's denial of its motion to dismiss the complaint; and

The Commission having examined the matter in the light of its disposition of a group of related cases by orders issued May 23, 1962, dismissing the complaints in those cases and directing that continuing close scrutiny be maintained of acts and practices in the frozen dairy products industry which may lessen competition or tend towards monopoly; and

The Commission having determined that it would be equitable and in the public interest that any further proceedings by the Commission

in regard to such acts and practices should, so far as practicable, be conducted on an industry-wide basis:

It is ordered, That the appeal of respondent be, and it hereby is, granted.

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

Commissioner MacIntyre dissenting.

IN THE MATTER OF

GIANT PLASTICS CORPORATION ET AL.

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

Docket C-188. Complaint, July 20, 1962—Decision, July 20, 1962

Consent order requiring Bronx, N.Y., distributors of toys, novelties, and jewelry, much of it imported from Hong Kong and Japan, to jobbers and retailers, to cease selling such merchandise so packaged—commonly on a printed cardboard mount secured by clear plastic-like material—that any identification of foreign origin was not visible except by detroying the so-called "bubble pack"; to cease representing such foreign-made articles falsely as of domestic origin by their practice of stating on some of the packages "MADE IN U.S.A." and on all of them "GIANT PLASTICS CORP., NEW YORK, N.Y."; and requiring them to clearly and conspicuously disclose the country of origin on such display or point of sale material.

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 Giant Plastics Corporation, a corporation, and Herbert J. Rosenberg, Harold Rosenberg, and Celia Rosenberg, 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 Giant Plastics Corporation 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 3876 Park Avenue, Bronx, N.Y.

Respondents Herbert J. Rosenberg, Harold Rosenberg, and Celia Rosenberg are individuals and 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 offering for sale, sale and distribution of children's toys, novelties and jewelry to distributors and jobbers and to retailers for resale to the public.

PAR. 3. In the course and conduct of their business respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other states of the United States, and 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. A substantial portion of respondents' toys, novelties and jewelry is imported from Hong Kong and Japan. Prior to distribution, the respondents cause all said imported articles, in some instances mingled with similar products of domestic origin, to be packed in retail display packages. Such packages consist of an article or group of articles on a printed cardboard mount secured by a tight form-fitting clear plastic bubble or other clear plastic-like material. At no place on the packaging, container, or cards is the fact disclosed that respondents' products are imported from Hong Kong or Japan. On some of the said packages appears the statement, "MADE IN U.S.A." All of the packages contain the statement "GIANT PLASTICS CORP., NEW YORK, N.Y." Obscurely printed on each item within the packaging in small and virtually indistinguishable letters appears the word "Hong Kong" or "Japan", as the case may be. In most instances, respondents cause said merchandise to be packaged so that any identification of origin thereof is not visible prior to purchase, except by damaging or destroying the so-called "bubble pack" or other plastic-like package and closely examining the contents thereof. As a result thereof the purchasing public is not informed of the country of origin of said imported merchandise prior to purchase. The use of the aforesaid quoted words, statements and representations of origin appearing on respondents' packaging herein described tends to lead the public to believe that the said merchandise is of domestic origin.

PAR. 5. In the absence of an adequate disclosure that a product, including children's toys, novelties and jewelry, is of foreign origin, the public believes and understands that it is of domestic origin, a fact of which the Commission takes official notice.

As to the aforesaid articles of merchandise, a substantial portion of the purchasing public has a preference for said articles which are of

domestic origin, of which fact the Commission also takes official notice. Respondents' failure clearly and conspicuously to disclose the country of origin of said articles of merchandise is, therefore, to the prejudice of the purchasing public.

PAR. 6. Respondents, in the course and conduct of their business, are in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of products of the same kind and nature as those sold by respondents.

PAR. 7. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said products are of domestic origin and that said statements and representations were and are true, and to induce a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase said products.

PAR. 8. The aforesaid acts and practices of the respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

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, Giant Plastics Corporation, 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 3876 Park Avenue, in the city of New York, State of New York.

Respondents Herbert J. Rosenberg, Harold Rosenberg and Celia Rosenberg 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 respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Giant Plastics Corporation, a corporation, and its officers, and Herbert J. Rosenberg, Harold Rosenberg and Celia Rosenberg, 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 children's toys, novelties, and jewelry, and any other imported products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, in advertising or in labeling that products manufactured in Hong Kong, Japan or any other foreign country are manufactured in the United States.

2. Offering for sale, selling, or distributing any such product which is packaged, or placed in a container, or mounted on or affixed to a card or other device, in such a manner as to conceal the country or place of origin, unless the country or place of origin is clearly and conspicuously disclosed on the package, container, card or other device.

3. Offering for sale, selling or distributing any such product in such a manner that the country or place of origin of the product cannot be readily seen by prospective purchasers.

4. Disseminating or causing to be disseminated any display or point of sale material with respect to any such product which fails to clearly and conspicuously disclose the country or place of origin of the product.

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

Complaint

IN THE MATTER OF

THE COMMERCIAL TRAVELERS MUTUAL ACCIDENT ASSOCIATION OF AMERICA

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

Docket 6242. Complaint, Oct. 14, 1954—Decision, July 23, 1962

Order dismissing without prejudice—the evidence relating to practices too remote in point of time to support the recommended order—complaint charging a Utica, N.Y., insurance company with false advertising.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as that Act is applicable to the business of insurance under the provisions of Public Law 15, 79th Congress (U.S.C. Title 15, Secs. 1011 to 1015, inclusive), and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that The Commercial Travelers Mutual Accident Association of America, a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Commercial Travelers Mutual Accident Association of America, is a corporation duly 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 70 Genesee Street in the city of Utica, New York.

PAR. 2. Respondent is now, and for more than two years last past has been, engaged as an insurer in the business of insurance in commerce, as "commerce" is defined in the Federal Trade Commission Act, by entering into insurance contracts with insureds located in various States of the United States other than the State of New York, in which States the business of insurance is not regulated by State law to the extent of regulating the practices of respondent alleged in this complaint to be illegal. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said insurance policies in commerce between and among the several States of the United States.

Respondent's said insurance policies, referred to by it as "certificates," are of the type known in the insurance trade as "accident and health policies" or "accident and sickness policies."

Generally, such a certificate provides that in consideration of a stated sum of money, sometimes referred to as a premium, and other considerations, respondent promises to indemnify the insured, or certificate holder, for losses resulting from accidental injury, disease or sickness, in accordance with the various terms and conditions of such certificates, by the payment of cash benefits.

Respondent during the two years last past has sold insurance coverage contained in a variety of certificates, among which were the following:

(1) Accident Certificates identified by respondent as "01."
(2) Accident Certificates identified by respondent as "02."
(3) Accident and Hospital and Surgical Certificates identified by respondent as "05."
(4) Accident and Hospital and Surgical Certificate identified by respondent as "06."
(5) Accident and Hospital and Surgical Certificate identified by respondent as "07."
(6) Accident and Hospital and Surgical Certificate identified by respondent as "08."
(7) Accident and Health Certificate identified by respondent as "11."
(8) Accident and Health Certificate identified by respondent as "22."
(9) Accident and Health Certificate identified by respondent as "33."
(10) Accident, Health and Hospital and Surgical Certificate identified by respondent as "44."
(11) Accident, Health and Hospital and Surgical Certificate identified by respondent as "55."
(12) Accident, Health and Hospital and Surgical Certificate identified by respondent as "66."
(13) Accident, Health and Hospital and Surgical Certificate identified by respondent as "77."
(14) Accident, Health and Hospital and Surgical Certificate identified by respondent as "88."

PAR. 3. Respondent is licensed, as provided by the respective State laws, to engage in the business of insurance as heretofore generally described in the States of New York and Virginia. Respondent is not now, and for more than two years last past has not been, licensed as provided by the respective State laws to engage in the business of insurance in any State of the United States other than New York and Virginia.

Respondent solicits business by mail in the various States of the United States in addition to the States of New York and Virginia. As a result thereof it has entered into insurance contracts with insureds located in many States in which it is not licensed to do business. Respondent's business practices are not regulated by any of these States as it is not subject to the jurisdiction of such States.

PAR. 4. In the course and conduct of its aforesaid business, respondent, during the two years last past, disseminated and caused to be disseminated in the form of circulars and other printed and written matter, false, misleading and deceptive advertisements concerning the terms and provisions of various of its contracts of insurance as reflected by said policies aforesaid. These advertisements were disseminated by the United States mails or through its agents in commerce between and among the various States of the United States. The purpose and effect of these advertisements was and is to induce members of the public to become insured by the respondent under the terms and provisions of the policies advertised.

PAR. 5. In the course and conduct of its said business in said commerce, as aforesaid, the respondent has disseminated, among others of similar import and meaning, not herein set out, advertisements relating to its said policies containing statements hereinafter set forth.

1. A man must be under 55 years of age to join, but once he becomes a member there is no age limit for the accident coverage, except for a reduction of the death benefit at age 70 * * *

Eligible members may continue their accident protection indefinitely with the death benefit reduced 80% at age 70.

Hospitalization may be continued to age 65 * * *

Sickness coverage reduces 40% at age 60, but it and hospital and surgical benefits may continue to age 65.

2. Accident benefits include $50.00 weekly payable from the first day of total disability every 30 days for as many as 104 weeks for *each* mishap * * * $25.00 weekly for as many as 26 weeks for partial disability * * * as much as $5,200 for each accident, with no reduction on account of other insurance.

IF You Have an Accident

membership in The Commercial Travelers pays you $50.00 a week while you are totally disabled from pursuing the regular duties of your occupation, from the very first day of disability for as many as 104 weeks—two whole years.
There is no limit to the number of accidents covered.

3. All kinds of sickness are covered, excepting only venereal diseases and alcoholism. Even heart disease, cancer, tuberculosis and hernia, arising after first year's membership, are included.

4. In addition to all other benefits, you are paid for *each* injury or illness * * * plus as much as $150 for a surgical operation * * *

PAR. 6. Through the use of said statements and representations, and others of similar import and meaning not specifically set out herein, the respondent represents and has represented, directly or by implication, with respect to said policies of insurance, as follows:

(1) That the indemnification provided by its said certificates against loss caused by accident or sickness may be continued to age 65 or 70

or indefinitely at the option of the insured upon the continued payment of premiums.

(2) That the weekly benefits hereinabove described in paragraph 5(2) are payable for each mishap and each accident from the first day of total disability for as many as 104 weeks up to a maximum of $5,200.

(3) That a member will be indemnified for a loss caused by any kind of sickness with the sole exception of those caused by an alcoholic or venereal condition, and after one year for such diseases or conditions as cancer, tuberculosis, heart trouble or hernia.

(4) That a member will be indemnified for each and every surgical operation in an amount up to $150.

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

(1) Each of the certificates described in paragraph 2 expressly provides that the respondent may cancel the certificate at any time; and that it is automatically terminated upon the payment of the maximum amount of losses set forth in Section A of said certificate, such termination varying in form with certain of the certificates; and each certificate of health, and hospitalization and surgical coverage contains a "change of occupation" clause requiring the consent of respondent as a condition precedent to the continuation of such coverage in the event an insured member engages in a new and different occupation.

(2) The weekly benefits described in paragraph 5(2) are not payable for each mishap or accident from the first day of total disability for as many as 104 weeks nor up to a maximum of $5,200, for the certificates referred to expressly provide that:

(a) No weekly benefits are payable by respondent for Total Disability caused by "each mishap" or "each accident" unless "such injuries alone shall, within twenty days after the date of the accident causing them or immediately following a period of partial disability insured against and caused by said accident, wholly and continuously disable him from the prosecution of every duty pertaining to his occupation."

(b) No weekly benefits are payable by respondent for Partial Disability caused by "each mishap" or "each accident" unless "such injuries alone shall, within twenty days after the date of the accident causing them or immediately following a period of total disability insured against and caused by said accident, partially disable and prevent him from performing the important duties of his occupation."

(c) No accident benefits, weekly or otherwise, are payable, for any loss whenever occurring, if such loss was caused "directly, in-

directly, wholly or partially by or to which a contributing cause is:

(a) medical, surgical or dental treatment; or

(b) any kind of sickness, disease, or bodily or mental infirmity;

(c) sunstroke, heatstroke, ptomaine poisoning or bacterial infection of any kind (except only septic infection of and through and external and visible wound caused solely and exclusively by external and accidental violence); or

(d) hernia, however caused, except in a sum not to exceed One Hundred Dollars ($100.00)."

(d) The exceptions contained in the certificate of accident coverage provide that no benefit shall be paid for any loss caused by suicide, or attempt to commit suicide, any loss caused by war or any act of war, any loss occurring or originating while a member is outside the continental limits of the United States and Canada unless a travel permit or a permit to reside elsewhere is first granted in writing by the respondent, or while engaged in military or naval service in time of war declared or undeclared, or while insane, or while intoxicated or under the influence of narcotics.

(e) No benefit is paid for a loss caused by an accident unless such loss occurs within 90 days of the date of such accident.

(3) No indemnification is provided for all losses caused by sickness aside from those caused by alcoholic or venereal conditions and after one year for such diseases as cancer, tuberculosis, heart trouble or hernia; on the contrary no benefits are payable for losses resulting from any disease or sickness if the cause of such disease or sickness is traceable to a condition that existed prior to or within 30 days of the effective date of the certificate.

(4) Members will not be indemnified for each and every surgical operation up to $150, for under the terms of the certificates providing surgical benefits, some are limited to provide a maximum recovery of $75; all other certificates providing surgical benefits do provide a maximum benefit of $150 for 14 specified operations; with respect to 73 other specified operations the maximum benefit payable ranges from $6 to $100. All certificates provide a maximum benefit of not less than $5 and not more than $10 for any operation not listed in the Schedule of Operations. No surgical benefits are provided in connection with the extraction, filling or surgical or dental treatment of tooth or teeth. In the event two or more surgical operations are performed because of injuries resulting from the same accident or

because of the same disease or illness or during any one period of continuous hospitalization, the insured member will only be paid the largest sum scheduled for any one of the operations so performed. No benefits are provided for any surgical operation necessitated by any injuries received in an accident which accident is specifically excluded by the provisions of the policy. No benefits are provided for any surgical operation in connection with any disease or sickness the cause of which disease or sickness is traceable to a condition existing before or within 30 days after the effective date of the certificate providing surgical benefits.

PAR. 8. The use by the respondent of the aforesaid false and misleading statements and representations with respect to the terms and conditions of its said policies and its failure to reveal the limitations of said coverage found in said policies have had and now have the tendency and capacity to mislead and deceive and have misled and deceived a substantial portion of the purchasing public into the erroneous and mistaken belief that the aforesaid statements and representations were and are true and to induce said portion of the purchasing public to purchase insurance coverage from the respondent because of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Mr. John W. Brookfield, Jr., and *Mr. William R. MaHanna* for the Commission.

Mr. Moses G. Hubbard and *Mr. Eugene B. Hubbard*, of *Hubbard, Felt & Fuller*, of Utica, N.Y., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding is one brought under Section 5 of the Federal Trade Commission Act as that Act is amended by and made applicable to the business of insurance under the provisions of Public Law 15, 79th Congress (Title 15, U.S.C. Secs. 1011–1015, inclusive). It involves the advertising acts and practices in interstate commerce of the respondent insurance company as to its health and accident insurance policies. The respondent is a cooperative assessment accident and health association incorporated under the laws of New York, under the original title of The Commercial Travelers Mutual Accident Association of America, which title was shortened by amendment to its

present form of The Commercial Travelers Mutual Accident Association on May 22, 1953.

While the corporation under its charter is privileged to engage in the life insurance business, it has never availed itself of its authority to write life insurance and to date has confined itself to providing accident, health, and hospitalization coverage. (See Respondent's Exhibit No. 7, pages 3–4.)

The respondent company has engaged in the solicitation of accident, health, and hospitalization insurance business entirely by advertisements in newspapers having a widespread national circulation and by direct mail advertising to the consuming public. Some of respondent's direct mail advertising is by means of follow-up brochures, applications, and letters sent to those who have become leads by answering its newspaper advertisements, but in some cases such mail advertisements are sent direct to persons whose names have been furnished by members of the respondent company. Respondent has never employed any agents in the solicitation and sale of its said accident, health, and hospitalization insurance.

The complaint alleges, in substance, that during the period of two years prior to the filing of such complaint on October 14, 1954, the respondent had disseminated in interstate commerce certain advertising matter which contained some four general types or categories of alleged false, misleading, and deceptive statements and representations concerning its accident, health, and hospitalization policies, which are subsequently herein discussed in detail. It is further alleged in the complaint that all of such acts and practices were and are to the prejudice and injury of the public. A cease and desist order prohibiting such acts and practices is therefore prayed for. Respondent in its answer, in substance, for a first defense denies that the Federal Trade Commission has any jurisdiction over it or over the subject matter of the complaint. For its second defense, respondent denies that it is a "corporation" as defined in Section 4 of the Federal Trade Commission Act "which is organized to carry on business for its own profit or that of its members," and alleges that respondent is a nonprofit association operating on a cost basis and not for its own profit or that of its members and thereby the Commission has no jurisdiction over its person. For its third defense, respondent admits that it is incorporated and doing business under the laws of the State of New York, with its principal place of business in the city of Utica in said State. The respondent generally denies the other material allegations of the complaint, although admitting, in substance, that it has issued, and does issue, the

certificates of insurance referred to in paragraph 2 of the complaint. Its fourth defense, in substance, states respondent's alleged compliance with the Trade Practice Rules of the Commission promulgated in 1950, pertaining to the advertising of health and accident insurance. This defense was stricken by the hearing examiner as hereinafter more fully stated. For the fifth defense, respondent, in substance, pleads abandonment of the advertising practices referred to in the complaint, alleging that they have become entirely moot and academic because it has been required *pendente lite* to change all of its policies and certificates under a new statute of the State of New York and that its new advertising applies solely and exclusively to such new forms of certificates of insurance. For its sixth defense, respondent pleads, in substance, estoppel against the Commission to the same effect as in its fourth complete defense which likewise was stricken by the hearing examiner as hereinafter stated.

In this initial decision respondent corporation is found to be a corporation which is subject to the jurisdiction of this Commission and that it has disseminated in interstate commerce a substantial amount of false, misleading, and deceptive advertising matter relating to its accident, health, and hospitalization insurance policies. It is concluded therefrom that the Federal Trade Commission has jurisdiction over the respondent's person and also over the subject matter of this proceeding which is clearly and substantially maintainable in the public interest. A cease and desist order against respondent insurance company appropriate to the findings made and conclusions drawn is issued herewith.

This proceeding was instituted October 14, 1954, by the filing of the complaint against respondent. After lawful service of the complaint upon it, respondent, on November 12, 1954, filed its notice of motion to dismiss the complaint, which motion was extensively presented pro and con at an oral argument held December 28, 1954. On May 23, 1955, the hearing examiner issued his interlocutory order overruling said motion to dismiss for lack of jurisdiction, supplemented on June 9, 1955, because of an additional brief of respondent, by a further interlocutory order rejecting respondent's suggestion of its immunity from the Commission's jurisdiction because of its alleged nonprofit corporate character. These orders were appealed to the Commission, which, on September 23, 1955, denied such interlocutory appeal. The hearing examiner conducted a hearing whereat evidence was introduced on behalf of the Commission at Utica, New York, on October 25, 1955, and counsel rested the Commission's case-in-chief. Thereafter respondent filed a motion for the dismis-

sal of the complaint with a supporting brief to which an answer brief was filed by Commission's counsel. After oral arguments had been had, the hearing examiner denied said motion on April 24, 1956. Meanwhile, on January 25, 1956, the hearing examiner issued his order to show cause why respondent's fourth and sixth defenses should not be stricken from the answer as incompetent, irrelevant, and immaterial. The extensive showing of cause filed on February 9, 1956, in response to said order, was orally argued *in extenso* on March 2, 1956, following which, on April 3, 1956, the hearing examiner, upon authorities and reasons cited therein, ordered such allegations stricken from the answer. An appeal from this decision and its typographical amendment of April 16, 1956, was denied by the Commission on May 29, 1956, and since the basis and reasons for the examiner's ruling, and the Commission's order sustaining such ruling fully appear in the record and are immaterial to the issues now presented, no further comment respecting the same will be made in this initial decision except, in substance, to say that the stricken matter attempted to state an illegal defense or defenses in the nature of equitable estoppels arising against the Commission by reason of alleged compliance by respondent with Trade Practice Rules adopted by the Commission in 1950. It may be noted further, however, that respondent never did subscribe to the Rules or consent in any way to the Commission's jurisdiction and authority to issue and enforce such Rules.

On June 18, 1956, at Utica, New York, the respondent presented its defense under the answer as it remained following the striking of said matter above referred to. Both parties thereupon rested and in due course submitted their respective proposed findings, conclusions, and order.

The hearing examiner has given full, careful, and impartial consideration to all the testimony and other evidence presented and to the fair and reasonable inferences arising therefrom, as well as to any and all facts pleaded in the complaint which are admitted by the answer, and to all matters stipulated or admitted during the hearing on the record by counsel for the respective parties. All briefs and arguments of counsel have been carefully reviewed and have also been given full, careful, and impartial consideration. Upon the whole record thus considered, it is found that the complaint's material allegations are each and all established by a preponderance of the evidence, the hearing examiner specifically finding as follows:

Respondent, The Commercial Travelers Mutual Accident Association of America, is an insurance corporation duly 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 70 Genesee Street, Utica, New York. As before stated, during 1953 its name was shortened to The Commercial Travelers Mutual Accident Association. The respondent is not and never has been a fraternal beneficiary association with a ritual and lodge system but is incorporated as a cooperative life and accident insurance company under Article 9–B of the *New York Insurance Law* (Book 27, McKinney's Consolidated Laws of New York, Annotated, Sections 230–248, inclusive). During the period covered by the complaint, 1953–1954, respondent was engaged in the business of accident and health insurance, writing accident, health, and hospitalization certificates or policies upon its membership. While the form of its policies has been changed during this litigation to comply with new requirements of New York insurance law and regulation, respondent is still engaged in the same type of business. The history of the company and its various changes in charter under several amendments of the applicable law of New York are aptly set forth in Respondent's Exhibits Nos. 7, 7–B, 7–C, and 13. During the period in question, membership was "limited to any white man of good moral character and good general health, not over fifty-five or under eighteen years of age at entry, considered by the board of directors as a preferred insurance risk." Respondent is licensed to conduct its business in the State of New York and the Commonwealth of Virginia, as well as in the Dominion of Canada and its provinces of Ontario and Quebec. Its membership extends throughout the United States and Canada. It maintains, in addition to its home office, offices in New York City and Ottawa, Canada. Incorporated in 1883, it ranks as the second oldest and by far the largest of the mail order insurers whose business was originally premised upon the writing of "commercial travelers" as the corporate name of respondent clearly denotes. By subsequent amendments of the statute and the corporation's charter and bylaws, its authorized membership had been broadened during the period in question to include any white male risks considered to be in the preferred risk class by the management. Recent amendments permit it to write accident, health, and hospitalization insurance also upon female persons and racial discrimination has been removed.

The evidence does not disclose the nature of the Canadian office of respondent but does indicate that its licensing in the State of Virginia has not resulted in any activity in such state other than is usual in the other states of the Union. The existence of this Virginia license may be attributable to the fact that respondent's general

counsel was also counsel in *Travelers Association, et al.* v. *Virginia ex rel State Corporation Commission* (1950), 339 U.S. 643. But the reasons for such license are immaterial since the respondent admittedly has no agents selling its insurance anywhere. During the period in question it solicited its business entirely either through advertisements placed in newspapers of general circulation, such as *The New York Times Magazine*, *The New York Times* editorial section, *New York Herald-Tribune*, *New York Mirror*, *Richmond* (Va.) *News-Leader*, *Buffalo* (N.Y.) *Courier*, *Rochester* (N.Y.) *Democrat and Chronicle*, the *Washington* (D.C.) *Times-Herald*, *Chicago Tribune*, *Chicago Sun-Times*, *Washington* (D.C.) *News*, and *New York Post*, as well as in certain magazines of large national circulation—*Nation's Business*, *Esquire* and *Coronet*—or by various other methods, such as names of prospects given to respondent by its members, and the circulation of letters and other advertising material through mailing lists covering preferred risks on the basis of occupational classification.

The record is replete with indications that the respondent's business has been successful and well-managed. The issues herein in no way attack the corporation's financial and business standing or the propriety of the insurance certificates which it issues to its members, which, of course, have been fully approved by the New York Insurance Department. The basic issue which is to be determined in this proceeding is, "Do the statements and representations of respondent in its advertising matter, each read in the entirety of the advertisement of which it is a part, have the tendency and capacity to deceive the prospective purchasers of respondent's accident, health, and hospitalization certificates which are advertised thereby?" There is no evidence that any person has been deceived or defrauded by respondent nor under the many decisions of the courts is such evidence at all necessary to the maintenance of this proceeding. Furthermore, consumer or public "impression" evidence is not necessary and none was received in this case. It is true that the opinion evidence of several officials of the Insurance Department of the State of New York indicates that they believe the questioned advertising in this proceeding is not false, misleading, and deceptive, but each of the witnesses so called was a mature expert who had been dealing with insurance and insurance regulation practically throughout his entire adult lifetime, and quite naturally he was familiar with all of the exceptions, exclusions, and reductions which were to be expected in respondent's insurance certificates. Their evidence is not at all conclusive upon this examiner who has been obliged to view the evidence broadly and make his findings herein with respect to the several classes or categories of

alleged false, misleading and deceptive advertising from a consideration of each of respondent's advertisements in its full context, compared with the particular certificate or certificates advertised, thereby giving due consideration to what those members of the public who were qualified to purchase such insurance most reasonably, probably, and generally would be led to believe from such statements and representations. As stated by the court in *Zenith Radio Corp.* v. *Federal Trade Commission* (C.C.A. 7, 1944), 143 F. 2d 29, 30,

> The Commission was not required to sample public opinion to determine what the petitioner was representing to the public. The Commission had a right to look at the advertisements in question, consider the relevant evidence in the record that would aid it in interpreting the advertisements, and then decide for itself whether the practices engaged in by the petitioner were unfair or deceptive, as charged in the complaint.

Respondent's several types of certificates used during the period in question are in evidence and identified as Commission's Exhibits Nos. 1 to 14, inclusive. They consist of accident certificates, accident and health certificates, accident and hospital and surgical certificates, and accident, health and hospital and surgical certificates, whereby respondent affords to its members a number of different plans which are summarized in Respondent's Exhibit 7–H. Respondent "requires each member to carry accident coverage, to which may be added sickness or hospital benefits or both. Currently (1955), 14 coverage combinations are offered. . . ." Each of the policies sets forth certain accident benefits and all certificates including hospital benefits have a schedule of operations. For brevity and in order not to repeat the exceptions, limitations, and reductions mentioned in the several certificates issued by respondent as to the several classes of alleged false, misleading and deceptive representations made in its advertising, the 1954 *Report on Examination* made by the Insurance Department of the State of New York (Respondent's Exhibits 7, 7–A to 7–Z–27, inclusive) is hereinafter appropriately quoted (7–I to 7–N, inclusive):

Accident Benefits

> Indemnity benefits are provided for loss of life, limb and sight or loss of time. The loss must be caused directly, exclusively, independently of disease, bodily infirmity or any other cause, by accidental bodily injuries resulting solely from and caused solely by external and accidental violence.
>
> A member becomes eligible for benefits immediately upon issuance of the certificate. There is no waiting period between the date of disability and the date on which benefits commence. The loss of life, limb or sight must occur, however, within 90 days after the accident; the loss of time must occur within 20 days after the date of accident.

The member is indemnified for total disability at the full rate provided in the contract and for partial disability at half rate. For total disability a member may receive benefits for periods up to 104 weeks; and for partial disability up to 26 weeks. The maximum period, however, within which benefits for total and partial disability may accrue is limited to two years and twenty days after the date of accident.

Excluded under the terms of the accident policy is any loss caused directly, indirectly, wholly or partially by or to which a contributing cause is any of the following:

(1) medical, surgical or dental treatment

(2) any kind of sickness, disease or bodily or mental infirmity

(3) sunstroke, heatstroke, ptomaine poisoning or bacterial infection of any kind (except only septic infection of and through an external and visible wound caused solely and exclusively by external and accidental violence)

Benefits are further limited by the policy provision that in those instances where the Association is liable to a member (or his beneficiary) for indemnity because of loss of life, limb or sight it shall not be liable for loss of time arising out of the same accident. In the event that a single accident causes multiple losses in any combination of life, limb or sight the Association's liability is limited to the greatest single loss sustained.

Where an accident policy is written without provision for benefits under a health policy, hernia, however caused, is limited to an amount equal to two weeks' total benefits.

The benefits offered under provisions of the single benefit Accident policy are as follows: (Double benefit policies provide for twice the amounts shown).

Total disability per week	$25.00
Partial disability per week	12.50
Loss of life:	
To age 70	5,000.00
Ages 70 and over	1,000.00
Loss of both hands, both feet, sight of both eyes, a hand and foot	5,000.00
Loss of one hand or one foot	2,500.00
Loss of sight of one eye	1,250.00

Hospital, Surgical and Nursing Benefits

Under this category indemnity benefits are provided to members under age 65 when hospitalization and related services are recommended and approved by a licensed physician, other than the assured, and the expense therefor has actually been incurred by the member. In May 1954, the Association permitted members aged 60 or over to elect to retain their hospitalization benefits without age limitation upon payment of an additional premium commencing at age 60.

A member becomes eligible for benefits immediately upon issuance of a certificate provided such benefits are necessitated because of an accidental injury. Where sickness or disease causes the member to seek hospitalization. surgical or nursing benefits, the indemnity is also payable provided the onset of the sickness or disease occurs after the certificate has been in force more than 30 days.

A further limitating provision requires that the policy be in force one year before liability commences with respect to benefits due on account of hernia.

A schedule of idemnity allowances for the various procedures and services is incorporated in the certificate. In the event the member requires more than one operation arising from the same accident or sickness, the liability of the Association is limited to the largest sum scheduled for any one operation performed.

The benefits offered under provisions of the single benefit Hospital policy are as follows: (Double benefit policy-holders receive twice the amount shown).

Room per day: $3.00—maximum 60 days.
Registered nurse in home: per day $3.00—maximum 30 days
Surgeon—up to $75.00
Operating room—up to $10.00
Anaesthesia—up to $10.00
Xray examination—up to $10.00
Laboratory—up to $5.00

Sickness Benefits

Indemnity benefits are provided to members under 60 years of age (and at a 40% reduction from age 60 through 64 years) for loss of time when a member is totally disabled due to sickness or disease.

Benefits commence on the 11th day of disability measured from the date of first treatment by a physician, provided that the onset of the sickness or disease occurs after the certificate has been in force more than 30 days. A further limitation requires that the policy be in force one year before liability commences for disability due to cancer, tuberculosis, heart trouble or hernia.

The member is indemnified for either confining total disability at the full rate provided in the contract or non-confining total disability at half rate. For confining disability, a member may receive benefits up to 52 weeks; for non-confining disability up to 26 weeks. The maximum period, however, within which benefits for total confining or total non-confining disability may accrue is limited to 52 weeks from the date of the commencement of liability for payment.

Hernia is construed by terms of the policy as due solely to sickness and not to accident.

The benefits offered under the provisions of the single benefit sickness policy are as follows: (Double benefit policies pay twice the amount shown).

Confining total disability—up to age 60—$25.00 a week
Non-confining total disability—up to age 60—$12.50 a week
Confining total disability—age 60 and over—$15.00 a week
Non-confining total disability—age 60 and over—$7.50 a week

Exceptions

All certificates issued by the Association contain certain limitations under which benefits may be denied. In general terms these are:

(1) Loss caused by suicide.
(2) Loss caused by war.
(3) Loss outside the United States or Canada unless a travel permit is issued by the Association.
(4) Loss while member is in military service.
(5) Loss while member is insane.
(6) Loss while member is intoxicated or under influence of narcotics.
(7) Loss due to aerial flights except as paying passenger on a scheduled air line.

(8) Loss while engaged in an illegal occupation or while committing a felony.

Sickness and Hospital certificates, in addition to the limitations listed above also contain the following exception:

Disability or claims resulting from or predicated upon, directly or indirectly, wholly or partially, venereal disease, syphilitic infection or alcoholism.

General Certificate Provisions

The general provisions as contained in all certificates are outlined below:

Specific time limits for filing proof of loss and instituting legal action against the Association.

Option of cancellation by the member or Association.

Procedures regarding reinstatement after lapse of membership.

The right and opportunity to examine the person of the insured when and so often as it may reasonably require during the pendency of claim.

Also the right and opportunity to make an autopsy in case of death where it is not forbidden by law.

Notification of Association of any change of members occupation.

The member shall pay such assessments as may be levied upon him and annual dues of $1.00.

The complaint specifies some four different classes or categories of alleged false, misleading, and deceptive advertising disseminated in interstate commerce by the respondent during 1953 and 1954. Under each category in the complaint, certain quoted statements appear which are alleged to be "among others of similar import and meaning, not herein set out." The advertising pieces in evidence, although disseminated widely, are but few in number, and each has been carefully examined with respect to each of the particular categories. Respondent contends, in substance, while not admitting that the original newspaper and magazine advertisements were in any way misleading or deceptive, that they were cured by the subsequent literature mailed to the prospect when he sent in the return-mail coupon appearing on each advertisement. The general practice of the respondent was that when a lead was obtained by reason of a coupon returned to respondent's home office, it thereupon mailed advertising literature to such prospect, including Commission's Exhibits 21 and 22, several editions of a booklet entitled "Facts About Personal Accident, Health, Hospital and Surgical Insurance," as well as various letters of solicitation, Commission's Exhibits 28 to 37, inclusive. With at least some of these letters, an application blank, whereby the prospect applies for membership in respondent company, is also forwarded. If this does not get results, still further letters follow at about two-week intervals, until the series has been concluded. Respondent further contends, in substance, that this material explains fully to the prospect anything which may be left obscure in the original advertisement.

It may be noted that the "Facts" booklet in some respects not only does not clarify matters for the applicant but follows, in essence, the precise language of inducement in the original advertisement. The series of letters is in no way illuminating as to the matters alleged in the complaint to be misleading but are typical sales letters generally challenging the prospect's need for accident and health insurance protection. The rotogravures entitled "The Utica Bulletin," which are subsequently sent to members only, exploit prominent citizens in various walks of life who are members of the Association and while they are sometimes sent to prospective members or applicants they certainly are not revealing as to the provisions of respondent's certificates of insurance. The application blanks, Commission's Exhibits 23 to 27, inclusive, also contain some of the statements alleged to be misleading.

The complaint in the first category of alleged false, misleading, and deceptive statements and representations sets forth certain quotations from respondent's advertisements which are claimed to represent directly or by implication that the indemnification provided by respondent's certificates against loss caused by accident or sickness may be continued to age 65 or 70 or indefinitely at the option of the insured upon his continued payment of premiums. The second category sets forth advertising statements alleged to mislead those to whom they are addressed into mistakenly believing that the weekly benefits provided by respondent's certificates are payable for each mishap and each accident from the first day of total disability for as many as 104 weeks up to a maximum of $5,200. As to the third category, it is charged that the statements of respondent falsely lead one to believe that an insured will be indemnified for loss caused by any kind of sickness with the sole exceptions of those caused by an alcoholic or venereal condition and, after one year, cancer, tuberculosis, heart trouble, or hernia. The fourth category of statements, it is charged, represent that an insured will be indemnified for each and every surgical operation in an amount up to $150. Each of the categories will now be considered separately and in some detail.

In the first category, Commission's Exhibit No. 17, a typical advertisement appearing in the *New York Herald-Tribune* of February 14, 1954, states:

> A man must be under 55 years of age to join, but once he becomes a member there is no age limit for the accident coverage, except for a reduction of the death benefit at age 70. Sickness coverage reduces 40% at age 60, but it and hospital and surgical benefits may continue to age 65 * * *. A member may resign or let his protection lapse at any time. *Accident coverage is effective the*

day the policy is issued, and health coverage 30 days thereafter. (Italic in original.)

Very similar language appears in Commission's Exhibit No. 18, an advertisement which appeared in the *New York Times Magazine.*

The "Facts" booklets, Commission's Exhibits Nos. 21 and 22, on page 12 of each, contain similar language, the important part of No. 21 being "eligible members may continue their accident protection indefinitely * * *," while the important language in Exhibit No. 22 is "accident indemnity may be continued without age limit, excepting only a reduction of the death benefit by 80% at age 70 * * *" and "Hospital and Surgical benefits which by the terms of this policy cease at age 65 *may nevertheless be continued without age limitation* [Italics in original] if, when you reach age 60, you elect this new feature and pay a moderately higher rate."

These statements represent that respondent's policies may be continued at the option of the insured until the age of 60, 65, or 70 or even for life if the insured makes the premium payments in the amounts and within the time provided by the certificate of membership. Such statements are false, misleading, and deceptive because each of respondent's policies contains Standard Provision 16, which provides:

> This Association may at any time terminate the membership of the member herein named, and cancel this certificate, by personal service of a written notice of such termination and cancellation upon him or by mailing to him such a notice, postage prepaid, and addressed to him to the post-office address of such member last appearing upon the records of this Association, and by accompanying such notice with the Association's check for the sum of not less than $2.00. Such termination and cancellation shall take effect at the time of mailing said notice, or at the time of personal service of the same, as the case may be. Upon termination of membership this Certificate of Membership is, without further action, cancelled, and all rights and interests in this Association are forthwith terminated, except as to a claim originating prior thereto.

Furthermore, each policy in two prominent places recites: "This Certificate is Cancellable by the Association." There is utterly nothing in the quoted advertising that suggests or advises that the insured will receive a certificate which permits the company to cancel his certificate and terminate his membership at any time by the service of a proper written notice with a refund of not less than $2.00, which termination and cancellation take practically immediate effect. The evidence indicates that the respondent has been somewhat liberal in its claims practices, but this does not alter the fact that the insured does not have a fixed contractual right to retain his certificate and membership. Among the other powers of the board of directors is the "power to terminate the membership of any member for any

cause which they deem just and proper" (Report of Examination by Insurance Department of New York, March 31, 1954, Respondent's Exhibit 7–T). In the financial statement of such report, it is indicated that there were returned fees and assessments in 1952 amounting to $35,689.77 and in 1953, $37,271.40 (Respondent's Exhibit 7–W). How much of this was due to canceled memberships does not appear from the report. This report further shows that while 229 death claims were paid in full, in the amount of $1,290,000, 117 were rejected without payment, in the amount of $724,000, and 94 others were compromised by the rejection of substantial amounts. Of course, death claims must be in accordance with the provisions of the policy and nothing is taken against respondent by reason of these general figures above recited. Nevertheless, they do indicate that many claims are rejected in full or compromised with partial rejection. The Report on Examination, however, further shows that between March 31, 1951 and March 31, 1954, 4,033 certificates were cancelled by the respondent, although its membership remained essentially static with only a slight gain during that period. Some 4,000 cancellations out of about 246,000 members is not a large fraction of such membership; still it is an appreciable number. This figure, of course, does not include the 8,466 deceased members, and the 34,342 lapsed members during this period. (See Respondent's Exhibit 7–P.) These figures show that cancellation of policies by respondent, however fair and equitable its claims practices are, is not mere academic speculation when the truthfulness of respondent's advertising is under question.

Of course, in considering all the advertising, the testimony of respondent's officials, their interpretation of the advertising, and their several opinions to the effect that the questioned advertising was not in any way false, misleading, and deceitful have been given full consideration along with the expert witnesses from the New York State Insurance Department. The opinion evidence of respondent's said officials has been given but little weight because of the very apparent lack of objectivity on the part of such witnesses. They drafted, approved, and spread the questioned advertising, and in substantial effect they are on trial in this proceeding as much as, if not more than, the corporation which they serve in their respective capacities. This is not to say that either these gentlemen or the eminent members of the New York Insurance Department who testified are not highly competent, qualified, and skilled persons in the field of accident and health insurance. Notwithstanding, the hearing examiner is obliged to consider the advertising in question in the light of the little clerks and tradesmen who are appealed to by respondent's said advertising.

These people, while constituting a part of the preferred risks which are the only kind of risks accepted as members by the Association, nevertheless, are not expert in the field of insurance although some of the distinguished lawyers and insurance men whose names or pictures appear in the several issues of "The Utica Bulletin" may be. It is the duty of the Federal Trade Commission in the public interest to prevent false advertising in its very incipiency insofar as is possible with the legal machinery and limited personnel which are available to enforce the law. The examiner, while holding the said witnesses all in high personal and professional regard and respect, is nonetheless obliged to be entirely objective in the findings which he makes and the conclusions which he reaches in this proceeding.

Passing now to the second category of allegedly false, misleading and deceptive statements in respondent's advertising (Commission's Exhibit No. 17), respondent advertised as follows:

> Accident Benefits include $50.00 weekly, payable from the first day of total disability every 30 days for as many as 104 weeks for *each* mishap * * * $25.00 weekly for as many as 26 weeks for partial disability * * * as much as $5,200 for each accident, with no reduction on account of other insurance. * * * (Italic in original.)

And in Commission's Exhibits Nos. 21 and 22, the "Facts" booklet, the impression to be gained from the foregoing advertisement of benefits to be had "for each mishap" is not dissipated, as the latter state unqualifiedly:

> If You Have an Accident membership in The Commercial Travelers pays you $25.00 a week while you are totally disabled from pursuing the regular duties of your occupation, from the first day of disability for as many as 104 weeks—two whole years.

"Each" mishap is in no way qualified by any of this advertising, although the exclusions and limitations hereinbefore set forth, as contained in respondent's certificates, are in no way alluded to. One of the limitations is that if "respondent is liable under the certificate for indemnity because of loss of life, limb or sight it shall not be liable for loss of time arising out of the same accident. In the event that a single accident causes multiple losses in any combination of life, limb or sight the Association's liability is limited to the greatest single loss sustained." In Commission's Exhibit No. 17, immediately following the language above quoted, respondent states:

> * * * The sum of $10,000 is payable for death or loss of hands, feet or sight of both eyes by accidental means; lesser amounts for loss of one hand or one foot or sight of one eye.

One could readily assume that as a result of an accident a man might lie in the hospital for many weeks while physicians and surgeons were

endeavoring to save one of his eyes and two of his hands. In the advertisement under question read in normal unqualified language in the full context of the advertisement, such a person, in becoming insured as a result of reading said advertisement, might well believe that he would be entitled to his total disability pay plus $10,000 for the loss of his hands and an additional amount for the loss of his eye should such injuries ultimately occur. The fact is that the $10,000 for the loss of his hands would be all he could recover. That the illustration is an extreme one does not vitiate its force.

In the third category of alleged false, misleading, and deceptive statements, respondent advertised (Commission's Exhibit No. 17):

* * * All kinds of sickness are covered, excepting only venereal diseases and alcoholism. Even heart disease, cancer, tuberculosis and hernia arising after the first year's membership are included.

This statement is false, misleading, and deceptive as respondent unequivocably represents "all kinds of sickness are covered" with the sole exceptions of venereal diseases and alcoholism. The word "Even," while it clearly defers respondent's liability for one year after the certificate is issued for the four afflictions therein referred to, does emphasize by way of such four illustrations that "all kinds of sickness are covered." This statement, "excepting only venereal diseases and alcoholism" is unequivocal and positive, but as hereinbefore pointed out, respondent's certificates expressly provide for sickness benefits but upon the payment of any such loss all of respondent's liability for any further or other claims arising from the same cause shall cease. Recurrence of the same sickness will not be compensated nor will the insured receive benefits if the cause of his sickness is traceable to a condition which existed prior to or within thirty days from the effective date of his certificate. This is true whether or not such pre-existing condition was known to the insured when he made application but which he fraudulently concealed. While claims made on the basis of a pre-existing illness unknown to the claimant might be paid under respondent's liberal claims practices, this is entirely a matter of discretion with respondent's board of directors and not a contractual right on the part of the policyholder.

In the fourth category of alleged false, misleading, and deceptive advertising, respondent, in stating its surgical benefits (Commission's Exhibit No. 18) after reciting, "You get up to $5,200 for each disabling accident," "You get up to $2,600 for each disabling illness," and "Accident protection includes $10,000 death benefit," further represents: "You get up to $580 in Hospital & Surgical Benefits. In addition to all other benefits, you are paid for *each* injury or illness"

certain alternative daily benefits for hospital room or registered nurse at home "plus as much as $150 for a surgical operation." Respondent has made a similar statement in Commission's Exhibit No. 20. Such statements are false, misleading, and deceptive because they definitely create the impression that in the event the policyholder undergoes surgery for any condition, the actual cost of such operation will be paid for by respondent under the certificate up to the amount of $150. But to the contrary, respondent's certificates providing for surgical operations contain a schedule of fixed maximum fees for various classes of operations. Of 87 operations listed in this schedule, only 14 operations or classes thereof would pay the actual surgical expense of an insured up to $150. The remaining 73 operations, respectively, range in amount from $10 to $100. The figures refer to double protection policies, the schedule in the single protection policies being fees of only one-half of the amounts listed in the double protection certificate schedules.

It is unnecessary to cite the numerous decisions of the Commission which have condemned language similar to that employed by respondent in each of the four foregoing categories. Therefore, the use of such false, misleading, and deceptive statements and representations by the respondent in its public advertising, with reference to the terms and conditions of its accident, health, and hospitalization insurance certificates or policies, has had a tendency and capacity to mislead and deceive a substantial portion of the purchasing public to whom the said advertisements are directed into believing erroneously that such statements and representations were true. That such statements and representations induced a substantial portion of the purchasing public to obtain a considerable number of said policies by reason of belief in said advertising may be inferred from the fact that during the period in question, despite substantial losses of members due to death, withdrawals, and cancellations, the membership actually increased. (See Respondent's Exhibit 7–P.) As previously stated, it is wholly immaterial that the Commission has not produced any of these new members, some 34,000 in number, to testify that they have been deceived or defrauded by respondent. Such acts and practices are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices by respondent in commerce within the meaning of the Federal Trade Commission Act.

Respondent has urged the defense of abandonment, in substance contending that, because of changes in the New York statutes governing all insurance companies in that State and regulations and requirements of the New York Department of Insurance implementing such

new statutes, during the pendency of this litigation it has been required "by force of law" to change all of its certificates and now issues an entirely new series of certificates. The statutory changes referred to are the adoption by New York of what respondent refers to as new Standard Provisions but which are generally referred to in the insurance industry as the "Uniform Provisions" adopted or in the course of adoption by nearly all of the States due to their approval by the National Association of Insurance Commissioners in June, 1950, and recommended to replace the "Standard Provisions" laws in order to bring back greater uniformity in such matters and to modernize such provisions. The new certificates of respondent are not in evidence nor is any of its advertising relating to the same. It may be properly assumed, however, that the redrafting of the certificates by respondent to conform to the new New York statutes and regulations has not resulted in any material change in the coverages, exclusions, exceptions, limitations, and reductions provided in such certificates as distinguished from those at bar. There is nothing, therefore, in the record on which a finding of a good-faith change in respondent's advertising methods and practices can be inferred. Moreover, respondent at all times has objected, and still objects, to the jurisdiction of the Federal Trade Commission over it personally and over the subject matter of the proceeding. Under such circumstances, the Commission has thus far uniformly refused to dismiss any of its proceedings against health and accident insurers on the grounds of abandonment. See cases cited on pages 25 and 26 of the initial decision in *Life Insurance Company of America*, Docket No. 6247, filed May 15, 1957.

Respondent, in substance, contends that it is a nonprofit corporation and, therefore, not subject to the Federal Trade Commission Act. Similar contentions have been adversely disposed of by the courts. See *Chamber of Commerce of Minneapolis* v. *F.T.C.* (C.C.A. 8, 1926), 13 F. 2d 673; *National Harness Mfgr's Assn.* v. *F.T.C.* (C.C.A. 6, 1920), 268 F. 705; and *Quality Bakers of America, et al.* v. *F.T.C.* (C.C.A. 1, 1940), 114 F. 2d 393. But here respondent corporation cannot even claim to be a non-profit association or company. The very act under which it is incorporated provides that any cooperative life and accident insurance company, where its excess admitted assets over reserves permit, may apportion and distribute them as dividends to the members if the New York Superintendent of Insurance approves, such excesses being derived from savings on mortality or other gains and "from underwriting profits" (Book 27, *McKinney's Consolidated Laws of New York, Annotated*, Article 9-B, sec. 243). The many authorities and reasons cited or stated and referred to in the inter-

locutory order herein, filed June 9, 1955, rejecting the suggestion of respondent's immunity from the Commission's jurisdiction because of its alleged non-profit corporate character, for brevity, are hereby made a part of this initial decision by reference.

The general objection of respondent to the jurisdiction of this Commission over the subject matter by reason of respondent's interpretation of Public Law 15, 79th Congress, has been fully covered by authorities and references in the interlocutory order overruling motion to dismiss for lack of jurisdiction, filed herein on May 23, 1955, which also for brevity is made a part hereof by reference. Since the date of that order, the Commission in a long series of decisions has upheld its own jurisdiction over direct mail order companies such as respondent, which employ no agents. In these cases the jurisdictional question, in its substantial essence, is identical with the one raised by respondent here. See cases cited on page 26 of initial decision in *Life Insurance Company of America, supra.*

The respondent, during the period in question, did business throughout the entire United States in very substantial volume by mail. Its income from the premiums received were substantially in excess of $6,000,000 in each of the years 1953 and 1954. Its advertising literature and its subsequent sale and distribution of its accident, health and hospitalization certificates in a constant stream of commerce, all from the State of New York, and particularly from its home office in Utica where all the advertising originates, amounts to a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act between and among each and all of the several States of the United States. Respondent's substantial interstate commerce between its home office and the Dominion of Canada is not involved herein.

Respondent's position, in substance, is that there can be no general public interest or jurisdiction on the part of the Federal Trade Commission over the subject matter of the proceeding because all of its activities are centered in New York State and the Insurance Department of that State has full and complete jurisdiction over its activities everywhere to the exclusion of any public interest or jurisdiction, and action by the Federal Trade Commission. In substance, respondent's position is that the Department of Insurance of the State of New York can and has amply protected the interests of all the people of the United States with respect to respondent's advertising matter disseminated throughout the Nation. The witnesses called by respondent who were members of the official staff of the Department of Insurance of the State of New York by their testimony, however, com-

pletely refute such contention by respondent. Their evidence points up the inability of insurance commissioners other than that of the domiciliary state to regulate mail order insurers which are not licensed in their respective jurisdictions. The witness, Joseph A. Oster, Associate Attorney of the New York State Insurance Department in charge of the Legal Bureau and who takes care of disciplinary actions against licensees and gives legal advice to various members of the Department in connection with their duties, admitted that the New York State Insurance Department was utterly powerless to regulate such a company which was not licensed by it, and that the only thing that could be done would be to take the matter up as one of comity with the commissioner having authority over such a foreign company. He testified as follows (R. 623) :

Q. Now, sir, what would you do if you received a complaint from a resident of the State of New York in which he stated that he had been misled by advertising sent from a mail order company located in California?

A. I would have to first ask you whether that company is licensed in the State of New York.

Q. It is not.

A. We cannot do anything against a company as such since it is not under our jurisdiction. If he has been misled by advertising we would write to him and suggest that he communicate with the superintendent of his state. If the matter is of sufficient weight the matter would be brought to the attention of the deputy or the Superintendent himself who may conceivably write such a letter to the Commissioner of the other state.

The witness, Samuel H. Dorf, Principal Examiner in charge and the Chief of the Complaint Bureau of the New York State Insurance Department, testified similarly (R. 604) :

Mr. Dorf, a few years ago, one of the distinguished members of your Department, Mr. George Kline, wrote a monograph on mail order companies which I read several times. Now, assuming that a company, say from Delaware or Indiana or West Virginia, doing a mail order business into the State of New York doesn't pay claims or claims with no coverage. How does your Claims Department handle that?

A. I assume the company is not authorized.

Q. Not licensed in the State of New York.

A. As a matter of fact, we can't do very much because if solicitation is made from a point outside of the State it doesn't come under our jurisdiction.

From the testimony of the several Department of Insurance witnesses, it is quite evident that the State of New York did not have, up to the time of the hearing at least, any system whereby the advertising of insurers licensed in the State of New York was examined prior to its publication. It was only after a person had procured a policy and then made a complaint to the Department that any action could

be taken. While there is no evidence that any complaint had been received by such Department concerning any of respondent's advertising, it is quite apparent that the policy of New York State with respect to regulating advertising is one of locking the barn after the horse is stolen. William C. Gould, Chief Insurance Examiner of the Property Bureau of the New York State Insurance Department, charged with the responsibility of supervising, among other things, the one cooperative accident and health corporation existing in the State, which is the respondent here, testified (R. 561–562) that the examiner in the Department had the duty of reading, analyzing, studying, and criticizing the advertisement of insurance policies but "there is not—I should state this to you—requirement for prior approval of these advertisements." When asked by the examiner:

It is only when the examiners go and look into claims and files of the company and find something wrong that the attention of the Department is drawn specifically to it, to you, and on to the Superintendent, if necessary, and other authorities?

he answered:

That is correct. And as you know, we have the requirements that we have referred to in the statute and specific regulations dealing with advertisements in the field of accident and sickness coverage, which was enacted to be effective as of May 1st of this year, which was formalized for the procedure of the Department.

Q. Will that require, in the future, all insurance advertisers in the field to submit in advance their advertising material?

A. It may well do that, your Honor, but that is a matter that rests with the discretion, as you well described in our recess, we have a personnel problem from that standpoint where it would impose a tremendous impact of work of prior approval. And that is a matter that the Superintendent has under advisement.

Q. The administrative details of how far the Department can go and what it can get done will depend on a lot of in-Court factors not settled yet, such as personnel and budget?

A. Yes, and what the Superintendent in his own business dictates as a procedure to be followed.

He further testified that even with respect to claims, the Department had no authority to compel the payment but could only use the art of persuasion (R. 597–598). Mr. Dorf further testified (R. 598):

Q. Now, sir, you mentioned that any company is permitted to submit their advertising for your approval.

A. If they want to.

Q. In other words, there is nothing that requires them to do it, is that correct?

A. Not to our bureau, anyway.

Q. Is there any bureau which requires the prior submission of advertisements?

A. Well, maybe the Property Bureau in connection with their investigation or examination of the company.

This evidence was surprising to the hearing examiner because he had always assumed that the Department of Insurance of the Empire State, with the largest number of employees and the largest appropriation for such a department of any of the States of the Union and which has taken the leadership in so many matters of constructive benefit to the public, would at least have some systematic method of preventing the dissemination of false, misleading, and deceptive advertising by the insurers which it licensed. There is no evidence, however, that such prior affirmative approval has ever been required despite the fact that since July 1, 1948, the New York State Department of Insurance has had all the power granted to it which might be necessary to regulate such matters. It was on that date that the Governor approved Article IX–D of the Insurance Law, which had for its express purpose the regulating of trade practices in the business of insurance in accordance with the intent of Congress in enacting Public Law 15. In such Act (Book 27, *McKinney's Consolidated Laws of New York, Annotated*, section 274), it is expressly provided:

> The superintendent shall have power to examine and investigate into the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by section two hundred seventy-two of this act * * *.

Nearly ten years have passed since New York adopted the said act, but apparently nothing has been done to date, and the Federal Trade Commission has been obliged to step into this void and regulate such "business of insurance to the extent that such business is not regulated by State Law," as ordained in the proviso of Section 2(b) of Public Law 15. If the State of New York with its vast resources and its immense Insurance Department cannot and does not regulate the unfair or deceptive acts or practices of insurers who owe their very corporate life to it, it can scarcely be expected that the lesser States in the constellation of the Union can accomplish anything by similar acts and powers. "The proof of the pudding is in the eating thereof," an old adage, is certainly applicable here. New York has let its own corporate child freely advertise throughout the Union in ways which are fully capable of deceiving the public. If there is any basis for any jurisdiction at all by the Federal Trade Commission under Public Law 15, it must be in a case like this. Otherwise the said proviso in that Act is utterly meaningless. This hearing examiner cannot presume that Congress so intended by the use of the language which it employed in applying the Federal Trade Commission Act "to the business of

insurance to the extent that such business is not regulated by State Law."

The large volume of respondent's business clearly establishes the element of public interest in this proceeding. While respondent has made many other contentions throughout the record and in the proposed findings of its counsel, the foregoing cover all the material matters involved herein, and this decision will not be unduly lengthened by a point-by-point discussion of the others.

Upon the findings of fact hereinbefore made, the hearing examiner hereby makes the following conclusions of law:

1. The acts and practices of the respondent, incorporated under the laws of New York, under the original title of The Commercial Travelers Mutual Accident Association of America, which title was shortened by amendment to its present form of The Commercial Travelers Mutual Accident Association on May 22, 1953, hereinbefore found to be false, misleading, and deceptive, are all to the prejudice and injury of the public and constitute unfair and deceptive acts or practices in commerce within the intent and meaning of the Federal Trade Commission Act.

2. Respondent being a corporation within the intent and meaning of the Federal Trade Commission Act and having been duly served with process and made general appearance herein, the Commission has jurisdiction over the person of the respondent.

3. The Federal Trade Commission has jurdisdiction over all of said corporate respondent's acts and practices which have been hereinbefore found to be false, misleading, and deceptive.

4. The public interest in the proceeding is clear, specific, and substantial.

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

ORDER

It is ordered, That the respondent, The Commercial Travelers Mutual Accident Association, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Fedral Trade Commission Act, of any accident, health, hospital or surgical insurance policy or certificate, do forthwith cease and desist from representing, directly or by implication:

1. That any such policy or certificate may be continued in effect by the insured upon payment of stipulated premiums

indefinitely or for any stated period of time, unless full disclosure of any other provision or condition of termination as to the insured contained in such insurance certificate is made conspicuously, prominently, and in sufficiently close conjunction with the representations as will fully relieve it of all capacity to deceive.

2. That any such policy or certificate provides for the payment of any special benefits in addition to other specified benefits unless such is the fact.

3. That any such policy or certificate provides for the payment of any specified benefits indemnifying the insured in cases of accident or sickness generally or in any or all cases of accident or sickness unless such is the fact.

4. That any such policy or certificate will pay in full or up to any specified amount for any medical, surgical, or hospital service unless such is the fact.

5. The extent or duration either of any coverage or of any benefits payable under the terms of any such policy or certificate unless a statement of all the conditions, exceptions, restrictions, reductions and limitations affecting the indemnification actually provided by such certificate relating to such coverage or benefits is set forth conspicuously, prominently, clearly, and in sufficiently close conjunction with the representations as will fully relieve it of all capacity to deceive.

ORDER DISMISSING THE COMPLAINT

This matter having come before the Commission upon respondent's appeal from the hearing examiner's initial decision, and the Commission having suspended action thereon pending final judicial disposition of a related matter; and

The Commission now having reviewed the record in this matter and having determined that the evidence relates to practices too remote in point of time to support the order contained in the initial decision and that for this reason the complaint herein should be dismissed:

It is ordered, That respondent's appeal be, and it hereby is, granted.

It is further ordered, That the complaint in this proceeding be, and it hereby is, dismissed without prejudice, however, to the right of the Commission to issue a new complaint or to take such further or other action against the respondent at any time in the future as may be warranted by the then existing circumstances.

Commissioner MacIntyre not participating.