It is further ordered, That the complaint, insofar as it relates to individual respondents Irving H. Stolz, Seth Harrison and Frank Silver, be, and it hereby is, dismissed.

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

IN THE MATTER OF

GIMBEL BROTHERS, INC.

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

Docket 7834. Complaint, Mar. 21, 1960—Decision, Oct. 17, 1962

Order requiring the corporate operator of 13 retail department stores in and around the cities of New York, N.Y., Philadelphia and Pittsburgh, Pa., and Milwaukee, Wis., to cease making in advertising deceptive pricing and savings claims for merchandise—including rugs, luggage, Hotpoint refrigerators, and cashmere coats—through use of such words as "comparable value", "regularly", "originally", "list price" with a fictitious price figure; and to cease overstating the size of rugs offered for sale.

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 Gimbel Brothers, Inc., 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 Gimbel Brothers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 33rd Street and Broadway in the city of New York, State of New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of floorcoverings, luggage, household appliances, women's wearing apparel and other articles of general merchandise to the public.

Respondent operates a number of retail department stores and specialty shops throughout the United States. One or more of such stores are located in and around the metropolitan areas of New York, New York; Philadelphia, Pennsylvania; Chicago, Illinois; Detroit, Michigan; San Francisco, California; St. Louis, Missouri, and other localities in the United States.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused its said products, when sold, to be shipped from its various places of business as aforesaid to purchasers thereof located in various other States of the United States and in the District of Columbia. Furthermore, respondent advertises its aforesaid products for sale in various newspapers having interstate circulation. Persons are thereby induced to travel from the various other states into the states in which the aforesaid stores and shops are operated and to purchase and transport, or cause to be transported the aforesaid products into the states from which such persons came. Respondent maintains and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the aforesaid advertisements of said products, respondent has made numerous representations respecting the price of the said products, amount of savings and the size of the floorcoverings.

Typical and illustrative of such representations are the following:

Gimbel's new group of reversible braided rugs $49.95 sale 9 x 12' oval rugs . . . comparable value $69.95. (Obscurely printed in one corner of the advertisement is the following: "All sizes approximate")

Never before this low price . . . compares to 9 x 12' all wool braids selling at 197.95 all wool braided rugs sale $79.00 big 9 x 12' size. (Very obscurely printed in one corner is the following: "All sizes approximate")

Wool-blend braided rugs! Room sizes! Regularly 89.95 9 x 12' and 8 x 10' 39.95. (Obscurely printed in one corner "all sizes approximate")

heavy wool blend oval braid rugs 9 x 12 special! or 8 x 10 $49. (no statement at all that sizes are approximate)

Sale! Featherweight luggage . . . $6.98 to $15.98 . . . sold last week at Gimbels for $9.98 to $24.98 . . . a. 18'' weekender, usually $9.98 $6.98 etc.

Sale! $7.95 to $15.95 comparable luggage is 10.98 to $24.98 fiberglass reinforced featherweight luggage! Only at Gimbels . . . 14'' train case . . . reg. $13.98 . . . now $9.95 etc.

Gimbels breaks the price on new 1959 Hotpoint Refrigerators . . . Sale . . . Hotpoint 14 cu. ft. Refrigerator . . . $399 list price $629.95 . . . Hotpoint 2-door 12 cubic foot refrigerator . . . sale $329 list price 479.95.

Cashmere coat sale . . . value $135 to 168 Einiger cashmere . . . $88 reg. 135 Bernhard Altmann's cashmere . . . $88 reg. 135 Mongolian cashmere . . . 109 reg. 165.

Wrap up in cashmere and save! Bernhard Altmann cashmere . . . sale $88 originally $135 . . . Mongolian cashmere . . . sale $109 originally $165.

PAR. 5. Through the use of the aforesaid statements, respondent has represented, directly or indirectly, that:

1. Rugs of like size, grade, quality, design and workmanship generally available for purchase at $69.95 in the same trade area were being offered for sale by respondent at $49.95; that rugs of like size, grade, quality, designs and workmanship generally available for purchase at $197.95 in the same trade area were being offered for sale by respondent at $79.00; and that rugs sold by respondent in the recent regular course of its business for $89.95 were being offered for sale at $39.95. In each of the aforesaid advertisements respondent further represented that said rugs were offered to the purchasers at substantial savings from such prices.

2. Respondent sold certain of said luggage in the recent regular course of its business at the higher amounts stated; that certain of said luggage was of a grade, quality, design and workmanship equal to that of higher priced luggage and that said luggage was offered to purchasers at a substantial savings from said higher prices.

3. The higher price amounts stated for the said refrigerators is the usual and customary retail price of the said refrigerators in the New York trade area and that a reduction in price with a consequent saving to the purchaser has been made by respondent.

4. Said women's coats were offered for sale by respondent in the recent regular course of its business at the higher price amounts and that reduction from respondent's higher prices had been made with consequent savings to the purchaser.

5. The size of said rugs was actually 9 x 12′, 8 x 10′ and other stated sizes with only minor variations resulting from uncontrollable factors in the manufacturing processes.

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

1. Said rugs were not of a size, grade, quality, design and workmanship equal to rugs selling at the higher prices of $69.95 or $197.95; respondent has not offered said rugs for sale in the recent normal course of its business at $89.95. The prices at which respondent offered said rugs for sale were its usual and regular retail selling prices for such rugs and no savings were afforded to the purchasers thereof.

2. Said luggage has not been offered for sale by respondent in the recent normal course of its business at the higher stated amounts; said luggage was not of a grade, quality, design and workmanship equal to luggage selling at the higher price amounts. The prices at which respondent offered said luggage for sale constituted the respondent's

usual and customary retail selling price for said luggage and afforded no savings to the purchasers.

3. The higher stated "list price" of said refrigerators is not the usual and customary retail price in the New York trade area. The usual and customary price in the New York trade area of said refrigerators is an amount substantially less than the so-called "list price". Savings or reductions in the amounts indicated are therefore not afforded to the purchaser.

4. Respondent has not sold said women's coats at the higher price amounts in the recent normal course of its business. Savings are, therefore, not afforded to the purchaser of said women's coats in the amounts represented.

5. Said rugs are not of the stated sizes of 9 x 12′, 8 x 10′ or the other sizes stated by respondents with due allowances for uncontrollable factors in the manufacturing processes. Said rugs are purchased by respondent, invoiced and labelled as being of cut sizes. For example, certain of the aforesaid rugs are invoiced and labelled as 103″ x 139″ for the so-called 9 x 12′ size; and 92″ x 116″ for the so-called 8 x 10 foot size. Other kinds and sizes of rugs are purchased, invoiced and labelled as substandard or "cut sizes".

PAR. 7. In the conduct of its business and at all times mentioned herein, respondent has been in substantial competition to commerce, with corporations, firms and individuals in the sale of floorcoverings, luggage, household appliances, women's wearing apparel and other articles of general merchandise of the same general kind and nature as that sold by respondent.

PAR. 8. The use by respondent 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 respondent's products by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondent from its competitors and substantial injury has thereby been and is being, done to competition to commerce.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's 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. Terral A. Jordan for the Commission.

Solinger & Gordon, of New York, N.Y., by *Mr. Eugene H. Gordon* and *Mr. Peter L. Szanton*, for respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

1. The complaint in this matter charges the respondent with use of certain misleading advertising in violation of the Federal Trade Commission Act. After the filing of respondent's answer, extended hearings were held at which evidence both in support of and in opposition to the complaint was received. Proposed findings and conclusions have been submitted, oral argument not having been requested, and the case is now before the hearing examiner for final consideration. Any proposed findings or conclusions not included herein have been rejected.

2. The respondent, Gimbel Brothers, Inc., a corporation, is the owner and operator of a large retail department store in New York City and also of department stores located in Milwaukee, Philadelphia and Pittsburgh. There is no issue over the elements of interstate commerce and the existence of competition, respondent in its answer having admitted in substance the statements in the complaint in those respects.

3. The first issue raised in the complaint has to do with certain "comparative value" advertising done by respondent in connection with braided rugs. In an advertisement published in one of the New York City daily newspapers on March 8, 1959, respondent advertised certain braided rugs which it was offering for $49.95 as having a "comparative value" of $69.95 (Com. Ex. 11). Commission Exhibits 12 and 13 represent similar advertisements in other New York City papers. In another advertisement (Com. Ex. 16), respondent offered certain other braided rugs at $79.00, stating that the rug "compares to 9 x 12′ all wool braids selling at 197.95".

4. Briefly stated, the issue here is whether the rugs advertised by respondent at $49.95 and $79.00 were comparable, respectively, to rugs being offered by competing stores in the New York Metropolitan area for $69.95 and $197.95. It was to this issue that most of the testimony in the record was directed.

5. Both of respondent's rugs were manufactured in Japan, being designed by and manufactured to the order of a rug company in New York, Couristan, Inc. The $49.95 rug was marketed under the name "Stoney Creek", while the $79.00 rug was sold under the name "Bunker

Hill". Both rugs were designed by Couristan to compete with certain American-made rugs which were then being sold by retail stores in the New York City area. The rugs advertised by respondent were purchased by it from Couristan. As to fiber content, the Stoney Creek rug and the rug with which it was compared by respondent in its advertising both contained approximately 35 percent wool, 35 percent rayon, and 30 percent other fibers. The Bunker Hill rug and the rug with which it was compared by respondent were both 100 percent wool, or practically so.

6. The essential difference between respondent's rugs and the rugs with which they were compared lies in the method of construction or manufacture. The American-made rugs in question are of the "flat braid" construction, while the Stoney Creek and Bunker Hill rugs are of the "tubular wrap-around braid" construction. Both the flat braid and the tubular braid are woven around a core or filler which usually is made of wool "shoddy" or some other relatively inexpensive material.

It appears that the flat braid method provides more of an interlacing or interlocking effect and that this may afford a somewhat tighter or more closely woven fabric.

7. The two types of construction are exemplified by two rugs received in evidence (Resp. Exs. 21 and 22). Respondent Exhibit 21 is the flat braid "Wool 0" rug with which respondent compared the Bunker Hill rug in its advertising, and Respondent Exhibit 22 is the Bunker Hill rug. In design, texture, color, appearance, attractiveness, feel, etc., the two rugs are very similar. So far as the record indicates, there is no difference in the quality of the wool used in the two rugs.

8. The only real issue is over the question of wearability. On this issue, wearability, there is testimony from four experts. One is an official of Couristan, Inc., the designer and importer of the Stoney Creek and Bunker Hill rugs. Two are officials of American companies manufacturing and selling braided rugs made in the United States. The fourth is an official of an importing company which imports rugs from Japan and a number of other countries for sale in the United States. All four of the witnesses have had long experience in the manufacture and sale of braided rugs.

9. The Couristan official was of the opinion that the wearability of the Stoney Creek and Bunker Hill rugs is equal to that of the flat-braided rugs with which they were compared. The two American manufacturers were of a contrary view, basing their opinion largely on the fact that there is more interlacing or interlocking of the yarns in a flat-braided rug, thus affording a tighter construction. The other importer was of essentially the same opinion as the Couristan

official, that there is little or no difference in the wearability of the two types of rugs, or at least between flat-braided rugs and the particular tubular-braided rugs here involved.

10. None of the experts is without some self-interest in the proceeding. As already stated, the rugs here involved were designed and imported by Couristan from Japan, and respondent is one of Couristan's customers. The two American rug manufacturers are president and vice president, respectively, of a trade association which has as one of its principal purposes combatting, through tariffs and otherwise, the importation of foreign-made braided rugs into the United States, particularly from Japan. The fourth witness is an importer of rugs, including braided rugs made in Japan. His company has on occasions sold rugs to respondent.

11. It must be remembered that the issue here is not whether the rugs are identical or the same, but only whether they are comparable. Comparable means fit to be compared with or worthy of comparison. What we are here confronted with is a relative, not an absolute, term.

12. As already indicated, and particularly as demonstrated by the rugs received in evidence, the two types of rugs are very similar in appearance, design, texture, color, attractiveness, feel, etc. There is no evidence of any substantial difference in the kind or quality of the materials used.

13. On the sole remaining issue, wearability, the hearing examiner is unconvinced that the record establishes a sound basis for a definite finding or conclusion that either type of rug is materially superior to the other. There is substantial, reliable evidence on both sides, neither side having established its contention by the greater weight of the evidence. The legal principle decisive of the issue is that of burden of proof. In such a situation it necessarily follows that the complaint has not been sustained.

14. Another charge in the complaint is that respondent has misrepresented the size of its rugs. In giving the size of the various rugs referred to in its advertisements (Com. Exs. 11, 12, 13, 16, 34, 35), some of the sizes were stated in inches, which were correct. In the case, however, of some of the larger rugs, the sizes were stated in feet, and the rugs actually were not as large as indicated. For example, the rug listed as having a size of 9′ x 12′ was, in fact, only 103″ x 139″. That is, the rug was short by five inches in both width and length.

15. Each of the advertisements carried, in connection with the listing of sizes, the statement "All Sizes Approximate", and all of the

rugs themselves had tags or labels attached to them giving the actual and correct size.

16. At the time the advertisements were used it appears to have been the custom in the trade, in advertising large rugs, to give the approximate size in feet rather than the exact size in inches. The reason for this was that most members of the public find it difficult to translate inches into feet and to envision the real size of a rug described as, for example, 103″ x 139″. They prefer a designation of "Approximately 9′ x 12′".

17. More recently, however, the trade in advertising rugs has adopted the practice of giving the exact size of all rugs in inches or in a combination of feet and inches. Respondent is now following this practice.

18. As a practical matter, it would seem that reasonably adequate protection was afforded the public by the statement in respondent's advertisements that all sizes given were approximate, and the fact that all of the rugs themselves had tags or labels attached giving the exact size. In any event, the issue raised by the complaint would appear to be largely moot, in view of the change in practice in the trade and respondent's adherence to such change.

19. The complaint also charged respondent with fictitious pricing of certain luggage. In one of its advertisements (Com. Ex. 18) certain luggage was offered by respondent at "6.98 to 15.98", and the statement was made that the luggage "sold last week at Gimbels for 9.98 to 24.98". This statement admittedly was untrue; the luggage had not been previously sold by respondent at the higher prices indicated. The record shows that the employee responsible for the misrepresentation (a buyer in the luggage department) was severely reprimanded and that termination of his employment was considered. Because of the fact that the employee had been in respondent's employ for a long period of time (some 40 years) he was not dismissed. Later, however, he was retired, the retirement taking place some two or three years before he reached the customary retirement age.

20. It appears that the false statement in the advertisement represented a single and isolated instance, and that it was wholly unauthorized by respondent. In the examiner's opinion the instance is insufficient to warrant the issuance of a cease and desist order.

21. Other charges in the complaint regarding alleged fictitious pricing of luggage arise out of the use by respondent of the terms "usually" and "regularly". In two advertisements (Com. Exs. 18 and 21), luggage was offered at designated prices and other, higher prices were listed as the usual or regular prices of the luggage. The

complaint charged that the use of these terms constituted representations that respondent itself had sold such luggage at the higher prices during its recent regular course of business.

22. It was stipulated that respondent had not itself sold the luggage at the higher prices. The controversy is over the meaning of the terms "usually" and "regularly". There is no evidence as to the meaning attached to the terms by the public. The position of Commission counsel is that no evidence is required; that the words necessarily have the meaning attributed to them by the complaint, particularly in view of the Commission's "Guides Against Deceptive Pricing". Respondent's position is that the terms do not necessarily refer to respondent's own prices; that they could just as well refer to prices at which other retailers in the New York City area are or have been selling the same merchandise.

23. In the absence of evidence as to public understanding of the terms in the trade area here involved, no sound basis appears for a finding or conclusion that the terms have the meaning ascribed to them by the complaint. No case has come to the hearing examiner's attention in which the Commission has held, as a matter of law and in the entire absence of evidence, that the words do have such meaning. Insofar as the Guides Against Deceptive Pricing are concerned, the Commission has expressly held that they do not constitute law (Arnold Constable Corporation, Docket No. 7657, January 12, 1961). Nor are the Guides a substitute for evidence.

24. One of the two luggage advertisements (Com. Ex 21), after offering certain luggage at "7.95 to 15.95", says "comparable luggage is 10.98 to 24.98". There is no evidence indicating that this statement is untrue.

25. It thus appears that, with the exception of the isolated instance referred to in paragraphs 19 and 20 above, there is a failure of proof insofar as the charges of fictitious pricing of luggage are concerned.

26. The next charge relates to the use by respondent of the term "list price". In one advertisement (Com. Ex. 24) respondent advertised Hotpoint Electric Refrigerators at designated sale prices, and in connection with each price showed a "list price" which usually was much higher. It was stipulated that respondent itself had not sold the refrigerators at the designated list prices. The charge in the complaint is that use of the list prices in the advertisement constituted representations by respondent that the refrigerators were usually and customarily sold in the New York City trade area at such higher prices.

27. The list prices were, in fact, the retail prices recommended by the manufacturer of the refrigerators, the Hotpoint Division of General Electric Company. While the refrigerators are seldom, if ever, sold at list prices by respondent and other large department stores, there are certain types of stores in the New York City area which usually, or at least frequently, do obtain the list prices. These are for the most part residential neighborhood stores, downtown "carriage trade" stores, stores which accept high-credit risks, and department stores in outlying areas.

28. The difficulty here, as in the issues of "usual" or "regular" prices, is that there is no evidence supporting the interpretation placed upon the term "list price" by the complaint. That is, there is no evidence that the public in that trade area interprets "list price" as meaning the usual and customary price at which the article is being sold in that area. Unless the deficiency can be supplied by resort to the Guides Against Deceptive Pricing, which, as indicated above, cannot in the examiner's opinion properly be done, the charge in the complaint must fall.

29. The last charge in the complaint is that respondent has engaged in fictitious pricing of women's coats. In two advertisements (Com. Exs. 25 and 26) respondent offered coats at designated prices, stating in substance that the "reg." (regular) prices on some of the coats were specified higher prices, and that others of the coats had "originally" sold at specified higher prices. It was stipulated that the coats offered in the advertisements had not been offered for sale by respondent during the three months immediately preceding the date of the earlier advertisement (October 27, 1957) at prices in excess of those at which the coats were offered in the advertisements.

30. It further appears, however, that previous to this three-month period coats similar to some of those offered in the advertisements (same fabric and workmanship) had been sold by respondent at prices higher than the advertised "regular" prices. And, further, that at or just prior to the time of the advertisements other department stores and certain specialty stores in the New York City area were selling the other coats offered in the advertisements for prices at least as high as the "regular" and "original" prices mentioned in the advertisements.

31. The complaint alleges that use by respondent in the advertisements of the "regular" and "original" prices constituted representations that the coats "were offered for sale by respondent in the recent regular course of its business at the higher price amounts and that reduction from respondent's higher prices had been made with consequent savings to the purchaser". Again we are confronted with a

question of failure of proof. There is no evidence that the terms in issue are understood by the public in the New York City trade area as carrying the meaning ascribed to them by the complaint.

32. In summary, this case, insofar as the charges of fictitious pricing are concerned, appears to present squarely the question of the legal effect of the Commission's Guides Against Deceptive Pricing. If the Guides can properly be considered as law or as a substitute for evidence the charges have been sustained. If, on the other hand, the Guides cannot properly be so considered, these charges in the complaint must fall for lack of supporting evidence. In the examiner's opinion the latter view is the correct one.

CONCLUSION

The examiner having concluded that the complaint has not been sustained,

ORDER

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

Opinion of the Commission

By MacIntyre, *Commissioner*:

This is a Federal Trade Commission Act proceeding instituted by a complaint issued March 21, 1960, charging that respondent made certain false, misleading and deceptive representations in newspaper advertisements. After trial the hearing examiner concluded the allegations were not sustained and dismissed the complaint. Counsel supporting the complaint has appealed.

Respondent corporation owns and operates under its corporate name thirteen department stores, and owns all of the stock of Saks & Company, a corporation, which operates a chain of nineteen retail "specialty stores". Complaint counsel's appeal assigns as error the hearing examiner's failure to find that respondent operates the nineteen Saks "specialty stores", but in our view the evidence in this record is insufficient to support such a finding, and we find no error in this respect. At the other extreme, respondent contends that any order which may issue should not be made applicable to the respondent as a whole but should apply to only the particular Gimbel store responsible for the violation in question. Respondent presents no convincing precedent to support this novel view and has not otherwise persuaded us of its merit. Respondent is the only legal entity responsible for the acts of its stores and it must exercise sufficient control to assure that they all operate within the law. A corporation cannot

evade responsibility for the actions of its divisions or units by granting them limited autonomy. An order to cease and desist directed against Gimbel Brothers, Inc., must be complied with by Gimbel Brothers and not by merely a fragment thereof.

The Rug Advertisements

In several New York newspaper advertisements published in 1959, respondent represented that the imported rugs it was offering for $49.95 and $79.00 were "of comparable value" or "compare [d] to" rugs selling at $69.95 and $197.95, respectively. The complaint charges these representations are false in that the advertised rugs "were not of a size, grade, quality, design and workmanship equal to rugs selling at the higher prices of $69.95 or $197.95."

The hearing examiner dismissed this charge, holding that the compared rugs were sufficiently similar to be "worthy" or "fit to be compared" and were therefore "comparable". Complaint counsel's appeal charges the hearing examiner's conception of the terms "comparable value" and "compare to" is erroneous and that proceeding from this "false base", he found the facts insufficient to prove the violation charged.

We are not persuaded that the hearing examiner's statement of the issue presented is erroneous. It may well be that items "worthy" or "fit to be compared" would be substantially "equal" in the qualities enumerated in the complaint. In other words, we are not at all sure that the hearing examiner's test differs materially from that utilized by the Commission in past decisions and in its published "*Guides Against Deceptive Pricing*".[1] We are in agreement with the hearing examiner's view that the compared rugs need not be identical and that the word "comparable" is a "relative" and not an "absolute" term. However, we are unable to agree that he correctly applied the interpretative rule to the facts adduced. In our opinion, the rugs are so materially different as to be not worthy or fit for comparison.

The respondent's rugs were purchased from an importer, Couristan, Inc., at the company's regular list prices for retailers, and respondent's advertised selling prices produced a normal gross profit. Therefore, this was not a special purchase at unusually low prices nor a special reduced price sale. As a matter of fact, Couristan distributed a price list which "suggests" a "special promotion retail price" of $39.95 for the rugs which respondent advertised at $49.95. It would appear, therefore, that both the importer and Gimbel's took their normal and usual markup for merchandise of this type.

[1] 23 F.R. 7965 (October 15, 1958); 2 Trade Reg. Rep. par. 7897 (1961).

The rugs in question were made in Japan to the importer's (Couristan's) specifications. They were designed to resemble as closely as possible rugs manufactured by domestic manufacturers. The respondent's "Stoney Creek" rug advertised at $49.95 was not designed to simulate any particular domestic rug but was, in the opinion of respondent's rug buyer, substantially similar and equal in value to an American-made rug marketed under the name "Troycraft". At about the time when respondent's advertisements appeared, the Troycraft rug in 9′ x 12′ size was being sold by another New York store for $69.95.

The other rug principally involved, respondent's "Bunker Hill" model, was specifically designed to copy a domestically produced rug marketed under the trade name "Wool-O". One of respondent's New York competitors was selling this rug to consumers for $197.95 for the 9′ x 12′ size.

The initial decision makes it appear that the "Troycraft" and "Wool-O" rugs differ from respondent's rugs in only minor and immaterial construction details. This is not correct. There are many important differences which in total render the rugs not "comparable" or of "comparable value".

The rugs are of entirely different construction and the product of different methods of manufacture. The domestic rugs are of "flat braid" construction. They are produced by braiding or weaving the surface yarn in a figure eight pattern around two parallel cords of a cheap base yarn sometimes called "shoddy". This system produces a flat braid in which the various colors of the surface yarn form the typical chevron-braid pattern. The surface material interlocks and firmly binds the cords to each other. The braids are then arranged in a tight coil, either round or oval, and sewed together to produce a finished rug.

The respondent's rugs are produced by wrapping yarn in a spiral around a single core of base yarn. This single "rope" is then sewed to another similar "rope" on which the spiral of the surface yarn angles in the reverse direction. Thus, a facsimile of the "flat braid" is produced which has the characteristic chevron pattern. These joined "ropes" or tubes are then coiled and sewed to form round or oval rugs which closely resemble flat braided rugs. The hearing examiner erroneously found that in this process the surface yarn is "woven" around the core when, in fact, no weaving or braiding takes place. The correct description of the process is "tubular wrap-around".

Although the complaint charges that the compared rugs were unlike in "size, grade, quality, design and workmanship", the hearing examiner concluded that "The only real issue is over the question of wear-

ability." He does not discuss or specifically rule upon the complaint allegation, and we feel that this omission was also error. To fill this hiatus, we will at this point consider these issues.

It would seem obvious that in order to be "comparable" the rug should be of the same size, yet such was not the case. The respondent's rugs were a "cut" size and measured only 103″ x 139″, while the domestic rugs to which they were compared measured a full 9′ x 12′ (108″ x 144″). This shortage of 5 inches in all dimensions is a material difference, making the domestic rugs approximately 8.6% larger than respondent's. In our opinion, this difference alone is sufficient to render false the representation that the rugs are a comparable value.

As to grade, quality and workmanship, the uncontroverted evidence of record shows that the surface yarns which actually receive and absorb the wear of use are four or five times more costly than the core yarns and that in "flat braided" rugs the surface yarns make up the greater part of the rugs' weight, while in rugs produced by the "tubular wrap-around" process the core outweighs the surface yarn. It was also shown that a "critical" factor in wearability is the thread which sews the braids or tubes together. In rugs produced by the tubular wrap-around process, each single tube must be sewed to its neighbor, while in the flat braid process only every other tube need be sewed, and thus there are twice as many of the "critical" seams in respondent's rugs as in the domestically produced "flat braided" rugs. It also appears that the threads which hold respondent's "Bunker Hill" rugs together are cotton, while the "Wool-O" rug is sewed with Nylon thread. The "Wool-O" rug is stitched with smaller and hence a greater number of stitches and each braid is tapered at its end and securely sewed, while the "Bunker Hill's" tubes are merely butted together and glued. From the foregoing facts, we conclude that the respondent's rugs are not comparable in grade, quality and workmanship to the domestic rugs described.

With respect to design, there is no evidence in this record that would support a finding that the rugs differ substantially in this respect. Interpreting the word "design" as meaning the surface pattern or appearance of the rugs and not in reference to the construction details, we are of the view that a difference in this factor, even though substantial, would not make rugs not comparable. In other words, rugs of different pattern or design can be alike in all other material respects and, hence, of comparable value.[2]

[2] It should be unnecessary to point out that design may be in other matters a highly significant factor, depending upon the type of product compared. We are here holding only that these rugs are not rendered not comparable by reason of the different surface patterns or designs.

Respondent contends that consumer witnesses should have been called to testify as to the impression created by respondent's advertisement. There is no merit at all to this contention. This Commission is empowered to determine the meaning of an advertisement from a perusal of the advertisement itself. It is certainly evident from this advertisement, and we hold, that respondent intended, and did convey thereby the impression that the imported rugs it was offering were substantially alike in all material respects to the higher priced domestic rugs whose prices appeared in the advertisement. This is the only sensible and logical interpretation which can be placed on the advertisement, and there was, therefore, no need for consumer testimony.[3]

The Rug Size Issue

The complaint alleges that the rugs advertised by the respondent as being 9′ x 12′ and 8′ x 10′ sizes were, in fact, considerably smaller. It was stipulated that the rug advertised by respondent as a 9′ x 12′ was actually 5 inches short in each of these dimensions and the rug advertised as being 8′ x 10′ was 4 inches short in each dimension. The rugs were so advertised and sold in both Philadelphia and New York City.

The hearing examiner dismissed this charge on the basis of his findings that (1) all of the advertisements carry the statement "All sizes approximate"; (2) the rugs themselves had tags or labels attached which gave the correct size in inches; and (3) the respondent had discontinued the practice. These findings do not, in our opinion, warrant dismissal of the charge.

It is true that each of the advertisements carries the caveat "All sizes approximate", but on most of the ads it appears in such very small print compared to the huge print representing the rugs to be 9′ x 12′ as to seriously detract from the efficacy of the disclosure. In advertisements used by the Philadelphia stores, the disclaimer is obscurely mingled in a paragraph with unrelated information.

More important, it is our view that a rug 8 feet 7 inches by 11 feet seven inches in size is not approximately the same size as a 9′ x 12′ rug. The word "approximate" will perhaps cover an inch or two departure from the norm, but it cannot in this instance stretch to cover five inches. As stated above, a 9′ x 12′ rug is 8.6% larger than one measuring 103 inches by 139 inches, and this material departure from the truth cannot be bridged by the word "approximate". The word

[3] *Zenith Radio Corp.* v. *Federal Trade Commission*, 143 F.2d 29, 31 (7th Cir. 1944); *Charles of the Ritz Distributing Corp.* v. *Federal Trade Commission*, 143 F.2d 676, 680 (2nd Cir. 1944).

"approximate" will only serve where the difference between the actual and stated size is sufficiently small to warrant application of the doctrine *de minimis non curat lex.* The difference here is far greater than the permissible minimum.

The hearing examiner's reliance upon the fact that the rug labels or tags gave the exact size as one of the grounds for dismissal is particularly inappropriate. As the court said in *Carter Products, Inc.* v. *Federal Trade Commission:* [4]

> The law is violated if the first contact . . . is secured by deception . . . even though the true facts are made known to the buyer before he enters into the contract of purchase.

This rule is based upon the logical and even compelling assumption that business is attracted by the misleading initial approach which would not have been attracted had the advertisement been completely frank and truthful. Moreover, it is not even certain that all consumers would see the labels before purchase since the advertisements invite mail and telephone orders.

On the basis of rather questionable evidence,[5] the hearing examiner found that at the time the advertisements appeared it was the custom in the trade in advertising large rugs to give the approximate size in feet rather than the exact size in inches. He further found that the trade has abandoned this practice and now all advertisements give the exact size of rugs, either in inches or in a combination of feet and inches. One of the respondent's officials testified that "since the commencement of the complaint in this action," the respondent has abandoned or discontinued utilizing approximate sizes in advertisements and now places therein only the exact sizes. From the foregoing evidence, the hearing examiner concluded the rug size issue "would appear to be largely moot."

That the Supreme Court and the various circuit courts of appeals have clearly, definitively and in concrete terms again and again stated that discontinuance of a practice does not render a controversy moot [6]

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[4] 186 F. 2d 821 [5 S.&D. 244] 7th Cir. 1951).

[5] This finding is based on the testimony of the importer of the rugs in question and whose company is the subject of a Commission order requiring it to cease misrepresenting the size of its rugs. On cross-examination, this witness testified that at the time in question he didn't keep up too closely with the New York retail market on wrap-around rugs; didn't know that situation; didn't have a customer of "any size" in the New York area; and that he did not know the "actual sizes" of rugs sold at retail in the New York area.

[6] *Federal Trade Commission* v. *Goodyear Tire & Rubber Co.,* 304 U.S. 257, 260 (1938); *Standard Distributors* v. *Federal Trade Commission,* 211 F.2d 7, 13 (2d Cir. 1954); *Educators Ass'n* v. *Federal Trade Commission,* 108 F. 2d 470, 473 (2d Cir. 1939); *Armand Co.* v. *Federal Trade Commission,* 78 F.2d 707, 708 (2d Cir. 1935); *C. Howard Hunt Pen Co.* v. *Federal Trade Commission,* 197 F.2d 273, 281 (3d Cir. 1952); *Hershey Chocolate Corp.* v. *Federal Trade Commission,* 121 F.2d 968, 971 (3d Cir. 1941); *Federal Trade Commis-*

is apparently not persuasive to this hearing examiner. The test to be applied in proceedings where the defense of discontinuance or abandonment of the challenged practice is raised is the same today as it was in 1919, when the first court decision reviewing a Commission order was passed down.[7] The rule can be stated in many different ways, but, in essence, it requires a showing of facts which guarantee or assure against resumption of the practice. A respondent's *post litem* discontinuance and promise to abstain do not constitute a sufficient showing. Other evidence to support a finding of permanent discontinuance is not present in this record, and, in fact, the respondent argues strongly that the advertisement is truthful and not misleading to any extent. On this record, the hearing examiner's dismissal of this charge for mootness is clearly error.

The complaint also charges that respondent's "comparable value" advertisement falsely represented that the rugs advertised were offered at "substantial savings from" the price of the higher priced domestic rug to which they were compared. Complaint counsel's brief pleads:

> Since the Bunker Hill and the Stoney-Creek rugs do not have the value represented by respondent's advertising, it inescapably follows that the consumer does not realize savings in the amount indicated.

It is apparent that a finding that consumers buying respondent's rugs would not realize savings from the higher comparative prices stated in the advertisements follows as a necessary corollary to our holding that respondent's rugs were not in fact comparable to rugs selling at the higher comparative prices. Complaint counsel's exception is well taken and is allowed.

The Luggage Advertisements

In an advertisement which appeared in the January 25, 1959, edition of the New York Times, the respondent represented that the luggage offered in the advertisement at prices ranging from $6.98 to $15.98 was "usually" priced at and had been "sold last week at Gimbel's for 9.98 to 24.98." The respondent admitted that it had not

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sion v. *Good Grape Co.*, 45 F.2d 70, 72 (6th Cir. 1930); *Clinton Watch Co.* v. *Federal Trade Commission*, 291 F.2d 838, 841 (7th Cir. 1961); *Marlene's, Inc.* v. *Federal Trade Commission*, 216 F.2d 556, 559–60 (7th Cir. 1954); *Federal Trade Commission* v. *Wallace*, 75 F.2d 733, 738 (8th Cir. 1935); *Arkansas Wholesale Grocers' Ass'n* v. *Federal Trade Commission*, 18 F.2d 866, 871 (8th Cir. 1927); *Philip R. Park, Inc.* v. *Federal Trade Commission*, 136 F.2d 428, 430 (9th Cir. 1943); *Juvenile Shoe Co.* v. *Federal Trade Commission*, 289 Fed. 57, 59–60 (9th Cir. 1923); *Dolcin Corp.* v. *Federal Trade Commission*, 219 F. 2d 742, 745 (D.C. Cir. 1954).

[7] *Sears, Roebuck & Co.* v. *Federal Trade Commission*, 258 F.2d 307 (7th Cir. 1919).

previously sold the luggage at prices higher than the advertised selling prices and the record indicates that, in fact, the luggage had not been sold during the preceding week at any price.

The complaint charges that by means of this advertisement respondent falsely represented that it had in the recent regular course of its business sold the luggage at the higher prices stated and that the purchaser would effect as a savings the difference between the said higher prices and the advertised "sale" price. The hearing examiner dismissed these charges, holding that the admitted false advertisement was "a single and isolated instance . . . wholly unauthorized by respondent" and, therefore, "insufficient to warrant the issuance of a cease and desist order." The dismissal is buttressed by the hearing examiner's conclusion that "no sound basis appears for a finding or conclusion" that the term "usually" is interpreted by the buying public as meaning that the advertiser had previously sold the luggage at the higher stated prices.

These conclusions are so fundamentally and patently erroneous that reversal might properly be ordered without opinion comment. In the first place, it is ridiculous to characterize respondent's advertisement as a "single isolated instance." This respondent has been using misleading advertising and labeling for a long time and this Commission has been required to proceed against it again and again.[8] But even if respondent's proclivity for misleading advertising was unknown to the hearing examiner, it would be error to label an advertisement appearing in the Sunday edition of the New York Times as an isolated instance. As a matter of fact, this very point was laid to rest by the United States Court of Appeals for the Seventh Circuit in a decision involving this same respondent, the court holding:[9]

> The petitioner contends that a single instance of unintentional misrepresentation does not constitute an unfair method of competition within the meaning of Section 5 of the Federal Trade Commission Act of 1914, 15 U.S.C.A. § 45. We think it plain that soliciting the purchase of goods by advertisement is a method of competition; if the advertisement contains false representations, it is an unfair method of competition.

The hearing examiner's inability to determine the public understanding of the word "usually" as employed in this advertisement is incomprehensible. Even assuming, as the hearing examiner mistakenly thought, that this is a case of first impression and that the courts had not affirmed Commission findings based solely on a reading

[8] Docket 3273, December 8, 1938; Docket 3364, December 29, 1939; and Docket 7888, February 23, 1962. Also, Stipulations #1691 (1936), #1938 (1937), #2831 (1940), #7535 (1946), #8990 (1958), #9245 (1959).

[9] *Gimbel Bros., Inc.* v. *Federal Trade Commission*, 116 F. 2d 578, 579 (7th. Cir. 1941).

of an advertisement that the word "usually" is understood by the purchasing public to refer to the seller's recent regular price,[10] it is still inconceivable that anyone could be confused or uncertain as to the meaning of the word when employed in conjunction with the phrase "sold last week at Gimbel's for 9.98 to 24.98." When so used, the word's meaning is crystal-clear for the advertisement itself provides the definition.

But even when employed alone, the word "usually" and its synonymic companion "regularly" convey to the public the impression that the advertiser's recent usual or regular price is being referred to. This has been our consistent holding for a long period of time and is the only reasonable and logical interpretation possible. We cannot even find in good conscience that these words are ambiguous, but even if we could, it would avail respondent nothing since enjoinable deception would still exist.[11] After all, the respondent had the whole English lexicon at its disposal and must be held to account for the choice it made for it is axiomatic that writers ". . . whose intentions require no concealment, generally employ the words which most directly and aptly describe the ideas they intend to convey . . . ." [12]

The Refrigerator Advertisement

The July 13, 1959, edition of the New York Times carried a full page advertisement in which respondent represented "Gimbel's breaks the price on new 1959 Hotpoint refrigerators." Five refrigerators were depicted and in connection with each a so-called "list price" was indicated which was considerably higher than the advertised selling price. For example: "list price 629.95" and a "sale" price of $399. The complaint charges this advertisement to be misleading in that the higher "list" prices are not the usual prices charged in the New York City area and that respondent did not "break" prices from "list" with a resultant savings to the purchaser of the difference between "list" and the advertised selling price. The hearing examiner dismissed this count of the complaint for failure of proof.

There is no evidence in this record as to the exact price at which the model refrigerators in question were being sold to the public in the New York City area in 1959. The record does show that they were "generally" not sold at list prices; that in metropolitan New York "there might be an instance here or there where our [Hotpoint]

[10] *E.g., The Fair* v. *Federal Trade Commission,* 272 F. 2d 609, 612–613 (7th Cir. 1959); *rehearing denied* January 7, 1960.

[11] *E.g., Murray Space Shoe Corp.* v. *Federal Trade Commission,* 304 F. 2d 270 (2nd Cir. 1962).

[12] *Gibbons* v. *Ogden,* 9 Wheat. 1, 188 (1824).

retail dealers sell at the suggested list prices"; that "Even in the rural area [around New York City] there would be very few people who would actually sell at the indicated, suggested list price"; and that the Gimbel appliance buyer would be "naive" if he were to "proceed on the assumption that a reasonable number of persons" actually sold Hotpoint products at list prices. The foregoing facts were testified by the district manager of Hotpoint's New York District; a man with twenty-three years' experience who supervises four sales managers and eighteen wholesale salesmen; who personally, periodically contacts a cross-section of Hotpoint retail dealers; and who makes it his business to know the general level at which his customers sell Hotpoint products. Such a witness is, in our view, worthy of belief and his testimony should be afforded weight. Using this testimony as a basis, we find that the list prices suggested by Hotpoint and used by Gimbel's in the advertisement are not the "usual and customary" prices for Hotpoint refrigerators in the New York trade area.

The hearing examiner's finding that certain types of stores in the New York City area do "usually, or at least frequently," obtain list prices for Hotpoint refrigerators is apparently based upon the testimony of the Gimbel official responsible for the advertisement in question. This witness could not identify a single store which sold "major appliances of this character at list price in the Gimbel Brothers' area back in 1959 when that advertisement was placed." He also testified that Gimbel's never sold its refrigerators at list prices because it was forced "To sell at exactly what our competition is selling", and that his "direct competition" were selling Hotpoint appliances "at less than list." Nothing in his testimony indicates that he had any personal knowledge that any store was selling Hotpoint refrigerators in 1959 at list prices and, in fact, he stated that he did not go out to "check" since his main concern was to see who was selling as low or lower than Gimbel's. The apparent basis for the witness' statement that some stores were selling at list prices is "common knowledge" since he used that phrase at least four times when asked the key question as to the prices charged by others. In our view a finding cannot be based upon "common knowledge" unless there is some showing that it is indeed common. Here the evidence clearly shows that list prices are generally not charged for Hotpoint refrigerators and that respondent and its competitors sell them at less than list. Thus sales at list prices must be infrequent and hardly the subject of "common knowledge."

The hearing examiner's principal difficulty with the charge is similar to the problem he posited with respect to the words "usually"

and "regularly". He holds the record to be deficient in that it contains "no evidence that the public in that area [New York City] interprets 'list price' as meaning the usual and customary price at which the article is being sold in that area."

Of course, the best evidence of consumer understanding is obtained from consumers themselves. In certain proceedings such testimony is valuable, as for example, in cases of first impression where the advertising representations have not been met before. But in this proceeding such testimony was neither necessary nor desirable. We have met the representation "list price" many times,[13] have reviewed consumer testimony as to its import, and see no reason for expending further funds and time in pursuit of knowledge already acquired. There can be no doubt that among the many millions in the New York City area, ten, twenty or even fifty witnesses could be produced to testify that they understand the term "list price" means the price generally charged by retailers in their area. And, doubtless, respondent could produce an equal number to testify to a different understanding of the term. A record containing such conflicting testimony would, at substantial expense, prove only what is already obvious from a reading of the advertisement itself, that is, that some people are likely to be misled thereby.

Drawing upon the experience obtained over a long period of years, we can with certainty find that a substantial percentage of the consuming public in New York would interpret the term "list price" as descriptive of the usual and customary retail price being charged in that market. In this particular case our conviction on this point is strengthened by the other words used in the advertisement in question, particularly "Gimbel's breaks the price on new 1959 Hotpoint refrigerators". This sentence can have no meaning other than that Gimbel's is reducing the generally prevailing price. That the Commission may itself, without the benefit of consumer testimony, find an ad to be misleading is not open to serious question.[14]

It is our conclusion that a substantial portion of the consuming public would be misled and deceived by respondent's advertisement into the belief that Gimbel's was offering Hotpoint refrigerators at prices greatly reduced from the usual and customary prices charged

[13] See *Giant Food, Inc.*, Docket 7773, July 31, 1962 p. 326 herein and cases cited therein.

[14] See *Giant Food, Inc.*, Docket 7773, July 31, 1962 [p. 326 herein] and cases cited 1962) ; *Exposition Press, Inc. v. Federal Trade Commission*, 295 F. 2d 869 (2nd Cir. 1961) ; *Royal Oil Corporation* v. *Federal Trade Commission*, 262 F. 2d 741 (4th Cir. 1958) ; *E. F. Drew & Co., Inc.* v. *Federal Trade Commission*, 235 F. 2d 735 (2nd Cir. 1956), *cert denied*, 352 U.S. 969 (1957) ; *Zenith Radio Corp.* v. *Federal Trade Commission*, 143 F. 2d 29 (7th Cir. 1944).

by others in the New York trade area. This is a material and actionable misrepresentation violative of the Federal Trade Commission Act. The hearing examiner's dismissal of this charge was erroneous and is reversed.

The Women's Coats Advertisements

In advertisements appearing in the New York Herald Tribune on October 27, 1957, and in the New York Times on December 8, 1957, respondent advertised certain women's cashmere coats as having been "originally" or "reg." (meaning "regularly") sold for stated higher prices than the advertised selling prices. The complaint charges this advertisement to be false in that respondent had not, in the recent regular course of its business, sold the coats at the higher stated prices; had not, therefore, reduced its prices; and purchasers of the coats would not effect the indicated savings. The hearing examiner's dismissal is based upon the failure of the record to show consumer understanding of the words "originally" and "reg."

The respondent stipulated that it had not offered the coats at any prices higher than the selling prices listed in the advertisements in question during a three-month period preceding the date of the first advertisement. The record shows that, in fact, the coats depicted were a "special purchase"; had not previously been sold at any price by Gimbel's; and were the first of their type and fabric purchased from their manufacturer. Gimbel officials testified that when advertising they do not intend to convey anything different by the word "regularly" as compared to the word "originally" and that when used in a Gimbel advertisement ". . . originally means that we sold the goods prior to the sale at a price higher than we are now offering it for sale."

On this record, the hearing examiner's dismissal of this complaint charge for failure of proof is so patently erroneous as to require no discussion.

The Guides

On October 2, 1958, we published, under the title "*Guides Against Deceptive Pricing*", a codification of the interpretative rules which the Commission and the courts have applied in past pricing representation cases. The "*Guides*" list many of the common terms used by advertisers in making price savings and value claims, including most of the terms at issue in this proceeding and point out the meaning these terms convey to the public as determined in past proceedings. The "*Guides*" were promulgated after lengthy and detailed study of all pertinent decided cases and are the end product of continuous

official observation of advertising practices and consumer reaction from the founding of the Commission to the date of publication. As we stated in *Arnold Constable Corporation* (Docket 7657, January 12, 1961) [58 F.T.C. 49], they are not substantive law in and of themselves, but this does not mean that they may be completely ignored and rejected in the fashion herein accomplished.

What, then, is the proper status of the "*Guides*" with respect to a Commission proceeding? When viewed as a compilation and summary of the expertise acquired by the Commission from having repeatedly decided cases dealing with identical false claims, the role of the "*Guides*" becomes apparent. They serve to inform the public and the bar of the interpretation which the Commission, unaided by further consumer testimony or other evidence, will place upon advertisements using the words and phrases therein set out. It is our view that words and phrases of the type set out in the "*Guides*" must be consistently dealt with by the Commission or its decisions will have no meaning or value. Only by consistent interpretation can some order be brought to the semantic jungle of advertising. By way of example, the court's words in *Bankers Securities Corporation* v. *Federal Trade Commission*,[15] are particularly apt:

> If different merchants may use the words "regular" and "usual" at different times to indicate either their own normal prices or the normal prices of their competitors, confusion, detrimental to buyers and sellers alike, may well be created as to the meaning of much advertising.

The Tardy Filing of Notice of Intention to Appeal

Respondent contends that the appeal of complaint counsel should be dismissed because of his failure to file a notice of intention to appeal within ten days after service of the initial decision as required by the applicable rules. It appears that complaint counsel mistakenly thought that the Commission's new Rules of Practice published in the Federal Register July 6, 1961, applied to this proceeding and made timely filing thereunder of a petition for review. Upon motion, we granted complaint counsel permission to withdraw the petition for review and accepted a notice of intention to appeal then approximately nine days overdue as timely filed.

Respondent does not allege that it has been prejudiced by the tardy filing and indeed, under the circumstances, prejudice does not appear likely or even possible. But, under these circumstances, a dismissal of the appeal as untimely filed would certainly prejudice the public,

[15] 297 F.2d 403, 405 (3rd Cir. 1961).

a result not to be countenanced for: "It must not be forgotten that the Commission is not a private party, but a body charged with the protection of the public interest; and it is unthinkable that the public interest should be allowed to suffer as a result of inadvertence or mistake on the part of the Commission or its counsel where this can be avoided." [16]

In view of the many errors found in the initial decision and its failure to make necessary and appropriate findings of fact, the Commission is unable to adopt any part of the initial decision and, in lieu thereof, makes its own findings of fact and an appropriate order to cease and desist based thereupon will issue.

Commissioner Elman concurred in the result of this decision.

Findings as to the Facts, Conclusions and Order

This matter having been heard by the Commission upon the appeal of complaint counsel from the hearing examiner's initial decision filed January 2, 1962, and the Commission, for the reasons stated in the accompanying opinion, having determined that the initial decision should not be adopted as the decision of the Commission but should be vacated and set aside, now makes in lieu thereof these, its findings as to the facts, conclusions and order.

FINDINGS AS TO THE FACTS

1. Respondent Gimbel Brothers, Inc., is a corporation incorporated under the laws of the State of New York, with its principal office located at 33rd Street and Broadway in the city of New York, State of New York.

2. Respondent owns and operates thirteen retail department stores located in and around the cities of New York, New York, Philadelphia, Pennsylvania, Milwaukee, Wisconsin, and Pittsburgh, Pennsylvania. Respondent offers and sells to the public a wide variety of goods, including rugs, luggage, household refrigerators, and women's coats. In selling, shipping, offering and advertising its goods, the respondent maintains a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

3. In several New York City newspaper advertisements disseminated in 1959, respondent represented that the imported rugs it was offering for $49.95 and $79.00 were "of comparable value" or "compare [d] to" rugs selling at $69.95 and $197.95, respectively.

4. Said imported rug advertisements were false and misleading for, in truth and in fact, the rugs offered by respondent were not of like

[16] *P. Lorillard Co. v. Federal Trade Commission*, 186 F.2d 52, 55 (4th Cir. 1950).

size, grade, quality, and workmanship to rugs having a retail selling price of $69.95 and $197.95 in the area where the advertisements were disseminated. Respondent's rugs were smaller in size and inferior in the qualities enumerated and, thus, did not represent a "comparable value" or "compare to" rugs selling at the higher stated prices.

5. In a newspaper advertisement disseminated in the Philadelphia trade area in 1958, respondent represented that the rugs offered therein for $39.95 were "regularly" $89.95. There is no evidence that respondent had not in the recent regular course of its business in that trade area sold the rugs at $89.95, and thus the complaint charge dealing with this representation is not sustained.

6. In certain newspaper advertisements disseminated in the New York City and Philadelphia trade areas, respondent represented that the rugs offered therein were 9 x 12 feet and 8 x 10 feet in size. Said advertisements were false and misleading for, in fact, the rug advertised as being 9 x 12 feet was actually 8 feet 7 inches by 11 feet 7 inches, and the rug advertised as being 8 x 10 feet was actually 7 feet 8 inches by 9 feet 8 inches in size. While said advertisements each carried the disclaimer "All sizes approximate," it appeared in such very small print as to be not readily apparent and noticeable. Moreover, the disparity between the stated and actual sizes of the rugs was too great to be bridged by the word "approximate".

7. In New York City newspaper advertisements, respondent represented that the luggage offered therein at prices ranging from $6.98 to $15.98 were "usually", "reg." and "sold last week at Gimbel's for 9.98 to 24.98". In truth and in fact, the respondent had not previously sold the advertised luggage at the higher prices set out in these advertisements.

8. The above-described luggage advertisements were false and deceptive in that they conveyed to a substantial segment of the consuming public the impression that respondent had reduced its usual and customary retail selling price for said luggage from the higher stated prices to the lower advertised selling price when such was not the fact.

9. Respondent also advertised certain luggage which it was offering for $7.95 to $15.95 as being "comparable" to luggage sold by others for $10.98 to $24.98. There is no evidence to establish that this representation is untrue, and the complaint charge with respect thereto has not been sustained.

10. In a New York City newspaper advertisement offering Hotpoint refrigerators, respondent made the following representation: "Gimbel's breaks the price on new 1959 Hotpoint refrigerators." Said advertisement contains pictorial representations of five refrigerators

and in connection with each, sets out a "list price" considerably higher than the advertised selling price. Said "list prices" were not the usual and customary retail prices for said refrigerators in the New York trade area, but were, in fact, suggested prices supplied by the refrigerator manufacturer and were higher than the prices generally charged by retailers selling in the New York trade area.

11. Said refrigerator advertisement was false and misleading in that it conveyed to a substantial segment of the purchasing public the impression that respondent had substantially reduced its prices below the usual and customary prices found in the New York trade area for said refrigerators when such was not the fact.

12. In certain New York City newspaper advertisements, respondent represented that the cashmere coats offered therein had been "originally" or "reg.[ularly]" sold for stated higher prices than the advertised selling prices. In truth and in fact, respondent had not sold or offered the advertised coats previously at any price.

13. The above-described cashmere coat advertisements were false and misleading in that they convey to a substantial segment of the purchasing public the impression that respondent itself had sold the coats during the recent regular course of its business at the higher stated prices when such was not the fact.

14. Through the use of terms "comparable value", "compares to", "regularly", "reg.", "usually", "originally", "sold last week" and words of similar import, respondent has falsely represented that purchasers of its merchandise would be afforded savings coextensive with the difference between respondent's actual selling price and the higher comparative prices set out in the advertisements.

15. Respondent is, and has been, in substantial competition with other retail sellers of rugs, luggage, household appliances, refrigerators, women's cashmere coats, and other articles of general merchandise, of the same general kind and nature as that sold by respondent.

CONCLUSIONS

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

2. The aforesaid acts and practices of respondent were and are to the prejudice and injury of the public and of respondent's competitors.

3. The false and misleading advertising aforedescribed constitutes unfair and deceptive acts and practices and unfair methods of competition in commerce and violates the Federal Trade Commission Act.

FINAL ORDER

Pursuant to § 4.22(c) of the Commission's Rules of Practice respondent, on August 10, 1962, was served with the Commission's decision on appeal and afforded the opportunity to file exceptions to the form of order which the Commission contemplates entering; and

Respondent having made timely filing of its exceptions to the order proposed which were opposed by a reply filed by counsel supporting the complaint and the Commission upon review of these pleadings having determined that respondent's exceptions should be disallowed and that the order as proposed should be entered as the final order of the Commission:

It is ordered, That respondent Gimbel Brothers, Inc., a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of rugs, luggage, refrigerators, women's coats, or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Comparing respondent's selling price for any article with any other price, by use of the words "comparable value", "compares to" or any other words of similar import, when the article offered by respondent is not substantially equal in all material respects, to an article or articles generally selling at the compared price in the trade area where the representation is made.

2. Referring to or describing any stated monetary amount with the words "regularly", "reg.", "usually", "originally", "sold last week", or any other words of similar import when the respondent itself has not previously sold the article advertised or when the amount so referred to or described is greater than the usual and customary price charged by respondent for the same article in the recent regular course of its business in the trade area where the representation is made.

3. Referring to or describing any stated monetary amount with the words "list price" or any other words of similar import when the amount so referred to or described is greater than the price or prices at which the advertised article is usually and customarily sold in the trade area where the representation is made.

4. Representing in any manner that, by purchasing any of its merchandise, customers are afforded savings amounting to the difference between respondent's stated selling price and any higher price used for comparison with that selling price, unless

the higher price used represents the price at which the same merchandise or merchandise substantially equal in all material respects is usually and customarily sold at retail in the trade area involved, or is the price at which such merchandise has been usually and regularly sold by respondent at retail in the recent, regular course of its business in the trade area involved.

5. Representing that the dimensions or sizes of rugs offered for sale are greater than they actually are.

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

IN THE MATTER OF

MORSE SEWING MACHINE & SUPPLY CORP. ET AL.

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

Docket C-254. Complaint, Oct. 17, 1962—Decision, Oct. 17, 1962

Consent order requiring two individuals in New York City and the three associated corporations they directed—including (1) an importer of sewing machine heads and replacement parts from Japan which were assembled into complete sewing machine units with domestically purchased cabinets, motors, controls, and electrical units; (2) its affiliate holding the capital stock and supervising the activities of seven retail subsidiaries; and (3) a corporation handling advertising and printing for all the corporations—to cease using bait advertising to obtain leads to prospects; representing falsely that they were conducting contests, winners of which would receive prizes or gift certificates, actually worthless; and that certain of their machines were "Guaranteed for a Lifetime" or had a "5 year written guarantee" when the guarantee had undisclosed limitations.

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 Morse Sewing Machine & Supply Corp., Morse Electro Products Corp., Morse Distributing Corp., corporations, and Philip S. Morse and Edward I. Rabin, individually and as officers 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. Respondents Morse Sewing Machine & Supply Corp., Morse Electro Products Corp., and Morse Distributing Corp., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their principal office and place of business located at 122 West 26th Street, New York 1, N.Y.

The functions of these corporations are as follows: Morse Sewing Machine & Supply Corp. imports sewing machine heads and replacement parts principally from Japan. Cabinets, motors, controls and electrical units are purchased domestically. Complete sewing machine units are sold to the public through franchised dealers or distributors and through retail outlets of wholly owned subsidiaries of its affiliate Morse Electro Products Corp. Respondent Morse Electro Products Corp. is a holding company, holding 100% of the capital stock of seven subsidiaries. Said corporation coordinates and supervises the activities of the subsidiaries. Respondent Morse Distributing Corp. handles advertising and printing for all Morse corporations.

Respondents Philip S. Morse and Edward I. Rabin are individuals and are officers of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondents.

PAR. 2. Respondents, for a number of years last past, have been engaged in the advertising, sale and distribution of new and used sewing machines to the purchasing public.

PAR. 3. In the course and conduct of their business, respondents Morse Sewing Machine & Supply Corp., Philip S. Morse and Edward I. Rabin have said products shipped from their place of business in the State of New York across state lines to such subsidiaries as Universal Sales Company, Inc., Morse Sewing Centers of Ohio, Inc., to other subsidiaries of Morse Electro Products Corp., and to franchised dealers or distributors 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.

Respondents have further engaged in extensive commercial intercourse in commerce, consisting of the transmission and receipt of letters, checks, reports, contracts, accounting and inventory forms and other documents of commercial nature, and various forms of advertising matter sent to their retail stores which is used by the retail

stores in the conduct of their business, all in connection with the sale of respondents' products.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the purchase of their products, respondents have made certain statements and representations with respect thereto in advertisements inserted in newspapers, magazines, direct mail advertising and through other advertising media, of which the following are typical:

Brand new Electric Portable Sewing Machine. It's equipped with a magic action attachment. Allowing you to: zig zag, button hole, darn and quilt. Special Price $21.95 Only $1.25 a week.

* * * * * * *

Win this brand new Morse Zig Zag. Over 200 other valuable prizes. Nothing to buy! It's easy! It's simple. Unscramble these famous cities and win . . . plus hundreds of dollars worth of prize certificates.

* * * * * * *

Special sale—Overstocked Singer Electric Portable. Reconditioned and electrified . . . 5 year written guarantee. Lowest price ever. $18.88 only $1.25 a week.

* * * * * * *

Guaranteed for a Lifetime.

* * * * * * *

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

(1) That they were making a bona fide offer to sell new portable electric sewing machines for $21.95 or used reconditioned Singer electric portable sewing machines for $18.88;

(2) That certain of their sewing machines were guaranteed in every respect for life or for a specified number of years.

(3) That they were conducting a bona fide contest, the winners of which were to receive a sewing machine and other valuable prizes.

PAR. 6. In truth and in fact:

(1) The offers to sell new portable electric sewing machines for $21.95 or used reconditioned Singer electric portable sewing machines for $18.88 were not genuine or bona fide offers but were made for the purpose of obtaining leads as to persons interested in purchasing sewing machines. After obtaining such leads, respondents or their salesmen called upon such persons at their homes or waited upon them at respondents' place of business. At such times and places, respondents and their salesmen would disparage the advertised machine and would instead attempt to sell and did sell different and

more expensive sewing machines. Sometimes this was done after selling pro forma the advertised machine and accepting a down payment and sometimes this was done before such a sale was made.

(2) Respondents' guarantee is not unconditional. It is limited in certain respects and these limitations are not disclosed in the advertisement or made known to the purchaser prior to the sale.

3. Respondents were not conducting a bona fide contest. Such contest was a scheme to obtain leads. Almost everyone entering the contest won a gift certificate entitling them to a discount on the purchase of a sewing machine. The certificates were valueless as the holders of such were charged the regular and usual price by the respondents for any sewing machine they may have purchased.

Therefore, the advertisements and representations referred to in paragraphs 4 and 5 were and are exaggerated, false, misleading and deceptive.

PAR. 7. In the conduct of their business, at all times mentioned herein, the respondents have been in substantial competition in commerce with corporations, firms and individuals engaged in the sale of sewing machines of the same general kind and nature as those sold by respondents.

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

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce, and unfair and deceptive acts in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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. Respondents Morse Sewing Machine & Supply Corp., Morse Electro Products Corp. and Morse Distributing Corp., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York with their office and principal place of business located at 122 West 26th Street, in the city of New York, State of New York.

Respondents Philip S. Morse and Edward I. Rabin 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, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Morse Sewing Machine & Supply Corp., Morse Electro Products Corp., Morse Distributing Corp., corporations, and their officers, and Philip S. Morse and Edward I. Rabin, individually and as officers 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 and distribution of sewing machines or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication:

1. That said merchandise is offered for sale when such offer is not a bona fide offer to sell the merchandise so offered.

2. That respondents are conducting a "contest" in which the winners will receive prizes or gift certificates unless respondents are in fact conducting a bona fide "contest" in which the winners will receive prizes or gift certificates of actual value.

3. That certificates or other articles awarded the winners of a contest conducted by respondents are of a certain value or worth

unless such certificates or other articles are in fact of the represented value or worth.

4. That any article of merchandise is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform are clearly and conspicuously disclosed.

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

ARONOFF & RICHLING, INC., ET AL.

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

Docket C-255. Complaint, Oct. 17, 1962—Decision, Oct. 17, 1962

Consent order requiring New York City manufacturers of wearing apparel to cease violating the Flammable Fabrics Act by furnishing customers with a false guaranty with respect to certain highly flammable ladies' dresses that tests made under provisions of said Act showed that such dresses were not so highly flammable as to be dangerous when worn.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Aronoff & Richling, Inc., a corporation, and Sidney Richling, Lowell Aronoff, Abraham Aronoff, and Robert Silver, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Flammable Fabrics Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Aronoff & Richling, Inc., is a corporation, duly organized, existing and doing business under and by virtue of the laws of the State of New York. Respondents Sidney Richling, Lowell Aronoff, Abraham Aronoff and Robert Silver are officers of the corporate respondent and formulate, direct, and control its policies, acts, and practices.

Respondents are manufacturers of articles of wearing apparel, including ladies' dresses, and have their office and principal place of business at 1400 Broadway, New York, N.Y.

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

Among the articles of wearing apparel mentioned above were ladies' dresses.

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

Among the articles of wearing apparel mentioned above were ladies' dresses.

PAR. 4. Respondents, subsequent to July 1, 1954, have furnished their customers with a guaranty with respect to the articles of wearing apparel, mentioned in paragraphs 2 and 3 hereof, to the effect that, based upon a guaranty received, respondents guaranteed that reasonable and representative tests made under the procedures provided in Section 4 of the Flammable Fabrics Act, as amended, and the Rules and Regulations promulgated thereunder, showed that said articles of wearing apparel in the form delivered by the respondents, were not so highly flammable under the provisions of the Flammable Fabrics Act as to be dangerous when worn by individuals. There was reason for respondents to believe that the articles of wearing apparel covered by such guaranty might be introduced, sold, or transported in commerce.

Said guaranty was false, in that with respect to some of the said articles of wearing apparel, respondents had not received such a guaranty.

PAR. 5. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act and the Rules and Regulations promulgated thereunder, and as such constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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, Aronoff & Richling, Inc., is corporation organized, existing and doing business under and by virtue of the laws of the State of New York. The said corporation has its office and principal place of business located at 1400 Broadway, New York, N.Y.

Respondents Sidney Richling, Lowell Aronoff, Abraham Aronoff and Robert Silver are officers of said corporation, and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Aronoff & Richling, Inc., a corporation, and its officers, and Sidney Richling, Lowell Aronoff, Abraham Aronoff, and Robert Silver, individually and as officers of Aronoff & Richling, Inc., and respondents' representatives, agents and em-

ployees, directly or through any corporate or other device, do forthwith cease and desist from:

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

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

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

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

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

3. Furnishing to any person a guaranty with respect to any article of wearing apparel or fabric which respondents, or any of them, have reason to believe may be introduced, sold or transported in commerce, which guaranty represents, contrary to fact, that reasonable and representative tests made under the procedures provided in Section 4 of the Flammable Fabrics Act, as amended, and the Rules and Regulations thereunder, show and will show that the article of wearing apparel, or the fabric used or contained therein, covered by the guaranty, is not, in the form delivered or to be delivered by the guarantor, so highly flammable under the provisions of the Flammable Fabrics Act as to be dangerous when worn by individuals, provided, however, that this prohibition shall not be applicable to a guaranty furnished on the basis of, and in reliance upon, a guaranty to the same effect received by respondents in good faith signed by and containing the name and address of the person by whom the article of wearing apparel or fabric was manufactured or from whom it was received.

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

JEROME G. PILE ET AL.

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

Docket C-256. Complaint, Oct. 17, 1962—Decision, Oct. 17, 1962

Consent order requiring two individuals in Harwood Heights, Ill., manufacturers of fibercrete panels for swimming pools which they distributed along with other swimming pool accessories, to cease misrepresenting, in advertising for franchise distributors, the annual profits to be expected, their advertising and installation assistance and value thereof, permanence and maintenance-free qualities of the pools, guarantees and a display pool as given free.

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 Jerome G. Pile and Clifford C. Trudeau have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows.

PARAGRAPH 1. Respondents are individuals and the former officers of Swim Queen Pool Company, a corporation organized, existing and formerly doing business under and by virtue of the laws of the State of Illinois, with its principal place of business and office located at 2301 East Oakton Street, Arlington Heights, Ill. Respondents, prior to the filing by the corporation of a Voluntary Petition in Bankruptcy on June 5, 1962, formulated, directed and controlled the acts and practices of Swim Queen Pool Company including the acts and practices hereinafter set forth. The address of Jerome G. Pile is 2301 East Oakton Street, Arlington Heights, Ill. The address of Clifford C. Trudeau is 5048 North Octavia Street, Harwood Heights, Ill.

PAR. 2. Swim Queen Pool Company and respondents, for some time last past, have been engaged in the manufacture, offering for sale, sale and distribution of fibercrete panels for swimming pools. Respondents also participated in the sale of terrazzocrete and fiberglass panels, concrete and other swimming pool accessories. Respondents effected the sale of said materials to franchise dealers and/or distributors (hereinafter referred to as franchise dealers) who retailed and in-installed the swimming pools.

PAR. 3. Respondents, in the course and conduct of their business, for some time last past have caused the aforesaid products, when sold, to be transported from Swim Queen Pool Company's place of business in the State of Illinois to purchasers thereof located in various other States of the United States, and at all times mentioned herein have maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, as aforesaid, respondents have caused persons to be solicited to enter into franchise agreements for the distribution of Swim Queen Pool Company's products by disseminating certain advertisements concerning their products and the profit making opportunities available in the dealing and distribution of said products. In addition to said advertising in the form of newspapers, magazines, circulars, brochures and letters and other advertising media, respondents have caused salesmen or representatives to be employed to secure franchise dealers for the sale and distribution of their products. In the course of solicitation, by both advertisements and salesmen or representatives respondents have caused many statements or representations to be made directly or by implication, to prospective franchise dealers. Typical, but not all inclusive, of said statements or representations, were the following:

1. That there was a $35,000 yearly profit potential to franchise dealers of Swim Queen Pool Company's products.

2. That franchise dealers would be supported by Swim Queen Pool Company's national advertising campaign.

3. That Swim Queen Pool Company would give a free display pool to distributors.

4. That Swim Queen Pool Company's pools will not crack, peel, chip, fade or require repainting and are maintenance free.

5. That Swim Queen Pool Company's pools were covered by a five year guarantee, thereby representing that said pools are guaranteed by them in every respect.

6. That the cost of installing Swim Queen Pool Company's pools was in accord with cost estimates supplied by respondents.

7. That sales aids and promotional material supplied to dealers had a value equivalent to those listed in materials furnished by Swim Queen Pool Company.

8. That Swim Queen Pool Company would supply installation assistance to dealers upon request.

PAR. 5. In truth and in fact:

1. The yearly profit potential, if any, of franchise dealers of Swim Queen Pool Company's products was substantially less than $35,000.

2. Swim Queen Pool Company did not support franchise dealers with a program of national advertising.

3. The display pool provided by Swim Queen Pool Company was not "free" or an unconditional gift. Only the construction materials for a pool were supplied and only after a substantial deposit was made in connection with the execution of the franchise agreement.

4. The panels which Swim Queen Pool Company supplied to franchise dealers, contrary to representations, cracked, peeled, chipped, faded, required repainting and were not maintenance free.

5. Swim Queen Pool Company guaranteed their pools only to a limited extent, and did not make repairs or adjustments in accordance with the guarantee.

6. The cost of installing Swim Queen Pool Company's pools was substantially greater than the amount represented.

7. The value of sales aids and promotional materials supplied by Swim Queen Pool Company was substantially less than the amount represented.

8. Swim Queen Pool Company did not provide installation assistance to franchise dealers upon request.

Therefore, the statements and representations set forth in paragraph 4 above were false, misleading and deceptive.

PAR. 6. In the conduct of its business and at all times mentioned herein, respondents have been in substantial competition in commerce, with corporations, firms and individuals engaged in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had the capacity and tendency to mislead and deceive a substantial number of said franchise dealers into the erroneous and mistaken belief that said statements and representations were true and into the execution of franchise agreements and purchases of Swim Queen Pool Company's products by reason of said erroneous and mistaken belief.

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

DECISION AND ORDER

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

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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. Respondents Jerome G. Pile and Clifford C. Trudeau are individuals and former officers of Swim Queen Pool Company. The address of Jerome G. Pile is 2301 East Oakton Street, Arlington Heights, Ill., and the address of Clifford C. Trudeau is 5048 North Octavia Street, Harwood Heights, Ill.

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

ORDER

It is ordered, That respondents Jerome G. Pile and Clifford C. Trudeau, and their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of swimming pool panels, or any other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That dealers can make any amount of earnings or profits within a specified period of time from the sale or installation of respondents' products when such amount is in excess of earnings or profits which dealers have consistently made in like periods of time from the sale or installation of such products; or otherwise misrepresenting the earnings or profits which dealers have derived, or may derive, from the sale or installation of respondents' products.

2. That dealers in respondents' products are supported by a national advertising campaign when respondents do not, in fact, advertise such products nationally.

3. That a free display pool will be provided to their dealers; or otherwise representing to their dealers that respondents will furnish any construction materials or other products free unless such materials or products are in fact furnished free or without charge therefor and, if the receipt or retention of such materials or products is conditioned in any manner, unless all the conditions and prerequisites to obtaining or retaining such material or products are clearly and conspicuously set forth or explained at the outset.

4. That respondents' pools will not crack, peel, chip, fade; require no repainting; or are free from maintenance problems.

5. That any products sold or offered for sale are guaranteed, unless the nature and extent of the guarantee and the manner in which the respondents will perform thereunder are clearly and conspicuously disclosed, and unless respondents do in fact fulfill all the requirements under the terms of the guarantee.

6. That the cost of installing respondents' pools is any amount which is less than the actual cost of such installation under ordinary circumstances and conditions.

7. That the value of the sales aids and promotional materials supplied to prospective dealers is any amount which is greater than their actual value.

8. That installation assistance will be supplied to dealers, unless such assistance is, in fact, provided.

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

HARRY USWALD TRADING AS M. McNAUGHTON, ETC.

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

Docket 8447. Complaint, Oct. 12, 1961—Decision, Oct. 26, 1962

Order requiring a Los Angeles advertising copywriter, acting also as a fur salesman, to cease violating the Fur Products Labeling Act by placing advertisements in newspapers which failed to disclose the names of animals producing the fur in certain fur products, represented that fur products were

guaranteed without disclosing the nature and extent of the guarantee, and represented falsely that prices of fur products were "at actual cost".

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Harry Uswald, an individual trading as M. McNaughton, U.S. Advertisers, Associated Advertisers and Better Business Builders, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Harry Uswald is an individual trading as M. McNaughton, U.S. Advertisers, Associated Advertisers and Better Business Builders with his office and principal place of business located at 2501 West Seventh Street, Los Angeles, Calif.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 8, 1952, respondent, in association with various retailers of fur products as an advertising copywriter, has been and is now engaged in the introduction into commerce and in the sale, advertising, and offering for sale in commerce, and in the transportation, and distribution in commerce of fur products and has sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were falsely and deceptively advertised, in violation of the Fur Products Labeling Act, in that respondent caused the dissemination in commerce, as "commerce", is defined in said Act, of certain newspaper advertisements, concerning said products, which were not in accordance with the provisions of Section 5(a) of the said Act, and the Rules and Regulations promulgated thereunder; and which advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

PAR. 4. Among said advertisements, but not limited thereto, were advertisements of respondent which appeared in issues of the Los Angeles Times, a newspaper published in Los Angeles, California, having a wide circulation in California and various other States of the United States.

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

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

2. Represented, directly or by implication, that fur products were guaranteed without disclosing the nature and extent of the guarantee and the manner and form in which the guarantor would perform thereunder, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

3. Represented prices of fur products to be "at actual cost" when such was not the fact, in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of said Rules and Regulations.

PAR. 5. The aforesaid acts and practices of respondent, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

Mr. Robert W. Lowthian and *Mr. Eugene H. Strayhorn for* the Commission.

Mr. Benjamin Held, of Los Angeles, Calif., for respondent.

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the respondent on October 12, 1961, charging that the respondent, individually and trading as M. McNaughton, U.S. Advertisers, Associated Advertisers and Better Business Builders in association with various retailers of fur products as an advertising copywriter, has been and is now engaged in the introduction into commerce and in the sale, advertising, and offering for sale in commerce, of fur products as defined in the Fur Products Labeling Act. The complaint charged that the respondent's acts and practices are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce in violation of the Federal Trade Commission Act. Respondent filed an answer to the complaint admitting and denying certain of the allegations set forth therein. A hearing was held on February 14, 1962, in Los Angeles, California.

This proceeding is presently before the hearing examiner for final consideration upon the complaint, answer, testimony and other evidence and proposed findings of fact and conclusions filed by counsel supporting the complaint. Counsel representing the respondent failed to file proposed findings, conclusions and order.

Consideration has been given to the proposed findings of fact and conclusions submitted, and all proposed findings and conclusions not hereinafter specifically found or concluded, are rejected and the hearing examiner having considered the entire record herein makes the following findings of fact, conclusions drawn therefrom and issues the following order:

FINDINGS OF FACT

1. Respondent, Harry Uswald, is an individual trading as M. McNaughton, U.S. Advertisers, Associated Advertisers and Better Business Builders, with his office and principal place of business located at 2501 West Seventh Street, Los Angeles, California.

2. Subsequent to the effective date of the Fur Products Labeling Act, August 8, 1952, respondent, in association with various retailers of fur products and in particular with Regal Furs, Los Angeles, California as an advertising copywriter, has been and is now engaged in the introduction into commerce, and in the sale, advertising, and offering for sale in commerce of fur products and has sold, advertised and offered for sale fur products which have been made in whole or in part of fur which had been shipped in commerce as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

Respondent, during the period he was employed by Regal Furs, Los Angeles, California as an advertising copywriter, in addition to his duties in that capacity, also acted as a salesman for Regal Furs and did in fact sell two fur garments.[1] Section 3 of the Fur Products Labeling Act proscribes certain practices:

> The introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of any fur product which is misbranded or falsely and deceptively advertised or invoiced * * * is unlawful and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act.

Section 8(a)(2) of the Act authorizes the Commission to prevent *any person* from engaging in these acts.

> (2) The Commission is authorized and directed to prevent *any person* from violating the provision of Section 3, 6 and 10(b) of this Act * * * and *any*

[1] Commission Exhibits 28 and 30.

person violating any provision shall be subject to penalties. (Emphasis supplied)

The Congress thus did not limit the application of the Act to just fur manufacturers, wholesalers or retailers. It includes every person regardless of his occupation or capacity, who does one of the unlawful acts referred to above. The Ninth Circuit Court of Appeals in the case of *Jacques DeGorter* v. *FTC*, 244 F.2d 270 [6 S. & D. 310], stated:

The object of the statute before us—as appears from the legislative history, was to prevent, among other things, false advertising of fur products or furs, *no matter to what it related.* (Emphasis supplied)

In the present case the respondent prepared the advertisements, had full access to the stock and premises of Regal Furs, and others, originated or collaborated on the ideas in each specific advertisement, and placed the advertisements in the newspapers circulated in interstate commerce. The record sustains, and the examiner finds that respondent advertised "fur products" in "commerce" within the meaning of the Fur Products Labeling Act. Commission Exhibits 1 through 21 are samples of advertisements prepared by the respondent which bear his copyright. The purpose of the copyright in the respondent's own words was: "To prevent other furriers from stealing the same ideas. I copyrighted dozens of these things."

In one advertisement, Commission Exhibit 2,[2] respondent inserted over his own signature as advertising manager:

For over 50 years the name Beckman Furs has meant the finest in furs to thousands of the most famous and most fashionable stars of the Stage, the Screen, Television and High Society! Now you can buy the same type of fine furs as they, at our exceptional low January Clearance Price! Hurry in and get one.

Sincerely yours,
H. Uswald.

3. Paragraph 3 of the complaint alleges that the respondent falsely and deceptively advertised certain fur products in commerce through the media of newspaper advertisements, when said advertisements were not in accordance with the provisions of Section 5(a) of the Fur Products Labeling Act, and furthermore, that said advertisements were intended to aid and promote and assist directly or indirectly in the sale and offering for sale of said fur products. For the reasons set forth in Finding No. 2 and the false and deceptive advertisements contained in Commission Exhibits 1 through 21, which will be discussed later herein, the examiner finds that Paragraph 3 of the com-

[2] This advertisement was prepared while respondent was employed by Beckman Furs, Los Angeles, California.

plaint has been sustained by a preponderance of the reliable, substantial and probative evidence.

4. Among the advertisements mentioned above, but not limited thereto, were advertisements of respondent which appeared in issues of the Los Angeles Times, a newspaper published in Los Angeles, California, having a wide circulation in California and various other States of the United States.

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

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

Commission Exhibits 2 and 3 advertised "DYED RUSSIAN BROADTAIL JACKET" when no animal name was set forth in the advertisement. Commission Exhibit 4 contains deficiencies in that a "FINE ROYAL PASTEL CLUTCH CAPE" is advertised with no animal name given. Likewise, "DYED RUSS." "BROADTAIL JACKET" is advertised with the animal name omitted. Commission Exhibit 7 advertised "HOMO PASTEL STOLE", "ROYAL PASTEL CLUTCH CAPE". None of the above advertisements complied with the Act.

5. It is found that by means of the advertisements heretofore referred to in Finding No. 2 and other advertisements of similar import, not specifically referred to herein, respondent falsely and deceptively advertised fur products in that said advertisements:

Represented, directly or by implication, that fur products *were guaranteed* without disclosing the nature and extent of the guarantee and the manner and form in which the guarantor would perform thereunder, in violation of Section 5(a)(5) of the Fur Products Labeling Act." (Emphasis supplied)

There are many cases wherein the Commission has issued cease and desist orders against firms advertising false and deceptive guarantees. In *Samuel A. Mannis, et al.*, 293 F. 2d 774 [7 S.&D. 214] (Docket 7062), a case arising under the Fur Products Labeling Act, the Commission approved the finding of the hearing examiner who said:

The word "guaranteed" as used in the advertisements is incomplete. The Commission has held many times that the use of the word "guaranteed" in advertising without disclosing the nature and extent of the guarantee, is deceptive. The fact that the nature and extent of the guarantee is revealed at the time is of no defense.

The fact of the matter is the respondent guaranteed nothing nor did his employer, *Ryal Furs*, Docket No. 8446 [page 74 herein].

6. By means of the advertisements referred to in Finding No. 2 above, and other advertisements of similar import not specifically referred to herein, respondent falsely and deceptively advertised fur products in that said advertisements:

Represented prices of fur products to be "at actual cost" when such was not the fact, in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of said Rules and Regulations.

As stated in Finding No. 2, respondent prepared the advertisements wherein fur products were advertised at actual cost. Respondent knew or should have known that the advertisements were false and deceptive, because the respondent was a man of long experience in the fur business and had complete run of the Regal Fur store by whom he was employed. The Commission witnesses Housel and Williams testified that it was as a result of the advertisements placed in the Los Angeles Times that they visited the Regal Fur store which resulted in their purchasing fur garments. Witness Housel testified that she interpreted the words "at actual cost" to mean "that the person who was selling did not make any profit" and "what he paid his supplier for the fur". Witness Williams interpreted the words "at actual cost" to mean "the purchase price of the original garment from the manufacturer".[3] Commission witness Anderson testified that during the course of his investigation, a total of 25 sales were made as a result of the advertisements placed in the newspapers by the respondents (two of which sales were actually made by respondent himself)[4] and that none of the fur products sold in the 25 sales referred to above were sold at actual cost. In fact, the respondent made no effort to check the accuracy of the statements made in the advertisements he prepared and he kept no records to substantiate such claims.

CONCLUSIONS

The acts and practices of the respondent hereinabove found are false, misleading and deceptive and are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

This proceeding is in the public interest, and an order to cease and desist the above found unlawful practices should issue against respondent.

[3] Record pp. 7, 11 and 12.
[4] Commission Exhibits 28 and 30.

ORDER

It is ordered, That Harry Uswald, an individual trading as M. McNaughton, U.S. Advertisers, Associated Advertisers and Better Business Builders, or under any other trade names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce or the transportation or distribution in commerce of fur products or in connection with the sale, advertising, offering for sale, transportation or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

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

A. Fails to set forth all the information required to be disclosed by each of the subsections of Section 5(a) of the Fur Products Labeling Act.

B. Represents, directly or by implication, that fur products are guaranteed unless the nature and extent of such guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously set forth.

C. Represents directly or by implication that prices of fur products are "at actual cost" or words of similar import, when such is not the fact.

D. Represents directly or by implication that savings are available to purchasers of fur products when such is not the fact.

FINAL ORDER

This matter having been heard by the Commission upon exceptions to the initial decision and brief in support thereof filed by respondent *pro se*, and the Commission having duly considered said exceptions and opposition thereto presented by counsel supporting the complaint; and

The Commission being of the opinion that respondent by virtue of his participation, as shown in this record, in the advertising practices charged in the complaint is amenable to the requirements of the Fur Products Labeling Act, and that the hearing examiner's finding

that said advertising practices are in violation of that Act is fully supported by the record; and

The Commission having previously scheduled an oral argument in this matter to be heard in Washington, D.C., on October 17, 1962, and the said hearing having been cancelled only after the Commission was advised by the respondent that he was financially unable to travel from Los Angeles, California, to Washington, D.C., to participate in the hearing and having requested that the oral argument instead be held in Los Angeles, California, which request was denied by the Commission; and

The Commission having considered respondent's letter of September 27, 1962, requesting in effect that the Commission reconsider its determination to dispense with oral argument, and having concluded that the briefs are entirely adequate to fully advise the Commission as to the matters at issue and that, therefore, respondent's request must be denied; and

The Commission having determined that the initial decision is appropriate in all respects:

It is ordered, That respondent's exceptions to the initial decision be, and they hereby are, denied.

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

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

IN THE MATTER OF

SIDNEY BERNSTEIN, INDIVIDUALLY, FORMERLY AN OFFICER OF ETELSON & BERNSTEIN, INC.

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

Docket C-257. Complaint, Oct. 26, 1962—Decision, Oct. 26, 1962

Consent order requiring a New York City furrier to cease violating the Fur Products Labeling Act by labeling and invoicing artificially colored fur as natural, failing to label and invoice bleached or dyed fur as such, failing in other respects to comply with invoicing requirements, and furnishing false guaranties that certain of their fur products were not misbranded, falsely invoiced, or falsely advertised.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Sidney Bernstein, an individual, hereinafter referred to as respondent, formerly an officer of Etelson & Bernstein, Inc., a corporation, now dissolved, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Sidney Bernstein is an individual and a former officer of Etelson & Bernstein, Inc., a corporation, now dissolved. He formulated, directed and controlled the acts, practices and policies of said corporation which, prior to its dissolution on June 7, 1962, existed and did business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 312 Seventh Avenue, New York, N.Y. The office and principal place of business of respondent Sidney Bernstein is 312 Seventh Avenue, New York, N.Y.

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

PAR. 3. Certain of said fur products were misbranded or otherwise falsely or deceptively labeled in that said fur products were labeled to show that the fur contained therein was natural when in fact such fur was bleached, dyed or otherwise artificially colored, in violation of Section 4(1) of the Fur Products Labeling Act.

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

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed to show that the fur contained in the fur products was bleached, dyed or otherwise artificially colored, when such was the fact.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced in that said fur products were invoiced to show that the fur contained therein was natural when in fact such fur was bleached, dyed or otherwise artificially colored, in violation of Section 5(b) (2) of the Fur Products Labeling Act.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in that they were not invoiced as required under the provisions of Section 5(b) (1) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed to disclose that the fur contained in the fur products was bleached, dyed or otherwise artificially colored, when such was the fact.

PAR. 7. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder inasmuch as information required under Section 5(b) (1) of the said Act and said Rules and Regulations was set forth in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

PAR. 8. Etelson & Bernstein, Inc. and respondent furnished false guaranties that certain of their fur products were not misbranded, falsely invoiced or falsely advertised when, in furnishing such guaranties they had reason to believe that the fur products so falsely guaranteed would be introduced, sold, transported or distributed, in commerce, in violation of Section 10(b) of the Fur Products Labeling Act.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, have been in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and have constituted unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act and the Fur Products Labeling

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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 Sidney Bernstein is an individual and a former officer of Etelson & Bernstein, Inc., a corporation, now dissolved. His office and principal place of business is located at 312 Seventh Avenue, New York, N.Y.

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

ORDER

It is ordered, That respondent Sidney Bernstein, individually, formerly an officer of Etelson & Bernstein, Inc., a corporation, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale, in commerce or the transportation or distribution in commerce of any fur product; or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation or distribution, of any fur product which has been made in whole or in part of fur which has been shipped and received in commerce as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act do forthwith cease and desist from:

1. Misbranding fur products by:

A. Representing, directly or by implication, on labels that the fur contained in fur products is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

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

2. False or deceptively invoicing fur products by:

A. Representing, directly or by implication, on invoices that the fur contained in fur products is natural when such fur is pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

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

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

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

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

IN THE MATTER OF

ROBERT J. FREUND ET AL. TRADING AS ROYAL WOOLEN CO.

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

Docket C-258. Complaint, Oct. 26, 1962—Decision, Oct. 26, 1962

Consent order requiring New York City distributors of textile fiber products to cease violating the Textile Fiber Products Identification Act by labeling as "88% Rayon, 7% Nylon, and 5% Crylor", textile fiber products which contained substantially different amounts of fibers, representing falsely on labels that textiles contained certain fibers only, failing to disclose on labels the true generic name of the fibers present and the percentage thereof, failing in other respects to comply with labeling requirements, and furnishing

false guaranties that certain of their said products were not misbranded or falsely invoiced; and

To cease violating the Wool Products Labeling Act by misbranding wool fabrics as to fiber content, affixing labels containing false guaranties that the fiber content information was correct, failing to disclose the true generic name and percentage of fibers present and failing in other respects to comply with labeling requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Textile Fiber Products Identification Act and the Wool Products Labeling Act of 1939 and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Robert J. Freund and Antoinette Freund, individually and as copartners trading as Royal Woolen Co., hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Textile Fiber Products Identification Act and the Wool Products Labeling Act of 1939 and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Robert J. Freund and Antoinette Freund are individuals and copartners trading as Royal Woolen Co. All respondents have their office and principal place of business at 110 West 40th Street, New York 18, N.Y. Respondents are engaged in the importation of textile fiber products and wool products, namely fabrics, into the United States and in the distribution of such products to manufacturers and wholesalers throughout the country.

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

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

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products with labels which:

1. Set forth the fiber content as "88% Rayon, 7% Nylon, and 5% Crylor", whereas, in truth and in fact, said products contained substantially different amounts of fibers.

2. Represented either directly or by implication, that textile fiber products contained certain fibers only, when in truth and in fact, the textile fiber products contained other fibers in substantial amounts.

PAR. 4. Certain of said textile fiber products were further misbranded by respondents in that they were not stamped, tagged, labeled, and otherwise identified as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

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

1. To disclose the true generic name of the fibers present; and

2. To disclose the percentage of such fibers.

PAR. 5. Certain of said textile fiber products were further misbranded by respondents in that fibers present in such textile fiber products in the amount of five percentum or less of the total fiber weight were designated by their fiber trademarks in violation of Section 4(b) of the Textile Fiber Products Identification Act and Rule 3 of the Rules and Regulations promulgated thereunder.

PAR. 6. Certain of said textile fiber products were misbranded in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

A. Fiber trademarks were placed on labels without the generic names of the fibers appearing on such labels, in violation of Rule 17(a) of the aforesaid Rules and Regulations.

B. Fiber trademarks were used on labels without a full and complete fiber content disclosure appearing on such labels, in violation of Rule 17(b) of the aforesaid Rules and Regulations.

C. Words, symbols and depictions which constitute or imply the name or designation of a fiber were used on labels attached to textile

fiber products when such fibers were not present in the aforesaid textile fiber products, in violation of Rule 18 of the aforesaid Rules and Regulations.

PAR. 7. The respondents furnished false guaranties that certain of their textile fiber products were not misbranded or falsely invoiced in violation of Section 10(b) of the Textile Fiber Products Identification Act.

PAR. 8. The acts and practices of respondents, as set forth above, were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute unfair methods of competition and unfair and deceptive acts and practices, in commerce, under the Federal Trade Commission Act.

PAR. 9. Subsequent to the effective date of the Wool Products Labeling Act of 1939, respondents have introduced into commerce, sold, transported, distributed, delivered for shipment, shipped and offered for sale in commerce, wool products, as the terms "commerce" and "wool product" are defined in said Act.

PAR. 10. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, and otherwise identified as to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were wool fabrics labeled and tagged by the respondents as "13% Fibro, 10% Cotton, 77% Wool," whereas, in truth and in fact, said products contained substantially different quantities of fibers.

PAR. 11. Certain of said wool products were misbranded within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder in that labels affixed thereto contained a guarantee that the fiber content information set forth on such labels was correct.

Said guarantee was false and deceptive in that it failed to set forth the terms and conditions thereof and the manner in which performance thereunder would be carried out.

PAR. 12. Certain of said wool products were further misbranded by the respondents in that they were not stamped, tagged, labeled and otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

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

1. To disclose the true generic name of the fibers present; and
2. To disclose the percentage of such fibers.

PAR. 13. Certain of said wool products were misbranded by respondents in violation of the Wool Products Labeling Act of 1939 in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

A. In that labels and tags attached to the wool products described a portion of the fiber content as "Fibro" instead of using the common generic name of said fiber, in violation of Rule 8 of the aforesaid Rules and Regulations.

B. In that nonrequired information or representations were placed on said wool products or on the label or mark of identification of such wool products in such a way as to be false and deceptive and so as to interfere with the required information in violation of Rule 10(b) of the aforesaid Rules and Regulations.

PAR. 14. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations thereunder and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, the Textile Fiber Products Identification Act and the Wool Products Labeling Act of 1939, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 agree-

ment, makes the following jurisdictional findings, and enters the following order:

1. Respondents, Robert J. Freund and Antoinette Freund, are individuals and copartners trading as Royal Woolen Co., with their office and principal place of business located at 110 West 40th Street, New York 18, N.Y.

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

ORDER

It is ordered, That respondents Robert J. Freund and Antoinette Freund individually and as copartners trading as Royal Woolen Co. or under any other trade name and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce", and "textile fiber product" are defined in the Textile Fiber Products Identification Act do forthwith cease and desist from:

A. Misbranding textile fiber products by:

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

2. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising or otherwise identifying such products by representing either directly or indirectly, that textile fiber products contain certain fibers only, when in truth or in fact, the textile fiber products contain other fibers in addition thereto.

3. Failing to affix labels to such textile fiber products showing each element of information required to be dis-

closed by Section 4(b) of the Textile Fiber Products Identification Act.

4. Designating fibers present in such textile fiber products in the amount of five percentum or less of the total fiber weight, by their generic names or fiber trademarks.

5. Using a fiber trademark on labels affixed to such textile fiber products without the generic name of the fiber appearing on the said label.

6. Using a generic name or fiber trademark on any label, whether required or nonrequired, without making a full and complete fiber content disclosure in accordance with the said Act and Regulations, the first time such generic name or fiber trademark appears on the label.

7. Using words, symbols, or depictions on labels attached to textile fiber products, which constitute or imply the name or designation of a fiber when such fiber is not present in the aforesaid product.

B. Furnishing false guaranties that textile fiber products are not misbranded or falsely invoiced under the provisions of the Textile Fiber Products Identification Act.

It is further ordered, That respondents Robert J. Freund and Antoinette Freund, individually and as co-partners trading as Royal Woolen Co. or under any other trade name and respondents' representatives, agents and employees directly or through any corporate or other device, in connection with the introduction into commerce, sale, transportation, distribution, delivery for shipment, shipment or offering for sale in commerce, of wool products, as the terms "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding wool products by:

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

2. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products by using on labels any guarantee which fails to set forth the terms and conditions thereof and the manner in which performance thereunder would be carried out.

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

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4. Failing to use the respective common generic name of fibers when naming fibers in the required information, except where another name is required or permitted under the Act or Regulations.

5. Setting forth nonrequired information or representations on wool products or on labels or any other mark of identification of said wool products in such a way as to be false and deceptive or to interfere with the required information.

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

STEELCRAFT TOOL CORPORATION ET AL.

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

Docket C-259. Complaint, Oct. 26, 1962—Decision, Oct. 28, 1962

Consent order requiring Long Island City, N.Y., distributors of German and Japanese wrenches, pliers, and other hand tools, to cease selling the tools so packaged or assembled as to conceal the mark of foreign origin or with the markings so small and inconspicuous as not to be readily discernible to purchasers, and to cease representing falsely, by use on packages of such words as "Guaranteed", "Fully Guaranteed", and "Warranted", that the product was guaranteed in every respect.

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 Steelcraft Tool Corporation, a corporation, and H. Harry Hahn and Kurt J. Spiegel, 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 Steelcraft Tool 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 place of business located at 36–50 31st Street, Long Island City, N.Y.

Respondents H. Harry Hahn and Kurt J. Spiegel are officers of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the sale and distribution of hand tools, including wrenches, pliers and allied products primarily to wholesalers and to retailers for resale to the public.

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

PAR. 4. The majority of the hand tools sold and distributed by respondents are manufactured in and imported from foreign countries, including Japan and Germany. Certain of such foreign made tools are assembled and packaged in the form of kits or sets or are assembled and packaged in kits or sets containing other tools manufactured in the United States or said foreign made tools are sold and distributed separately without being assembled and packaged as part of a kit or set.

Respondents' said foreign made tools bear markings indicating their manufacture in and importation from Japan or Germany. However, in some instances, the markings are so small and inconspicuous that this fact is not readily discernible to the public. In other instances, said foreign made tools are packaged or otherwise assembled so as to conceal or obscure the mark of foreign origin.

PAR. 5. In the absence of clear and conspicuous disclosure that a product, including hand tools, 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 hand tools, a substantial portion of the purchasing public have a preference for hand tools 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 hand tools is, therefore, to the prejudice of the purchasing public.

PAR. 6. Respondents, by placing in the hands of others imported products which do not bear clear and conspicuous marks of foreign origin, provide means and instrumentalities whereby the purchasing public is misled as to the place of origin of such products.

PAR. 7. Respondents use such words and expressions as "Guaranteed" and "Fully Guaranteed" and "Warranted" on the packages in which the said hand tools are contained, thereby representing that said product is guaranteed by them in every respect. In truth and in fact, the guarantee provided is limited both as to time and extent. Said statements and representations are therefore false, misleading and deceptive.

PAR. 8. In the conduct of their business at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of hand tools of the same general kind and nature as those sold by respondents.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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, Steelcraft Tool 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 36–50 31st Street, Long Island City, N.Y.

Respondents H. Harry Hahn and Kurt J. Spiegel are officers of said corporation and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Steelcraft Tool Corporation, a corporation, H. Harry Hahn and Kurt J. Spiegel individually and as officers of said corporation and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of hand tools, including wrenches, pliers or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale, selling or distributing said products which are in whole or in part of foreign origin in packages or containers without clearly and conspicuously disclosing on the front or face of each package or container the name of the country or place of origin of the product.

2. Offering for sale, selling or distributing said products which are in whole or in part of foreign origin mounted on display cards without clearly and conspicuously disclosing the name or names of the country or countries, or place or places, of origin on the front of said display cards.

3. Placing in the hands of others any means or instrumentalities by or through which they may mislead the public as to any of the matters and things set out in paragraphs 1 and 2, above.

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

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

GEORGE GORBATENKO TRADING AS GEORGE GORBATENKO

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

Docket C-260. Complaint, Oct. 26, 1962—Decision, Oct. 26, 1962

Consent order requiring a San Francisco furrier to cease violating the Fur Products Labeling Act by failing to show on fur products labels the name of the manufacturer, etc., and the country of origin of imported furs, and to use the term "natural" where required; failing to disclose on invoices the true animal name of furs and when fur was dyed, and to set forth the terms "Dyed Broadtail-processed Lamb" and "natural" as provided; and failing in other respects to comply with labeling and invoicing requirements.

COMPLAINT

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

PARAGRAPH 1. Respondent George Gorbatenko is an individual trading as George Gorbatenko with his office and principal place of business located at 140 Geary Street, San Francisco, Calif.

Respondent is engaged in the wholesale and retail sale and distribution of fur products.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has been and is now engaged in the introduction into commerce and in the sale, advertising, and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products; and has sold, advertised, offered

for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce; and has sold, advertised, offered for sale and processed fur products which have been shipped and received in commerce and upon which fur products substitute labels have been placed by respondent, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Respondent in introducing, selling, advertising, offering for sale and processing fur products which have been shipped and received in commerce, has misbranded fur products by substituting thereon labels which did not conform to the requirements of Section 4 of the Fur Products Labeling Act, in violation of Section 3(e) of said Act.

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

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

1. To show the name or other identification issued and registered by the Commission of one or more of the persons who manufactured such fur products for introduction into commerce, introduced them into commerce, sold them in commerce, advertised or offered them for sale, in commerce, or transported or distributed them in commerce.

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

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

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

(b) The term "natural" was not used to describe fur products which were not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Rule 19(g) of said Rules and Regulations.

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

(d) Information required under Section 4(2) of the Fur Products

Labeling Act and the Rules and Regulations promulgated thereunder was set forth in handwriting on labels, in violation of Rule 29(b) of said Rules and Regulations.

(e) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth in the required sequence, in violation of Rule 30 of said Rules and Regulations.

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

PAR. 6. Certain of said fur products were falsely and deceptively invoiced by the respondent in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act, and the Rules and Regulations promulgated under such Act.

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

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

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

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

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

(b) The term "Dyed Broadtail-processed Lamb" was not set forth in the manner required, in violation of Rule 10 of said Rules and Regulations.

(c) The term "natural" was not used to describe fur products which were not pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Rule 19(g) of said Rules and Regulations.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act and the Fur Products Labeling

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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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, George Gorbatenko, is an individual trading as George Gorbatenko with his office and principal place of business located at 140 Geary Street, San Francisco, Calif.

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

ORDER

It is ordered, That George Gorbatenko, an individual trading as George Gorbatenko or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce or the transportation or distribution in commerce of any fur product; or in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce; or in connection with the sale, advertising, offering for sale or processing of any fur product which has been shipped and received in commerce, and upon which fur product a substitute label has been placed by respondent, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

A. Placing substitute labels on fur products for labels affixed to such fur products pursuant to Section 4 of the Fur Products Labeling Act and which substitute labels do not conform to the requirements of Section 4 of the said Act.

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

C. Setting forth on labels affixed to fur products:

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

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

D. Failing to set forth all the information required under Section 4(2) of the Fur Products Labeling Act, and the Rules and Regulations promulgated thereunder on one side of such labels.

E. Failing to set forth information required under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in the sequence required by Rule 30 of the aforesaid Rules and Regulations.

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

G. Failing to use the term "natural" to describe fur products which are not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

2. Falsely or deceptively invoicing fur products by:

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

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

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

D. Failing to use the term "natural" to describe a fur product which is not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

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

IN THE MATTER OF

EXCEL PRODUCTS, INC., ET AL.

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

Docket C-261. Complaint, Oct. 26, 1962—Decision, Oct. 26, 1962

Consent order requiring Philadelphia distributors of aluminum storm-screen windows and doors, aluminum and fiberglass awnings, carports and patio covers, to cease using bait advertising in newspapers and misleading statements of salesmen to obtain leads to interested prospects; representing falsely, in such connection, that their products were on sale for three days only at a special price, which was in fact the regular price; and representing falsely that the advertised products were as pictured and included an ornamental grill and monogram on the storm door, and that repairs and adjustments would be made as guaranteed.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Excel Products, Inc., a corporation, and Jerome Albert, individually and as an officer of said corporation, and Hannah Gendal and Harriet Albert, 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 Excel Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with its office and principal place of business located at 1717 North 54th Street, Philadelphia, Pa.

Respondents Jerome Albert, Hannah Gendal and Harriet Albert are officers of the said corporate respondent. Respondent Jerome Albert formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. The address of the individual respondents, 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 aluminum storm-screen windows and doors, aluminum and fiberglass awnings, carports and patio covers and other related products.

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

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their aluminum and fiberglass products, respondents have made certain statements and representations in newspapers of general circulation and through other means, typical of which, but not all inclusive, are the following:

3-DAY
SALE
[Picture of aluminum patio cover]
Installation included. Wrought iron rails extra. Other sizes priced proportionately.

WE DO THE
WHOLE JOB

SPECIAL
$109
8' x 12'
Complete

COUNT 'EM 6
[Picture of six storm windows with top half in screens.]

Self-Storing
Triple-Track
2 Glass 1 Screen
ALUMINUM
COMBINATION
SCREEN STORM

ALL 6 FOR ONLY
$49.50
COMPLETELY INSTALLED
No Size Restrictions
No Other Charges

THIS WEEK'S SPECIAL
WELDED ALUMINUM DOOR
ALL HARDWARE
$22.50
Completely Installed
With the Purchase of 6 Windows

(Picture of Aluminum Door)

PAR. 5. By means of the statements in the aforesaid advertisements, and others of a similar nature not specifically set out herein, and

through oral statements made by their salesmen, respondents have represented, directly or by implication:

1. That they are making a bona fide offer to sell the products advertised at the prices set forth in the advertisements.

2. That they were offering the advertised products for sale at a special price for three days only.

3. That the advertised products were as pictured and included an ornamental grill and monogram on the storm door, and that the same would be completely installed at the prices listed.

4. That respondents will make repairs or adjustments pursuant to the terms of their guarantee.

PAR. 6. In truth and in fact:

1. The offers set forth in paragraph 4 above were not bona fide offers, but were made for the purpose of obtaining leads and information as to persons interested in the purchase of respondents' products. After obtaining such leads through response to such advertisements and calling upon such persons, respondents and their salesmen made no effort to sell the advertised products at the advertised prices, but instead discouraged the purchase of said initially offered products by various methods, including, but not confined to, disparaging said products by words or acts and showing or demonstrating products not having the advertised characteristics or which were unsuitable, unusable or impractical for the purpose represented or implied in said initial offer. As a result of the foregoing practices, respondents seldom, if ever, sell the initially offered products but instead succeed in selling prospects higher priced products.

2. The advertised products were not on sale at a special price for three days only. In fact, said merchandise is advertised regularly at the represented prices. This practice is used in conjunction with the charge set forth in subparagraph (1) above.

3. The storm door does not include the ornamental grill or a monogram, as pictured, at the price listed.

4. Respondents in many instances do not make repairs or adjustments in accordance with their guarantee.

Therefore, the statements and representations referred to in paragraphs 4 and 5 are false, misleading and deceptive.

PAR. 7. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms and individuals engaged

in the sale of products of the same general kind and nature as those sold by respondents.

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

PAR. 9. The aforesaid acts and practices of respondents as herein alleged were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

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, Excel Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 1717 North 54th Street in the City of Philadelphia, State of Pennsylvania.

Respondents Jerome Albert, Hannah Gendal and Harriet Albert are officers of said corporation, and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Excel Products, Inc., a corporation, and its officers and Jerome Albert, individually and as an officer of said corporation and Hannah Gendal and Harriet Albert, 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 aluminum storm-screen windows and doors, aluminum or fiberglass awnings, carports and patio covers, or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that merchandise is offered for sale, when such offer is not a bona fide offer to sell the merchandise so offered;

2. Representing, directly or indirectly, that merchandise is sold at a special or reduced price unless such price constitutes a reduction from the price at which the merchandise has been usually and regularly sold by respondents in the recent regular course of business;

3. Representing, directly or indirectly, that a sale is limited to three days, or any other time, contrary to fact;

4. Representing, pictorially or otherwise that products offered for sale at a stated price include certain construction or features when such products do not include such construction or features at the price stated;

5. Representing, directly or indirectly, that any products are guaranteed unless respondents do in fact fulfill all the requirements of the terms of their guarantees.

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

MORRIS HESSEL, INC., ET AL.

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

Docket C-262. Complaint, Oct. 31, 1962—Decision, Oct. 31, 1962

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by failing to disclose on invoices that furs were artificially colored, and in invoicing and advertising that they were natural, when such was the case; advertising prices of fur products falsely as reduced; failing to label and invoice fur products with the required information; and failing to keep adequate records as a basis for pricing claims.

COMPLAINT

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

PARAGRAPH 1. Respondent Morris Hessel, 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 231 West 29th Street, New York, N.Y.

Individual respondent Morris Hessel is president of the said corporate respondent and controls, directs and formulates the acts, practices and policies of the said corporate respondent. His office and principal place of business is the same as that of the said corporate respondent.

The corporate respondent and the individual respondent retail fur products.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce and in the sale, advertising, and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products, and have sold, advertised, offered for sale, transported and distributed fur products which have

been made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

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

Among such misbranded fur products, but not limited thereto, were fur products that were not labeled with any of the information required under the said Act and said Rules and Regulations.

PAR. 4. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder inasmuch as required item numbers were not set forth on labels, in violation of Rule 40 of said Rules and Regulations.

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

Among such falsely and deceptively invoiced fur products were fur products covered by invoices which failed to disclose that the fur contained in the fur products was bleached, dyed or otherwise artificially colored, when such was the fact.

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

(a) Failure to describe fur products as natural when such fur products were not pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Rule 19(g) of said Rules and Regulations.

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

PAR. 7. Certain of said fur products were falsely or deceptively advertised in that said fur products were not advertised as required under the provisions of Section 5(a) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

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

Included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in issues of the

New York Times, a newspaper published in the city of New York, State of New York.

Among such false and deceptive advertisements of fur products, but not limited thereto, were advertisements wherein respondents represented through such statements as "Every Coat valued at $3000 to $4000 Full Cut, Fully Let Out Mink. Coats Now From $1150" that prices of fur products were reduced from the usual and customary retail prices of such fur products in the trade area or areas where the statement was made when such was not the fact, in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of said Rules and Regulations.

PAR. 8. In advertising fur products for sale as aforesaid respondents failed to describe fur products as natural when such fur products were not pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Rule 19(g) of said Rules and Regulations.

PAR. 9. In advertising fur products for sale as aforesaid respondents made claims and representations respecting prices and values of fur products. Said representations were of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act. Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based, in violation of Rule 44(e) of said Rules and Regulations.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 Morris Hessel, 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 231 West 29th Street, New York, N.Y.

Respondent Morris Hessel is president of said corporation and his address is the same as that of said corporation.

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

ORDER

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

1. Misbranding fur products by:

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

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

2. Falsely or deceptively invoicing fur products by:

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

B. Failing to describe fur products as natural when such fur products are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

C. Failing to set forth the item number or mark assigned to a fur product.

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

A. Misrepresents directly or by implication that prices of fur products are reduced from the usual and customary retail prices of such fur products in the trade area or trade areas where the statement is made.

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

C. Fails to describe fur products as natural when such fur products are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

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

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

IN THE MATTER OF

TOWN AND COUNTRY FOOD COMPANY, INC., ET AL.

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

Docket C-263. Complaint, Oct. 31, 1962—Decision, Oct. 31, 1962

Consent order requiring Fort Wayne, Ind., sellers of freezers and food along with a freezer food plan through three subsidiary corporations in different states, to cease representing falsely—in advertisements in newspapers and periodicals, etc., and by radio and television broadcasts—that purchasers

of their food plan could buy food from them at wholesale prices and save enough to pay for the freezer, and that the initial food order would last the purchaser for four months; and to cease inducing purchasers to sign blank contracts that failed to disclose all the terms and conditions of sale.

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 Town and Country Food Company, Inc., a corporation, and Robert O. Locke, Laurel J. Short, and Carl H. Bruns, 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:

PAR. 1. Respondent Town and Country Food Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana with its principal office and place of business located at 422 West California Road, Fort Wayne, Ind.

Respondents Robert O. Locke, Laurel J. Short and Carl H. Bruns are officers of said corporate respondent. They formulate, direct and control the policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of freezers, food, and a freezer food plan through the following wholly owned subsidiary corporations:

Town and Country Food Company of Ohio, Incorporated.

Town and Country Food Company, Detroit, Michigan.

Town and Country Food Company, Knoxville, Tennessee.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, the freezers and food, when sold to be shipped from their warehouses located in Michigan, Ohio, Tennessee and Indiana to purchasers, many of whom are located in States of the United States other than the State of origin of said shipment.

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

PAR. 4. In the course and conduct of their business and at all times mentioned herein, respondents have been in substantial competion 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 and television 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 oral statements of sales representatives, respondents have represented, directly or by implication:

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

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

3. That purchasers of the aforesaid freezer food plan can sign blank contracts with the assurance that when such contracts are filled in the terms and conditions of sale as set forth therein will be the same as agreed upon and disclosed at the time of the sale.

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

5. That the initial food order supplied by the respondents will last the purchaser for 4 months.

PAR. 7. In truth and in fact:

1. Prices charged for food by respondents are not always wholesale prices, nor are respondents' prices so low that purchasers 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.

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

3. All the terms and conditions of sale are not always disclosed at the time of the sale. In many instances when contracts which have been signed in blank are filled in, the terms and conditions of sale as set forth therein are not the same as agreed upon and disclosed at the time of the sale.

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

5. The initial food order supplied by respondents is not sufficient to last purchasers 4 months.

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 the respondents, as herein alleged, including the dissemination by respondents of false advertisements as aforesaid, were, and are, all to the prejudice and injury of the public and the 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, Town and Country Food Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana with its office and principal place of business located at 422 West California Road, in the city of Fort Wayne, State of Indiana.

Respondents Robert O. Locke, Laurel J. Short and Carl H. Bruns 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 respondent Town and Country Food Company, Inc., a corporation, and its officers and Robert O. Locke, Laurel J. Short and Carl H. Bruns, 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 that:

a. Purchasers of their food plan will receive the same amount of food and a freezer for the same or less money than they have been paying for food alone.

b. Purchasers of their freezer food plan will save enough money on the purchase of their food to pay for the freezer;

c. Food ordered by the purchasers will be sufficient to last such purchaser any stated or specified period of time;

d. Certain charges constitute the total amount purchasers are required to pay when such amount is less than the total amount such purchasers are required to pay.

2. Representing that purchasers of their freezer food plan can buy their food from respondents at wholesale prices unless all of respondents' food items are in fact sold at wholesale prices.

3. Representing that any food item is sold at a wholesale price unless the price at which such item is sold by respondents is in fact a wholesale price.

4. Misrepresenting in any manner the savings realized by purchasers of respondents' freezers, food or freezer food plan.

5. Inducing purchasers of their freezer food plan or purchasers of their food or freezers to sign any contract to purchase which does not at the time of signing contain all of the terms and conditions of sale.

PART II

It is further ordered, That respondents Town and Country Food Company, Inc., a corporation, and its officers and Robert O. Locke, Laurel J. Short and Carl H. Bruns, 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 through 4 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 through 4 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

CHEMSTRAND CORPORATION

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

Docket 8477. Complaint, Apr. 5, 1962—Decision, Nov. 1, 1962

Order dismissing—following dissolution of the offending corporation, and because of the short duration of the challenged advertising and the affidavits of responsible officers that it would not appear again—complaint charging the manufacturer of "Acrilan" acrylic fiber with disparaging reprocessed acrylic fiber and its producers, and representing falsely that its product was superior to all reprocessed acrylic fiber available for use in the manufacture of blankets.

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

PARAGRAPH 1. Respondent Chemstrand Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 350 Fifth Avenue in the city of New York, State of New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the manufacture, advertising, offering for sale, sale and distribution of acrylic fiber under the trademark of "Acrilan" to mills and manufacturers.

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

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the sale of its acrylic fiber, respondent has made certain

statements in advertisements with respect to the quality and characteristics of the reprocessed acrylic fiber manufactured by its competitors, typical and illustrative, but not all inclusive of which, are the following:

Will you be a junkman by fall? Blankets made of junk fibers labeled "acrylic" will be flooding the market masquerading as quality merchandise.

As long ago as last year, it became clear that many fast-buck operators would use the new labeling law as an excuse for palming off sub-standard products under their generic names.

These loophole artists expect a free ride on the public acceptance earned by blankets of quality BRANDED fibers.

. . . unscrupulous merchants selling cheap rag-bag imitations.

. . . inferior imitations that merely *sound* like quality merchandise.

. . . a massive consumer education job to distinguish between the excellent and the junk.

And to make sure the consumer understands this fact, CHEMSTRAND'S advertising will be slugging it home time and again.

Why not build on the reputation you've worked so many years to earn rather than tossing it out the window while a mess of junk walks in the door.

No merchant with integrity wants to re-peddle a load of junk.

NOTICE! PEDDLERS, SOLICITORS, JUNK—ACRYLIC FIBER SELLERS—USE DELIVERY ENTRANCE—TO SOMEBODY ELSE'S STORE!

Chemstrand advertising and in-store promotion will continue to shoot hard—harder than ever—for the tenth consumer. And it will continue to pound in and pound in and pound in the big "A" trademark into the awareness of *every* consumer. There will be no let-up in the big "A" barrage.

So when a junk-acrylic hawker knocks on your door, he'll be hawking something nobody wants!

So don't let him in!

These statements appeared in full-page advertisements in newspapers of interstate circulation, in conjunction with illustrations depicting a tramp-like rag-picker next to, or carrying, a burlap sack apparently filled with reprocessed acrylic fiber.

PAR. 5. Through the use of the aforesaid statements and illustrations:

(a) Respondent has represented that its acrylic fiber is superior in material respects to all reprocessed acrylic fiber available for use in the manufacture of blankets.

(b) Respondent has disparaged reprocessed acrylic fiber by representing that said fiber is junk, sub-standard, cheap, imitation, and inferior in quality and character in all material respects to respondent's acrylic fiber, and

(c) Respondent has disparaged the producers of said reprocessed acrylic fiber by representing that said producers are fast-buck operators, loophole artists, unscrupulous merchants, and peddlers, solicitors and hawkers of junk fibers.

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

(a) Respondent's acrylic fiber is not superior in material respects to all reprocessed acrylic fiber available for use in the manufacture of blankets,

(b) Said reprocessed acrylic fiber is not junk, sub-standard, cheap, imitation, or inferior in quality and character in all material respects to respondent's acrylic fiber, and

(c) Said producers of this reprocessed acrylic fiber are not fast-buck operators, loophole artists, unscrupulous merchants, or peddlers, solicitors and hawkers of junk fibers.

PAR. 7. In the conduct of its business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of acrylic fiber of the same general kind and nature as that sold by respondent.

PAR. 8. The use by respondent of the aforesaid false, misleading, deceptive, and disparaging 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 respondent's product by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

Mr. Sheldon Feldman and *Mr. Terral A. Jordan* in support of the complaint.

Mr. Thomas J. Lynch, of *Foley & Lynch*, of Washington, D.C., and *Mr. C. Brent Holleran*, of New York, N.Y., for respondent.

INITIAL DECISION BY ANDREW C. GOODHOPE, HEARING EXAMINER

The Commission's complaint in this matter issued April 5, 1962, and was served upon respondent on April 9, 1962, charging a violation of Section 5 of the Federal Trade Commission Act for allegedly false and disparaging statements in newspaper advertising concerning competing products.

On April 24, 1962, the respondent Chemstrand, a Delaware Corporation, ceased to exist by operation of law since it was merged into the Monsanto Chemical Company, a Delaware corporation.

Monsanto, by its counsel, has filed an answer in which it moves that the complaint be dismissed. Counsel in support of the complaint have in turn moved that Monsanto be substituted as the proper party respondent in lieu of the now defunct corporation, Chemstrand, and that the charges in the complaint be amended in certain respects which the examiner has not considered in this decision. A preliminary hearing was held in this matter on June 20, 1962, at which the parties were heard in support of their motions.

The facts pertinent to the disposition of the motions are not in substantial dispute and are as follows:

1. Respondent, Chemstrand, was incorporated on May 16, 1949. Until January 17, 1961, Monsanto and the American Viscose Corporation each owned 50% of the shares of stock issued and outstanding of Chemstrand. Monsanto and Viscose possessed and exercised equal voting rights in the election of Directors and other stockholder rights and privileges in Chemstrand. During this time, Monsanto and Viscose each elected an equal number of Directors of Chemstrand, with any additional odd-numbered Director being chosen by agreement between them. Officers of Chemstrand were appointed by the Board of Directors, thus chosen.

2. On January 17, 1961, Monsanto acquired from Viscose its total shares of stock (5,000 or 50% of the total of such shares) in Chemstrand and $9,500,000, 4% subordinated notes due April 1, 1977, of Chemstrand in exchange for 3,540,000 shares of common stock (about 13%) of Monsanto. These Monsanto shares are held by the Wilmington Trust Company under an escrow agreement which provides for the shares to be voted by the depository under instructions from shareholders of Viscose in proportion to their various holdings.

3. Following January 17, 1961, until April 24, 1962, Monsanto alone exercised voting control in the selection of Directors and other shareholder rights and privileges in Chemstrand Corporation. On April 24, 1962, Chemstrand was dissolved and has been an operating division of Monsanto since that time.

4. The advertisements challenged in the complaint appeared in approximately May and June of 1960, during the time of the joint ownership of Chemstrand by Monsanto and Viscose. The advertisements appeared in a trade journal, the Daily News Record, which has subscription appeal primarily to the textile industry. No other advertising of like or similar content has appeared since May and June of 1960 in any publication at the instance of Chemstrand or Monsanto.

5. Edward A. O'Neal, Jr., who is currently the "president" of "Chemstrand Company, a division of Monsanto Chemical Company," was the president of Chemstrand from 1956 till the corporation was dissolved in April 1962 at which time he assumed his present position. He has been a member of the Board of Directors of Monsanto since January 1961 and since April 1962 has been a Vice-President of Monsanto. Consequently, he occupied no position in Monsanto as of the time the advertisements in question appeared in 1960. Five of the members of the Board of Directors of Chemstrand at the time the ads in question appeared were and are still Directors of Monsanto.

6. There is no evidence that the ads in question ever came to the attention of the Board of Directors of Monsanto or any of its officers or employees at the time of their publication. There is no evidence that Monsanto, through any of its officers or employees, exercised any control other than the selection of its Board of Directors over the operations of Chemstrand or over its advertising policies or programs. In fact, such control is specifically disclaimed in an affidavit of Mr. O'Neal submitted in support of the motion to dismiss the complaint. Counsel in support of the complaint were given an opportunity by the examiner to seek evidence of control of Chemstrand by Monsanto and declined. (Tr. pp. 25–30)

7. The ads in question appeared in May and June of 1960. The first contact by the Commission with Chemstrand or Monsanto was a year later in May 1961. No further advertising of a like or similar nature has ever appeared at the instance of either Chemstrand or Monsanto. An affidavit submitted by Robert E. Smith, the man responsible for advertising in the Chemstrand division, states that such ads have been abandoned and instructions given that none are ever to appear again.

Preliminarily, it is apparent that the complaint must be dismissed as to the defunct corporation, Chemstrand. No purpose could be served by proceeding further against this now non-existent corporation. *Galter* v. *FTC*, 186 F. 2d 810, 815 (7th Cir., 1951) 5 S&D 252.

The issue remains as to whether Monsanto, the legal corporate successor to Chemstrand should, at this time, be substituted as the proper party respondent.

Commission counsel urge that this should be done and have so moved. In support of their motion, Commission counsel point out that there has been no fundamental change in the operations of Chemstrand between the time the ads appeared and the present. As found above, the principal officer, O'Neal, President of Chemstrand at the time the ads appeared, is still the principal executive officer of the Chemstrand Division, and five of the twelve directors of Chemstrand when the ads

appeared are still directors of Monsanto. Commission counsel also observe that Viscose still has an interest in Chemstrand since it now owns 13% of the outstanding shares of Monsanto. Consequently, they urge that the continuity of business operations, management and ownership of Chemstrand provides a sound basis for substituting Monsanto as respondent in lieu of Chemstrand.

Counsel for Monsanto, on the other hand, urges that Monsanto cannot now be held accountable for the ads of its then partially (½) owned subsidiary unless there is at least some evidence that at about the time the ads appeared Monsanto so dominated and controlled the operation of Chemstrand that their separate corporate existences at the time may be disregarded and, therefore, that the acts of Chemstrand may be treated in reality as those of Monsanto.

The evidence in the record is not sufficient to support a finding that Monsanto, by reason of its relationship with Chemstrand, can be held liable for the violation of the Federal Trade Commission Act as charged in the complaint. The record in this proceeding is devoid of any substantial evidence that Monsanto at the time the ads appeared maintained such complete control of Chemstrand as to render it a mere tool or *alter ego* warranting a conclusion that the corporate entity of Chemstrand should be disregarded. *National Lead Company* v. *FTC*, 227 F. 2d 825, 828 (7th Cir., 1955), 5 S&D 749, Rev'd. on other grounds, 352 U.S. 419 (1957), *Press Co.* v. *N.L.R.B.*, 118 F. 2d 937, 946–947 (D.C. Cir. 1940), cert. denied 313 U.S. 595, *Baim & Blank, Inc.* v. *Philco Corp.*, 148 F. Supp. 541 (EDNY, 1957).

Commission counsel also rely upon the provisions of the Delaware Corporation law, under which both Chemstrand and Monsanto were incorporated, to the effect that successor corporations assume the liabilities and obligations of the corporations they replace. The examiner is of the opinion that these provisions are similar in purpose and intent to the provision in the Illinois Revised Statutes discussed in *Galter* v. *FTC* (supra). This case held that similar provisions do not provide a basis for the Commission seeking an injunction against dissolved corporations prohibiting future acts and practices. In the examiner's opinion, the provision of the Delaware code relied on by Commission counsel cannot be interpreted so broadly as to permit the Commission to enter a cease and desist order prohibiting possible future acts by Monsanto based upon the past actions of Chemstrand. The provisions of the Delaware code simply extend creditor rights against the prior corporation to the successor corporation the same as the provision for a two year extension of creditor rights beyond dissolution discussed in the Galter case. Consequently, the motion by

Commission counsel to substitute Monsanto as respondent must be denied.

In addition, counsel for Monsanto argue that the type of ads under scrutiny in this proceeding have in good faith been long abandoned justifying a dismissal of the complaint. The ads appeared in May and June of 1960. The first contact with Chemstrand by the Commission was May 1961 and the complaint issued in April 1962. Responsible officers of Monsanto have filed affidavits asserting that this type of advertising was abandoned in 1960 promptly after they appeared and that no such ever will appear again. This abandonment occurred without any action or even threat of action by the Commission. The examiner is of the opinion that the advertising has been abandoned in good faith by the Chemstrand Division and will not again appear. *Eugene Dietzgen Co.* v. *FTC*, 142 F. 2d 321 (7th Cir., 1944) 4 S&D 117. See also *Ward Baking Co.*, 54 FTC 1919 (1958), FTC Docket 6833 and cases cited therein. The motion to dismiss the complaint on the grounds of discontinuance of the ads is granted.

CONCLUSIONS

1. The complaint must be dismissed as to the now defunct corporation Chemstrand.

2. The record provides no basis for substituting Monsanto as respondent in lieu of Chemstrand.

3. The advertising in question has been abandoned in good faith, with no likelihood that it will be resumed.

ORDER

It is ordered, That the complaint be dismissed.

DECISION AND ORDER DISMISSING COMPLAINT

On September 11, 1962, the Commission, on its own motion, placed this case on its docket for review. The Commission has concluded that the complaint was correctly dismissed because of the short duration of the advertising in question, the affidavits of responsible officers of Chemstrand assuring the Commission that the advertising challenged in the complaint will not appear again, and the acquisition and dissolution of the respondent by another corporation render further litigation under the present complaint inappropriate. We do not accept or reject, however, the views expressed by the examiner concerning the legal significance of the acquisition as a bar to continued proceedings.

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

Complaint

IN THE MATTER OF

ABBOT MILLS, INC., ET AL.

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

Docket C-264. Complaint, Nov. 2, 1962—Decision, Nov. 2, 1962

Consent order requiring New York City converters and jobbers of textile fabrics to cease violating the Textile Fiber Products Identification Act by labeling as "65% rayon, 35% silk", fabrics which contained substantially less than 35% silk, and failing to show on labels on imported products the true percentage of fibers by weight and the name of the foreign country of origin; and to cease representing themselves falsely as manufacturers by use of the word "Mills" in their corporate name, when in fact they either bought fabrics already finished or paid independent contractors to manufacture or finish raw materials or uncompleted products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Abbot Mills, Inc., a corporation, and Edward H. Rothstein, James Olkein, and Arthur L. Schwartz, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Abbot Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Individual respondents Edward H. Rothstein, James Olkein, and Arthur L. Schwartz are officers of the corporate respondent and formulate, direct and control the acts, practices and policies of the corporate respondent, including the acts and practices complained of herein.

Respondents are converters and jobbers of textile fabrics with their office and principal place of business located at 1412 Broadway, New York, N.Y.

PAR. 2. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondents have and are

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

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

Among such textile fiber products, but not limited thereto, were fabrics labeled and invoiced by respondents as "65% rayon, 35% silk", whereas, in truth and in fact, such fabrics contained substantially less silk than represented.

PAR. 4. Certain of said textile fiber products were further misbranded by respondents in that they were not stamped, tagged, or labeled as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were fabrics with labels which failed:

(a) To show the true percentage of the fibers present by weight.

(b) To show the name of the country from which such textile fiber products were imported.

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

PAR. 6. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their products, including

textile fabrics, when sold, to be shipped from their place of business in the State of New York to purchasers thereof 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. 7. In the course and conduct of their business in soliciting the sale of and in selling textile fabrics, respondents do business under the name Abbot Mills, Inc., and use said name on letterheads, invoices, labels and tags, and in various advertisements of their products.

PAR. 8. Through the use of the word "Mills" as part of respondents' corporate name, respondents represent that they own or operate mills or factories in which the textile products sold by them are manufactured.

PAR. 9. In truth and in fact respondents do not own, operate or control the mills or factories where the textile fabrics sold by them are manufactured, but in some instances, buy finished fabrics from others, and in other instances, purchase raw materials or unfinished fabrics from others and pay independent contractors to manufacture or finish such fabrics. The aforesaid representations are therefore false, misleading and deceptive.

PAR. 10. There is a preference on the part of many dealers to buy products, including textile fabrics, directly from factories or mills, believing that by doing so lower prices and other advantages thereby accrue to them.

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

PAR. 12. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead dealers and other purchasers into the erroneous and mistaken belief that said statements and representations were, and are, true, and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid acts and practices of respondents as alleged in paragraphs 6 through 12 were, and are, to the prejudice and injury of the public and of respondents' competitors, and constituted, and now constitute unfair methods of competition 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 Textile Fiber Products Identification Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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, Abbot Mills, 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 1412 Broadway, in the city of New York, State of New York.

Respondents Edward H. Rothstein, James Olkein, and Arthur L. Schwartz are officers of said corporation and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Abbot Mills, Inc., a corporation, and its officers, and Edward H. Rothstein, James Olkein, and Arthur L. Schwartz, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile

fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce", and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising, or otherwise identifying such products as to the name or amount of constitutent fibers contained therein.

2. Failing to affix labels to such products, or when permitted by Section 3(d)(5) of the Act to invoice such products in the manner provided by law, showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

It is further ordered, That respondents Abbot Mills, Inc., a corporation, and its officers, and Edward H. Rothstein, James Olkein, and Arthur L. Schwartz, 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 textile fabrics or any other textile products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly, using the word "Mills", or any other word or term of similar import or meaning, in or as a part of respondents' corporate or trade name, or representing in any other manner that respondents perform the functions of a mill or otherwise manufacture the textile fabrics or other textile products sold by them, unless and until respondents own and operate, or directly and absolutely control the mill wherein said textile fabrics or other textile products are manufactured.

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

BAIN'S, INC., ET AL.

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

Docket C-265. Complaint, Nov. 2, 1962—Decision, Nov. 2, 1962

Consent order requiring Los Angeles furriers to cease violating the Fur Products Labeling Act by failing to show on invoices of fur products the true animal name of furs and the country of origin of imported furs and to disclose when fur was artificially colored; failing, on invoices, to use the term "Dyed Broadtail-processed Lamb" and on invoices and newspaper advertising to use the word "natural" where required; and failing to comply with other invoicing requirements and to maintain adequate records as a basis for pricing claims.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Bain's, Inc., a corporation, and its officers, and Charles Bain, Sonny Bain, Mac Rosen and Jack E. Slote, individually and as officers of said corporation, hereinafter referred to as respondents have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

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

Individual respondents Charles Bain, Sonny Bain, Mac Rosen, and Jack E. Slote are officers of the corporate respondent and formulate, direct and control the acts, practices and policies of the corporate respondent, including those hereinafter set forth.

Respondents are retailers of fur products with stores located in Las Vegas, Nev., and Los Angeles, Calif., and have their principal office at 1108 South La Cienega Boulevard, Los Angeles, Calif.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce and in the sale, advertising, and offering for sale, in commerce, and in the transportation and distribution, in commerce of fur products; and have sold, advertised,

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

PAR. 3. Certain of said fur products were falsely and deceptively invoiced by the respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act, and the Rules and Regulations promulgated under such Act.

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

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

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

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

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

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

(b) The term "Dyed Broadtail-processed Lamb" was not set forth in the manner required by law, in violation of Rule 10 of said Rules and Regulations.

(c) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth separately on invoices with respect to each section of fur products composed of two or more sections containing different animal furs, in violation of Rule 36 of said Rules and Regulations.

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

(e) The term "natural" was not used to describe fur products that were not pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Rule 19(g) of said Rules and Regulations.

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

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

Among and included in the advertisements aforesaid, but not limited thereto, were advertisements of respondents, which appeared in issues of the Las Vegas Sun and the Las Vegas Review Journal, newspapers published in the city of Las Vegas, State of Nevada.

Respondents by means of the advertisements referred to above and other advertisements of similar important and meaning not specifically referred to herein, falsely and deceptively advertised their fur products in violation of the Fur Products Labeling Act in that they were not advertised in accordance with the Rules and Regulations promulgated thereunder in that fur products which were not pointed, bleached, dyed, tip-dyed or otherwise artificially colored were not described as natural as required by Rule 19 of said Rules and Regulations.

PAR. 6. Respondents, in advertising fur products for sale as aforesaid, made claims and representations of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Regulations under the Fur Products Labeling Act. Respondents, in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such pricing claims and representations were based in violation of Rule 44(e) of the said Rules and Regulations.

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

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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, Bain's, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its office and principal place of business located at 1108 South La Cienega Boulevard, in the city of Los Angeles, State of California.

Respondents Charles Bain, Sonny Bain, Mac Rosen and Jack E. Slote are officers of said corporation, and their address is the same as that of said corporation.

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

ORDER

It is ordered, That Bain's, Inc., a corporation, and its officers, and Charles Bain, Sonny Bain, Mac Rosen and Jack E. Slote, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of any fur product, or in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Falsely or deceptively invoicing fur products by:

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

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

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

4. Failing to describe as natural fur products which are not

pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

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

6. Failing to set forth information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder with respect to each section of fur products composed of two or more sections containing different animal furs.

B. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement or notice which is intended to aid, promote, or assist, directly or indirectly, in the sale, or offering for sale of fur products, and which fails to describe as natural fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

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

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

IN THE MATTER OF

KENTON LEATHER PRODUCTS, INC., ET AL.

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

Docket 7812. Complaint, Mar. 10, 1960—Decision, Nov. 13, 1962*

Order dismissing without prejudice, for failure of proof, complaint charging New York City manufacturers with attaching to their leather wallets and billfolds, tickets upon which a certain amount was printed along with the words "Comparable Billfolds", when in fact respondents' wallets or billfolds were inferior in grade and quality to products selling for the amount so printed.

*As amended October 26, 1960.