II.

It is further ordered, That respondents Qualitone Industries, Inc., a corporation, and its officers, and Samuel Karns and Dorothy Karns, 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 phonograph needles, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "sapphire" or "jewel" or any other word or words denoting precious stones, in designating or describing the points or tips of phonograph needles made of synthetic material of the kind so designated, without clearly stating in immediate connection with such word or words, that such points or tips are synthetic.

2. Placing in the hands of jobbers, retailers, dealers, and others, means and instrumentalities by and through which they may deceive and mislead the purchasing public concerning any merchandise in the respects set out in Section II herein.

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.

By the Commission, Commissioner Elman not participating.

IN THE MATTER OF

COVE VITAMIN AND PHARMACEUTICAL, INC., ET AL.

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

Docket C-572. Complaint, Sept. 6, 1963—Decision, Sept. 6, 1963

Consent order requiring two associated corporate distributors of safflower oil capsules in Glen Cove, N. Y., to cease making a variety of false representations in a book "Calories Don't Count", which they promoted jointly with the publishers, and in newspaper and magazine advertising, with regard to the importance of polyunsaturated fats in the diet and their effectiveness in reducing etc., as in the order below in detail set forth.

COMPLAINT

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

Trade Commission having reason to believe that Cove Vitamin and Pharmaceutical, Inc., a corporation, and Harry Bobley, Edward Bobley and Peter M. Bobley, individually and as officers of said corporation, and CDC Pharmaceutical Corporation, a corporation, and Kenneth Beirn, individually and 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 Cove Vitamin and Pharmaceutical, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York. Its address is Bobley Building, Glen Cove, New York.

Respondents Harry Bobley, Edward Bobley and Peter M. Bobley are officers of respondent Cove Vitamin Pharmaceutical, Inc. They each participate in the formulation, direction and control of the policies, acts and practices of said corporation, including the acts and practices hereinafter set forth. Their address is the same as respondent Cove Vitamin and Pharmaceutical, Inc.

Respondent CDC Pharmaceutical Corporation is a corporation organized and existing under and by virtue of the laws of the State of New York. This respondent has offices and its principal place of business at Bobley Building, Glen Cove, New York. It is a subsidiary of Cove Vitamin and Pharmaceutical, Inc.

Respondent Kenneth Beirn is an individual whose address is 270 Park Avenue, city of New York, State of New York.

PAR. 2. Respondents Cove Vitamin and Pharmaceutical, Inc., CDC Pharmaceutical Corporation, Harry Bobley, Edward Bobley and Peter M. Bobley have been engaged in the promotion, sale and distribution of safflower oil capsules designated "CDC Capsules" and have participated in the acts and practices set forth below. These respondents have caused said capsules when sold to be transported from their place of business in the State of New York to purchasers located in various other States of the United States and in the District of Columbia. These respondents have maintained, at all times material to this complaint, a substantial course of trade in said capsules in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Respondent Kenneth Beirn participated in the promotion, sale and distribution of the book entitled "Calories Don't Count" and the safflower oil capsules designated "CDC Capsules" and has participated in the acts and practices herein described.

PAR. 3. Simon and Schuster, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Jason C. Berger an officer of Simon and Schuster, Inc., actively participates in the formulation, direction and control of the policies, acts and practices of said corporation including the acts and practices hereinafter set forth.

Richard L. Grossman was formerly an officer of Simon and Schuster, Inc., during which time he actively participated in the formulation, direction and control of the policies, acts and practices of said corporation in connection with the acts and practices as hereinafter set forth.

Schwab, Beatty and Porter, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York.

Simon and Schuster, Inc., and Jason C. Berger are now, and for some time last past have been, engaged in the publication, promotion, sale and distribution of a book entitled "Calories Don't Count" by Herman Taller. They cause said book when sold to be transported from their place of business in the State of New York to purchasers located in various other States of the United States and in the District of Columbia. They maintain, and at all times mentioned herein have maintained, a substantial course of trade in said book in commerce, as "commerce" is defined in the Federal Trade Commission Act. Richard L. Grossman has engaged in the business described herein and has participated in the acts and practices herein described.

Schwab, Beatty and Porter, Inc., is now and at all times mentioned herein has been, the advertising agency of Simon and Schuster, Inc., and now prepares and places, and has prepared and placed, for publication the advertising and promotional material, referred to herein, to induce the sale of the aforesaid book, and through such means has promoted the sale and distribution of Safflower Oil Capsules.

Herman Taller, an individual, is a physician licensed and practicing in the State of New York.

PAR. 4. In the course and conduct of the business of jointly promoting, selling and distributing the book "Calories Don't Count" and the safflower oil capsules, CDC Capsules, all respondents named herein, and the corporations and individuals referred to in Paragraph 3 herein, have been in substantial competition, in commerce, with other corporations, firms and individuals in the sale of books and safflower oil capsules.

PAR. 5. In the course and conduct of their businesses, and for the purpose of inducing the purchase in commerce of said book and of safflower oil capsules, respondents and the corporations and individuals referred to in Paragraph 3 herein have made certain statements and representations with respect thereto in said book and in other advertisements inserted in newspapers and magazines, and in other promotional material, having a general circulation throughout the various States of the United States and in the District of Columbia.

PAR. 6. Among and typical, but not all inclusive, of the statements and representations made and appearing in said advertisements and other promotional material disseminated as herein set forth are the following:

News about a revolutionary reducing plan, based on a new biochemical discovery * * *.

UNBELIEVABLE—but true! You need to eat fat if you are to be slim. It isn't how many calories you consume that matters — but what kind of calories. The inclusion of polyunsaturated fatty acids in your diet is the essential step toward loosening the body's long-stored fat. It is the key to your losing only excess fat rather than vital body tissue.

In this just-published book, CALORIES DON'T COUNT, Dr. Herman Taller explains the principles behind this new understanding of the body's chemistry — and tells you in full detail:

1. How to eat three full meals a day and lose weight in the safest way possible.

* * * * * * *

4. How this radical new way of losing weight is linked with a low cholesterol count, better skin condition, and resistance to colds.
5. Why you may eat fried foods every day and keep slim — what kind of fats to fry them in.

* * * * * * *

After painstaking research he put his program into practice on a group of 93 problem dieters with extraordinary success. Today patients from all over the country come to Dr. Taller for treatment. And his principles have won ever widening interest in the medical field. In the preface to the book he writes:

"The concept this book advances is revolutionary. Perhaps all I need say in support of my nutrition principle is that it works. It has been tested in medical laboratories and among large numbers of patients. There have been no failures, nor can there be any when the principle is properly applied. For it is based on new knowledge — a medical breakthrough."

* * * * * * *

How this radical new way of losing weight is linked to a low cholesterol count, better skin condition and resistance to colds and sinus trouble.

* * * * * * *

CALORIES DON'T COUNT

* * * * * * *

In addition, you must supplement your diet further in unsaturated fats. In all, you should take three ounces of highly unsaturated vegetable oil and eat two ounces of margarine every day * * *.

* * * * * * *

The key substance in vegetable oils is linoleic acid, an essential, unsaturated fatty acid. The oils with the greatest quantity of linoleic acid are most valuable in conquering obesity and in keeping cholesterol level low * * *.

* * * * * * *

Clearly, safflower oil is the most valuable by far. * * * Safflower oil is becoming more easily available, both in liquid form and in capsules obtainable at drug and department stores or through such mail-order sources as Cove Pharmaceuticals, New York.

PAR. 7. Through the use of said advertisements, and others similar thereto not specifically set out herein, respondents and the corporations and individuals referred to in Paragraph 3 herein have represented, directly and by implication:

1. That the dietary principles expounded in said book are new, that they are based on a new discovery, new knowledge and new understanding, and that they constitute a medical breakthrough;

2. That a person will be able to loosen long-stored fat by the inclusion of polyunsaturated fatty acids in his diet;

3. That the book truthfully reflects an established scientific fact that polyunsaturated fatty acids are essential to an effective reducing diet, and that polyunsaturated fatty acids are more effective in a reducing diet than are other fats;

4. That said book enables a person to improve the condition of his skin and increase his resistance to colds and sinus trouble;

5. That all other reducing programs and principles will cause loss of vital body tissue or are less safe than those set forth in said book;

6. That the book truthfully reflects an established scientific fact that it is necessary for a person to eat fat in order to lose weight;

7. That calories are not important in relation to obesity, and that a person can reduce his body weight, regardless of the number of calories consumed, by following the principles set forth in the book sold under the title "Calories Don't Count";

8. That safflower oil capsules will be of substantial value as a part of diet in reducing body weight.

PAR. 8. In truth and in fact:

1. The dietary principles expounded in said book are not new. They are not based upon a new discovery, new knowledge or new understanding and do not constitute a medical breakthrough;

2. A person, by the inclusion of polyunsaturated fatty acids in his diet, will not be able thereby to loosen long-stored fat;

3. It is not an established scientific fact that polyunsaturated fatty acids are essential to an effective reducing diet, or that they are more effective in a reducing diet than are other fats;

4. Said book will not enable a person to improve the condition of his skin or increase his resistance to colds or sinus trouble;

5. Many reducing programs and principles other than those of respondents' and the corporations and individuals referred to in Paragraph 3 herein when properly administered, will not cause loss of vital body tissue and are no less safe than the reducing programs and principles of the respondents and the corporations and the individuals referred to in Paragraph 3 herein;

6. It is not an established scientific fact that it is necessary for a person to eat fat in order to lose weight;

7. Calories are important in their relation to obesity, and the number of calories consumed by the individual is important to, and directly related to, the reduction of his body's weight. Contrary to representations of the respondents and the corporations and individuals referred to in Paragraph 3 herein a person cannot, by following the principles set forth in the book "Calories Don't Count", reduce his body weight without regard to the number of calories consumed;

8. Safflower oil capsules are not of substantial value as a part of a diet in the reduction of body weight.

Therefore, the statements and representations as set forth in Paragraph 6 and 7 were and are false, misleading and deceptive.

PAR. 9. In the course and conduct of their businesses, the respondents and the corporations and individuals referred to in Paragraph 3 herein have entered into understandings, agreements and planned courses of action to mislead and deceive the public into believing that the reducing plans outlined in said book, including the use of safflower oil capsules, would produce the results in bringing about the reduction in body weight specified and implied through representations contained in said book. Thus, through their understandings, agreements, and planned courses of action, respondents and the corporations and individuals referred to in Paragraph 3 herein conceived the scheme to make the book entitled "Calories Don't Count" an advertising material which would promote the sale of safflower oil capsules. In doing so the respondents and the corporations and individuals referred to in Paragraph 3 herein and each of them acted to induce members of the public to purchase said book and also to purchase safflower oil capsules in commerce.

Pursuant to the said understandings, agreements, arrangements, planned courses of action, combination and conspiracy and in further-

ance thereof, respondents and the corporations and individuals referred to in Paragraph 3 herein have acted in concert and in cooperation in the performance of the things hereinabove alleged and in order to assist them in the effectuation of their scheme, respondents and the corporations and individuals referred to in Paragraph 3 herein performed the following acts and practices.

1. Dr. Herman Taller, the nominal author of "Calories Don't Count", presented a draft of the manuscript of his original version of the aforesaid book to the publisher, Simon and Schuster, Inc. Mr. Berger and his associates concluded that in order to further the schemes of the respondents and the corporations and individuals referred to in Paragraph 3 herein the book should be revised by some professional writer. Therefore, arrangements were made with Roger Kahn, a sports writer, to revise the manuscript. When the revision was completed, Mr. Kahn had made substantial contributions to the content of the book. Mr. Kahn also conceived the title for the book "Calories Don't Count".

2. During the period of time that Kahn was rewriting the book, respondents and the corporations and individuals referred to in Paragraph 3 herein devised the scheme to make the book a piece of advertising material which would promote the sale of safflower oil capsules. That was done. Respondents and the corporations and individuals referred to in Paragraph 3 herein thereupon embarked on a joint sales campaign for advertising the book "Calories Don't Count" and of advertising through it the sale and distribution of safflower oil capsules. It was their hope that they would develop through the advertising contained in the book a market for the safflower oil capsules. In this way it was intended that the owners of Cove Vitamin and the officials of Simon and Schuster would profit at the expense of deceiving and misleading the public through the misleading and false statements contained in the book.

3. By agreement and general understandings, respondents and the corporation and individuals referred to in Paragraph 3 herein made it the primary responsibility of Richard L. Grossman and the advertising agency, Schwab, Beatty and Porter, Inc., to prepare, disseminate and make effective various forms of advertising to induce the sale and distribution of the book "Calories Don't Count", and through it the advertising, sale and distribution of safflower oil capsules.

4. This scheme and planned course of action of respondents and the corporations, and individuals referred to in Paragraph 3 herein went so much further in deceiving and misleading the public than the original version of the manuscript prepared by Dr. Taller that he took the position privately, but did not inform the public that the portion

of the book "Calories Don't Count" which referred to safflower oil capsules was without justification.

5. By arrangement of respondents and the corporations and individuals referred to in Paragraph 3 herein CDC Pharmaceuticals Corporation planned to, and did, use the title of the book "Calories Don't Count", pictures of its cover, and abstracts from its pages for use in the promotion of safflower oil capsules.

6. Respondents and the corporations and individuals referred to in Paragraph 3 herein carried out newspaper campaigns and other advertising and promotional activities promoting the sale of the book "Calories Don't Count" and the sale and distribution of safflower oil capsules.

PAR. 10. Each of the respondents and the corporations and individuals referred to in Paragraph 3 herein have acted to promote the dissemination and circulation of false and misleading advertising, including the publication, sale and distribution of the advertising material contained in the book "Calories Don't Count" and the advertising material appearing in newspapers, magazines, counter displays and in other forms, to induce not only the sale and distribution of the book "Calories Don't Count" but also of safflower oil capsules. Among the acts thus committed were those involving the advertising hereinafter alleged.

1. Two advertisements side-by-side in New York Times, Sunday, December 17, 1961.

(a) for the book "Calories Don't Count"; "Read the book the whole country's talking about CALORIES DON'T COUNT by Dr. Herman Taller."

(b) for "CDC Capsules": "Crash! Go Crash Diets . . ." "'Eat and lose weight' says Dr. Herman Taller, prominent N. Y. Physician. A Revolutionary new way to lose pounds, inch by inch, while eating and enjoying three square meals a day supplemented by CDC Capsules * * *."

2. Counter display picturing bottle of "CDC capsules" and cover of book "Calories Don't Count":

We've Got It!
CDC
Capsules
Calories Don't Count
Weight Control Program.

PAR. 11. The use by the respondents of the foregoing false, misleading and deceptive statements has had, and now has, the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that such statements were

and are, true and into the purchase of substantial quantities of the aforesaid book and safflower oil capsules by reason thereof.

PAR. 12. The aforesaid acts and practices of respondents, including the aforesaid understanding agreement, and planned course of action, 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 Cove Vitamin and Pharmaceutical, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its offices and principal place of business located in the Bobley Building, Glen Cove, New York.

Respondents Harry Bobley, Edward Bobley and Peter M. Bobley are officers of said corporation, and their address is the same as that of said corporation.

Respondent CDC Pharmaceutical Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its offices and principal place of business located in the Bobley Building, Glen Cove, New York.

Respondent Kenneth Beirn is an individual whose address is 270 Park Avenue, city of New York, State of New York.

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

ORDER

It is ordered, That Cove Vitamin and Pharmaceutical, Inc., a corporation, and its officers, and Harry Bobley, Edward Bobley, and Peter M. Bobley, individually and as officers of said corporation, and CDC Pharmaceutical Corporation, a corporation, and its officers, and Kenneth Beirn, individually, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of a book entitled "Calories Don't Count", or any other book or books of the same or approximately the same content, material or principles, whether sold under the same name or any other name, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication:

a. That the dietary principles expounded in this book are new, are based on a new discovery, are based on new knowledge or understanding, or constitute a medical breakthrough.

b. That a person will be able to loosen long-stored fat by the inclusion of polyunsaturated fatty acids in his diet.

c. That the book reflects an established scientific fact that polyunsaturated fatty acids are essential to an effective reducing diet, or that polyunsaturated fatty acids are more effective in a reducing diet than are other fats.

d. That said book enables a person to improve the condition of his skin or his resistance to colds or sinus trouble.

e. That other reducing principles and programs will cause loss of vital body tissue or are less safe than those set forth in said book.

f. That the book reflects an established scientific fact that it is necessary for a person to eat fat in order to lose weight.

g. That safflower oil in capsules or in any other form, or any other preparation of substantially the same ingredients is of substantial value as a part of a diet for the reduction of body weight.

2. The use in advertising of the title "Calories Don't Count", or representing in any other manner in advertising or promotional material, directly or by implication, that a person can reduce body weight regardless of the number of calories consumed by following the principles set forth in said book; provided, however, that any advertising or listing of the book which contains only the title and names of the author and publisher without any reference to the qualifications of the author, and which makes no claims concerning the efficacy of the dietary principles of the book shall not be prohibited hereby.

It is further ordered, That Cove Vitamin and Pharmaceutical, Inc., a corporation, and its officers, and Harry Bobley, Edward Bobley, and Peter M. Bobley, individually and as officers of said corporation, and CDC Pharmaceutical Corporation, a corporation, and its officers, and Kenneth Beirn, individually, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of a book entitled "Calories Don't Count", or any other book or books or in connection with the offering for sale, sale and distribution of safflower oil capsules or any other product or products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do cease and desist from:

1. Entering into, continuing, cooperating in or carrying out any planned course of action, understanding, agreement or combination between any of said respondents and any other respondent or respondents in the instant case or between said respondents, or any of them, and any others not parties hereto, to engage in:

a. Misrepresenting by any means or in any manner in connection with the advertising, offering for sale, sale or distribution of safflower oil capsules or any other product offered as a source of polyunsaturated fatty acids, the quality or merits of said products, or advertising, offering for sale, selling or distributing said products with the effect, purpose or intent to deceive, to mislead, or to make any false claims concerning the quality or merits of said product or products.

b. Publishing, participating in, or causing the publication of a book without clearly and conspicuously labeling same as an advertisement or otherwise clearly and conspicuously disclosing in the book and on its dust jacket, or on its cover if there be no dust jacket, or by its title that it is

published in cooperation or in association with or by a supplier or associated group of suppliers of a service or commercial product mentioned or referred to in the book, the identity of such supplier or group and the identity of such service or product, when an objective of such publisher is the substantial use of the book as a merchandising tool for such service or commercial product, or an accord is present between the publisher and the supplier or associated group of suppliers which contemplates substantial use of the book as such merchandising tool.

c. Advertising any book which the respondent knows or reasonably should know is required by the preceding subparagraph (b) to contain a disclosure, without making substantially the same disclosure, in such advertising for said book as is required by the said preceding subparagraph (b).

2. Individually engaging in, doing, or performing any act, practice, or thing prohibited in the immediately foregoing provisions 1(a), (b) or (c) 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.

By the Commission, Commissioner Elman not participating.

IN THE MATTER OF

OXWALL TOOL COMPANY, LTD., ET AL

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

*Docket 7491. Complaint, May 15, 1959—Decision, Sept. 9, 1963**

Order amending desist order of Dec. 26, 1961, 59 F.T.C. 1408—which required conspicuous affirmative disclosure of the country of foreign origin of imported tools—to provide that where two or more clearly marked products imported from two or more foreign places were packaged together in an unsealed container, the conspicuous disclosure of such facts on the container should constitute compliance with the order.

ORDER AMENDING FINAL ORDER OF THE COMMISSION

Respondents by their "Motion to Re-Open and Modify", pursuant to § 5.7 of the Commission's Rules of Practice effective June 1962,

*Order, with opinion, denying motion for further modification, dated Jan. 16, 1964, 64 F.T.C. ___.

having requested that the final order of the Commission issued December 26, 1961 be modified; and

The Commission on consideration of the aforesaid motion having determined that its final order of December 26, 1961 should be modified in certain respects:

It is ordered, That the Commission's final order of December 26, 1961, be, and it hereby is, modified to read as follows:

It is ordered, That respondents Oxwall Tool Company, Ltd., a corporation, and its officers, and respondents Max J. Blum and Sidney Blum, 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 imported merchandise 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 without affirmatively and clearly disclosing in a conspicuous place on the products themselves the country of origin thereof.

2. Offering for sale, selling or distributing said products in containers or with attachments in a manner which causes the mark on the products identifying the country of origin to be hidden or obscured without clearly disclosing the country of origin of the products in a conspicuous place on the container or attachment. Provided, however, that in those instances where (a) two or more products imported from two or more foreign countries or places are packaged together in the same container, where (b) the imported articles themselves are clearly and conspicuously marked with the country of origin, and where (c) the container is unsealed and the articles may be readily removed therefrom for examination by a prospective purchaser prior to purchase, the disclosure, in a conspicuous place on the container, that all or a portion of the contents of such package are imported and that the country or place of origin of foreign made products is set forth on each product, shall constitute compliance with the terms of this order.

It is further ordered, That respondents, Oxwall Tool Company, Ltd., Max J. Blum and Sidney Blum, 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 as modified.

IN THE MATTER OF

H. & D. GROSSMAN CORPORATION

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

Docket C-573. Complaint, Sept. 10, 1963—Decision, Sept. 10, 1963

Consent order requiring New York City manufacturing furriers to cease violating the Fur Products Labeling Act by labeling and invoicing artificially colored fur products as natural and failing to disclose on labels and invoices that certain furs were bleached, dyed, etc.

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 H. & D. Grossman Corporation, a corporation, hereinafter referred to as respondent has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent H. & D. Grossman Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent is a manufacturer of fur products with its office and principal place of business located at 333 Seventh Avenue, New York, New York.

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

PAR. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled to show that fur contained therein was natural, when in fact such fur was pointed, bleached,

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

PAR. 5. 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 fur products covered by invoices which failed to disclose that the fur contained in the fur product 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 that said fur products were invoiced to show that the fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

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

DECISION AND ORDER

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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 H. & D. Grossman 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 333 Seventh Avenue, New York, New York.

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

ORDER

It is ordered, That respondent H. & D. Grossman Corporation, a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, 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 manufacture for sale, 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. Misbranding fur products by:

1. Representing directly or by implication on labels that the fur contained in any fur product is natural when the fur contained therein is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

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

B. Falsely or deceptively 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 in each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

2. 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.

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

IN THE MATTER OF

JO COPELAND FURS INC., FORMERLY D/B/A BRODY GROSSMAN CORPORATION ET AL.

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

Docket C-574. Complaint, Sept. 10, 1963—Decision, Sept. 10, 1963

Consent order requiring New York City wholesale furriers to cease violating the Fur Products Labeling Act by labeling and invoicing artificially colored fur products as natural and failing to disclose on labels and invoices that certain furs were bleached, dyed, etc.

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 Jo Copeland Furs Inc., a corporation formerly doing business under the corporate name of Brody Grossman Corporation and Harry Grossman and Dan Grossman, individually and as officers of the 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 Jo Copeland Furs Inc., formerly doing business under the corporate name of Brody Grossman Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Harry Grossman and Dan Grossman are officers of the corporate respondent and formulate, direct and control the acts,

practices and policies of the said corporate respondent, including those hereinafter set forth.

Respondents are wholesalers of fur products with their office and principal place of business located at 333 Seventh Avenue, New York, New York.

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 furs which have been shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled to show that fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-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 disclose 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 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 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 product 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 that said fur products were invoiced to show that the fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

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 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 Jo Copeland Furs Inc., formerly doing business under the corporate name of Brody Grossman 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 333 Seventh Avenue, New York, New York.

Respondents Harry Grossman and Dan Grossman 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 Jo Copeland Furs Inc., a corporation formerly doing business under the corporate name of Brody Grossman Corporation, and its officers, and Harry Grossman and Dan Grossman, 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 intro-

duction 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. Misbranding fur products by:

1. Representing directly or by implication on labels that the fur contained in any fur product is natural when the fur contained therein is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

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

B. Falsely or deceptively 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 in each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

2. 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.

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 & DAN GROSSMAN FURS INC.

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

Docket C-575. Complaint, Sept. 10, 1963—Decision, Sept. 10, 1963

Consent order requiring New York City wholesale furriers to cease violating the Fur Products Labeling Act by failing to disclose on labels that certain furs were artificially colored and to show the registered identification of the manufacturer, etc.; invoicing artificially colored furs as natural and abbreviating required information on invoices.

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 & Dan Grossman Furs Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Harry & Dan Grossman Furs Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent is a wholesaler of fur products with its office and principal place of business located at 333 Seventh Avenue, New York, New York.

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 furs which have been shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled to show that fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-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:

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

2. To show the name, or other identification issued and registered by the Commission, of one or more of the persons who manufactured

such fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale, in commerce, or transported or distributed it in commerce.

PAR. 5. 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 fur products covered by invoices which failed to disclose that the fur contained in the fur product 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 that said fur products were invoiced to show that the fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

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

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

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

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

spondent 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 Harry & Dan Grossman Furs 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 333 Seventh Avenue, New York, New York.

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

ORDER

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

A. Misbranding fur products by:

1. Representing directly or by implication on labels that the fur contained in any fur product is natural when the fur contained therein is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

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

B. Falsely or deceptively 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 in each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

2. 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.

3. 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.

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

IN THE MATTER OF

THE PARISEAU CORP. ET AL.

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

Docket C-576. Complaint, Sept. 10, 1963—Decision, Sept. 10, 1963

Consent order requiring a Massachusetts wholesaler and two New Hampshire retailers of furs, to cease violating the Fur Products Labeling Act by failing on labels and invoices and in advertising, to describe as "natural" fur products that were not artificially colored; failing in invoicing and advertising, to show the country of origin of imported furs and to disclose that certain furs were bleached, etc.; failing on invoices, to show the true animal name of fur and when the product contained cheap or waste fur; failing to use the term "Persian Lamb" as required on invoices, and "Dyed Broadtail—processed Lamb" in advertising; representing prices falsely as reduced from so-called regular prices which were fictitious, and as "25 to 30% off" and reduced "up to 50% and more"; failing to maintain adequate records as a basis for pricing claims; substituting nonconforming labels on fur products for those affixed by the manufacturer, etc., and failing in other respects to comply with labeling, invoicing and advertising 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 The Pariseau Corp., Rooks, Inc., and Rooks, Inc. of Lynn, corporations, and their officers, and Alexander Rooks, individually and as an officer of said corporations, and George Younger and Isadore Rooks, individually and as officers of The Pariseau Corp., and Jack Younger, individually and as manager of the fur department of The Pariseau Corp., 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. Respondents The Pariseau Corp. and Rooks, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New Hampshire.

Respondent Rooks, Inc. of Lynn is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts.

Respondents Isadore Rooks, Alexander Rooks, and George Younger are officers of corporate respondent The Pariseau Corp., and along with respondent Jack Younger formulate, direct and control the acts, practices and policies of said corporate respondent including those hereinafter set forth.

Respondent Jack Younger is manager of the fur department of corporate respondent, The Pariseau Corp., and assists in formulating, directing and controlling the acts and practices of such corporate respondent with respect to the aforesaid fur department.

Respondent Alexander Rooks is also an officer of corporate respondents Rooks, Inc., and Rooks, Inc. of Lynn, and formulates, controls and directs the acts, practices and policies of said corporate respondents including those hereinafter set forth.

Respondents The Pariseau Corp. and Rooks, Inc., are retailers of fur products and have their office and principal place of business located at 1001 Elm Street, Manchester, New Hampshire.

Respondent Rooks, Inc. of Lynn is a wholesaler and retailer of fur products and has its office and principal place of business at 313 Union Street, Lynn, Massachusetts.

The office and principal place of business of individual respondent Alexander Rooks is the same as that of corporate respondent Rooks, Inc. of Lynn.

The office and principal place of business of individual respondents George Younger, Jack Younger and Isadore Rooks is the same as corporate respondent The Pariseau Corp.

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 furs which have 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 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 "Dyed Broadtail-processed Lamb" was not set forth on labels in the manner required by law, in violation of Rule 10 of said Rules and Regulations.

(c) 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.

(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.

PAR. 4. 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 show the country of origin of imported furs used in the fur products.

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

4. To show that the fur product was composed in whole or in substantial part of paws, tails, bellies or waste fur, when such was the fact.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced with respect to the name of the country of origin of imported

furs used in such products, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products invoiced to show the name of the country of origin of furs contained in such fur products as Russia when the country of origin of such furs was, in fact, Finland.

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) 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 "Persian Lamb" was not set forth on invoices in the manner required by law, in violation of Rule 8 of said Rules and Regulations.

(c) 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.

(d) 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 and deceptively advertised in violation of the Fur Products Labeling Act in that certain advertisements intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of such fur products were not in accordance with the provisions of Section 5(a) of the said Act.

Among and included in the aforesaid advertisements but not limited thereto, were advertisements of respondents which appeared in issues of the Manchester Union Leader, a newspaper published in the City of Manchester, State of New Hampshire.

Among such false and deceptive advertisements, but not limited thereto, were advertisements which failed:

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

2. To show the country of origin of imported furs contained in fur products.

PAR. 8. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products in that certain of said fur products were falsely or deceptively identified with

respect to the name or designation of the animal or animals that produced the fur from which the said fur products had been manufactured, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

Among such falsely and deceptively advertised fur products, but not limited thereto, were fur products advertised as "Coney" when the fur contained in such fur products was, in fact, "Rabbit".

PAR. 9. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products in violation of the Fur Products Labeling Act in that the said fur products were not advertised in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 5(a) 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 the 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 the 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 the said Rules and Regulations.

PAR. 10. By means of the aforesaid advertisements and other advertisements of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products in that said advertisements represented that the prices of fur products were reduced from regular or usual retail prices and that the amount of such price reductions afforded savings to the purchasers of respondents' products, when the so-called regular or usual retail prices were, in fact, fictitious in that they were not the prices at which said merchandise was usually sold by respondents in the recent regular course of business and the represented savings were not thereby afforded to the purchasers, in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of the Rules and Regulations promulgated under the said Act.

PAR. 11. In advertising fur products for sale as aforesaid respondents represented through such statements as "All furs reduced 25 to 30% off" and "Save up to 50% and more" that prices of fur products were reduced in direct proportion to the percentages stated and that the amount of said reduction afforded savings to the purchasers of

respondents' products when in fact such prices were not reduced in direct proportion to the percentages stated and the represented savings were not thereby afforded to the said purchasers, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 12. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products in that said advertisements misrepresented prices as being "offered at below cost" and thereby also misrepresented the savings available to purchasers of said products, in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of the Rules and Regulations promulgated under the aforesaid Act.

PAR. 13. In advertising fur products for sale, as aforesaid, respondents made pricing 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. 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 said Rules and Regulations.

PAR. 14. Respondents in introducing, selling, advertising, and offering for sale, in commerce, and in processing for commerce, fur products; and in selling, advertising, offering for sale and processing fur products which have been shipped and received in commerce, have misbranded such fur products by substituting thereon, labels which did not conform to the requirements of Section 4 of the Fur Products Labeling Act, for the labels affixed to said fur products by the manufacturer or distributor pursuant to Section 4 of said Act, in violation of Section 3(e) of said Act.

PAR. 15. 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 rspondents 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 The Pariseau Corp. and Rooks, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New Hampshire with their offices and principal places of business located at 1001 Elm Street, in the city of Manchester, State of New Hampshire.

Respondent Rooks, Inc. of Lynn is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its office and principal place of business located at 313 Union Street, in the city of Lynn, Commonwealth of Massachusetts.

Respondents Isadore Rooks, Alexander Rooks and George Younger are officers of The Pariseau Corp. Respondent Jack Younger is manager of the fur department of the Pariseau Corp.

Respondent Alexander Rooks is also an officer of Rooks, Inc., and Rooks, Inc. of Lynn, and his address is the same as that of Rooks, Inc. of Lynn. The address of George Younger, Jack Younger and Isadore Rooks is the same as that of the Pariseau Corp.

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 The Pariseau Corp., and Rooks, Inc. and Rooks, Inc. of Lynn, corporations and their officers and Alexander Rooks, individually and as an officer of said corporations and George Younger and Isadore Rooks, individually and as officers of The Pariseau Corp. and Jack Younger, individually and as manager of the fur department of The Pariseau Corp., and respondents' representatives, agents and employees, directly or through any cor-

porate 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. Misbranding fur products by:

1. Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form on labels affixed to fur products.

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

3. Failing to set forth the term "Natural" as part of the information required to be disclosed on labels under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

4. Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in handwriting on labels affixed to fur products.

5. Failing to set forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder on labels in the sequence required by Rule 30 of the aforesaid Rules and Regulations.

B. 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 in each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

2. Misrepresenting in any manner, directly or by implication, the country of origin of the fur contained in fur products.

3. 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.

4. Failing to set forth the term "Persian Lamb" in the manner required where an election is made to use that term instead of the word "Lamb".

5. Failing to set forth the term "Natural" as part of the information required to be disclosed on invoices under the Fur Products Labeling Act and Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

6. Failing to set forth on invoices the item number or mark assigned to fur products.

C. 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 any fur product, and which:

1. Fails to set forth in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(a) of the Fur Products Labeling Act.

2. Falsely or deceptively advertising any fur product with respect to the name or designation of the animal or animals that produced the fur contained in such fur product.

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

4. Fails 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 words "Dyed Lamb".

5. Fails to set forth the term "Natural" as part of the information required to be disclosed in advertisements under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

6. Represents, directly or by implication, that any price, when accompanied or unaccompanied by any descriptive language, was the price at which the merchandise advertised was usually and customarily sold at retail by the respondents

unless such advertised merchandise was in fact usually and customarily sold at retail at such price by respondents in the recent past.

7. Represents directly or by implication through percentage savings claims that prices of fur products are reduced to afford purchasers of respondents' fur products the percentage of savings stated when the prices of such fur products are not reduced to afford purchasers the percentage of savings stated.

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

9. Falsely or deceptively represents in any manner that prices of respondents' fur products are reduced.

10. Falsely or deceptively represents directly or by implication that the prices of fur products are at or below cost.

D. 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 respondents The Pariseau Corp., and Rooks, Inc. and Rooks, Inc. of Lynn, corporations and their officers and Alexander Rooks, individually and as an officer of said corporations and George Younger and Isadore Rooks, individually and as officers of The Pariseau Corp. and Jack Younger, individually and as manager of the fur department of The Pariseau Corp., and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, sale, advertising or offering for sale, in commerce, or the processing for commerce, of fur products; or in connection with the selling, advertising, offering for sale, or processing of fur products which have been shipped and received in commerce, do forthwith cease and desist from misbranding fur products by substituting for the labels affixed to such fur products pursuant to Section 4 of the Fur Products Labeling Act labels which do not conform to the requirements of the aforesaid Act and the Rules and Regulations promulgated thereunder.

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

H. GREENBLATT COMPANY, INC., TRADING AS GREENBLATTS BRAZY BROTHERS FURRIERS ET AL.

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

Docket C-577. Complaint, Sept. 11, 1963—Decision, Sept. 11, 1963

Consent order requiring retail furriers in South Bend, Ind., to cease violating the Fur Products Labeling Act by removing required labels prior to delivery of fur products to the ultimate consumers, and by substituting nonconforming labels for those originally attached; failing, on labels and invoices and in advertising, to name the country of origin of imported furs and to use the term "Natural" for furs not artificially colored; labeling imported furs as products of the United States; failing, on tags and invoices, to give the true animal name of the fur, to disclose on labels that fur products contained cheap or waste fur, and labeling "Blue Fox" as "Fox"; failing on invoices to disclose when fur was artificially colored and to set forth the term "Dyed Mouton Lamb" as required, and invoicing "Japanese Mink" as "Mink"; advertising prices of fur products falsely as "up to 70% off", failing to maintain adequate records to maintain pricing claims; and failing in other respects to conform with requirements of the law.

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 H. Greenblatt Company, Inc., a corporation trading as Greenblatts Brazy Brothers Furriers and Sylvia Brazy, Lee Brazy, and Simon Brazy individually and as officers of the 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 H. Greenblatt Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana. The corporate respondent trades under the name of Greenblatts Brazy Brothers Furriers.

Respondents Sylvia Brazy, Lee Brazy and Simon Brazy are officers of the corporate respondent and formulate, direct and control the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are retailers of fur products with their office and principal place of business located at 230 South Michigan Street, South Bend, Indiana.

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 furs which have been shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Respondents have removed and have caused and participated in the removal of, prior to the time fur products subject to the provisions of the Fur Products Labeling Act were sold and delivered to the ultimate consumer, labels required by the Fur Products Labeling Act to be affixed to such products, in violation of Section 3(d) of said Act.

PAR. 4. Certain of said fur products were misbranded in that they were falsely and deceptively labeled or otherwise falsely or deceptively identified with respect to the name of the country of origin of furs contained in such products, in violation of Section 4(1) of the Fur Products Labeling Act.

Among such misbranded fur products, but not limited thereto, were fur products labeled to show that the country of origin of furs used in such fur products was the United States when in fact such furs were imported.

PAR. 5. Certain of said fur products were misbranded in that they were falsely and deceptively labeled or otherwise falsely or deceptively identified with respect to the name or designation of the animal or animals that produced the fur from which the said fur products had been manufactured, in violation of Section 4(1) of the Fur Products Labeling Act.

Among such misbranded fur products, but not limited thereto, were fur products which were labeled as "Fox" when the fur contained in such product was, in fact, "Blue Fox".

PAR. 6. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

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

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

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

PAR. 7. 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 on labels in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(b) The term "natural" was not used on labels 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) The disclosure that fur products were composed in whole or in substantial part of paws, tails, bellies, sides, flanks, gills, ears, throats, heads, scrap pieces or waste fur, where required, was not set forth on labels, in violation of Rule 20 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 not completely set out on one side of labels, in violation of Rule 29(a) of said Rules and Regulations.

(e) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not 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. 8. 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 fur products covered by invoices 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 imported furs used in fur products.

PAR. 9. 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 on invoices in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(b) The term "Dyed Mouton Lamb" was not set forth on invoices in the manner required by law, in violation of Rule 9 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.

PAR. 10. Certain of said fur products were falsely and deceptively invoiced with respect to the name or designation of the animal or animals that produced the fur from which the said fur products had been manufactured, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products which were invoiced as "Mink" when, in fact, the fur contained in such products was "Japanese Mink".

PAR. 11. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that certain advertisements intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of such fur products were not in accordance with the provisions of Section 5(a) of the said Act.

Among and included in the aforesaid advertisements but not limited thereto, were advertisements of respondents which appeared in issues of The South Bend Tribune, a newspaper published in the City of South Bend, State of Indiana.

Among such false and deceptive advertisements, but not limited thereto, were advertisements which failed to show the country of origin of imported furs contained in fur products.

PAR. 12. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products in violation of the Fur Products Labeling Act in that the said fur products were not advertised in accordance with the Rules and Regulations

promulgated thereunder inasmuch as 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 the said Rules and Regulations.

PAR. 13. In advertising fur products for sale as aforesaid respondents represented through such statements as "Up to 70% Off" that prices of fur products were reduced in direct proportion to the percentages stated and that the amount of said reduction afforded savings to the purchasers of respondents' products when in fact such prices were not reduced in direct proportion to the percentages stated and the represented savings were not thereby afforded to the said purchasers, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 14. In advertising fur products for sale, as aforesaid, respondents made pricing 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 are based, in violation of Rule 44(e) of the said Rules and Regulations.

PAR. 15. Respondents in introducing, selling, advertising, and offering for sale, in commerce, and in processing for commerce, fur products; and in selling, advertising, offering for sale and processing fur products which have been shipped and received in commerce, have misbranded such fur products by substituting thereon, labels which did not conform to the requirements of Section 4 of the Fur Products Labeling Act, for the labels affixed to said fur products by the manufacturer or distributor pursuant to Section 4 of said Act, in violation of Section 3(e) of said Act.

PAR. 16. 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 H. Greenblatt Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana. The corporate respondent trades under the name Greenblatts Brazy Brothers Furriers. Respondents Sylvia Brazy, Lee Brazy and Simon Brazy are officers of said corporation and all of the respondents have their office and principal place of business at 230 South Michigan Street, South Bend, Indiana.

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 H. Greenblatt Company, Inc., a corporation, trading as Greenblatts Brazy Brothers Furriers or under any other trade name and its officers, and Sylvia Brazy, Lee Brazy and Simon Brazy, 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. Misbranding fur products by:

1. Falsely or deceptively labeling or otherwise identifying any such fur product as to the country of origin of furs contained in such fur product.

2. Falsely or deceptively labeling or otherwise identifying any such product as to the name or designation of the ani-

mal or animals that produced the fur contained in the fur product.

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

4. Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form on labels affixed to fur products.

5. Failing to set forth the term "Natural" as part of the information required to be disclosed on labels under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

6. Failing to disclose on labels that fur products are composed in whole or in substantial part of paws, tails, bellies, sides, flanks, gills, ears, throats, heads, scrap pieces or waste fur.

7. Failing to completely set out information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations thereunder on one side of the labels affixed to fur products.

8. Failing to set forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder on labels in the sequence required by Rule 30 of the aforesaid Rules and Regulations.

9. Failing to set forth separately on labels attached to fur products composed of two or more sections containing different animal fur 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.

B. 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 in 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 the term "Dyed Mouton Lamb" in the manner required where an election is made to use that term instead of the word "Dyed Lamb".

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

5. Setting forth on invoices pertaining to fur products any false or deceptive information with respect to the name or designation of the animal or animals that produced the fur contained in such fur product.

C. 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 any fur product, and which:

1. Fails to set forth in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(a) of the Fur Products Labeling Act.

2. Fails to set forth the term "Natural" as part of the information required to be disclosed in advertisements under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

3. Represents directly or by implication through percentage savings claims that prices of fur products are reduced to afford purchasers of respondents' fur products the percentage of savings stated when the prices of such fur products are not reduced to afford to purchasers the percentage of savings stated.

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

5. Falsely or deceptively represents in any manner that prices of respondents' fur products are reduced.

D. 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 respondents H. Greenblatt Company, Inc., a corporation, trading as Greenblatts Brazy Brothers Furriers or under any other trade name and its officers, and Sylvia Brazy, Lee Brazy and Simon Brazy individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from removing, or causing or participating in the removal of, prior to the time any fur product subject to the provisions of the Fur Products Labeling Act is sold and delivered to the ultimate consumer, any label required by the said Act to be affixed to such fur product.

It is further ordered, That respondents H. Greenblatt Company, Inc., a corporation, trading as Greenblatts Brazy Brothers Furriers or under any other trade name and its officers, and Sylvia Brazy, Lee Brazy and Simon Brazy 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, sale, advertising or offering for sale, in commerce, or the processing for commerce, of fur products; or in connection with the selling, advertising, offering for sale, or processing of fur products which have been shipped and received in commerce, do forthwith cease and desist from misbranding fur products by substituting for the labels affixed to such fur products pursuant to Section 4 of the Fur Products Labeling Act labels which do not conform to the requirements of the aforesaid Act and the Rules and Regulations promulgated thereunder.

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

BRAMSON, INC.

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

Docket C-578. Complaint, Sept. 11, 1963—Decision, Sept. 11, 1963

Consent order requiring Chicago retail furriers to cease violating the Fur Products Labeling Act by failing, on labels and invoices, and in advertising, to show the true animal name of furs; failing on invoices and in advertising to show when fur was artificially colored and the country of

origin of imported furs; failing to use the term "Natural" on labels and invoices of furs not artificially colored; failing to show the Commission's registered identification on labels; labeling and advertising furs falsely as "Broadtail"; advertising fur products as on sale at "savings of 1/3 to 1/2 and more", and failing to set forth the term "Dyed Broadtail-processed Lamb" as required in advertising; failing to maintain adequate records as a basis for pricing claims; substituting nonconforming labels for those originally affixed to fur products; and failing in other respects to comply with requirements of the Act.

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 Bramson, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

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

Respondent is a retailer of fur products with its office and principal place of business located at 160 North Michigan Avenue, Chicago, Illinois.

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 furs which have been shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

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

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

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

2. To show the name or other identification issued and registered by the Commission, of one or more of the persons who manufactured such fur product for introduction into commerce, introduced it into

commerce, sold it in commerce, advertised or offered it for sale, in commerce, or transported or distributed it in commerce.

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

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

(b) The term "natural" was not used on labels 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) Labels affixed to fur products did not comply with the minimum size requirements of one and three-quarter inches by two and three-quarter inches, in violation of Rule 27 of said Rules and Regulations.

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

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

(f) 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.

(g) 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.

(h) 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.

(i) 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 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 fur products covered by invoices 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 imported furs used in fur products.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced with respect to the name or designation of the animal or animals that produced the fur from which the said fur products had been manufactured, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products which were invoiced as "Broadtail" thereby implying that the furs contained therein were entitled to the designation "Broadtail Lamb" when in truth and in fact they were not entitled to such designation.

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 on invoices in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

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

(c) The term "natural" was not used on invoices to describe furs which were not pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Rule 19(g) 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.

PAR. 8. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that certain advertisements intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of such fur products were not in accordance with the provisions of Section 5(a) of the said Act.

Among and included in the aforesaid advertisements, but not limited thereto, were advertisements of respondent which appeared in issues of the Chicago Tribune, a newspaper published in the city of Chicago, State of Illinois.

Among such false and deceptive advertisements, but not limited thereto, were advertisements which failed:

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

2. To show 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 imported furs contained in fur products.

PAR. 9. By means of the aforesaid advertisements and others of similar import and meaning not specificially referred to herein, respondent falsely and deceptively advertised fur products in that certain of said fur products were falsely or deceptively identified with respect to the name or designation of the animal or animals that produced the fur from which the said fur products had been manufactured in violation of Section 5(a)(5) of the Fur Products Labeling Act.

Among such falsely and deceptively advertised fur products, but not limited thereto, were fur products advertised as "Broadtail" thereby, implying that the furs contained therein were entitled to the designation "Broadtail Lamb" when in truth and in fact they were not entitled to such designation.

PAR. 10. In advertising fur products for sale as aforesaid respondent represented through such statements as "Wonderful, Wonderful January Buys At Jubilant Savings of 1/3 to 1/2 and More" that prices of fur products were reduced in direct proportion to the percentages stated and that the amount of said reduction afforded savings to the purchasers of respondent's products when in fact such prices were not reduced in direct proportion to the percentage stated and the represented savings were not thereby afforded to the said purchasers, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 11. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondent falsely and deceptively advertised fur products in violation of the Fur Products Labeling Act in that the said fur products were not advertised in accordance with the Rules and Regulations promulgated thereunder in the following respects:

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

2. 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 the said Rules and Regulations.

PAR. 12. In advertising fur products for sale, as aforesaid, respondent made pricing 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. Respondent 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. 13. Respondent in introducing, selling, advertising, and offering for sale, in commerce, and in processing for commerce, fur products; and in selling, advertising, offering for sale and processing fur products which have been shipped and received in commerce, has misbranded such fur products by substituting thereon, labels which did not conform to the requirements of Section 4 of the Fur Products Labeling Act, for the labels affixed to said fur products by the manufacturer or distributor pursuant to Section 4 of said Act, in violation of Section 3(e) of said Act.

PAR. 14. The aforesaid acts and practices of respondent, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 Bramson, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 160 North Michigan Avenue, Chicago, Illinois.

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

A. Misbranding fur products by:

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

2. Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form on labels affixed to fur products.

3. Failing to set forth the term "Natural" as part of the information required to be disclosed on labels under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

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

5. Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder mingled with non-required information on labels affixed to fur products.

6. Failing to completely set out information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations thereunder on one side of the labels affixed to fur products.

7. Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in handwriting on labels affixed to fur products.

8. Failing to set forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder on labels in the sequence required by Rule 30 of the aforesaid Rules and Regulations.

9. Failing to set forth separately on labels attached to fur products composed of two or more sections containing different animal fur 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.

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

B. 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 in each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

2. Setting forth on invoices pertaining to fur products any false or deceptive information with respect to the name or designation of the animal or animals that produced the fur contained in such fur product.

3. 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.

4. 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 words "Dyed Lamb".

5. Failing to set forth the term "Natural" as part of the information required to be disclosed on invoices under the Fur Products Labeling Act and Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

6. Failing to set forth on invoices the item number or mark assigned to fur products.

C. 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 any fur product, and which:

1. Fails to set forth in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(a) of the Fur Products Labeling Act.

2. Falsely or deceptively identifies any such fur product as to the name or designation of the animal or animals that produced the fur contained in the fur product.

3. Fails 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 words "Dyed Lamb".

4. Fails to set forth the term "Natural" as part of the information required to be disclosed in advertisements under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

5. Represents directly or by implication through percentage savings claims that prices of fur products are reduced to afford purchasers of respondent's fur products the percentage of savings stated when the prices of such fur products are not reduced to afford to purchasers the percentage of savings stated.

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

7. Falsely or deceptively represents in any manner that prices of respondent's fur products are reduced.

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

It is further ordered, That respondent Bramson, Inc., a corporation, and its officers and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, sale, advertising or offering for sale, in commerce or the processing for commerce, of fur products; or in con-

nection with the selling, advertising, offering for sale, or processing of fur products which have been shipped and received in commerce, do forthwith cease and desist from misbranding fur products by substituting for the labels affixed to such fur products pursuant to Section 4 of the Fur Products Labeling Act labels which do not conform to the requirements of the aforesaid Act and the Rules and Regulations promulgated thereunder.

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

IN THE MATTER OF

K. & W. FUR CO., INC. DOING BUSINESS AS KRESEL & WOLF ET AL.

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

Docket C-579. Complaint, Sept. 11, 1963—Decision, Sept. 11, 1963

Consent order requiring retail furriers in New Haven, Conn., to cease violating the Fur Products Labeling Act by failing, on invoices and in advertising, to show the true animal name of fur and when fur was artificially colored, to use the word "natural" for fur that was not bleached or dyed, and the term "Dyed Broadtail-processed Lamb" as required, and using the term "Broadtail" improperly; failing, on invoices, to show the country of origin of imported furs and to use the term "Persian Lamb" where required; invoicing furs from S.W. Africa as from Russia, and using the name of another animal than that which produced a fur; failing to keep adequate records as a basis for pricing claims; and failing in other respects to comply with requirements of the Act.

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 K. & W. Fur Co., Inc., a corporation doing business as Kresel & Wolf, and George M. Dermer and Herman Katz, 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 K. & W. Fur Co., Inc., doing business as Kresel & Wolf, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut.

Respondents George M. Dermer and Herman Katz are officers of the corporate respondent and formulate, direct and control the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are retailers of fur products with their office and principal place of business located at 196 Orange Street, New Haven, Connecticut.

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 furs which have 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 fur products covered by invoices 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 imported furs used in fur products.

PAR. 4. Certain of said fur products were falsely and deceptively invoiced with respect to the name of the country of origin of imported furs used in such fur products, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products invoiced to show the name of the country of origin of furs contained in such fur products as Russia when the country of origin of such furs was, in fact, S.W. Africa.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced in that respondents set forth on invoices pertaining to fur

products the name of an animal other than the name of the animal that produced the fur from which the said fur products had been manufactured, 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 with respect to the name or designation of the animal or animals that produced the fur from which the said fur products had been manufactured, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products which were invoiced as "Broadtail" thereby implying that the furs contained therein were entitled to the designation "Broadtail Lamb" when in truth and in fact they were not entitled to such designation.

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) The term "Persian Lamb" was not set forth on invoices in the manner required by law, in violation of Rule 8 of said Rules and Regulations.

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

(c) The term "natural" was not used on invoices 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.

(d) 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.

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

PAR. 8. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that certain advertisements intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of such fur products were not in accordance with the provisions of Section 5(a) of the said Act.

Among and included in the aforesaid advertisements but not limited thereto, were advertisements of respondents which appeared in issues

of the New Haven Register, a newspaper published in the city of New Haven, State of Connecticut.

Among such false and deceptive advertisements, but not limited thereto, were advertisements which failed:

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

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

PAR. 9. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products in that certain of said fur products were falsely or deceptively identified with respect to the name or designation of the animal or animals that produced the fur from which the said fur products had been manufactured, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

Among such falsely and deceptively advertised fur products, but not limited thereto, were fur products advertised as "Broadtail" thereby implying that the furs contained therein were entitled to the designation "Broadtail Lamb" when in truth and in fact they were not entitled to such designation.

PAR. 10. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products in violation of the Fur Products Labeling Act in that the said fur products were not advertised in accordance with the Rules and Regulations promulgated thereunder in the following respects:

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

PAR. 11. In advertising fur products for sale, as aforesaid, respondents made pricing 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. 12. 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 K. & W. Fur Co., Inc., doing business as Kresel & Wolf is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 196 Orange Street, New Haven, Connecticut.

Respondents George M. Dermer and Herman Katz are officers of the corporate respondent and their address is the same as that of said corporate respondent.

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

ORDER

It is ordered, That respondents K. & W. Fur Co., Inc., a corporation doing business as Kresel & Wolf, and its officers, and George M. Dermer and Herman Katz, 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 com-

merce, 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 the terms "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 in each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

2. Misrepresenting in any manner, directly or by implication, the country of origin of the fur contained in fur products.

3. Setting forth on the invoices pertaining to fur products the name or names of any animal or animals other than the name of the animal producing the fur contained in the fur product as specified in the Fur Products Name Guide, and as prescribed by the Rules and Regulations.

4. Setting forth on invoices pertaining to fur products any false or deceptive information with respect to the name or designation of the animal or animals that produced the fur contained in such fur product.

5. Failing to set forth the term "Persian Lamb" in the manner required where an election is made to use that term instead of the word "Lamb".

6. 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 words "Dyed Lamb".

7. Failing to set forth the term "Natural" as part of the information required to be disclosed on invoices under the Fur Products Labeling Act and Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

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

9. Failing to set forth on invoices the item number or mark assigned to fur products.

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 any fur product, and which:

1. Fails to set forth in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(a) of the Fur Products Labeling Act.

2. Falsely or deceptively identifies any such fur product as to the name or designation of the animal or animals that produced the fur contained in the fur product.

3. Fails 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 words "Dyed Lamb".

4. Fails to set forth the term "Natural" as part of the information required to be disclosed in advertisements under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe 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

MODEL HOME FURNITURE CORPORATION ET AL.

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

Docket C-580. Complaint, Sept. 11, 1963—Decision, Sept. 11, 1963

Consent order requiring retail furniture dealers in Washington, D. C., to cease representing falsely, through use of their corporate name and in advertising, that their principal business was that of decorating and furnish-

ing model homes and apartments and that furniture offered for sale had been obtained from model homes; and to cease representing falsely in newspaper advertising that excessive amounts were regular retail prices or "original cost", that certain furniture was "DANISH" and "completely guaranteed", and that merchandise was limited in quantity and as to time on 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 Model Home Furniture Corporation, a corporation, and Evan Sax and Audrey Sax, 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 Model Home Furniture Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 907 Seventh Street, N. W., in the city of Washington, District of Columbia.

Respondents Evan Sax and Audrey Sax are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of furniture, home furnishings and other products 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 merchandise, when sold, to be shipped from their place of business in the city of Washington, in the District of Columbia, to purchasers thereof located in various 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 merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their furniture, home furnishings, and merchandise, the respondents have made numerous statements in advertisements inserted in newspapers having a wide circulation in the District of Columbia, the States of Maryland and

Virginia, and the various other States of the United States and in advertising materials disseminated and distributed by and through the United States mail.

Among and typical, but not all inclusive, of said statements are the following:

DANISH AND MODERN FURNITURE PURCHASED FOR MODEL HOME DISPLAY Never Been Used Completely Guaranteed (Compare with Groups Sold in Stores for $1500) DECORATOR WILL SELL FOR $799 * * * Interior Decorator for Stoneridge Estate, Winslow Hills, Indian Spring Homes and Kingswood, liquidating these exclusive styles at a fraction of their value.

DANISH MODERN FURNITURE Purchased by Decorator for Model Home Never Been used — Completely Guaranteed Worth About $1500 — Sell For $799 * * * Stored in Furniture Warehouse.

We are removing the furniture of a housing project display home in your area.

* * * complete living room bedroom, and dinette suites for $399. The original cost was $700. You save over $300! * * * call me before next week since we must remove it from the home by then * * * Audrey Sax, Interior Decorator, Model Home Furniture Corp.

Several of the housing project sample homes and apartments which I have decorated are being closed. The luxurious furnishings are for sale at about half the price you would have to pay in stores. * * * Stores sell this group for about $700. *I will give you a $300 discount!* You can have everything for $399 * * * I want you to come in to see this furniture now. I have just 8 groups and I know they will be sold by next week because the builders who own them are going to run large ads in newspapers * * * Audrey Sax Interior Decorator.

DANISH MODERN FURNITURE * * *. Compare to Styles Offered by Stores for $1500 * * *. SALE PRICE $799.

PAR. 5. Through the use of the corporate name "Model Home Furniture Corporation" standing alone or through the use of the aforesaid statements and representations, and others similar thereto, separately, or in connection with said corporate name, respondents represent and have represented directly or by implication that their principal business is that of decorating and furnishing model homes and apartments.

PAR. 6. In truth and in fact:

Respondents' principal business is not that of decorating and furnishing model homes and apartments. Respondents' principal business is that of advertising, offering for sale and selling furniture and home furnishings at retail to the general public.

Therefore, the use of the corporate name "Model Home Furniture Corporation", standing alone, or in connection with the statements and representations set out in Paragraph 4 hereof and referred to in

Paragraph 5 hereof, and the aforesaid statements and representations alone, were and are false, misleading and deceptive.

PAR. 7. Through the use of the statements and representations set out in Paragraph 4 hereof and others similar thereto, but not included herein, respondents represent and have represented directly or by implication that:

(a) Furniture and home furnishings offered for sale by respondents have been withdrawn or obtained from model homes or apartments.

(b) The higher stated price set out in said advertisements in connection with the words "Compare with groups sold in stores for" is the price at which furniture and home furnishing groups of like grade and quality were and are usually sold at retail in the trade areas where the representation is made, and that purchasers of respondents' merchandise would realize a saving of the difference between the represented $1,500 price and respondents' price of $799.

(c) The higher stated price set out in said advertisements in connection with the words "original cost" was the price at which the advertised merchandise had been usually and customarily sold by respondents at retail in the recent, regular course of business and that the difference between the higher and lower price represented savings to purchasers from respondents' usual and customary retail price.

(d) The higher stated prices set out in said advertisements in connection with the terms "worth about" and "Stores sell this group for" were the prices at which the merchandise referred to was usually and customarily sold at retail in the trade area where the representations were and are made, and, through the use of said amounts and the lesser amounts, that the difference between said amounts represents a saving to the purchaser from the prices at which said merchandise was usually and customarily sold in said trade area.

(e) Certain furniture was manufactured in the country of Denmark.

(f) Merchandise offered for sale was unconditionally guaranteed for an unlimited period of time.

(g) The quantity of certain merchandise was limited and that purchasers must order immediately to obtain said merchandise.

PAR. 8. In truth and in fact:

(a) Furniture and home furnishings offered for sale have not been withdrawn or obtained from model homes or apartments. Such furniture and home furnishings have been procured from normal supply sources such as furniture manufacturers.

(b) The higher stated price set out in said advertisements in connection with the words "Compare with groups sold in stores for" is

not the price at which furniture and home furnishing groups of like grade and quality were and are usually sold at retail in the trade area where the representation was made, and purchasers of respondents' merchandise would not realize a saving of the difference between the represented $1,500 price and respondents' price of $799.

(c) The higher stated price set out in said advertisements in connection with the words "original cost" was in excess of the price at which the advertised merchandise had been usually and customarily sold by respondents at retail in the recent, regular course of business and the difference between the higher and lower prices did not represent savings to purchasers from respondents' usual and customary retail price.

(d) The higher stated amounts set out in connection with the words "worth about" and "Stores sell this group for", were not the prices at which the merchandise referred to was usually and customarily sold at retail in respondents' trade area, but were in excess of the price or prices at which the merchandise was generally sold in said trade area, and purchasers of respondents' merchandise did not realize a saving of the difference between the said higher and lower amounts.

(e) The furniture and home furnishings described in said advertisements as "DANISH" and "DANISH MODERN" were not manufactured in the country of Denmark.

(f) The merchandise advertised as "completely guaranteed" was not so guaranteed, and the advertisements failed to set forth the nature and extent of the guarantee and the manner in which the guarantor will perform.

(g) The quantity of merchandise for sale was not limited and the offers of said merchandise did not have to be accepted within a limited time as adequate quantities were available.

Therefore, the statements and representations referred to in Paragraphs 4 and 7 hereof, were and are false, misleading and deceptive.

PAR. 9. In the conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of furniture and home furnishings of the same general kind and character as those sold by respondents.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' merchandise by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair 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 Model Home Furniture Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at 907 7th Street, N. W., in the city of Washington, District of Columbia.

Respondents Evan Sax and Audrey Sax 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 Model Home Furniture Corporation, a corporation, and its officers, and Evan Sax and Audrey Sax, 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 furniture, home furnishings or other merchandise

to persons or firms other than bona fide exhibitors of model homes or apartments, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

a. Using the words "Model Home Furniture" or any other word or words of similar import or meaning as a part of respondents' trade or corporate name.

b. Representing in any other manner, that respondents' principal business is that of decorating and furnishing model homes and apartments.

It is further ordered, That respondents Model Home Furniture Corporation, a corporation, and its officers, and Evan Sax and Audrey Sax, 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 furniture, home furnishings or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

a. Representing, directly or by implication, that furniture or home furnishings offered for sale have been withdrawn or obtained from model homes or apartments; provided, however, that it shall be a defense, hereunder, for respondents to establish the truth of such representations.

b. Representing, directly or by implication, through the use of the words "Compare with groups sold in stores for" or other words or terms of similar import or meaning, or in any other manner, that respondents' merchandise is of a value comparable to any other merchandise retailing at a higher price unless respondents' merchandise is at least of like grade and quality in all material respects as the merchandise with which it is compared and such other merchandise is generally available for purchase at the comparative price in the same trade area or areas where the representation is made.

c. Representing, directly or by implication, that any saving is afforded in the purchase of respondents' merchandise, as compared to the purchase of another's merchandise, unless respondents' merchandise is at least of like grade and quality in all material respects as the merchandise with which it is compared and such other merchandise is generally available for purchase at the comparative price in the same trade area or areas in which the representation is made.

d. Using the words "original cost" or any other words of similar import or meaning, to refer to any amount which is in

excess of the price at which such merchandise has been usually and regularly sold by respondents at retail in the recent, regular course of their business; or otherwise misrepresenting the respondents' usual and customary retail selling price of such merchandise.

e. Using the words "worth", "Stores sell this group for" or any other words of similar import or meaning, to refer to any amount which is in excess of the price or prices at which such merchandise is usually and customarily sold in the trade area where the representation is made; or otherwise misrepresenting the usual and customary retail selling price or prices of such merchandise in the trade area.

f. Representing in any manner that, by purchasing any of their merchandise, customers are afforded savings amounting to the difference between respondents' stated selling price and any other price used for comparison with their selling price, unless the comparative price used represents the price at which the merchandise 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 respondents at retail in the recent regular course of their business.

g. Representing, directly or by implication, through the use of the words "DANISH MODERN", "DANISH" or any other terms or words of similar import or meaning, or in any other manner, that domestically manufactured furniture is manufactured in the country of Denmark; or misrepresenting in any other manner the country of origin of respondents' merchandise.

h. Representing, directly or by implication, that merchandise is guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

i. Representing, directly or by implication, that the quantity of any merchandise is limited or that said merchandise must be purchased within a limited time, where an adequate supply is available.

j. Misrepresenting in any manner the source, price, value, or availability of any item of merchandise or the savings resulting to purchasers thereof.

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

LEO ESSERMAN TRADING AS ESSERMAN CO.

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

Docket C-581. Complaint, Sept. 11, 1963—Decision, Sept. 11, 1963

Consent order requiring a New York City manufacturing furrier to cease violating the Fur Products Labeling Act by failing, on labels and invoices, to show the true animal name of fur, to use the term "Persian Lamb" as required, and to describe fur products which were not artificially colored as "natural"; failing, on invoices, to disclose when fur was bleached, etc.; and to show the country of origin of imported furs; failing in other respects to comply with labeling and invoicing requirements, and furnishing false guarantees that 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 Leo Esserman, an individual trading as Esserman Co., hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Leo Esserman is an individual trading under the name Esserman Co.

Respondent is a manufacturer of fur products with his office and principal place of business located at 231 West 29th Street, New York, New York.

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

PAR. 3. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of

the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed to show the true animal name of the fur used in the fur product.

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

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

(b) The term "Persian Lamb" was not set forth on labels in the manner required by law, in violation of Rule 8 of said Rules and Regulations.

(c) The term "natural" was not used on labels 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.

(d) The term "assembled" was used on labels to describe fur products composed of pieces in lieu of the required terms, in violation of Rule 20(d) of said Rules and Regulations.

(e) Information required under Section 4(2) of the Fur Products Labeling Act and Rules and Regulations promulgated thereunder was not set forth in a legible manner, in violation of Rule 29(a) 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 set forth in handwriting on labels, in violation of Rule 29(b) of said Rules and Regulations.

(g) 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.

(h) 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.

(i) 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 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 fur products covered by invoices 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 imported furs used in fur products.

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

(b) The term "Persian Lamb" was not set forth on invoices in the manner required by law, in violation of Rule 8 of said Rules and Regulations.

(c) The term "natural" was not used on invoices 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.

(d) 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.

(e) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth on invoices in a clear, legible, distinct and conspicuous manner, in violation of Rule 37 of said Rules and Regulations.

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

PAR. 7. Respondent furnished false guaranties that certain of his fur products were not misbranded, falsely invoiced or falsely ad-

vertised when respondent in furnishing such guaranties had reason to believe that fur products so falsely guaranteed would be introduced, sold, transported or distributed in commerce, in violation of Section 10(b) of the Fur Products Labeling Act.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 Leo Esserman is an individual trading under the name Esserman Co., with his office and principal place of business located at 231 West 29th Street, in the city of New York, State of New York.

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

ORDER

It is ordered, That respondent Leo Esserman, an individual, trading under his own name as Esserman Co., or under any other trade name, and respondent's representatives, agents and employees, di-

rectly 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 manufacture for sale, 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. Misbranding fur products by:

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

2. Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form on labels affixed to fur products.

3. Failing to set forth the term "Persian Lamb" on labels in the manner required where an election is made to use that term instead of the word "Lamb".

4. Failing to set forth the term "Natural" as part of the information required to be disclosed on labels under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

5. Setting forth the term "assembled" or any term of like import as part of the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe fur products composed in whole or in substantial part of paws, tails, bellies, sides, flanks, gills, ears, throats, heads, scrap pieces or waste fur.

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

7. Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in handwriting on labels affixed to fur products.

8. Failing to set forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and

Regulations promulgated thereunder on labels in the sequence required by Rule 30 of the aforesaid Rules and Regulations.

9. Failing to set forth separately on labels attached to fur products composed of two or more sections containing different animal fur 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.

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

B. 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 in 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 the term "Persian Lamb" in the manner required where an election is made to use that term instead of the word "Lamb".

4. Failing to set forth the term "Natural" as part of the information required to be disclosed on invoices under the Fur Products Labeling Act and Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

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

6. Setting forth information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations thereunder in a manner which is not clear, legible, distinct and conspicuous.

7. Failing to set forth on invoices the item number or mark assigned to fur products.

It is further ordered, That respondent Leo Esserman, an individual, trading under his own name as Esserman Co., or under any other trade name, and respondent's representatives, agents and employees,

directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any fur product is not misbranded, falsely invoiced or falsely advertised when the respondent has reason to believe that such fur product may be introduced, sold, transported, or distributed in commerce.

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

IN THE MATTER OF

WESTINGHOUSE ELECTRIC CORPORATION

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

*Docket 8053. Complaint, July 20, 1960—Decision, Sept. 12, 1963**

Consent order requiring a manufacturer of electrical devices, equipment and supplies, to cease discriminating in price in violation of Sec. 2(a) of the Clayton Act by such practices as (1) granting to automotive replacement parts wholesalers who purchased in excess of $25,000 worth of its miniature and sealed-beam lamps in a contract year, an additional discount over that allowed to purchasers of smaller amounts; and (2) granting to General Motors Corporation, on purchases resold to car and truck dealers, in competition with replacement parts wholesalers, an additional discount to that allowed such wholesalers.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described has violated and is now violating the provisions of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson Patman Act, approved June 19, 1936, (U.S.C. Title 15, Sec. 13) hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Westinghouse Electric Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal office located at 3 Gateway Center, Pittsburgh, Pennsylvania. Respondent's numerous divisions and corporate subsidiaries are variously located, and engaged in the manufacture, sale and distribution

*Order modifying Final Order, dated Nov. 6, 1963, p. 631 herein.

of electrical devices, equipment and supplies. In 1956 the total value of products and services sold by respondent amounted to $1,525,375,771.

One of the divisions of respondent is the Lamp Division. The Lamp Division is engaged in the manufacture, sale and distribution of electric lamps of various kinds, including automotive miniature and sealed-beam lamps, which respondent sells to various classes of customers.

Respondent in the course and conduct of its business as aforesaid, competes with other manufacturers and sellers of similar automotive miniature and sealed-beam lamps.

PAR. 2. Respondent in the course and conduct of its business as aforesaid, has caused and now causes, the said miniature and sealed-beam lamps to be shipped and transported from the States of location of its various places of business to the purchasers thereof located in States other than the States wherein said shipments originated. Said miniature and sealed-beam lamps have been, and are, sold to different purchasers for use or resale within the United States and the District of Columbia. In the sale of said miniature and sealed-beam lamps, respondent has been, at all times relevant herein, engaged in commerce, as "commerce" is defined in the Clayton Act.

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

For example, among respondent's customers are automotive replacement parts wholesalers who purchase automotive miniature and sealed-beam lamps pursuant to the terms and conditions set forth in respondent's "Distributor Franchise For Miniature and Sealed Beam Lamps", which is also identified as respondent's "Form DA" franchise. According to the terms and conditions of the aforesaid distributor franchise miniature and sealed-beam lamps are sold to form DA distributors at prices appearing in the current "Westinghouse Schedule of Net Prices to Wholesalers—Automotive, Marine and Aircraft Lamps." Such prices are not discounted on orders of less than $250. On orders of $250 or more for shipment in entirety at one time to one place a discount of 18% is granted from the prices appearing in the aforesaid price schedule. An additional discount is available, according to the terms and conditions of the distributor franchise, as follows:

If the Distributors net purchases of Westinghouse Miniature and Sealed Beam Lamps during any contract year reach $25,000 net value, an additional discount

of 5% of the net value of each invoice (after all other applicable discounts except cash discount have been deducted) will be allowed and a retroactive credit adjustment will be made on all net purchases during the contract year. In such cases the additional discount will be allowed during the subsequent contract year.

The granting of such an additional discount results in the charging of higher and less favorable prices to purchasers whose total annual dollar volume of purchases is less than $25,000. As of January 1, 1957, respondent had executed DA franchises with 752 distributors of which 719 purchased less than $25,000 worth of miniature and sealed-beam lamps annually and 33 of which purchased $25,000, or more, worth of miniature and sealed-beam lamps annually.

As another example, the General Motors Corporation, through its AC Spark Plug Division, purchases for replacement resale automotive miniature and sealed-beam lamps pursuant to the terms and conditions of a negotiated contract. According to the terms and conditions of the aforesaid contract, automotive miniature and sealed-beam lamps are sold to the General Motors Corporation at prices appearing in the current "Westinghouse Schedule of Net Prices to Wholesalers—Automotive, Marine and Aircraft Lamps" less discounts of 29.2%. Such automotive miniature and sealed-beam lamps are then sold by the General Motors Corporation, to General Motors car and truck dealers, in competition with automotive replacement parts wholesalers.

The granting of such an additional discount, by respondent, to the General Motors Corporation results in the charging of lower and more favorable prices to the General Motors Corporation than the higher and less favorable prices charged to other wholesaler purchasers competitive with the General Motors Corporation and who purchase from respondent pursuant to the terms and conditions set forth in respondent's "Distributor Franchise For Miniature and Sealed Beam Lamps."

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

PAR. 5. The aforesaid acts and practices of respondent constitute violations of subsection (a) of Section 2 of the Clayton Act, as

amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. Title 15, Sec. 13).

Mr. Richard B. Mathias for the Commission.

Cravath, Swaine & Moore, by *Mr. John D. Calhoun*, New York, N. Y., for respondent.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER.

JULY 24, 1962

The complaint filed herein on July 20, 1960, charges respondent with violating subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, by discriminating in price between different purchasers of its automotive miniature and sealed-beam lamps of like grade and quality by selling said products at higher and less favorable prices to some purchasers than the same are sold to other purchasers, many of whom have been, and now are, in competition with the purchasers paying the higher prices. On August 10, 1961, the parties to this proceeding filed with the Secretary of the Federal Trade Commission a notice of their intention to dispose of this proceeding by entering into an agreement containing a consent order to cease and desist, as then required by the Rules of Practice for Adjudicative Proceedings. One July 16, 1962, the parties submitted to the undersigned an agreement dated December 28, 1961, which purports to dispose of all the issues raised by the complaint herein as to all parties involved. Said agreement has been signed by the vice president of respondent corporation and by counsel for both parties, and has been approved by the Director of the Bureau of Restraint of Trade of this Commission. The said agreement was submitted to the above-named hearing examiner for his consideration, in accordance with § 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings published May 6, 1955.

Respondent, pursuant to the aforesaid agreement, has admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondent waives any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. The parties have, *inter alia*, by such agreement covenanted:

1. The order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing;

2. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement;

3. The complaint may be used in construeing the terms of said order;

4. The agreement is entered into subject to the condition that the initial decision based thereon shall be stayed by the Commission unless and until the Commission disposes of Docket No. 8514 [p. 632 herein] by an order to cease and desist in substantially the same form as set forth herein, or by other appropriate order to cease and desist or of dismissal;

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

6. The complaint and the order to cease and desist to be entered in accordance with the agreement deal only with sales (i) by respondent of automotive miniature and sealed-beam lamps to customers engaged in the resale or distribution of such lamps to the replacement trade and (ii) for replacement purposes only;

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

8. The following order to cease and desist may be entered in this proceeding by the Commission. It may be altered, modified, or set aside in the manner provided for other orders. The term "purchaser" as used in the agreed upon order to cease and desist herein shall include any purchaser buying directly or indirectly from respondent, or a division, subsidiary or affiliate of respondent by means of group-buying or any related device.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement of December 28, 1961, containing consent order, and it appearing that the order provided for in said agreement covers the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, the agreement is hereby accepted, pursuant to §§ 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings published May 6, 1955; and

The undersigned hearing examiner having considered the complaint herein and the agreement and proposed order, and being of the opinion that the disposition of this proceeding by means of said agreement will be in the public interest, makes the following jurisdictional findings, and issues the following order.

JURISDICTIONAL FINDINGS

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

2. Respondent Westinghouse Electric Corporation is a corporation existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania. The principal office of respondent is located at 3 Gateway Center, Pittsburgh, Pennsylvania;

3. Respondent is engaged in commerce, as "commerce" is defined in the Clayton Act;

4. The complaint states a cause of action against said respondent under the Act hereinabove named, and this proceeding is in the public interest. Now, therefore,

It is ordered, That Westinghouse Electric Corporation, a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in or in connection with the sale for replacement purposes, of automotive miniature and sealed-beam lamps in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

> Discriminating, directly or indirectly, in the price of such automotive miniature and sealed-beam lamps of like grade and quality, by selling to any purchaser at net prices higher than the net prices charged any other purchaser who, in fact, competes in the resale and distribution of said products with the purchaser paying the higher price.

FINAL ORDER

SEPTEMBER 12, 1963

By its order of August 13, 1962, the Commission extended until further order the date on which the initial decision of the hearing examiner herein would become the decision of the Commission; and

The Commission having determined that the conditions set forth in Paragraph 7 of the agreement upon which the initial decision is based have been fulfilled and having concluded that said initial decision is appropriate in all respects to dispose of this proceeding:

It is ordered, That the initial decision of the hearing examiner filed July 24, 1962, be, and it hereby is, adopted as the decision of the Commission.

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

625 Final Order

Order Modifying Final Order

NOVEMBER 6, 1963

Respondent having moved the Commission to modify its Final Order, issued September 12, 1963, for the purpose of including within the initial decision a paragraph inadvertently omitted therefrom, said paragraph being an integral part of the agreement upon which the initial decision is based; and

The Commission, after noting that counsel in support of the complaint does not oppose respondent's motion and, after duly considering said motion, having determined that respondent's request has merit and that good cause has been shown in support thereof:

It is ordered, That this proceeding be, and it hereby is, reopened.

It is further ordered, That the Commission's Final Order, issued September 12, 1963, be, and it hereby is, modified by striking the last two paragraphs of said Final Order and, in lieu thereof, substituting the following paragraphs:

> *It is ordered*, That the initial decision of July 24, 1962, be, and it hereby is, adopted as the decision of the Commission, except that said initial decision is modified by inserting the following paragraph as a subparagraph to paragraph 6 of the covenants of the parties:
>
> > For purposes of this agreement and the order to cease and desist to be entered in accordance herewith, customers engaged in the resale or distribution of automotive miniature and sealed-beam lamps to the replacement trade are defined as such types of customers as were or are (i) purchasing automotive miniature and sealed-beam lamps from respondent under distributor franchise agreements with respondent and (ii) automotive manufacturers purchasing for replacement, rather than original installation, purposes;

ORDER

> *It is ordered*, That Westinghouse Electric Corporation, a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in or in connection with the sale for replacement purposes, of automotive miniature and sealed-beam lamps in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:
>
> > Discriminating, directly or indirectly, in the price of such automotive miniature and sealed-beam lamps of like grade and quality, by selling to any purchaser at net prices higher

than the net prices charged any other purchaser who, in fact, competes in the resale and distribution of said products with the purchaser paying the higher price.

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

IN THE MATTER OF

TUNG-SOL ELECTRIC INC., ET AL.

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

Docket 8514. Complaint, June 27, 1962—Decision, Sept. 12, 1963

Order requiring a major manufacturer of electronic products, including miniature bulbs, sealed-beam lamps and flashers for replacement in automotive vehicles, with main office in Newark, N. J., to cease violating Sec. 2(a) of the Clayton Act by such practices as granting on purchases of automotive flashers to buying group jobbers—whose organizations did not perform the functions of warehouse distributors but were actually devices for facilitating the receipt by the jobber purchasers of the discriminatory prices—the higher price discounts accorded warehouse distributors but not available to nongroup buying distributors in competition with the favored jobbers; and by granting "incentive rebates" based on net purchases to warehouse distributors and redistributors in addition to their functional discounts.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondents named in the caption hereof and hereinafter more particularly designated and described, have violated and are now violating the provisions of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936, (U.S.C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Tung-Sol Electric Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with principal office and place of business located at One Summer Avenue, Newark, New Jersey. Tung-Sol Electric Inc., has divisions and corporate subsidiaries which are variously located and engaged in the manufacture, sale and distribution of electronic products, including miniature bulbs, sealed-beam

lamps and flashers for repair or replacement installation and use in automotive vehicles. Tung-Sol Electric Inc.'s overall product sales during 1959 totaled approximately $72,000,000.

Respondent, Tung-Sol Sales Corporation, a wholly owned and controlled subsidiary of respondent Tung-Sol Electric Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with principal office and place of business located at One Summer Avenue, Newark, New Jersey. Tung-Sol Sales Corporation is engaged in the sale and distribution of the products, including automotive replacement parts, manufactured by its parent Tung-Sol Electric Inc. Tung-Sol Sales Corporation maintains a warehouse stock for such purposes in one warehouse which it operates, located in Atlanta, Georgia; other warehouse stock are maintained elsewhere in warehouses operated by respondent Tung-Sol Electric Inc. Tung-Sol Sales Corporation's sales of automotive replacement products during 1959 totaled approximately $9,000,000.

Respondents Tung-Sol Electric Inc., and Tung-Sol Sales Corporation, in the course and conduct of their business, as aforesaid, have caused and now cause the said automotive miniature bulbs, sealed-beam lamps and flashers to be shipped and transported from the State or States of location of their various manufacturing plants, warehouses and places of business, to the purchasers thereof located in States other than the State or States wherein said shipment or transportation originated. Said products have been and are sold to different purchasers for use or resale within the United States and the District of Columbia, and respondents, in the sale of the said products, have at all times relevant herein been and now are engaged in commerce, as "commerce" is defined in the Clayton Act.

PAR. 2. Respondents classify said different purchasers of their automotive replacement products and extend and set terms and conditions of sale for each such classification as follows:

Jobbers — A purchaser classified as a jobber is normally engaged in reselling said automotive replacement products to automotive vehicle fleets, garages, gasoline service stations, and others in the automotive repair trade serving the general public. Jobbers purchase at a net price set out in respondents' "Jobber Net Price Lists". Respondents sell to approximately 500 such jobber purchasers throughout the United States.

Warehouse Distributors—A purchaser classified as a warehouse distributor normally resells only to jobbers. A warehouse distributor purchases from respondents' "Jobber Net Price Lists", less a 7½%

"warehousing allowance" on purchases of automotive miniature and sealed-beam lamps. The warehouse distributor receives a "Redistribution Allowance", or rebate, of 14% of the jobber net price of automotive miniature and sealed-beam lamps, and 20% of the jobber list price of flashers. To obtain the redistribution allowances the sales must be made by the warehouse distributor to bona fide jobbers approved by respondents' sales representatives. Claims for redistribution allowances must be submitted monthly to respondents. In certain instances upon "certification" that a warehouse distributor does 100% of his business with bona fide jobbers the redistribution allowance is granted as a discount off the warehouse distributors purchase invoice without the required submission of monthly claims.

Redistributor—A purchaser classified as a so-called "redistributor" is a jobber who resells both as a jobber and as a warehouse distributor. A redistributor purchases from respondents' "Jobber Net Price Lists" less the aforesaid warehousing allowance on automotive miniature bulbs and lamps. Each month such a purchaser submits a claim for those sales made as a warehouse distributor and accordingly is allowed thereon the aforesaid applicable redistribution allowances for approved sales.

Respondents grant warehouse distributors and redistributors an "Incentive Rebate" based on net purchases of automotive products according to the following schedule:

Net purchases:	*Incentive rebate, percent*
$3,000 to $9,999	1
$10,000 to $19,999	2
$20,000 and over	3

Respondents sell to 581 such "warehouse distributors" and "redistributors".

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

For example, among respondents' customers are a number of jobbers engaged in so-called "group buying" which are classified by respondents as "warehouse distributors". Such "buying group" members who are the real purchasers, do not perform the normal functions of a

warehouse distributor, but are in fact jobbers buying and reselling as jobbers. Respondents' classification of such buying groups as warehouse distributors results in the granting of higher and more favorable purchase price discounts to these group buying jobbers than are granted to respondents' non-group buying jobber customers who purchase at respondents' regular jobber prices and do not receive the additional discounts available to respondents' warehouse distributor classification. Many of these group buying jobbers are in competition with respondents' nongroup buying jobber customers.

As sample illustrations respondents have appointed Cornbelt Automotive Warehouse, Inc., Omaha, Nebraska, Southern California Jobbers, Inc., Los Angeles, California, and Nor-Cal Distributors, Inc., San Francisco, California, as warehouse distributors of their automotive replacement products. These organizations are or have been buying groups through which their jobber members purchased respondents' automotive replacement products at the lower warehouse distributor price which would otherwise not have been available to such jobbers. Purchase transactions between respondents and the individual jobbers have been billed to and paid for through the aforesaid organizations. Said organizations thus have purported to be the purchasers of respondents' products, when in truth and in fact they served only as an agent for the several individual purchasers aforedescribed, and were devices for facilitating the inducement or receipt by the said jobber purchasers from the respondents of discriminatory purchase prices.

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

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

Mr. Richard B. Mathias and *Mr. John Perry*, counsel supporting the complaint.

Howrey, Simon, Baker & Murchison, by *Mr. Harold F. Baker* and *Mr. David C. Murchison*, Washington, D. C., attorneys for respondents.

Mr. Harry G. Mason and *Mr. Charles Rupprecht*, Newark, New Jersey, of counsel.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

MAY 13, 1963

HISTORY OF CASE

Complaint was issued in this proceeding against the two corporate respondents named in the caption on June 27, 1962, charging them with a violation of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U.S.C. 13). After describing the activities of these respondents in the sale and distribution of automotive replacement parts, the complaint charges that the respondents have been engaged in commerce, as "commerce" is defined in the Clayton Act, in the sale of automotive miniature bulbs, sealed-beam lamps and flashers.

The complaint goes on to charge the respondents with discriminatory practices with respect to the sale of miniature and sealed-beam lamps and flashers.

By answer filed July 25, 1962, respondents, while making certain admissions, denied a number of material allegations of the complaint and by further answer raised certain affirmative defenses.

By order dated October 12, 1962, a prehearing conference was set by the hearing examiner to consider simplification and clarification of the issues, stipulations, admissions, and other matters to expedite the trial of the case. At the prehearing conference held on October 30, 1962, counsel for the respondents indicated that a drastic change in sales practices had taken place since the matter had been investigated by Commission personnel. On the strength of that change, he felt that a continuation of this proceeding would not be in the public interest. As a result, a second prehearing conference was scheduled to hear Commission counsel's attitude in the light of this change in sales practices.

At the second prehearing conference, held on November 23, 1962, counsel supporting the complaint advised that he wished to go to trial. Counsel for the respondents, however, argued that a dismissal of the complaint as to miniature bulbs and sealed-lamps was appropriate and if it were granted, the respondents would not contest a cease and desist order with respect to flashers. He proposed to file a formal motion for dismissal of the complaint as to the first two products coupled with a stipulation of facts sufficient to cover a cease and desist order with respect to flashers. In support of the motion to dismiss, counsel for respondents indicated that several affidavits would be filed

setting forth the factual basis for the motion. Counsel supporting the complaint was asked:

HEARING EXAMINER HINKES: Do you disagree with them [the supporting affidavits] or are you going to contest their factual basis?

MR. MATHIAS: No.

HEARING EXAMINER HINKES: Well, it seems to me then that conceivably we do have a purely legal issue, whether the facts thus stated constitute a legal basis for dismissal for abandonment, and if I should so find then conceivably we would not have to make as many trips or perhaps any trips, I don't know, and to that end, of course, I think our effort should be directed at this moment.

MR. MATHIAS: Yes — excuse me.

HEARING EXAMINER HINKES: Yes, go right ahead.

MR. MATHIAS: I believe just as I have listened to the discussion so far, if you find that the abandonment does constitute a defense and a cause for dismissal of the two products involved therein, it is my understanding that the case would pretty much be over right about that point.

HEARING EXAMINER HINKES: Yes.

MR. MATHIAS: As to the third product involved in this, Mr. Baker either commented that there was not too much, too great a dispute involved in that particular item.

Accordingly, on November 26, 1962, counsel for the respondents filed a "Motion for Partial Dismissal of Complaint" with three affidavits attached thereto (Schulte, Kirchner and Bennett), together with a memorandum in support of the motion. In addition, a stipulation, signed only by respondents' counsel and not by Commission counsel, was submitted with respect to the respondents' practices in connection with the sale of flashers, and a proposed order to cease and desist discriminatory pricing practices with respect to the flashers.

On November 30, 1962, Commission counsel filed their answer to the respondents' motion, asking that the motion be denied. Among other things the answer stated:

If the hearing examiner were to grant respondents' motion to dismiss, it would amount to allowing respondents to present part of their case without the necessity of formal hearings and without allowing counsel supporting the complaint to participate in the taking of testimony and presentation of evidence. Counsel supporting the complaint would have no opportunity to cross examine any persons who prepared and signed any of the affidavits submitted in support of the motion to dismiss.

A third prehearing conference was thereupon held January 15, 1963. At that prehearing conference the hearing examiner stated that he was "somewhat at a loss to understand the posture of this case * * * ." Here called the second prehearing conference at which the legal issue of abandonment was in dispute but not the factual issues

set forth in the affidavits accompanying the motion to dismiss. The hearing examiner stated:

On the record it does not appear to me quite clear as to whether or not the affidavits, that is, the facts in these affidavits, are now being contradicted or not by Commission counsel * * *.

By way of reply (Tr. 45) Commission counsel stated "* * * our concern is not that we have any controversy of facts in the course of the events that have occurred. There is perhaps an issue of fact or an issue of a conclusion to be drawn from the facts * * * ."

The transcript goes on:

HEARING EXAMINER HINKES: Are you speaking of facts—let us put it that way—the chronology of the events as contained in the affidavits—is that the idea?

MR. MATHIAS: That is correct.

HEARING EXAMINER HINKES: Rather than any construction that can be put upon any intent?

MR. MATHIAS: Correct—that is much better stated than I could have stated it. It is not the facts contained therein, but the motive or the fact [t]hat will occur in the future.

HEARING EXAMINER HINKES: I understand. Now, let me put it this way, however, Mr. Mathias. Are you satisfied with the chronology of events contained in these affidavits so that we can proceed simply to a determination of the legal issue of abandonment or do you prefer to have hearings to develop any change—any shade of interpretation that we care to put upon the facts contained in these affidavits?

Counsel for the respondents then (Tr. 51) offered to produce the affiants in the event there were questioning required concerning the affidavits. Commission counsel replied that the facts set forth in these affidavits were not really going to be contested. Commission counsel hinted (Tr. 53) at "other facts" which would require hearings.

The hearing examiner then stated:

* * * apparently, there is no necessity for a hearing to prove the facts that are averred in these affidavits, since they are not really being disputed. However, you tell me that in addition there are some other facts not mentioned which you think you can prove, that is, Commission counsel can prove, which will militate against a dismissal for abandonment. I cannot tell you whether you should proceed to prove these facts. I can only say that if you think you would like to have that in the record before I make my ruling, then we have got to hold hearings for that purpose.

MR. CORKEY: Well, I do not know that it would be necessary to hold hearings. I suppose that we could counter his affidavits with affidavits of our own from witnesses that we would bring forward.

* * * * * * *

* * * I think that we would, probably, be inclined at this point to stand on the fact that these affidavits we do not believe give any basis for a plea of abandonment.

At the same prehearing conference, there was a discussion of the scope of the order in the event the complaint was dismissed as to miniature bulbs and sealed-lamps.

HEARING EXAMINER HINKES: * * * Let us assume, for the purpose of discussion, that I should agree that abandonment took place as to the miniature bulbs and lamps—I see those are the two products involved—sufficient to warrant a dismissal of the complaint as to those two products, we have from the respondents an offer to consent to an order which would prohibit the illegal practices with respect to flashers.

* * * * * * *

* * * would you want to have hearings of any kind to establish a record basis for an order which would encompass more than flashers, even though only flashers were involved in the illegal practices that have not been abandoned?

* * * * * * *

MR. MATHIAS: I do not believe that hearings relative to the scope of the order extending beyond flashers would, necessarily, be required at this juncture of the case.

* * * * * * *

But I do not think that I would make any strong argument immediately as to including miniature bulbs and lamps within an order on stipulation regarding flashers.

* * * * * * *

MR. BAKER: As I understand it, Commission counsel will appeal only on the assumed findings by your Honor of abandonment with respect to the two products and would not contest the scope of the order on flashers. As I understand it, that is his position.

HEARING EXAMINER HINKES: * * * is that correct?

MR. MATHIAS: Yes.

Thereafter, on January 28, 1963, complaint counsel filed a supplemental reply to the respondents' motion for dismissal. In it was stated:

Counsel supporting the complaint must admit that they are in no position to take issue with the affidavits filed by respondents outlining the so-called "one price" system. The investigation on which the complaint is based ended sometime before the changes now averred took place * * *. For the purpose of this part of our argument we accept the fact that there has been a change. But, even accepting the statements made regarding the change, we must reject the conclusion that these statements afford any proper basis for a claim of abandonment.

Two appendices were attached to the supplemental reply. Appendix A was part of the prehearing conference transcript. Appendix B was a notice issued by the respondents on April 12, 1962, concerning their discontinuance of service allowances.

On February 7, 1963, respondents filed a reply brief in support of their motion for dismissal. In it they stated they had no objection

to the hearing examiner's consideration of Appendix B of complaint counsel's supplemental reply, and admitted its authenticity.

Finally, on April 17, 1963, respondents filed a motion for leave to file certain admissions in connection with respondents' alleged violation of Section 2(a) of the Robinson-Patman Act with respect to flashers. Complaint counsel having no objection thereto, the motion was granted by order of the hearing examiner dated April 23, 1963, and the admissions incorporated in the record.

On the record thus constituted, including the complaint, the answer, the motion for partial dismissal and the uncontested affidavits attached thereto, the Appendix B attached to complaint counsel's supplemental reply, the admissions by respondents with respect to their sale of flashers, and the statements of record by counsel, the hearing examiner concludes that respondents' motion for partial dismissal should be granted, their conditional offer of an order covering flashers be accepted, and an initial decision rendered to such effect.

FINDINGS OF FACT

The Parties

1. Respondent, Tung-Sol Sales Corporation, is the wholly owned sales subsidiary of respondent, Tung-Sol Electric Inc. Tung-Sol Electric Inc., is a corporation organized and doing business under the laws of the State of Delaware with its principal office and place of business located at 1 Summer Avenue, Newark 4, New Jersey. Tung-Sol Sales Corporation is a corporation organized and doing business under the laws of the State of New York with its principal office and place of business located at 1 Summer Avenue, Newark 4, New Jersey.

2. Respondent, Tung-Sol Electric Inc., controls the sales policy of Tung-Sol Sales Corporation.

Automotive Flashers

3. Respondents have been engaged and are presently engaged in the manufacture, sale, and distribution of flashers for repair or replacment installation and use in automotive vehicles. Automotive flashers are the activating device in the directional signal used in automotive vehicles. Tung-Sol's gross sales of automotive flashers in the replacement market in the year 1961 were approximately $3,320,000. Flashers are sold by respondents to jobbers and warehouse distributors located in various States of the United States for resale in the replacement market.

4. Respondents have sold and now sell their automotive flashers in commerce as "commerce" is defined in the Clayton Act, as amended, to customers located throughout the United States.

5. Respondents have sold and do sell their flashers to jobbers and to distributors. Respondents sell flashers to approximately 500 jobber customers throughout the United States and to approximately an equal number of warehouse distributors.

Purchasers classified as jobbers are normally engaged in reselling said flashers to automotive vehicle fleets, garages, gasoline service stations, and others in the automotive repair trade.

Purchasers classified as warehouse distributors normally resell only to jobbers.

Warehouse distributors receive a "redistribution allowance" from respondents in the amount of 20% off the jobber list price for flashers. Warehouse distributors submit monthly claims to respondents for such redistribution allowances based upon their resales to jobbers. In certain instances upon "certification" that a warehouse distributor does 100% of his business with bona fide jobbers the redistribution allowance is granted as a discount off the warehouse distributor's purchase invoice without the required submission of monthly claims.

Some of such warehouse distributor customers of respondents are composed of jobbers who either own and control, or are members of a group, which group collectively constitutes the warehouse distributor, sometimes referred to as a "buying group." The members or owners of said "buying groups" compete with jobber customers of respondents, which jobber customers pay jobber list price for flashers as compared to respondents' selling price to said buying groups of jobber list price less 20%. Some of such jobber owned and controlled entities, sometimes known as "buying groups," do not operate as warehouse distributors or perform functions in the redistribution of flashers.

The result of the foregoing is the granting by respondents of higher and more favorable purchase price discounts to jobber members of said groups than are granted by respondents to competing jobber customers not affiliated with a "buying group."

Respondents grant and have granted to competing customers incentive rebates on net purchases of flashers according to the following schedule:

Net purchases:	*Incentive rebate, percent*
$10,000 to $24,999	2
$25,000 to $49,999	3
$50,000 and over	4

6. Respondents, in the course and conduct of their business as aforesaid, have been and now are discriminating in price between different purchasers of their automotive flashers of like grade and quality, by selling said products at higher and less favorable prices to some pur-

chasers than the same are sold to other purchasers, many of whom have been and now are in competition with the purchasers paying the higher prices.

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

Sealed-Beam and Miniature Lamps

8. Prior to January 1, 1962, Tung-Sol Electric Inc., and Tung-Sol Sales Corporation and all of their major competitors, including particularly General Electric Company and Westinghouse, sold sealed-beam and miniature lamps to the automotive replacement market on the basis of a dual price structure. Historically, the industry has sold miniature bulbs and sealed-beam lamps on such a dual price structure for approximately 40 years. Basically, this price structure consists of two levels, namely, warehouse distributors and jobbers. Warehouse distributors receive from manufacturers redistribution allowances based upon services rendered to the manufacturers in connection with their resale of the merchandise to jobbers. The effect of this pricing structure is to accord to warehouse distributors lower net prices than to jobbers (Schulte p. 1).

9. The General Electric Company is by far the leading and dominant manufacturer and seller of sealed-beam lamps and miniature bulbs. It is estimated that General Electric and their agents have about 800 salesmen calling upon the warehouse distributor and jobber trade. Tung-Sol has approximately 40 salesmen calling upon this class of trade (Schulte p. 2; Kirchner p. 4).

10. On January 1, 1962, the General Electric Company put into effect a revolutionary change in distributional patterns and pricing structure in the miniature bulb and sealed-beam lamp replacement market. Thereafter, and continuing to date, General Electric sold sealed-beam lamps and miniature bulbs to all customers, irrespective of classification or function, at a single, uniform price. As a result of this drastic change by General Electric, Tung-Sol undertook a reevaluation of its pricing practices and reached a firm decision on or about March 15, 1962, to adopt, effective April 2, 1962, a one price policy to all of its sealed-beam lamp and miniature bulb replacement customers irrespective of classification or function (Schulte p. 2).

11. The price change which was effective April 2, 1962, was publicized by a company release dated April 12, 1962 (Appendix B of complaint counsel's supplemental reply), in which it was stated:

The action of competition as of April 2, 1962, makes it necessary for us to hold in abeyance our service allowance program. As of April 2, 1962, consider article 1 of the warehouse distributor contract to be temporarily void.

12. As a result of adoption of a strict one-price policy effective April 2, 1962, Tung-Sol has experienced a revolution in its distributional patterns in that it has lost some of its larger warehouse distributor customers. This has occurred because jobbers who historically and usually purchased from warehouse distributors now purchase directly from Tung-Sol or any other manufacturer of miniature or sealed-beam lamps at precisely the same price as warehouse distributors (Schulte p. 2).

13. For some years prior to April 2, 1962, when Tung-Sol sold to jobbers and warehouse distributors at different prices, it did not sell to any warehouse distributors characterized as "paper wholesalers," *i.e.*, those who did not perform a bona fide redistributional function. Prior to April 2, 1962, all Automotive Parts cases with one exception were cases involving so-called "warehouse distributors" who did not perform any bona fide redistributional functions and whose ownership, in one form or another was held by jobbers. The one exception was the case of *Alhambra Motor Parts, et al* v. *FTC*, which was on appeal to the Ninth Circuit Court of Appeals on April 2, 1962. An opinion in this case was rendered by the Court of Appeals on October 9, 1962, remanding the proceedings, CCH Trade Reg. Rep. ¶ 70,496 [7 S.&D. 550]. Therefore, at the time of Tung-Sol's decision to go to a one-price policy, and to date, there had been no final adjudication as to the legality of a two-price structure in connection with warehouse distributors performing bona fide redistribution functions in those situations where a warehouse distributor was owned in whole or in part by jobbers, and Tung-Sol did not have reason to believe that its dual pricing policy was certainly illegal (Schulte p. 3).

14. Prior to January 1, 1962, Tung-Sol granted to jobbers and warehouse distributors incentive rebates of from 1% to 3% discount from net purchase prices based on the volume of purchases. Effective January 1, 1962, long prior to the issuance of the Complaint herein, such incentive rebates were discontinued and Tung-Sol has no intent to reinstate such "incentive rebates" or any other "incentive rebates" or volume discounts, according to its executives (Schulte p. 4).

15. Top management officials state that Tung-Sol has no intention of reinstituting a dual price system or selling to jobbers and warehouse distributors at differing prices, or selling to any competing

customers in the replacement market at different prices. The adoption by Tung-Sol of a one-price system and the discontinuance of the 1% to 3% incentive rebate is considered by the management of Tung-Sol as a permanent change in pricing policy in the replacement market. Additionally, it is the considered and firm opinion of the respondents that the revolutionary change that has taken place in Tung-Sol marketing policies, along with the marketing policies of the rest of the sealed-beam lamp and miniature bulb industry, is a permanent change and precludes a return to a dual-price structure in the replacement market. This is so for several reasons. First, the change that has taken place has already resulted in a drastic realignment of customers with many of the larger warehouse distributors giving up entirely the business of selling sealed-beam lamps and miniature bulbs. Additional customers have been obtained at the jobber level and it would be extremely difficult to withdraw from these jobbers the privilege of buying at the distributors' prices. Any such attempt would injure the respondents seriously. Second, the dominance of General Electric and its actions in revolutionizing its distributional and pricing policies in the replacement market render it impossible for Tung-Sol, from a practical standpoint, to return to a dual-price system based on classification of customers even if Tung-Sol desired to do so. (Schulte p. 4.)

16. The decision of Tung-Sol to abandon its dual-pricing structure based on classification of customers was not influenced by the investigation of the Federal Trade Commission. The possibility of a Federal Trade Commission proceeding against Tung-Sol "was never discussed" in connection with any of the deliberations preceding Tung-Sol's abandonment (Kirchner p. 5–6). This is conclusively shown by Tung-Sol's continuation of a modified dual-pricing structure in connection with one of its other automotive products, namely flashers (Schulte p. 5).

17. Tung-Sol and its predecessor have been engaged in the sale of automotive lamps for over 50 years and until the instant complaint Tung-Sol has never been proceeded against in any Federal Trade Commission action (Schulte p. 6).

DISCUSSION

Abandonment

The law with respect to the defense of abandonment is relatively well settled.

It is, of course, axiomatic that mere discontinuance of a challenged practice does not render the controversy moot or estop the Commission

from entering an order to cease and desist.[1] Basically, determination as to whether the public interest requires the issuance of an order in cases where challenged practices have been abandoned lies in the exercise of a sound discretion by the Examiner and the Commission,[2] subject only to the caveat that "[t]his discretion must be confined, however, within the bounds of reasonableness." [3]

As stated in *National Lead Co.* v. *Federal Trade Commission*, 227 F. 2d 825, 839–40 (7th Cir. 1955):

> While the Commission is vested with a broad discretion to determine whether an order is needed to prevent the resumption of unlawful acts which have been discontinued, this "discretion must be confined * * * within the bounds of reasonableness." (Quoting from *Marlene's, Inc.* v. *Federal Trade Commission*, 216 F. 2d at p. 559).
>
> This rule of reasonableness requires something more than a mere guess or suspicion contrary to the evidence and to the finding of the trial examiner that a resumption of discontinued practices may not reasonably be anticipated. * * *

The principal elements which must be established to sustain the defense of abandonment are:

(1) That there has been a voluntary and good faith abandonment by respondents;

(2) That the challenged practices have been surely stopped under circumstances which assure that there is no reasonable likelihood of resumption of said practices by respondents, thus rendering the issuance of an order unnecessary.

The timing of abandonment has not necessarily been a determinative factor as to a respondent's voluntary and good faith conduct or a finding as to the likelihood of resumption. In *Firestone Tire & Rubber Co.*, Docket No. 7020, 55 F.T.C. 1909 (1959), the respondent did not abandon the practice in question until *after* the issuance of the

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[1] *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 Commission* 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).

[2] *Marlene's, Inc.* v. *Federal Trade Commission*, 216 F.2d 556, 559–60 (7th Cir. 1954); *Keasbey and Mattison Co.* v. *Federal Trade Commission*, 159 F.2d 940, 951 (6th Cir. 1947); *Deer* v. *Federal Trade Commission*, 152 F.2d 65, 66 (2d Cir. 1945). This discretion is to be exercised in view of all the facts and circumstances surrounding the alleged discontinuance. *Eugene Dietzgen Co.* v. *Federal Trade Commission*, 142 F.2d 321, 330–31 (7th Cir. 1944); *Guarantee Veterinary Co.* v. *Federal Trade Commission*, 285 Fed. 835, 860 (2d Cir. 1922).

[3] *Marlene's, Inc.* v. *Federal Trade Commission, supra*, cited and followed in *Stokely Van Camp, Inc.* v. *Federal Trade Commission*, 246 F.2d 458, 464–65 (7th Cir. 1957).

complaint, and yet the Commission upheld the hearing examiner's dismissal of the complaint on the ground of abandonment in view of other factors which precluded "cognizable danger of recurrent violations" (55 F.T.C. at 1920). The Commission stated:

> As we stated in the matter of *Ward Baking Company*, Docket No. 6833 (decided June 23, 1958), dismissal is rarely warranted in cases where a party waits until the Commission has acted and only then discontinues his illegal practice. We also pointed out in that case and in the matter of *Argus Cameras, Inc.*, Docket No. 6199 (decided October 20, 1954), that the Commission, in the exercise of its proper discretion, may dismiss a complaint even though the discontinuance takes place after proceedings have been initiated, where there is a clear showing of unusual circumstances which in the interest of justice do not require entry of an order (55 F.T.C. at 1918).

Conversely, it is to be noted that "[t]he fact that a respondent has discontinued an illegal practice even prior to the issuance of a complaint does not prevent the Commission from issuing a cease and desist order." *Argus Cameras, Inc.*, Docket No. 6199, 51 F.T.C. 405, 406 (1954). Thus in final analysis, the key determinative question is not the timing but rather the likelihood of the resumption of the questioned practice, as the main goal of the Commission is to protect the public against continued or future violations of the statutes it administers.

1. Respondents Voluntarily and in Good Faith Abandoned the Challenged Practices

The Commission's complaint, dated June 27, 1962, was served on respondents on or about July 3, 1962 (Schulte p. 1). Respondents abandoned some of the challenged practices on January 1, 1962, and abandoned the practices which constitute the major part of the Commission's complaint effective April 2, 1962, as a result of a decision reached on or about March 15, 1962. Tung-Sol's abandonment decision on or about March 15, 1962, "* * * was in no way, shape or manner influenced by the investigation of the Federal Trade Commission."

The abandonment of the challenged practices by respondents was with respect to two of its three automotive items, namely bulbs and lamps. The third automotive product manufactured and sold by respondents is flashers. There was no abandonment as to this product and respondents have continued to date the practices challenged in the complaint with respect to flashers (Schulte, p. 5). If, as stated in *Ward Baking Co.*, Docket No. 6833, 54 F.T.C. 1919 (1958), the

motivating force behind respondents' decision was to "avoid the issuance of an order" (54 F.T.C. at 1921), then logic dictates that respondents' abandonment as to bulbs and lamps would have been extended likewise to flashers.

Respondents' good faith is further shown by their offer to admit a prima facie case against them and the entry of a cease and desist order with respect to the flashers.

The nature of the change in respondents' business resulting from abandonment of the challenged practices was far-reaching and constituted a drastic upheaval of the historic patterns of distribution. Old and valued customers were lost and a new pattern of distribution has been set up with the acquisition of many new jobber customers. Thus discontinuance in this case does not involve the abandonment of a practice that was outmoded and was to be discarded in any event. Unlike an advertising theme that has run its course and is to be replaced in the normal course of business, the change of respondents was one which literally "shook" the very foundations upon which distributional patterns had rested for 40 years.

Respondents' abandonment was not, and could not reasonably be suspected to be, based upon a clear understanding by respondents that the practices challenged were illegal. The thrust of the complaint is that the respondents sold bulbs and lamps to certain customers classified as warehouse distributors and that such warehouse distributors in fact constituted "buying groups" of jobbers and hence the sale to such "warehouse distributors" was in actuality a sale to a jobber. Illustrative of such customers, it is alleged, is Southern California Jobbers, Inc., Los Angeles, California (Complaint, Par. Three).

The *Alhambra* case was pending in the courts at the time of abandonment by respondents, and if respondents had any intention of continuing their dual-price structure in the future and selling, for example, to Southern California Jobbers as a warehouse distributor and at lower prices than it sold to non-member jobbers, then prudence would have dictated awaiting the outcome of that case prior to any abandonment.

Absence of knowledge that a questioned practice was clearly unlawful plus abandonment notwithstanding this fact constitutes a powerful showing of good faith. Thus, in the *Argus* case, *supra*, the Commission held that abandonment by Argus subsequent to complaint was in good faith because, *inter alia*, Argus did not have reason to

know that the practices challenged were clearly illegal (51 F.T.C. at 408–9).[4]

2. The Challenged Practices Have Been Surely Stopped under Circumstances which Assure There Is No Reasonable Liklihood of Resumption

A. Assurances by Respondents

While assurances *alone* as to future intentions, either in the form of affidavits or otherwise, are not necessarily a sufficient basis to support an abandonment dismissal,[5] it is equally true that bona fide assurances as to future intent are a persuasive factor, especially when coupled with other facts and circumstances which indicate a nonliklihood of resumption. Thus, for example, in a number of cases the Commission has specifically pointed out in the course of denying motions to dismiss on the ground of abandonment that respondents have failed to give assurances as to the future. See, for example, *Colgate-Palmolive Co.*, Docket No. 7660, Opinion of Commission, March 9, 1961 [58 F.T.C. 422, 432], where the Commission stated:

> In the *Argus* case [dismissed on the basis of abandonment], the respondent filed affidavits stating that it had no intention of resuming the practices with which it was charged. Nowhere in this record has the Colgate-Palmolive Company given any such express assurance.

Likewise, in *Browning King & Co., Inc., et al*, Docket No. 7060 [59 F.T.C. 155, 164], the Commission, in denying dismissal on the basis of abandonment, stated: "We have no express assurance from respondents that they will not resume such practices and there is no indication of any unusual circumstances which would support that conclusion".

In *Marlene's, Inc.* v. *Federal Trade Commission*, *supra*, respondents filed an equivocal affidavit stating it had no intention of resuming the complained of practices "on a major scale." Referring to this lack of categorical assurances by respondents, the court held: "Thus, not only is the record devoid of evidence as to petitioners' future intent, but also of any statement as to such intent. On this state of the record, we believe the Commission properly placed the

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[4] The fact that respondents, as a precautionary measure, have filed an answer denying illegality and setting up affirmative defenses, including the defense of abandonment, cannot be cited against acceptance of the abandonment defense. In *Stokely-Van Camp, Inc.* v. *Federal Trade Commission, supra,* the court held:

"Fact (2) is irrelevant. Its irrelevancy is emphasized by the Commission's apologetic statement that no criticism is to be made against respondents (petitioners here) for vigorously defending the position they had taken, which, of course, they had a right to do. It does not follow, however, that one who defends charges before the Commission is, on that account, to be subjected in the future to a cease and desist order because his defense there proves unsuccessful. That would be a policy abhorrent to our sense of justice" (246 F.2d at 465).

[5] *Ward Baking Company,* Docket No. 6833, 54 F.T.C. 1919, 1922 (1958).

burden on petitioners to reveal affirmatively their intentions" (216 F. 2d at 560).

Again, referring to the equivocal affidavit, the court stated:

> We can only speculate as to why these are so phrased, but certainly the Commission on this record, so wanting in candor on this crucial issue, could well be apprehensive that the public interest required an order (216 F.2d at 560).

On the other hand, where surrounding circumstances demonstrate rather clearly the absence of likelihood of resumption, affidavits of intent have been held to be unnecessary. Thus, in *Stokely-Van Camp, Inc.* v. *Federal Trade Commission*, *supra*, the Commission in denying an abandonment dismissal of the complaint noted that there were no affidavits indicating future intentions. The Court of Appeals, reversing the Commission, held the complaint should be dismissed on the ground of abandonment notwithstanding the absence of affidavits of future intent because of a change in industry competitive conditions which rendered a resumption of the questioned practices improbable (246 F. 2d at 465).

That the Commission places substantial weight on sworn assurances of future intent where other circumstances and facts tend to corroborate such assurances is shown by its decision in *Bell & Howell Co.*, Docket No. 6729, 54 F.T.C. 108 (1957), as follows: "The sworn assurances of respondent's responsible officers that the practices will not be revived are * * * persuasive that the 'practices alleged have been surely stopped and there is no liklihood that they will be resumed in the future'" (54 F.T.C. at 109).

In the instant case, respondents' responsible officials have given sworn assurances that respondents have no intention whatsoever of a resumption of the questioned practices. For all of the reasons stated under Point 1 above, these assurances must be found to be in good faith.

B. Changed Business Conditions

In *Sheffield Merchandise, Inc.*, Docket No. 6627, 55 F.T.C. 2027 (1958), the Commission reversed the hearing examiner's dismissal based on abandonment, pointing out that the Commission had no reasonable assurances of non-resumption "by reason of existing industry-wide business conditions" and remanded the case (55 F.T.C. at 2028). On the remand, it was shown that there had been an industry-wide change concerning the use of the term "jeweled" on watches. The hearing examiner again dismissed the complaint on the ground of abandonment, *Sheffield Merchandise Inc.*, Docket No. 6627, 56 F.T.C. 991 (1960), and the Commission affirmed, pointing out:

> One of the points mentioned in our decision to remand was the absence of a showing that industry-wide business conditions had so changed as to warrant a

conclusion that respondents for competitive reasons would not engage again in the alleged practices. We think the record now fully supports such a conclusion. Of particular significance is the evidence before us that members of a Swiss association of watch manufacturers make the only one jewel watch movement sold in this country and that in July, 1956 all members of this organization discontinued their practice of marking the word "jeweled" on such watches (56 F.T.C. at 999).

Conversely, absence of a change in industry-wide conditions has been a factor influencing the Commission's decision not to accept the defense of abandonment. Thus in *Ward Baking Co., supra*, the Commission pointed out that "* * * the same competitive conditions which allegedly induced respondent to initiate the challenged advertising program apparently still exist" (54 F.T.C. at 1922). Likewise, in the first *Sheffield* opinion, and prior to any evidence as to industry-wide changes, the Commission stated the proposition thus:

There is no assurance other than respondents' promise, even though made in good faith, that they will not resume the practices complained about in the future for competitive reasons, because of the *"continued existence in the industry of the practices that led respondents initially to employ the questioned representations.* In such setting, *respondents for compelling competitive reasons would be free again to adopt the same or similar practices,* absent some effective legal restraint." (55 F.T.C. at 2028, emphasis added.)

The contrast to the instant case is striking. By April 2, 1962, the miniature bulb and sealed-beam lamp industry had completely abandoned a dual-price structure. Respondents, of course, prior to the industry-wide change followed industry-wide practice. However, with the revolutionary change that has taken place industry-wide, there exists no overall competitive condition which might prompt or even make feasible a return by respondents to the former practices.

Unusual circumstances exist in the present case. The "* * * competitive conditions that influenced respondent[s] to adopt the practice in the first place have been changed * * * "[6] completely. Respondents were among the first licensees of the General Electric Company more than 40 years ago and at a time when General Electric held all patents on incandescent miniature bulbs, sealed-beam lamps and the machinery and equipment necessary to their manufacture. GE thereby had a 100% monopoly.[7] During that period, General Electric alone set the distributional patterns, including the dual-price structure, which it maintained until January 1, 1962. Perforce, therefore, respondents in their initial entry to the market as an independent manufacturer after the GE patents became available, were required from a practical competitive standpoint to follow the competitive pattern set by GE. Obviously, the unusual and drastic change in

[6] *Firestone Tire & Rubber Co., supra.*

[7] *Cf. United States v. General Electric Co.,* 272 U.S. 476, 480–81 (1926).

industry-wide practices wrought by GE's adoption of a one-price policy on January 1, 1962, removed, and removed surely, the "competitive conditions that influenced respondent[s] to adopt the practice in the first place" (*Firestone Tire & Rubber Co., supra*).

Indeed, the change wrought by GE effectively precludes a return by respondents to a two-price basis as effectively as the "industry-wide adoption of the [FTC] guides" in the *Firestone* case. In the *Firestone* case the Commission held that an agreement by respondent and other members in the industry, subsequent to complaint, to observe industry FTC Guides constituted an industry-wide change in competitive conditions justifying a conclusion that "* * * it is to be expected that the continuing guidance to be afforded by this program will prevent a recurrence" and that there was no "cognizable danger of recurrent violation" (55 F.T.C. at 1920). The Commission also pointed out that the respondent had "* * * taken costly steps to bring itself into line with the new standards" contained in the FTC Guides (*Ibid.*). The names of the tires are embedded in the sidewalls, and thus in changing the names of its tires in compliance with the Guides, Firestone had taken the "costly step" of making new tire molds. Respondents here have likewise made changes which, from a practical standpoint, are more costly than a physical tire mold change. As is shown by the Schulte affidavit, page 5, the changes which respondents made in turning to a one-price distribution system "resulted in a drastic realignment of customers" with many of respondents' customers giving up entirely the business of selling the products in question. While, of course, it might be physically possible to attempt to realign the customers once again in accordance with the old pricing system and to attempt to regain the lost customers, just as it would have been *possible* for Firestone to make once again tire molds bearing the deceptive designations, both situations are drastic enough to warrant the assumption that they will not be reversed. Indeed, the realignment of one's customers is an even more drastic change of commercial behavior than is the mere casting of new molds for one's products changing nomenclature.

A case which contains many significant parallels with the present proceeding is *Bell & Howell Co., supra.* In that case the complaint, issued on February 20, 1957, charged the respondent with illegally enforcing Fair Trade agreements. On January 16, 1957, Bell & Howell announced that effective February 1, 1957, its Fair Trade system would be terminated, and on that date such termination was fully carried out, thus rendering inoperative the methods of enforcement questioned by the Commission. The hearing examiner denied Bell & Howell's motion to dismiss. In overruling the examiner and

dismissing the case, the Commission upheld the defense *which was based on the ground of changed business conditions.*

Again, it was possible for Bell & Howell to Fair Trade in the future; it was possible that Bell & Howell's dominant competitors, including Eastman Kodak, would resume Fair Trade in the future.

In *Ward Baking Co.*, the Commission demonstrated that it is always ready to entertain a showing of changed competitive conditions as a basis for the abandonment defense. In denying the abandonment defense in the *Ward Baking* case, the Commission declared:

> The instant proceeding contains none of the unusual circumstances which existed in the *Argus* case, or any other factors so out of the ordinary that they would call for dismissal. The plain fact is that here we have simply a showing of a discontinuance following the issuance of the complaint and a promise not to resume in the future. *On the other hand, the same competitive conditions which allegedly induced respondent to initiate the challenged advertising program apparently still exist.* Clearly, the Commission would not be required to rely on the promise not to further engage in the practices. (54 F.T.C. at 1921-1922, emphasis added.)

Among the reasons for denying dismissal on the basis of abandonment in *The Grand Union Co.*, Docket No. 6973 (Aug. 12, 1960) [57 F.T.C. 382, 425], the Commission pointed out that "* * * respondent has not given any assurances that it will not again engage in the practice challenged by the complaint or some similar practice, nor can it be said that competitive conditions have so changed that respondent is not likely to engage in such practice."

Similarly, in *Carter Products, Inc.*, Docket No. 7943 (April 25, 1962) [60 F.T.C. 782, 796], the current Commission in upholding the hearing examiner's rejection of the abandonment defense, pointed out the absence of any change in the competitive conditions: "There has been no showing of unusual circumstances which would indicate that entry of an order is unnecessary nor does it appear that there has been any change in the competitive conditions which may have influenced respondents to use advertising of the type under consideration."

In *N. Erlanger, Blumgart & Co., Inc.*, Docket No. 5243, 46 F.T.C. 1139 (1950), one of the reasons for the dismissal on the ground of abandonment was that "* * * the economic conditions in the industry prior to 1944 under which producers of rayon materials felt it necessary to create in the consuming public a demand for products fabricated from rayon yarns no longer exist * * *" (46 F.T.C. at 1144). *National Retail Furniture Ass'n*, Docket No. 5324, 48 F.T.C. 1540 (1951), and *National Coat and Suit Industry Recovery Board*, Docket No. 4596, 47 F.T.C. 1552 (1950), were both also dismissed cases in which the questioned practices took place "* * * under economic con-

ditions which differed materially from those now prevailing * * *" (48 F.T.C. at 1558; 47 F.T.C. at 1568).

Complaint counsel, citing *Hillman Periodicals, Inc.* v. *Federal Trade Commission*, 174 F. 2d 122 (2d Cir. 1949), state that respondents' admitted abandonment is a "partial abandonment" and, therefore, the defense of abandonment is unavailable. In the *Hillman* case respondents were charged with such false and misleading statements as "Complete and unabridged" and "A full-length novel" on the covers of their abridged editions, without indicating that the books were not complete reprints of the originals. Respondents abandoned use of the statement "complete and unabridged" but continued to use the statement "A full-length novel." *Hillman Periodicals, Inc.*, Docket No. 5440, 44 F.T.C. 832 (1948). This is the discontinuance "in part" of which the court speaks (174 F. 2d at 123). Obviously, the abandonment in the present proceeding is not remotely similar. In *Hillman*, respondents abandoned only one of two false and misleading statements relating to the product being considered. In the present proceeding Tung-Sol has abandoned *all* the questioned practices relating to the two products being considered. Therefore, the abandonment here involved can in no way be deemed a "partial abandonment."

C. Other Considerations

Other factors bearing on the liklihood of resumption are the "attitude of respondent towards the proceedings" [8] and "the character of the past violations" of the law, if any.[9]

In the instant case respondents have supplied counsel in support of the complaint with all documents and data requested without requiring resort to compulsory processes.[10] There has been complete cooperation.

Moreover, in its 50-odd years of existence, Tung-Sol has never been proceeded against by the Federal Trade Commission (Schulte, p.6).

Respondents' situation is thus to be deemed in clear contrast to those cases in which assurances of future compliance with the law were held to be vitiated or neutralized by a past history of respondent's misbehavior. In *Consolidated Royal Chemical Corp.* v. *Federal Trade Commission*, 191 F. 2d 896, 898 (7th Cir. 1951), the court

[8] *Eugene Dietzgen Co.* v. *Federal Trade Commission, supra.*

[9] *United States* v. *W. T. Grant Co.*, 345 U.S. 629, 633 (1953).

[10] In *Fred Bronner Corp.*, Docket No. 7068 [57 F.T.C. 771, 779], Hearing Examiner Johnson, in finding abandonment and no likelihood of resumption noted: "The record shows that respondents cooperated to the fullest extent in the course of the investigation, withholding no information and making freely available to the investigator all records and information requested.

upheld the Commission in its refusal to accept respondent's assurances of future compliance on the ground that respondent had already violated the terms of two stipulations made 6 and 16 years previously.

Complaint counsel point out that in respondents' April 12, 1962, notice of change to a one-price policy, this change is referred to as a temporary change. Based on this, it is urged that there can be no finding of a non-likelihood of resumption. However, viewing the drastic and radical change being made and its certain adverse impact on certain old and loyal customers (Kirchner affidavit, p.6), the language employed in the notice is wholly logical and consistent with business objectives. For example, as Kirchner points out in his affidavit, the company calculated that it could keep some of its warehouse distributor accounts, even though jobbers to whom these warehouse distributor accounts had previously sold could buy at the same price as warehouse distributors themselves. The notice was no more than a diplomatic announcement of a change in pricing structure which had been in existence for over 40 years. In any event, the hard fact is that more than one year later respondents still have a one-price policy and the affidavits thoroughly support the complete unlikelihood of any change in the future.

Procedural Issues

Counsel supporting the complaint argues that a full record must be made and that the issue is presented to the hearing examiner "in a factual vacuum" (Br., p.3). In the same vein it is asserted that there should be evidence as to the actions of respondents' competitors and that the abandonment issue cannot properly be decided apart from "the considerations which led the Commission to issue the complaint in the first instance" (Br., p.3).

These assertions are wholly without merit. It can and must be assumed that the Commission in issuing the complaint had "reason to believe" that respondents had violated the Robinson-Patman Act as alleged. Upholding a defense of abandonment assumes, without deciding, that the abandoned practices were unlawful. Therefore, evidence that they were in fact unlawful, if such be the case, would add nothing. It would, as complaint counsel so aptly observed, be "whip[ping] a dead horse" (Tr. 10).

In view of counsel's reluctance to "whip a dead horse" the examiner gave complaint counsel until November 23, 1962, to investigate and satisfy themselves as to the current facts (Tr. 15–17). At the hearing on November 23, 1962, counsel for respondents advised the ex-

aminer that respondents had prepared a motion to dismiss as to two products on the ground of abandonment, supported by affidavits and brief. In response to this suggestion the hearing examiner inquired whether Commission counsel took issue with the facts stated in the supporting affidavits, as follows:

MR. MATHIAS: It is my understanding that April 2 a radical change did occur in their sales program which—

HEARING EXAMINER HINKES: Have you seen the affidavits referred to by Mr. Baker?

MR. MATHIAS: Yes, sir.

HEARING EXAMINER HINKES: Do you disagree with them or are you going to contest their factual basis?

MR. MATHIAS: No (Tr. 33).

At a further hearing on January 15, 1963, Commission counsel affirmed that there was no question as to facts and that their answer was not meant to be interpreted as raising issues of fact and that the only issue was as to the "conclusion to be drawn from the facts" (Tr. 44–45). Again counsel for respondents offered to produce the affiants for interrogation and again Commission counsel stated they were not contesting the facts but only the "conclusions to be drawn" (Tr. 51).

The examiner invited Commission counsel to put in any evidence they had which they thought would have a bearing on the abandonment issue (Tr. 53), but counsel declined to avail themselves of this opportunity and stated they would "stand on the fact that these affidavits we do not believe give any basis for a plea of abandonment" (Tr. 54). Nevertheless, complaint counsel infer that the briefs and affidavits submitted so far in this proceeding do not form an adequate legal basis for deciding whether there is a good abandonment defense. However, decision of controversies through affidavits, and especially uncontroverted affidavits, is commonplace both in the courts and the Commission.

In *Bell & Howell Co.*, *supra*, the Commission's decision dismissing the complaint on the ground of abandonment was made on the basis of affidavits and attached exhibits and the briefs of opposing counsel. In *Argus Cameras, Inc.*, *supra*, the decision to dismiss for abandonment was made on the basis of one affidavit, attached exhibits, a supplementary affidavit, and memoranda. In *N. Erlanger, Blumgart & Co., Inc.*, *supra*, the dismissal for abandonment was made on the basis of one affidavit and a supporting brief.

In *Oneida, Ltd.*, Docket No. 7236, 55 F.T.C. 1669 (1959), at the oral hearing on the motion to dismiss for abandonment, the examiner granted the dismissal on the basis of the affidavit and attached

exhibits and memoranda without the taking of any evidence. In the oral argument before the Commission on appeal from the dismissal, complaint counsel maintained that he would have liked to have had further testimony given on the question of abandonment but that the examiner never granted him the opportunity to put respondent's officials on the stand and instead asked several questions of respondent's counsel and dismissed the case forthwith. The Commission nevertheless affirmed the examiner's dismissal.

In *R. H. White Corp.*, Docket No. 6884, 54 F.T.C. 1734 (1958), the examiner dismissed the proceeding without prejudice on the ground of abandonment, and complaint counsel appealed. In its opinion the Commission stated:

> No oral testimony was received. The record which was the basis for the hearing examiner's challenged ruling was composed of the complaint and the respondent's combined answer and motion, and attached memorandum, together with counsel's reply in opposition to the motion and an affidavit submitted by the respondent. Hence our consideration of the appeal is likewise limited to those record matters. (54 F.T.C. at 1736.)

Later on in its opinion the Commission stated:

> * * * *After the motion to dismiss was filed, counsel supporting the complaint took no exception to the basic or essential facts asserted in the respondent's answer and affidavit and made no effort to supplement the record with additional facts bearing on the good faith of the respondent's discontinuance. They thus permitted the motion to go to the hearing examiner for decision virtually by default and, on the record presented to him, the hearing examiner's action of dismissal without prejudice clearly was appropriate.* [Emphasis added.]
>
> Under the circumstances, we are of the opinion that our action should be governed similarly. We recognize, of course, the Commission's power to remand a proceeding to a hearing examiner for the reception of such evidence as may be necessary to provide an adequate basis for an informed decision on any question presented for review. But such a procedure is costly, time-consuming, and, to a degree, harassing to the respondent. We believe that in the instant matter the public interest will be best served by allowing the initial decision to stand undisturbed and by underwriting the professions of respondent's affidavit of abandonment by continued close scrutiny of its future operations. (54 F.T.C. at 1737–1738.)

Scope of the Order

Although statements of complaint counsel at the prehearing conferences reflected no issue between the parties respecting the scope of the order and no objection to an order which would mention flashers alone, a brief exposition of the issue might be appropriate. Many cases have held that it is appropriate to confine the order in a litigated case to the products in connection with which violation is shown under circumstances where no exculpable defense is available.

In *Vanity Fair Paper Mills, Inc.*, Docket No. 7720 [60 F.T.C. 568, 584], the Commission limited the order to "paper products" and refused to include "other merchandise." There the record failed to disclose "whether respondent makes or sells any other product." Had the complaint been dismissed with respect to "other products" for failure of proof or because of an affirmative defense, the same result should obtain. *In the Matter of Transogram Company, Inc.*, Docket No. 7978 [61 F.T.C. 629]. This would also appear to be consistent with the opinion in *Swanee Paper Corp.* v. *Federal Trade Commission*, 291 F. 2d 833 (2d Cir. 1961) [7 S.&D 175, 181] that "there must be some relation between the facts found and the breadth of the order." Moreover, there is a practical basis for a distinction in the treatment of flashers vis-a-vis miniature bulbs and sealed-beam lamps. The competitive nature of the two markets is entirely distinct. For example, while General Electric and Westinghouse are major competitors of Tung-Sol in connection with miniature bulbs and sealed-beam lamps, they do not compete with Tung-Sol in connection with flashers, of which Tung-Sol is the leading manufacturer and seller. The "tailoring" of the order here is, therefore quite appropriate in view of the voluntary, good faith abandonment of the practice with respect to miniature bulbs and sealed-beam lamps, the difference in the competitive market for these two products compared to flashers, and the failure of complaint counsel to take issue with the proposed narrow scope of the order.

ORDER

It is ordered, That Tung-Sol Electric Inc., a corporation, and Tung-Sol Sales Corporation, a corporation, their officers, representatives, agents and employees, directly or through any corporate or other device, in or in connection with the sale and distribution for replacement purposes of automotive flashers in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from discriminating, directly or indirectly, in the price of said products of like grade and quality, by selling to any purchaser at net prices higher than the net prices charged any other purchaser who, in fact, competes in the resale and distribution of said products with the purchaser paying the higher price.

It is further ordered, That the complaint be, and it hereby is, dismissed with respect to miniature bulbs and sealed-beam lamps without prejudice to the right of the Commission to take such further action against respondents as future facts and circumstances may warrant.

FINAL ORDER

The hearing examiner filed an initial decision in this case on May 13, 1963. Subsequently, on July 25, 1963, the Commission, having been informed by complaint counsel that no petition for review would be filed, issued an order staying the effective date of the initial decision. The Commission has now determined not to place the case on its own docket for review. Accordingly,

It is ordered, That the Commission's order of July 25, 1963, staying the effective date of the initial decision, be, and it hereby is, vacated.

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 respondents shall file with the Commission, within sixty (60) days after service of this order upon them, a report in writing, signed by them, setting forth in detail the manner and form of their compliance with the order.

By the Commission, Commissioners Dixon and MacIntyre not concurring.

IN THE MATTER OF

MILTON FETTNER TRADING AS MILTON FURS

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

Docket C-582. Complaint, Sept. 12, 1963—Decision, Sept. 12, 1963

Consent order requiring a manufacturer, retailer and wholesaler of furs in Cincinnati, Ohio, to cease violating the Fur Products Labeling Act by failing to show on labels and invoices and in advertising when fur products contained cheap or waste fur, to show on labels and in advertising the true animal name of fur and when fur was "natural", to disclose on labels that certain furs were "secondhand" and to show on invoices the country of origin of imported furs; using in advertising the names of animals other than those producing certain furs; advertising falsely that prices of fur products were reduced "1/4 to 1/2 and more"; failing to maintain adequate records as a basis for pricing claims; and failing in other respects to comply with the requirements of the Act.

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 Milton Fettner, an individual trading as