

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS, OPINIONS, AND ORDERS, JANUARY 1, 1964, TO MARCH 31, 1964

IN THE MATTER OF

FOSTER PUBLISHING COMPANY, INC., NOW KNOWN AS
NORTH AMERICAN PUBLISHING CO. ET AL.

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

Docket 7698. Complaint, Dec. 21, 1959—Decision, Jan. 7, 1964

Order dismissing complaint charging a Philadelphia publisher of two monthly newspapers for the graphic arts industry and its associate company engaged in the purchase and sale of printing equipment and supplies, with violating the Federal Trade Commission Act, by knowingly inducing and receiving discriminatory advertising allowances from suppliers of graphic arts equipment.

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 Foster Publishing Company, Inc., a corporation, and Foster Type and Equipment Company, Inc., a corporation, and Irwin J. Borowsky, individually and as an officer of said corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

COUNT I

PARAGRAPH 1. Respondents Foster Publishing Company, Inc., and Foster Type and Equipment Company, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with their principal office and place of

business located at 13th and Cherry Streets in the city of Philadelphia, State of Pennsylvania.

Respondent Irwin J. Borowsky is president of each of the corporate respondents. He formulates, directs and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondents.

PAR. 2. Respondent Foster Publishing Company, Inc., is now, and since 1958 has been, engaged in the publishing of two monthly trade newspapers for the graphic arts industry. These newspapers are known as "Printing Impressions National Edition" and "Delaware Valley Printing Impressions". The publishing company mails and has mailed copies of its "Delaware Valley" edition to prospective customers in the States of Pennsylvania, New Jersey and Delaware and also mails and has mailed copies of its "National Edition" to prospective customers throughout the nation. The respondent publishing company also solicits and sells advertising in both of its newspapers from customers throughout the United States, doing an annual business of approximately \$100,000.

Respondent Foster Type and Equipment Company, Inc., is now, and for many years has been, engaged in the purchase and sale of printing equipment and supplies to newspapers, printers and other members of the graphic arts industry. It solicits and sells customers in many parts of the country, but particularly in the States of Pennsylvania, New Jersey and Delaware, with approximate annual sales of \$750,000. Respondent Foster Type and Equipment Company, Inc., advertises the products which it sells, to create customer demand and acceptance therefor throughout the United States.

PAR. 3. Respondents, in the course and conduct of their business, have engaged, and are now engaging, in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent Foster Publishing Company, Inc., since 1958, has been selling advertising space in both its publications to advertisers located in the several States of the United States and has mailed copies of its publications to prospective customers throughout the nation. Respondent Foster Type and Equipment Company, Inc., for many years, has been purchasing products for resale from a number of suppliers located throughout the United States and it causes these products to be transported from the place of manufacture or purchase without the State of Pennsylvania to its place of business within said State and to its customers located in various States throughout the United States. The respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in com-

merce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as herein described, respondents have been for many years in competition in the sale and distribution of printing equipment and supplies in commerce between and among the various States of the United States, and in the District of Columbia, with other corporations, persons, firms and partnerships.

PAR. 5. In the course and conduct of their business in commerce, respondents have knowingly induced and received payment, or contracted for the payment of, something of value to respondents or for respondents' benefit as compensation or in consideration for services and facilities furnished by or through respondents in connection with respondents' offering for sale or sale of products sold to respondents by many of their suppliers, and which payments were not made available by such suppliers on proportionally equal terms to all other customers of such suppliers competing with respondents in the sale and distribution of such suppliers' products.

PAR. 6. For example, the respondents addressed letters to a number of their suppliers during 1958 stating in part as follows:

PRINTING IMPRESSIONS was started for the purpose of diversifying our present operation and as a cooperative means of furthering our printing equipment business and the manufacturers we represent.

Advertising will not be accepted from anyone competitive to our equipment company, or from manufacturers we do not represent and are in competition to the lines we sell in our Foster Type and Equipment Co.

Your ad in our publication will reach every printing plant, newspaper mechanical superintendent, newspaper business manager, printing school teacher and many private plants at 62% comparable costs.

Example:

Full page ad in Graphic Arts Monthly 1 time rate is \$375.00—Space 4½x6½.

A slightly larger ad in PRINTING IMPRESSIONS would cost \$235.00 at special rate based on 5"x7".

Circulation of both publications the same.

Another Example:

Full page Ad in Inland Printer or Printing Equipment Engineer is \$470.00 average. Circulation of above publication is approximately 13,700.

Above size ad 4 columns wide (8") by 10" deep is \$480.00. Circulation of PRINTING IMPRESSIONS is 4 times greater than above publication.

This is good for both of us and we want to represent successful manufacturers. Both of us will benefit from the business we can get for you in our local area.

Furthermore, every dollar you spend in our publication, we will have our Foster Type & Equipment Co., buy back in your products * * *.

We are flexible. You can bill us and we can bill you and exchange checks. Or, we can enter into a written agreement, guaranteeing advertising space for 12 ads, and you can ship display. Whichever suits your own accounting will be okay with us.

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During the period between July 1, 1958, and June 30, 1959, at least 14 of respondents' suppliers entered into contracts with respondents and as a result agreed to and did pay respondents a total amount exceeding \$30,000 for such advertising.

PAR. 7. Typical of the suppliers, the products which they supplied, and the amounts which they paid the respondents, are the following:

Name of supplier	Location	Products	Amount paid
Lanston Industries, Inc.---	Philadelphia, Pa.	Platemaking and photo-mechanical equipment.	\$6, 500
Wetter Numbering Machine Company, Inc.	Brooklyn, N.Y.	Typographical numbering machines.	1, 500
Anchor Chemical Company, Inc.	Brooklyn, N.Y.	Chemical specialties-----	2, 800
NuArc Company-----	Chicago, Ill---	Vacuum frames, layout tables and dark room lights.	1, 300

PAR. 8. Many of respondents' suppliers, including those listed above, did not offer or otherwise make available similar compensation, or things of value, or allowance for advertising or other service or facility to all of their other customers who were competing with respondents in the sale and distribution of the same suppliers' products. Respondents knew or should have known that they were inducing and receiving a payment or allowance for advertising or other services or facilities from their suppliers which their suppliers were not offering or otherwise making available on proportionally equal terms to other of such suppliers' customers who were competing with respondents in the sale and distribution of such suppliers' products.

PAR. 9. The acts and practices of respondents, as hereinbefore alleged, of inducing and receiving special payments or allowances from their suppliers which were not made available by such suppliers on proportionally equal terms to respondents' competitors, are all to the prejudice and injury of competitors of respondents and of the public; have the tendency and effect of obstructing, injuring and preventing competition in the sale and distribution of printing supplies and equipment and have the tendency to obstruct and restrain and have obstructed and restrained commerce in such merchandise; and constitute unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning and in violation of Section 5 of the Federal Trade Commission Act.

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COUNT II

Paragraphs 1 through 4, inclusive, and Paragraph 6 of Count I of this complaint are hereby incorporated into this Count II of this complaint to the same extent and with the same effect as though fully set out herein.

PAR. 10. In the course and conduct of their business, and for the purpose of inducing the sale of advertising space in their publication, "Printing Impressions National Edition", respondents have made certain statements with respect to the circulation of said publication in letters, advertisements and in said "Printing Impressions National Edition" of national circulation, of which the following are typical:

Circulation 60,000 and Circulation of both publications [Graphic Arts Monthly and Printing Impressions] the same.

PAR. 11. Through the use of the aforesaid statements, respondents represented that their circulation of the publication "Printing Impressions National Edition" was 60,000 for each month from September 1958 to September 1959 and that such circulation was the same as Graphic Arts Monthly.

PAR. 12. Said statements and representations were false, misleading and deceptive. In truth and in fact:

(a) The circulation of said "Printing Impressions National Edition" was substantially less than 50,000 for many months during this period.

(b) At all times mentioned herein the circulation of "Printing Impressions National Edition" was not the same as "Graphic Arts Monthly", the circulation of the latter being subject to audit by Business Publications Audit of Circulation, Inc., providing for publication circulation statements of average total qualified circulation and of territorial distribution.

PAR. 13. In the conduct of their business since 1958, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of advertising space in national publications of the same general kind and nature as that sold by respondents.

PAR. 14. 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 these statements and representations were and are true and into the purchase of substantial amounts of advertising space in respondents' publication "Printing Impressions National Edition" by reason of

said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 15. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Eugene Kaplan for the Commission.

Fox, Rothschild, O'Brien & Frankel, Philadelphia, Pa., for the respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

JANUARY 24, 1963

The Federal Trade Commission issued its complaint against the above-named respondents on December 21, 1959, charging that said respondents have engaged in unfair competition in violation of Section 5 of the Federal Trade Commission Act as alleged in Counts I and II thereof.

Paragraph 5, Count I, alleges that in the course and conduct of their business in commerce, respondents have knowingly induced and received payment, or contracted for the payment of something of value to respondents or for respondents' benefit as compensation or in consideration for services and facilities furnished by or through respondents in connection with respondents' offering for sale or sale of products sold to respondents by many of their suppliers, and which payments were not made available by such suppliers on proportionally equal terms to all other customers of such suppliers competing with respondents in the sale and distribution of such suppliers' products. This allegation is premised upon the contention that such allowances are violative of Section 2(d) of the Clayton Act, as amended,¹ and

¹ Counsel in support of the complaint also points out that on the question of Section 2(d) violations of the suppliers, there are striking parallels in the record facts herein and the facts in *State Wholesale Grocers, et al. v. The Great Atlantic & Pacific Tea Co., et al.*, 258 F. 2d 831 (7th Cir. 1958) cert. denied, 358 U.S. 947 (1959). In that case, *The Great Atlantic & Pacific Tea Co., a Maryland corporation*, wholly owned and controlled the defendant *The Great Atlantic & Pacific Tea Co., a New Jersey corporation*, and owned as well all of the capital stock of defendant *Woman's Day, Inc.* Thus, under this complaint it was held that grocery suppliers who placed advertising in a magazine owned by corporate subsidiary of the national grocery company and distributed exclusively through such company stores thereby violated Section 2(d) of the Clayton Act proscribing payment for services or facilities for processing or sale unless they made similar payments available on proportionately equal terms to other grocery companies even though such companies did not publish magazines, and that the evidence failed to show that they so made payments available.

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that such knowing receipt constitutes a violation of Section 5 of the Federal Trade Commission Act. *Grand Union Company*, FTC Docket 6973; *Giant Food Shopping Center, Inc.*, FTC Docket 6459; and the *American News Company, et al.*, FTC Docket 7396.

Count II of the complaint in substance alleges that in the course and conduct of their business and for the purpose of inducing the sale of advertising space in their publication "Printing Impressions National Edition", respondents had made misrepresentations exaggerating the extent of circulation.

An initial decision was issued by the hearing examiner on July 17, 1961, pursuant to which a cease and desist order was issued as to Count I. Count II was dismissed.

The Commission, pursuant to an order dated July 26, 1962, [61 F.T.C. 1489-1491] vacated the initial decision and remanded the case for the purpose of taking additional evidence. Said order is as follows:

The Commission, for the reasons stated in the accompanying opinion, having determined that said initial decision should be vacated and the case remanded to the hearing examiner:

IT IS ORDERED that the aforesaid initial decision be vacated and set aside.

IT IS FURTHER ORDERED that this case be remanded to the hearing examiner for further proceedings in conformity with the views expressed in the aforesaid opinion.

IT IS FURTHER ORDERED that after such proceedings have been terminated the hearing examiner shall forthwith make and file, in accordance with the provisions of section 4.19 of the Commission's Rules of Practice, a new initial decision based on the record as then constituted.

The following remarks in the opinion formed the basis for the remand:

Since we find that the evidence adduced thus far is inadequate for an informed determination as to whether competition existed between Foster Type and other distributors in the resale of the goods involved in the alleged inducement of payments violative of section 2(d) and in view of our further finding that the testimony of certain distributors as to the non-availability of payments for advertising or other promotional services is deficient because of inadequate knowledge on the part of certain of such witnesses, the initial decision is vacated and remanded to the hearing examiner for the purpose of receiving additional evidence on these points.

The Commission ordered that:

Specifically, the examiner is directed to receive additional evidence identifying the products and lines of products purchased by Foster Type and its competitors from suppliers allegedly induced by respondents to make payments violative of section 2(d), as well as evidence bearing on the issue of competition between Foster Type and other distributors in the resale of goods involved in the alleged violation of law. The examiner is further directed to receive additional testimony on the availability or non-availability of payments for

advertising or promotional services to distributors competing with Foster Type in the resale of such products.

Following hearings at which testimony and documentary evidence was received, proposed findings and briefs were filed by counsel supporting the complaint and counsel for respondents. Proposed findings which are not herein adopted, either in the form proposed or in substance, are rejected as not supported by the record or as involving immaterial matters. Upon the entire record in the case the hearing examiner makes the following:

FINDINGS OF FACT

I

CORPORATE RESPONDENTS

1. Respondents Foster Publishing Company, Inc., and Foster Type and Equipment Company, Inc., are corporations organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with their principal office and place of business located at 13th and Cherry Streets in the city of Philadelphia, State of Pennsylvania. On or about August 3, 1959, Foster Publishing Company, Inc., changed its name to North American Publishing Company.²

2. Respondent Foster Publishing Company, Inc., is now, and since 1958 has been, engaged in the publishing of two monthly trade newspapers for the graphic arts industry. These newspapers are known as "Printing Impressions National Edition" and "Delaware Valley Printing Impressions". The publishing company mails and has mailed copies of its "Delaware Valley" edition to prospective customers in the States of Pennsylvania, New Jersey, and Delaware and also mails and has mailed copies of its "National Edition" to prospective customers throughout the Nation. The respondent publishing company also solicits and sells advertising in both of its newspapers from customers throughout the United States, doing an annual business of approximately \$100,000.³

3. Respondent Foster Type and Equipment Company, Inc., is now, and for many years has been, engaged in the purchase and sale of printing equipment and supplies to newspapers, printers, and other members of the graphic arts industry. It solicits and sells customers in many parts of the country, but particularly in the States of Pennsylvania, New Jersey, and Delaware, with approximate annual sales

² Admitted in answer of each respondent, p. 1.

³ Admitted in answers by each respondent at p. 1.

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of \$750,000. Respondent Foster Type and Equipment Company, Inc., advertises the products which it sells, to create customer demand and acceptance therefor throughout the United States.⁴

II

COMMERCE

4. Respondents, in the course and conduct of their business, have engaged, and are now engaging, in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent Foster Publishing Company, Inc., since 1958, has been selling advertising space in both its publications to advertisers located in the several States of the United States and has mailed copies of its publications to prospective customers throughout the nation. Respondent Foster Type and Equipment Company, Inc., for many years, has been purchasing products for resale from a number of suppliers located throughout the United States and it causes these products to be transported from the place of manufacture or purchase without the State of Pennsylvania to its place of business within said state and to its customers located in various States throughout the United States. The respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.⁵

III

OWNERSHIP AND OPERATIONAL CONTROL OF CORPORATE
RESPONDENTS BY INDIVIDUAL RESPONDENT

5. Respondent Irvin J. Borowsky (whose first name is incorrectly spelled in the complaint as "Irwin") is president of each of the corporate respondents. He formulates, directs, and controls the acts and practices of the corporate respondents, including the acts and practices set forth in the complaint. His address is the same as that of the corporate respondents.⁶

6. During the years 1957, 1958, and until May 1, 1959, the officers of Foster Type and Equipment Company were Irvin Borowsky, president; Alex Borowsky (brother of Irvin), vice president; Beverly Borowsky (wife of Irvin), secretary. In the spring of 1959, Hans Weiss became vice president and secretary (replacing Alex and Beverly Borowsky) and Stephen Mucha became vice president while

⁴ Admitted in answers by each respondent at p. 1.

⁵ Admitted in answers by each respondent at p. 2.

⁶ Admitted in answers by each respondent at p. 1.

respondent Irvin Borowsky continued as president, owning 100% of the outstanding shares of stock of the company at all times until August 1, 1959, when he transferred 10% of the stock to Hans Weiss and retained 90%.⁷

7. Since the date of its incorporation, Foster Publishing Company's outstanding shares of stock have been owned entirely by respondent Irvin Borowsky, president and treasurer of the publishing company. His wife Beverly Borowsky is secretary.⁸

8. Respondent Irvin Borowsky has at all times exercised control and supervision of the day to day, week to week, and month to month operation of Foster Publishing Company, Inc. Respondent also formulated, directed, and controlled the acts and practices of Foster Type and Equipment Company at least until February 1, 1960, the date on which he and the two corporate respondents filed their answers with the Commission and made this admission.⁹

IV

THE PUBLICATION "PRINTING IMPRESSIONS"

9. The publication known as "Printing Impressions" was created by respondents and existed for the purpose of being used as a corporate means of furthering the printing equipment business of Foster Type and Equipment Company and of the manufacturers and suppliers whose products are bought and resold by said Foster Type and Equipment Company. Respondents gave notice to their suppliers of the above-stated purpose in letters signed by respondent Irvin J. Borowsky who signed such letters sometimes as president of Foster Type and Equipment Company, Inc.,¹⁰ and at other times as president of Foster Publishing Company, Inc.¹¹

10. In some instances suppliers of respondent Foster Type and Equipment Co., Inc., in written replies to respondents, expressed their understanding that the publication Printing Impressions was being used by respondent Irvin Borowsky for the benefit of Foster Type and Equipment Company, Inc.

The Wetter Numbering Machine Company writing to I. J. Borowsky stated in part as follows:¹²

* * * Thank you for your letters of May 14 and 26 [CX 12 and 13] outlining the plans and policies that have been established for your new publication Printing Impressions.

⁷ CX 2A, Tr. 144-145; TR. 300, 482, CX 2A.

⁸ CX 2A, Tr. 303.

⁹ Tr. 304; answers, p. 1.

¹⁰ CX 15A-B; 19A-C.

¹¹ CX 6A-F; 7A-F; 8A-F; 9A-F; 10A-F; 12A-B; 13A-D; 14A-D; 17A-C; 18A-B; 22A-B.

¹² CX 11A-B.

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The several details that were not entirely clear have now been clarified through the additional information that you gave us during our recent telephone conversations, and we would appreciate your reserving for us space for 12 Wetter ads 4' x 5' * * * net cost for the twelve issues of \$1,584,000.

We understand that it will be your policy not to accept advertising from any competitive manufacturer of typographic numbering machines whom you do not represent, and further that the Foster Type Equipment Company will order from us within a reasonable period of time, machines, parts, or accessories in the amount equal to our net cost for the advertising for which we are contracting * * *.

This exchange arrangement was proposed by respondent I. J. Borowsky in the following words:¹³

* * * Furthermore every dollar you spend in our publication, we will have our Foster Type & Equipment Co., buy back in your products a Wetter display * * *.

Mr. Borowsky also stated:¹⁴

* * * Will you please send us * * * Photos of your products for our Type and Equipment Co. ads * * * In "these tight" money times our proposal to buy back every dollar you spend in advertising should be most beneficial to you * * *.¹⁵

11. In some cases the exchange arrangement of advertising in Printing Impressions in return for purchases of merchandise for resale by Foster Type and Equipment Company was actually consummated.¹⁶

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MERGER OF IDENTITY OF ALL RESPONDENTS

12. Consequently, the suppliers of Foster Type and Equipment Co., Inc., were on notice that Irvin Borowsky was actually operating that company and Foster Publishing Co., Inc., as parts of the same enterprise or as a joint venture for the benefit of both corporate participants. The publishing company, in its solicitations for advertising, committed the equipment company to buy merchandise from suppliers in return for their agreements to advertise in Printing Impressions and at times the equipment company solicited the suppliers to advertise in the publishing company's Printing Impressions.

The evidence does not adequately support respondents' position that the joint venture was revoked shortly after a formal announcement thereof and that a cease and desist order is not, therefore, in the public interest. It does not seem reasonable to assume that after a formal written announcement of the joint venture to secure adver-

¹³ CX 13C.

¹⁴ CX 12A.

¹⁵ CX 19A-C; CX 20; CX 22.

¹⁶ CX 67; 68; 69; 11A-C; 15A-B; 16; 18A-B; 19A-C; 20; 63; 64.

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tising for the benefit of the respondent participants that informal telephone calls alone to a few suppliers of Foster should be construed as vitiating the joint plan as to all suppliers, or that there was even a bona fide intention to do so. In fact, there is no evidence having substantial probative weight indicative of a change in the joint relationship of Foster Type and Equipment and Foster Publishing preceding the filing of the complaint and after the announcement of the joint relationship except the self-serving statements of Foster representatives.¹⁷

13. Since the publication *Printing Impressions* was represented to the suppliers by respondents Borowsky and Foster Publishing Company as "a cooperative means of furthering our printing equipment business and the manufacturers we represent" and because of the high degree of control obviously exercised by respondent Irvin Borowsky over both corporate respondents, any payments made to Foster Publishing Company, Inc., for advertising services were payments *for the benefit of* all respondents including Foster Type and Equipment Company, Inc., if not actually payments to the equipment company.

VI

THE SOLICITATION

14. Payments for advertising services were solicited by each and all of the respondents from the suppliers of Foster Type and Equipment Company. The answers of respondents admit that the "*Foster [Type and Equipment Company, Inc.]* sent out [to its suppliers] the letter set out in Paragraph Six of the complaint". Many of said letters were signed by the other two respondents.¹⁸

15. In their letters of solicitation, respondents offered advertising in return for payments from manufacturers represented by them and whose "lines we sell in our Foster Type and Equipment Co." Consequently, any such advertising payments were made in connection with respondents' offering for sale or sale of products bought from their suppliers or manufacturers.

VII

THE DISCRIMINATORY PAYMENTS

16. As a result of respondents' inducement, twenty-nine of the suppliers of Foster Type and Equipment Company, Inc., between

¹⁷ See also comments of Commissioner Kern in the Nuare case Docket 7848 relating to identically proved facts at pages 3 through 8, and Tr. 882 re Foster, Docket 7698.

¹⁸ CX 6A-F; 7A-F; 8A-F; 9A-F; 10A-F; 12A-B; 13A-D; 14A-D; 17A-C; 18A-B; 22A-B.

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June 1958 and December 1959, made payments to respondents for advertising services in a total amount exceeding \$47,500.

17. Many of the suppliers who made payments for such advertising services to or for the benefit of Foster Type and Equipment Company, Inc., did not offer or otherwise make available such payments to their customers who were in competition with Foster Type and Equipment Company, Inc.¹⁹

VIII

KNOWLEDGE

18. Respondents knew or should have known that the payments for advertising services which they solicited and received were not offered or made available to the competitors of Foster Type and Equipment Company. Respondent Irvin Borowsky testified that none of the suppliers of the equipment company made offers of cooperative advertising since Foster Publishing Company went into business in 1958.²⁰ He also testified that during 1955, 1956, and 1957, out of its 400 to 500 suppliers, only five offered cooperative advertising allowances or payments to Foster Type and Equipment Company.²¹ Not one of the competitors of Foster Type and Equipment Company received any kind of offer of payment or allowance for advertising services from any of the suppliers listed in Appendix A hereof. A buyer who induces a seller to depart from his customary pattern of granting no allowances and obtains a payment for advertising services does so at his peril in the absence of evidence indicative of reasonable inquiry to assure the buyer that his competitors who are customers of the sellers, are receiving a proportionally equal allowance to that granted him. See *F.T.C. v. American News Company*, Docket No. 7396, Commission's decision of January 10, 1961; see also, opinion of United States Circuit Court of Appeals, Second Circuit, in deciding this case on review, February 7, 1962. If anything, the evidence circumstantially suggests that respondents knew Foster Type and Equipment Company was receiving a preferential allowance. There is certainly no evidence of inquiry which would meet the requirements of the *American News Company* case *supra*.

19. The respondents have knowingly induced and received payments of money and credits in consideration for advertising services furnished by respondents in connection with respondents offering for sale and sale of products sold to respondents by many of their sup-

¹⁹ See the attached enumeration (Appendix A) [p. 18 herein] accurately setting forth as evidenced, some of these suppliers.

²⁰ Tr. 151-152.

²¹ Tr. 197-199.

pliers. Furthermore, they knew or should have known such payments were not made available on proportionally equal terms to all other customers of such suppliers competing with respondents in the sale and distribution of such suppliers' products.

Respondents request the hearing examiner to reconsider the decision of the U. S. Court of Appeals for the Seventh Circuit in *State Wholesale Grocers v. The Great Atlantic & Pacific Tea Co.*, 258 F. 2d 831, which formed the basis for the legal position of counsel in support of the complaint, in light of the wholly different facts in the instant case.

It is pointed out by respondents that, irrespective of the initial decision in this matter, new evidence demonstrates that any payments to Foster Type are not disproportionate since all competitors of Foster Type testified they had received without limit costly direct mail and other promotional materials from all suppliers.

This evidence fails to negate any inference which may be reasonably drawn from the evidence that respondents knew or should have known that any payments which they received for advertising services were not offered or made available to competitors of Foster Type on proportionally equal terms or that equivalent allowances were in fact granted on proportionally equal terms.

The Commission has established that specific discriminatory advances for advertising were made by suppliers to Foster Equipment via Foster Publishing, its joint venturer. The burden is then upon the respondents if they wish to take advantage of the exception to show that the promotional materials were not disproportionate to the advertising allowances proved. Respondents' evidence in this respect is too vague and conjectural in establishing the dollar value of the promotional material to justify a conclusion that such promotional material is the dollar equivalent of payments for the benefit of Foster Equipment.

IX

CIRCULATION REPRESENTATIONS

20. In the course and conduct of their business, and for the purpose of inducing the sale of advertising space in their publication, "Printing Impressions National Edition", respondents have made certain statements with respect to the circulation of said publication in letters, advertisements and in said "Printing Impressions National Edition" of national circulation, of which the following are typical:

Circulation 60,000 and Circulation of both publications [Graphic Arts Monthly and Printing Impression] the same.

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Conclusion

21. Said statements and representations were true and not misleading or deceptive as evidenced by the following:

CIRCULATION ANALYSIS OF PRINTING IMPRESSIONS, NATIONAL EDITION,
SEPTEMBER 1958 TO DECEMBER 1959

Date	Billed from printer	Mailed 3d class	Mailed 1st class, Europe and Canada	Total circulated
Sept. 1958.....	66,000	64,103	1,897	66,000
Oct. 1958.....	60,000	55,094	*2,956	60,000
Nov. 1958.....	60,000	53,402	**5,398	60,000
Dec. 1958.....	60,000	58,513	1,487	60,000
Jan. 1959.....	61,000	53,276	7,724	61,000
Feb. 1959.....	61,000	56,945	4,055	61,000
Mar. 1959.....	61,000	60,973	27	61,000
April 1959.....	61,000	59,933	1,067	61,000
May 1959.....	63,000	62,271	729	63,000
June 1959.....	60,000	56,659	3,341	60,000
July 1959.....	60,000	56,569	3,431	60,000
Aug. 1959.....	59,000	58,192	***2,808	61,000
Sept. 1959.....	85,000	60,588	****1,812	78,400
Oct. 1959.....	61,500	60,329	1,171	61,500
Nov. 1959.....	62,300	59,451	2,849	62,300
Dec. 1959.....	61,500	59,257	2,243	61,500

*1,950 copies of Printing Impressions were distributed at Business Show in New York City.

**1,200 copies of Printing Impressions were distributed at Canadian Graphic Arts Conference in Montreal.

***Printer had large spoilage. Billed for 59,000 copies but gave 2,000 lesser quality copies at no charge.

****16,000 copies of Printing Impressions were distributed at 7th Graphic Arts Exposition at New York City.

22. During the period September 1958 through September 1959 the average circulation of Printing Impressions was equal to or in excess of 60,000.

23. The representation that the circulation of the National Edition of Printing Impressions was the same as Graphic Arts Monthly was substantially true.

24. In the conduct of their business since 1958, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of advertising space in national publications of the same general kind and nature as that sold by respondents.

X

CONCLUSIONS

As charged in Count I of the complaint the acts and practices of respondents, as hereinbefore alleged, of inducing and receiving special payments or allowances from their suppliers which were not made available to competitors, are all to the prejudice and injury of competitors of respondents and of the public; have the tendency and effect of obstructing, injuring and preventing competition in the sale and distribution of printing supplies and equipment and have the tendency to obstruct and restrain and have obstructed and restrained commerce in such merchandise; and constitute unfair methods of

competition in commerce and unfair acts and practices in commerce within the intent and meaning and in violation of Section 5 of the Federal Trade Commission Act.

Contrary to the charges in Count II of the complaint the respondents have not used false, misleading and deceptive statements, representations and practices which have had and now have the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that these representations were and are true and into the purchase of substantial amounts of advertising space in "Printing Impressions National Edition" by reason of any erroneous and mistaken belief. As a consequence thereof substantial trade in commerce has not been, and is not deemed, unfairly diverted to the respondents from their competitors and substantial injury has not thereby been, and is not being, done to competition in commerce.

Aside from other reasons heretofore discussed, respondents urge that the instant proceeding should be dismissed for lack of public interest since on June 18, 1962, the assets of Foster Type and Equipment Company, Inc., were purchased by Phillips & Jacobs, Inc., and a restrictive covenant under the terms of a purchase agreement prohibits Foster Type and Borowsky from competing as set forth in Respondents' Exhibit 70, for identification. This document, as well as other evidence, was rejected by the hearing examiner since his authority pursuant to the order of remand was specifically limited to the receipt of "additional evidence identifying the products and lines of products purchased by Foster Type and its competitors from suppliers allegedly induced by respondents to make payments violative of Section 2(d), as well as evidence bearing on the issue of competition between Foster Type and other distributors in the resale of goods involved in the alleged violation of law." The examiner was also specifically directed "to receive additional testimony on the availability or unavailability of payments for advertising or promotional services to distributors competing with Foster Type in the resale of such products."

Respondents' evidence relating to public interest concerning events which occurred subsequent to the issuance of the hearing examiner's initial decision on July 17, 1961, was received by the hearing examiner as a proffer of proof only so that the Commission could have a complete record before it in the event they wish to take cognizance of the rejected proof offered by respondents suggesting that a cease and desist order would only resolve an academic issue.

Since the hearing examiner's decision is premised upon adducible evidence as limited by the Commission order, it is concluded that this

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proceeding is in the public interest and that the following order shall issue:

ORDER

It is ordered, That the respondents Foster Publishing Company, Inc., and/or its successor in name, North American Publishing Co., and Foster Type and Equipment Company, Inc., corporations, and Irvin J. Borowsky, individually and as an officer of the corporate respondents, their officers, employees, agents or representatives, directly or through any corporate or other device, in or in connection with the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of printing equipment and supplies and graphic arts equipment and supplies for resale by respondents, do forthwith cease and desist from:

Inducing, receiving or contracting for the receipt of anything of value from any of their suppliers as compensation or in consideration for services or facilities furnished by or through respondents in connection with the processing, handling, sale or offering for sale of products purchased from any of their suppliers, when respondents know or should know that such compensation or consideration is not affirmatively offered or otherwise made available by such suppliers on proportionally equal terms to all of their other customers competing with respondents in the sale and distribution of such suppliers' products.

It is further ordered. That Count II of the complaint is herein and hereby dismissed for lack of evidence supporting the allegations thereof.

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APPENDIX A
 Respondent's sales area: *The Delaware Valley, which encompasses Eastern Pennsylvania, Southern New Jersey and the State of Delaware; also certain areas in Maryland and Western Penn. (TR. 669)*

Competitors of respondent to whom no advertising, payment, offer, or anything in lieu thereof was made by suppliers	Suppliers paying Foster and not competitors	Products lines involved	Sales area	Amount paid Foster in 1958-1959 (C.X.A.&B)	Competitor-distributor named by witness selling same line of products in same area
Franklin Printers Supply Company (TR. 715).	American Type Foundry Company (TR. 715). Anchor Chemical Company (TR. 719).	Printing machinery, book binding machinery (TR. 716). Type wash, cleaning chemicals; TR-228 Solution (cleaning rollers); Members and G. Cleaner; Labels (cleaning for labels); presses (TR. 719; Resp. TR. 687); electrical units for heating lead. (TR. 728; Resp. TR. 695).	Middle Atlantic States Pennsylvania, New Jersey, Delaware, New York, including Philadelphia (TR. 715). Same.	\$1,677.90 2,757.20	<i>Foster Type and Equipment</i> , Northern Machinery Works, Michael Carlson (TR. 716). <i>Foster Type and Equipment</i> , H. David Siegfried; Bingham Roller (TR. 720).
	Nolan Corporation (TR. 722). Nu-ARC Company (TR. 723).	Photomechanical equipment (machines needed to make photo engravings and lithographs) (TR. 698 Resp.; TR. 725). Paper drilling machinery (TR. 727-8; Resp. TR. 706).	Same. Same.	150.00 2,320.86	<i>Foster Type and Equipment</i> , Michael Carlson, Northern Machine Works R.W. Hartnett (TR. 723). <i>Foster Type and Equipment</i> , Northern Machine, Michael Carlson; R.W. Hartnett; American Type Foundry (TR. 725).
Phillips & Jacobs, Inc. (TR. 745; TR. 815).	Pioneer Toledo Company (TR. 747). W. A. Brown Manufacturing Company (TR. 747). Craftsman Line-up Table Company (TR. 748). Mark Specialty Company (TR. 749).	Photomechanical equipment (entire line) (TR. 747-Resp. TR. 678). Line-up tables used in photo engraving field (TR. 748 Resp. TR. 681). hundreds of miscellaneous items for printing industry such as razor blades, knives, wood cutting tools, etc. (TR. 749; Resp. TR. 692).	Same. Pennsylvania, New Jersey and Delaware (Phil. office covers eastern Penn.) (TR. 746). Same. Same.	1,359.00 1,006.72 2,484.00	<i>Foster Type and Equipment</i> , Michael Carlson and Northern Machine; R.W. Hartnett (TR. 727-8). <i>Foster Type and Equipment</i> , Eastman Kodak Stores (TR. 748). <i>Foster Type and Equipment</i> , Eastman Kodak (TR. 749; TR. 681).
	Nu-ARC Company (TR. 753).	Photomechanical equipment such as sinks, tables, X-rays for developing and other uses (TR. 753; Resp. TR. 698).	Same.	120.00	<i>Foster Type and Equipment</i> , Roberts and Forter; Eastman Kodak (TR. 750).
	Leedal Company (TR. 755).	tanks, sinks, trays used in photo developing (TR. 755; Resp. TR. 700).	Same.	2,320.86 142.80	<i>Foster Type and Equipment Company</i> (TR. 698). <i>Foster Type and Equipment</i> , Eastman Kodak Stores (TR. 756; Resp. TR. 700).

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R. W. Hartnett Company (TR. 780).	Macbeth Lamp Company (TR. 756); H. S. Royd Company (TR. 758).	A-R-C Lamps and Carbons used in photo lamps for bulbs (TR. 756; Resp. TR. 701). perforating strips used in printing press (TR. 755; Resp. TR. 700).	Same	334.90	<i>Poster Type and Equipment Company</i> (Resp. TR. 702).
The Bingham Brothers Company (TR. 801).	American Wood Type Company (TR. 782).	hundreds of miscellaneous printing supplies for graphic arts industry (TR. 685; TR. 782).	Pennsylvania, New Jersey and Delaware (Phil. office covers eastern Penn.) (TR. 740).	354.45	<i>Poster Type and Equipment Company</i> ; Roberts and Porter (TR. 758).
	Challenge Machinery Company (TR. 784).	Drills, drill blocks, paper cutters, drilling machines. (TR. 784; Resp. TR. 704).	Philadelphia, eastern Pennsylvania Camden, Phil. suburbs. (TR. 781). Same	364.65	<i>Poster Type and Equipment</i> , Franklin Printing Supplies. (TR. 785).
	Wetler Numbering Machine Company (TR. 787).	Numbering Machines (TR. 787).	Same	147.05	<i>Poster Type and Equipment Company</i> ; Northern Machine Works; (TR. 785 Resp. TR. 704).
	Anchor Chemical Company (TR. 802).	Solvents used around type room; type wash, press, wash, roller cleaners (carried complete line) (TR. 803; Resp. TR. 686).	Same	2,206.50	<i>Poster Type and Equipment Company</i> (TR. 705).
	Anchor Chemical Company (TR. 841).	press room equipment on chemical, blanket, wash-up roller, wash-up sprays; cleaning chemicals (TR. 842; Resp. TR. 686).	Pennsylvania, east of Altoona to the New York State line north; in Jersey South of Trenton, and the State of Delaware. (TR. 802).	2,757.20	<i>Poster Type and Equipment Company</i> ; H. David Siegfried Company; International Chemical Company, Penned; T. J. Murphy (TR. 803, 808; Resp. TR. 686).
T. J. Murphy Company (TR. 840).	Nit-A-R-C Company (TR. 846).	Plate-making equipment; makeup tables (TR. 846; Resp. TR. 698).	Eastern Pennsylvania, Southern Jersey and New Castle County, Delaware (TR. 841). Same	2,757.20	<i>Poster Type and Equipment Company</i> ; Poundell Company. (TR. 842).
	Challenge Machinery Company (TR. 848).	paper cutters and paper drills; drill bits (TR. 848; Resp. TR. 704).	Same	2,320.86	<i>Poster Type and Equipment Company</i> ; Pendell (TR. 847; Resp. TR. 698).
	H. S. Royd Company (TR. 849).	Perf rules; thin metal strip that attaches to a printing press to perforate while printing (TR. 849; Resp. TR. 706).	Same	354.45	<i>Poster Type and Equipment</i> ; Lithograph Multigraph (TR. 849; Resp. TR. 704).
Pendell & Co. (TR. 859).	Macbeth Lamp Company (TR. 859).	Carbons for arc lamps to expose offset plates; (TR. 860; Resp. TR. 701).	Same	334.90	<i>Poster Type and Equipment Company</i> (Resp. TR. 707).
	Anchor Chemical Company (TR. 861).	Blanket washes; type wash; line of cleaning chemicals (TR. 861; Resp. TR. 686).	Philadelphia, Wilmington, Reading, Lancaster, Easton, Allentown, Bethlehem and a small section of Jersey. (TR. 859). Same	2,757.20	<i>Poster Type and Equipment Company</i> ; Phillips & Jacobs; Roberts & Porter; T. J. Murphy (TR. 860).
	Nit-A-R-C Company (TR. 862).	machines needed to make photo engravings (TR. 862; Resp. TR. 698).	Same	2,320.86	<i>Poster Type and Equipment Company</i> ; Roberts & Porter, (TR. 861). <i>Poster Type</i> , Phillips & Jacobs, Roberts and Porter (TR. 863).

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FINAL ORDER

This matter having been heard by the Commission upon respondents' exceptions to the initial decision after remand and upon briefs in support thereof and in opposition thereto; and

The Commission having considered said exceptions and briefs and the record herein, and having determined that the exceptions should be granted:

It is ordered, That the initial decision of the hearing examiner, filed January 24, 1963, be, and it hereby is, set aside.

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

By the Commission, Commissioner MacIntyre not concurring and Commissioner Higginbotham not participating.

IN THE MATTER OF

MILTON KASTIL ET AL. TRADING AS
MILTON KASTIL FURS ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS
LABELING ACTS

Docket C-674. Complaint, Jan. 7, 1964—Decision, Jan. 7, 1964

Consent order requiring manufacturing furriers in Chicago, Ill., to cease violating the Fur Products Labeling Act by failing to use the term "natural" on labels to describe fur products which were not artificially colored; failing, in invoicing, to show the true animal name of furs and the country of origin of imported furs, to disclose when fur was bleached or dyed, and to use the terms "Persian Lamb" and "natural" where required; substituting nonconforming labels for those attached by the manufacturer or distributor; and failing in other respects to comply with labeling and invoicing requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Milton Kastil, and Edward Kastil, individually and as copartners trading as Milton Kastil Furs and Irving Kastil, individually and as an employee of the partnership 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 Milton Kastil and Edward Kastil are individuals and copartners trading as Milton Kastil Furs and Irving Kastil is an individual and employee of the partnership.

Respondents are manufacturers, wholesalers and retailers of fur products with their office and principal place of business located at 17 North State Street, Chicago, Illinois.

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 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 have 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 "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) 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.

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(d) 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.

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

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

wise 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. 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 the said Act, in violation of Section 3(e) of said Act.

PAR. 9. Respondents in substituting labels as provided for in Section 3(e) of the Fur Products Labeling Act have failed to keep and preserve the records required, in violation of said Section 3(e) and Rule 41 of the Rules and Regulations promulgated under the said Act.

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

DECISION AND ORDER

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

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

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agree-

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

1. Respondents Milton Kastil and Edward Kastil are individuals and copartners trading as Milton Kastil Furs and Irving Kastil is an individual and employee of the partnership, and their office and principal place of business is located at 17 North State Street, Chicago, Illinois.

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

ORDER

It is ordered. That respondents Milton Kastil and Edward Kastil, individually and as copartners trading as Milton Kastil Furs or under any other trade name and Irving Kastil, individually and as an employee of the partnership and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the 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 the terms "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. 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.

5. 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.

6. 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. 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 "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.

It is further ordered, That respondents Milton Kastil and Edward Kastil, individually and as copartners trading as Milton Kastil Furs, or under any other trade name and Irving Kastil, individually and as an employee of the partnership, 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

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sale, or processing of fur products which have been shipped and received in commerce, do forthwith cease and desist from:

A. 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.

B. Failing to keep and preserve the records required by the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in substituting labels as permitted by Section 3(e) of the said Act.

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

IN THE MATTER OF

SIDNEY WOLFF TRADING AS
WOLFSON YARN COMPANY, ETC.

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

Docket C-675. Complaint, Jan. 7, 1964—Decision, Jan. 7, 1964

Consent order requiring a New York City importer of wool products to cease violating the Wool Products Labeling Act by such practices as labeling and invoicing as "100% Mohair," yarns which contained substantially different amounts of woolen fibers than thus represented and also contained other fibers, and failing to disclose on labels on certain yarns the percentages of the different fibers contained therein.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Sidney Wolff, an individual trading as Wolfson Yarn Company and Em-Gee-Ess Knitwear Company, hereinafter referred to as respondent, has violated the provisions of the said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the

public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Sidney Wolff is an individual doing business as Wolfson Yarn Company and Em-Gee-Ess Knitwear Company. Said individual respondent formulates, directs and controls the acts, policies and practices of said proprietorships including the acts and practices hereinafter referred to.

Respondent is an importer and distributor of wool products with his office and principal place of business located at 260 Fifth Avenue, New York, New York.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, respondent has introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in said Act, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded by the respondent within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were certain yarns stamped, tagged, or labeled as containing 100% Mohair, whereas, in truth and in fact, said yarns contained substantially different amounts of woollen fibers than represented and also contained fibers other than woollen fibers.

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

Among such misbranded wool products, but not limited thereto, were certain yarns with labels on or affixed thereto which failed to disclose the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) woollen fibers; (2) each fiber other than wool if said percentage by weight of such fiber is 5 per centum or more; and (3) the aggregate of all other fibers.

PAR. 5. The acts and practices of the respondent as set forth above were, and are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and prac-

tices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

PAR. 6. Respondent is now, and for sometime last past, has been engaged in the offering for sale, sale and distribution of certain products, namely yarn, to retail stores. In the course and conduct of his business, respondent, now causes, and for sometime last past has caused, his said products, when sold, to be shipped from his place of business in the State of New York to purchasers located in various other States of the United States, and maintain, and at all times mentioned herein, has maintained, a substantial course of trade in said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. Respondent in the course and conduct of his business, as aforesaid, has made statements on invoices and shipping memoranda to his customers misrepresenting the fiber content of certain of his said products.

Among such misrepresentations, but not limited thereto, were statements representing certain yarns to be "100% Mohair", whereas said yarns contained substantially different fibers and quantities of fibers than represented.

PAR. 8. The acts and practices set out in Paragraph 7 have had and now have the tendency and capacity to mislead and deceive the purchasers of said products as to the true content thereof and to cause them to misbrand products sold by them in which said materials were used.

PAR. 9. The acts and practices of the respondent set out in Paragraph 7 were, and are, all to the prejudice and injury of the public and of respondent's competitors and constituted and now constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the complaint

to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

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

1. Respondent Sidney Wolff is an individual trading as Wolfson Yarn Company and Em-Gee-Ess Knitwear Company, with his office and principal place of business located at 260 Fifth Avenue in the city of New York, State of New York.

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

ORDER

It is ordered, That Sidney Wolff, an individual trading as Wolfson Yarn Company and Em-Gee-Ess Knitwear Company, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the offering for sale, sale, transportation, distribution or delivery for shipment in commerce, of wool yarn or other wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from:

Misbranding such products by:

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

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

It is further ordered, That respondent Sidney Wolff, an individual trading as Wolfson Yarn Company and Em-Gee-Ess Knitwear Company, and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of yarn or any other textile products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or amount of constituent fibers contained in

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yarn or any other textile products on invoices or shipping memoranda applicable thereto or in any other manner.

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

IN THE MATTER OF

PRENTICE-HALL, INC., ET AL.

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

Docket C-676. Complaint, Jan. 7, 1964—Decision, Jan. 7, 1964

Consent order requiring three associated corporate publishers with a common place of business at Englewood Cliffs, N.J., to cease representing falsely in advertising that certain publications were given free of cost when, in fact, persons accepting such "free" offers obligated themselves to examine and either return or pay for another publication; misrepresenting that certain advertised publications are in limited supply and that respondent's offer should be accepted immediately; representing falsely in letters and materials sent to delinquent customers, some on letterheads of purported collection agencies, that delinquent accounts would be, or had already been, turned over to a credit rating agency or an independent collection agency or attorney; and requiring the parent corporation to cease representing falsely that the sales techniques described in its "PRENTICE-HALL Miracle Sales Guide"—actually a compilation by its editors—were based on a broad individual case study of successful salesmen.

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 Prentice-Hall, Inc., a corporation, Parker Publishing Company, Inc., a corporation, and Institute for Business Planning, Inc., a 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 Prentice-Hall, Inc., is a corporation organized, existing and doing business under and by virtue of the

laws of the State of Delaware, with its principal office and place of business located at Englewood Cliffs, in the State of New Jersey.

Respondent Parker Publishing Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at Englewood Cliffs, in the State of New Jersey.

Respondent Institute for Business Planning, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal offices and places of business located at 2 West 13th Street in the city of New York, and at Englewood Cliffs, in the State of New Jersey.

PAR. 2. Respondent Prentice-Hall, Inc., is now and for some time last past has been engaged in the publishing, advertising, offering for sale, sale and distribution of books, magazines, periodicals and other merchandise and business services directly to the general public and to jobbers, distributors, retailers and others for resale to the general public.

Respondent Parker Publishing Company, Inc., is now and for some time last past has been engaged in the advertising, offering for sale, sale and distribution of books, periodicals and other merchandise to the general public primarily through the United States mails. Respondent Parker Publishing Company, Inc., although separately incorporated is entirely owned, operated, managed and controlled by Respondent Prentice-Hall, Inc. Respondent Parker Publishing Company, Inc., sells books and publications manufactured, published by and bearing the name of Respondent Prentice-Hall, Inc.

Respondent Institute for Business Planning, Inc., is now and for some time last past has been engaged in the preparation, publishing, advertising, offering for sale, sale and distribution of various publications and services in the field of taxation and business to the general public. Respondent Institute for Business Planning, Inc., is also separately incorporated but was organized by Respondent Prentice-Hall, Inc., which owns a substantial majority of its capital stock. Respondent Prentice-Hall, Inc., controls, manages and directs the operations of Institute for Business Planning, Inc.

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

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PAR. 4. Respondent Prentice-Hall, Inc., for the purpose of inducing the purchase of the "PRENTICE-HALL Miracle Sales Guide" has made certain statements and representations in advertising in regard to the manner in which said publication was prepared, the unique nature of its contents, the persons utilizing and benefiting from its use, the price at which said publication is offered, and other aspects of its development, use and value.

Said statements and representations were made in advertising disseminated by and through the United States mails, in advertising placed in newspapers and magazines of general and special circulation and in other advertising materials. Typical, but not all inclusive of said statements and representations, are the following:

One of America's top sales geniuses—the man who built this guide—saw this truth blaze up all through the selling world. The 4,000 men he analyzed were successes or failures to the extent that they put their energies into the 10% that pays off, steered clear of the useless 90%.

Hundreds of men were trained in the "miracle 10%" approach. Their success was breathtaking. As soon as these men discovered how to "go all out" on the 10% of selling activity that counts, they soared to success. Men who had been mediocrities moved rapidly up to \$40,000, \$50,000 a year—and more.

* * * * *

Here are just a few of the more than 50,000 top men and firms who are already profiting by The Prentice-Hall MIRACLE SALES GUIDE * * *:

The Borden Co., New York, New York
American Airlines, Inc., New York, New York
Sabrosa Coffee Co., Inc., Brooklyn, New York.

And all it costs is just \$15.00 on this special offer.

This hot new information comes directly from a study of 300 of the greatest salesmen in America—men who are making from \$50,000 to \$100,000 a year.

THE MIRACLE THAT TURNS SALESMEN INTO GIANTS the great new approach that multiplies a man's selling power and income by ten.

PAR. 5. By and through the use of the above-quoted statements, and others of similar import not specifically set out herein, Respondent Prentice-Hall, Inc., represents and has represented:

a. That the sales methods and techniques described in said "PRENTICE-HALL Miracle Sales Guide" were derived from an individual case study of 4,000 salesmen in one group and of 300 of the greatest salesmen in America who were each earning from \$50,000 to \$100,000 a year in another group.

b. That the selling techniques and methods contained in said publication were new, unique and had not heretofore been known or available.

c. That use of the sales methods and techniques described in said "PRENTICE-HALL Sales Guide" assures mediocre salesmen of

incomes in excess of \$40,000 a year and enables all salesmen to earn ten times their present incomes.

d. That each of the companies and persons named above and in other advertising not herein set forth had utilized said publication and as a result had realized a gain in sales, income and other benefits.

e. That the price at which said publication was offered constituted a reduction from the price at which said publication had been usually and customarily sold by respondent at retail in the recent, regular course of its business or from the price at which said publication was generally sold at retail in the trade area or areas where the representation was made, and as a result thereof, purchasers of said publication would realize a saving.

PAR. 6. In truth and in fact:

a. The sales methods and techniques described in said "PRENTICE-HALL Miracle Sales Guide" were not derived from an individual case study of 4,000 salesmen in one group and of 300 of the greatest salesmen in America who were each earning from \$50,000 to \$100,000 a year in another group. Said publication represented a compilation and summary of the general experiences and study of its authors and editors in the area of sales and salesmanship.

b. The selling techniques and methods contained in said publication were not new, unique or unknown prior to the publication of said book. The information, techniques and methods contained in said publication are general, universally known basic principles of salesmanship and selling.

c. The use of the sales methods and techniques described in said "PRENTICE-HALL Sales Guide" does not assure mediocre salesmen of incomes in excess of \$40,000 a year and does not enable all salesmen to earn ten times their present incomes.

d. All of the companies and persons named above and in other advertising not herein set forth had not utilized said publication and all of such companies and persons, as a result thereof, did not realize a gain in sales, income or other benefits.

e. The price at which said publication was offered did not constitute a reduction from the price at which said publication had been usually and customarily sold by respondent, at retail in the recent, regular course of its business or from the price at which said publication was generally sold at retail in the trade area or areas where the representations were made, and purchasers did not realize a savings as a result thereof.

Therefore, the statements and representations as set forth in Paragraphs 4 and 5 hereof were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of their business as aforesaid and for the purpose of inducing the purchase of publications, books, services and merchandise respondents have made certain statements and representations in advertising materials disseminated through the United States mails, in regard to the "free" nature of certain publications and articles of merchandise offered to induce the purchase of other publications, books and services.

Typical, but not all inclusive of said statements and representations, are the following:

FREE! "The Pocket Book Of Toasts For Every Occasion"

* * * * *
At no cost or obligation, we will send you this complete collection of rousing toasts * * *.

Think of it, all this in one FREE book! * * *

FREE! THE POCKET BOOK OF TOASTS FOR EVERY OCCASION.

For the doctor who's tired of watching others grow rich—accept with our compliments:

"A METHOD FOR PUTTING AWAY \$250,000—TAX FREE"

Mail this card now to make sure you receive this special Report—*free*

THE MOST AMAZING FINANCIAL HELP EVER MADE AVAILABLE TO THE MEDICAL PROFESSION * * * FREE OF COST.

Dear Doctor:

We now have ready for free distribution the great new DOCTOR'S PERSONAL WEALTH-BUILDING PORTFOLIO.

PAR. 8. By and through the use of the above-quoted statements and others of similar import not specifically set out herein, respondents represent and have represented, directly or by implication, that the publications or articles of merchandise referred to as "free", "At no cost or obligation * * *", "* * * with our compliments:" and "FREE OF COST" are given free, as a gift or gratuity, without cost, obligation, restriction or liability.

PAR. 9. In truth and in fact the publications or articles of merchandise referred to as "free", "At no cost or obligation * * *", "* * * with our compliments:" and "FREE OF COST" are not given free, as a gift or gratuity, without cost, obligation, restriction or liability. Persons accepting the offer of the aforesaid publications and articles of merchandise also thereby: (1) obligate themselves to accept for examination and subsequently return or pay for another publication; or (2) subscribe to a publication of respondents and obligate themselves to subsequently pay the regular subscription price therefor.

The conditions, obligations and other prerequisites to receipt and retention of the publications and articles of merchandise referred to as "free", "At no cost or obligation * * *", "* * * with our compliments:" and "FREE OF COST" are not clearly and conspicuously explained or set forth at the outset so as to leave no reasonable prob-

ability that the terms and conditions of the advertisements or offer might be misunderstood.

Therefore, the statements and representations as set forth in Paragraphs 7 and 8 hereof are false, misleading and deceptive.

PAR. 10. In the course and conduct of their business as aforesaid and for the purpose of inducing the purchase of their publications and merchandise respondents have made certain statements in advertising in regard to the supply of said publications and merchandise available. Typical, but not all inclusive of these statements, are the following:

The advance demand for this Miracle Sales Guide is so heavy we must ask that you kindly return the enclosed card today.

MAIL PROMPTLY TO GET YOUR SPECIAL REPORTS WHILE THE SUPPLY LASTS

Only a few hundred copies are left.

By and through the use of these statements and others of similar import not specifically set out herein, respondents represent and have represented, directly or by implication, that the supply of said publications or merchandise was limited, and the offer must be accepted immediately. In truth and in fact, adequate supplies of said publications and merchandise were available or were obtainable.

Therefore the statements and representations set forth above, are false, misleading and deceptive.

PAR. 11. In the course and conduct of their business and for the purpose of inducing the payment of delinquent accounts respondents have made certain statements and representations through letters and materials sent through the United States mails to purportedly delinquent customers who have purchased publications, books, and merchandise. Typical, but not all inclusive of said statements and representations, are the following:

a. On the letterhead of Prentice-Hall, Inc.:

Surely you must realize that your outstanding balance cannot be allowed to run indefinitely. There's been no payment * * * In anticipation that we will receive your check within the next five days, further action will be held up * * *.

An immediate payment from you will relieve us from taking whatever steps may be necessary to collect the amount due * * *.

b. On the letterhead of Parker Publishing Company, Inc.:

No one really wants to become a poor credit risk.

Several weeks ago, we stated our case frankly with reference to your account. We haven't heard from you, so we will have no choice but to mark your account "Poor Credit".

You still have 5 days in which to avoid this.

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c. On the letterhead of "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC. CREDIT REPORTS. SPECIAL INVESTIGATIONS COLLECTIONS — 15 WEST 38th STREET, NEW YORK 18, N. Y.":

Our business is to help our clients collect past due accounts. That is why the Parker Publishing Company turned to us for help.

We are sure you want to keep an untarnished credit reputation and that is the reason we urge you again to settle the account due our clients, the Parker Publishing Company.

Just to make it perfectly clear—your failure to pay your account within the next ten days will leave our client no choice but to proceed with such other means at their disposal to effect collection.

d. On the letterhead of "GRESHAM COLLECTION AGENCY —2 WEST THIRTEENTH STREET, NEW YORK 11, N. Y.:

Prentice-Hall has turned your account over to us for immediate collection.

Our client has forwarded to us the enclosed statement of your account with his organization. Noting that it is just and correct, further noting that you have been given ample opportunity to remit, he has asked us to procure payment.

I feel that it will not be necessary to detail to you the consequences of non-payment, such as possible court appearances; judgment; attachment of salary; loss of credit, etc.* * *

We regret to advise you that your lack of cooperation has compelled us to forward your account * * * to our attorney.

* * * * *
For your information, his address is: * * *, Esq.

* * * * *
PAR. 12. By and through the use of the above-quoted statements, and others of similar import not specifically set out herein, respondents represent and have represented that:

a. If payment is not made, the delinquent customer's name will be transmitted to a credit rating agency or bureau with the result that said customer's credit rating will be adversely affected.

b. If payment is not made, the account will be turned over to an independent, bona fide collection agency or independent, outside attorney.

c. "The MAIL ORDER CREDIT REPORTING ASSOCIATION, INC.," and "GRESHAM COLLECTION AGENCY" are independent, bona fide collection agencies.

d. Various persons named in the foregoing and in other materials, are independent, outside attorneys at law.

e. The letters and notices on the letterhead of the said "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC." and "GRESHAM COLLECTION AGENCY" are prepared and sent by these agencies.

f. Respondents have turned over to "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC., "GRESHAM COLLECTION AGENCY", or certain named attorneys, the delinquent account of the customer for collection with instructions to take all necessary legal steps to collect the outstanding amount due.

PAR. 13. In truth and in fact:

a. If payment is not made, the delinquent customer's name is not transmitted to a credit rating agency or bureau with the result that the customer's credit rating is adversely affected.

b. If payment is not made, the account is not turned over to an independent, bona fide collection agency or independent, outside attorney unless the amount of purported indebtedness is substantial.

c. "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC.," and "GRESHAM COLLECTION AGENCY" are not independent, bona fide collection agencies.

d. The various persons named in the foregoing and in other materials are not independent, outside attorneys at law, but are employees of respondents.

e. The letters and notices with the name of "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC.," and "GRESHAM COLLECTION AGENCY" are not prepared or sent by these agencies. Respondents prepare and mail said letters and notices. Replies addressed to "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC." are forwarded by said organization directly, unopened, to respondents. The address utilized for replies to the "GRESHAM COLLECTION AGENCY" is that of one of the respondents.

f. Respondents have not turned over to "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC.," "GRESHAM COLLECTION AGENCY," or certain named attorneys, the delinquent accounts of the customer for collection nor have respondents instructed said organizations or individuals to take all necessary legal steps to collect the outstanding amount due.

Therefore, the statements and representations as set forth in Paragraphs 11 and 12 hereof, are false, misleading and deceptive.

PAR. 14. In the conduct of their business and at all time mentioned herein, the respondents have been in substantial competition, in commerce, with corporations, firms, and individuals in the sale of books, magazines, publications and other merchandise of the same general kind and nature as that sold by the respondents.

PAR. 15. 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' publications and merchandise by reason of said erroneous and mistaken belief.

PAR. 16. 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 Prentice-Hall, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Englewood Cliffs, in the State of New Jersey.

Respondent Parker Publishing Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at Englewood Cliffs, in the State of New Jersey.

Respondent Institute for Business Planning, 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 places of business located at 2 West 13th Street in the city of New York,

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State of New York and at Englewood Cliffs, in the State of New Jersey.

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

I

It is ordered, That respondents Prentice-Hall, Inc., Parker Publishing Company, Inc., and Institute for Business Planning, Inc., corporations, and their respective officers, 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 books, periodicals, publications, tax or business reports or other merchandise or services, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Using the terms "free," "At no cost or obligation * * *"; "* * * With our compliments", "FREE OF COST" or any other word or words of similar import or meaning, to designate or describe any publication, book, service or other product, in advertising or in other offers to the public, when all of the conditions, obligations, or other pre-requisites to the receipt and retention of the said free publication, book, report or other product, are not clearly and conspicuously explained or set forth at the outset so as to leave no reasonable probability that the terms of the advertisements or offer might be misunderstood.

B. Representing, directly or by implication, that the supply of publications, books or other products is limited when adequate suppliers are available or will be obtained.

C. Representing, directly or by implication, that:

1. Delinquent customers' general or public credit ratings will be adversely affected unless where payment is not received, respondents in fact refer the information of said delinquency to a separate, bona fide credit rating agency or bureau;

2. Delinquent accounts will be or have been turned over to an independent, bona fide collection agency or outside attorney unless respondents in fact turn or have turned said accounts over to such agencies or persons;

3. "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC." and "GRESHAM COLLECTION AGENCY" are independent, bona fide collection agencies;

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or that any other organization or trade name owned in whole or in part by respondents or over which respondents exercise any direction or control are independent collection agencies;

4. Any employee of respondents is an independent, outside attorney; or that any person or firm is an outside, independent attorney or firm of attorneys representing respondents for collection purposes unless a bona fide attorney-client relationship exists for purposes of collecting delinquent accounts;

5. Notices or other communications, which have been prepared, written or mailed by respondents, have been sent by "THE MAIL ORDER CREDIT REPORTING ASSOCIATION", the "GRESHAM COLLECTION AGENCY", or any other person, firm or organization;

6. Delinquent accounts have been turned over to "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC.", "GRESHAM COLLECTION AGENCY", or to any attorney, or to any other person, firm, or organization with instructions to take legal steps to collect the amount purportedly due, unless respondents establish that such is the fact.

II

Respondent Prentice-Hall, Inc., a corporation, and its officers, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of books, periodicals, publications, tax or business reports, or other merchandise or services, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication:

1. That the sales methods and techniques described in the "PRENTICE-HALL Miracle Sales Guide" are derived from an individual case study of sales methods and techniques of individual salesmen;

2. That the techniques or methods contained in said "PRENTICE-HALL Miracle Sales Guide" are new, unique or have not theretofore been known or available;

3. That the use of the sales methods and techniques described in said "PRENTICE-HALL Miracle Sales Guides" will assure mediocre salesmen of incomes in excess of \$40,000 a year or enable all salesmen to earn ten times their present incomes.

B. Misrepresenting, in any manner, the method or basis by or upon which said "PRENTICE-HALL Miracle Sales Guide" or any other book or publication was compiled or written.

C. Misrepresenting, in any manner, that any book or publication is the only one of its kind, or that its contents are current, or that the techniques or methods of its preparation have never before been utilized: *Provided however*, That it shall be a defense hereunder, involving any book or publication not prepared by respondent's editorial staff, that respondent did not know and had no reason to know of the falsity of such representation.

D. Representing, directly or by implication, that the amount of income or increase in income which will be derived by persons applying the methods or techniques described in said "PRENTICE-HALL Miracle Sales Guide" or any other book or publication will be in excess of the amounts of income or increases in income typically and usually received by others contemporaneously using or applying the methods or techniques of the aforesaid sales guide or other book or publication.

E. Representing, directly or by implication, that said "PRENTICE-HALL Miracle Sales Guide" or any other publication, book or service has been used or is being used by stated persons or organizations or that said persons have experienced gains in income, sales or other benefits from the use of said "PRENTICE-HALL Miracle Sales Guide" or other publications, book or service, unless respondent establishes that such is the fact.

F. Representing, directly or by implication, that the price of any publication, book or service is a reduced price, unless it constitutes a reduction from the price at which the publication, book or service referred to has been usually and regularly sold by the respondent at retail in the recent, regular course of its business or a reduction from the price at which said product or service is generally sold in the trade area or areas where the representation is made; or otherwise misrepresenting the amount of savings afforded purchasers of respondent's publications, books or services.

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, Commissioners MacIntyre and Higginbotham not concurring.

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IN THE MATTER OF

IRVING-FREDERICK, INC., ET AL.

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

Docket C-677. Complaint, Jan. 9, 1964—Decision, Jan. 9, 1964

Consent order requiring two associated retailers of fur products in San Francisco, Calif., to cease violating the Fur Products Labeling Act by failing in labeling and invoicing, to show the true animal name of fur and when fur was bleached or dyed; failing to disclose, in invoicing, the country of origin of imported furs; failing to use the term "Natural" in labeling, invoicing, and advertising to describe fur products which were not artificially colored; substituting nonconforming labels for those affixed by the manufacturer or distributor; and failing in other respects to comply with provisions of the Act; and to cease violating the Wool Products Labeling Act by failing to label wool products as required and removing labels or other identification prior to ultimate sale.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Fur Products Labeling Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Irving-Frederick, Inc., a corporation, and Irving Bartel and Mrs. Joseph Nagel, individually and as officers of said corporation; and Irving Bartel, Inc., a corporation, and Irving Bartel, Gerson Bartel, and Ben Bartel, individually and as officers of said corporation, hereinafter referred to as respondents have violated the provisions of said Acts and Rules and Regulations promulgated under the Fur Products Labeling Act and the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Irving-Frederick, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California.

Respondents Irving Bartel and Mrs. Joseph Nagel 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.

Respondent Irving Bartel, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California.

Respondents Irving Bartel, Gerson Bartel, and Ben Bartel are officers of corporate respondent Irving Bartel, Inc., and formulate, direct and control the acts, practices and policies of this corporate respondent, including those hereinafter set forth.

Corporate respondent Irving-Frederick, Inc., and individual respondents Irving Bartel and Mrs. Joseph Nagel are retailers of fur products, with their office and principal place of business located at 775 Market Street, city of San Francisco, State of California.

Corporate respondent Irving Bartel, Inc., and individual respondents Irving Bartel, Gerson Bartel, and Ben Bartel are retailers of fur products, with their office and principal place of business located at 812 Market Street, city of San Francisco, State of California.

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 or otherwise falsely and 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.

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

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

1. To show the true animal name of the fur used in the fur product.
2. To disclose that the fur contained in the fur product was bleached, dyed, or otherwise artificially colored, when such was the fact.
3. To show the country of origin of the imported furs contained in the fur product.

PAR. 5. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled

in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) 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.

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

(c) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in handwriting on labels, in violation of Rule 29(b) of said Rules and Regulations.

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

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices 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. 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 "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.

(b) 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 advertised in issues of the San Francisco Chronicle and the San Francisco Examiner, newspapers published in the city of San Francisco, State of California. Said advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of such fur products.

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 viola-

tion of the Fur Products Labeling Act by virtue of the fact that said fur products were not advertised in accordance with the Rules and Regulations promulgated thereunder, in that 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. 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. 11. Respondents, in substituting labels as provided for in Section 3(e) of the Fur Products Labeling Act, have failed to keep and preserve the records required, in violation of said Section 3(e) and Rule 41 of the Rules and Regulations promulgated under the said Act.

PAR. 12. The acts and practices of respondents, as set forth above, were and are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

PAR. 13. Subsequent to the effective date of the Wool Products Labeling Act of 1939, respondents have introduced into commerce, sold, transported, distributed, delivered for shipment, and offered for sale in commerce, as "commerce" is defined in said Act, wool products as "wool product" is defined therein.

PAR. 14. Certain of said wool products were misbranded by respondents in that they were not stamped, tagged, labeled or otherwise identified with the information required under Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as required by the Rules and Regulations promulgated under said Act.

PAR. 15. Respondents with the intent of violating the provisions of the Wool Products Labeling Act of 1939 have removed or caused or participated in the removal of the stamp, tag, label or other identification required by the Wool Products Labeling Act of 1939 to be affixed to wool products subject to the provisions of such Act, prior to the time such wool products were sold and delivered to the ultimate consumer, in violation of Section 5 of said Act.

PAR. 16. The acts and practices of the respondents as set forth above in Paragraphs 12, 13, 14 and 15 were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Irving-Frederick, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 775 Market Street, city of San Francisco, State of California.

Respondents Irving Bartel and Mrs. Joseph Nagel are officers of Irving-Frederick, Inc., and their address is the same as that of said corporation.

Respondent Irving Bartel, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 812 Market Street, city of San Francisco, State of California.

Respondents Irving Bartel, Gerson Bartel and Ben Bartel are officers of Irving Bartel, Inc., 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 Irving-Frederick, Inc., a corporation, and Irving Bartel and Mrs. Joseph Nagel, individually and as officers of said corporation, Irving Bartel, Inc., a corporation, and Irving Bartel, Gerson Bartel, and Ben Bartel, 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 name or identification of the animal or animals that produced the fur contained in the fur product.

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

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 mingled with non-required information on labels affixed to fur products.

5. 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.

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. 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 the Rules and Regulations promulgated thereunder, to describe fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

3. 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:

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.

It is further ordered, That respondents Irving-Frederick, Inc., a corporation, and Irving Bartel and Mrs. Joseph Nagel, individually and as officers of said corporation, Irving Bartel, Inc., a corporation, and Irving Bartel, Gerson Bartel, and Ben Bartel, 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:

A. 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.

B. Failing to keep and preserve the records required by the Fur Products Labeling Act and the Rules and Regulations

promulgated thereunder in substituting labels as permitted by Section 3(e) of the said Act.

It is further ordered, That respondents Irving-Frederick, Inc., a corporation, and Irving Bartel and Mrs. Joseph Nagel, individually and as officers of said corporation, Irving Bartel, Inc., a corporation, and Irving Bartel, Gerson Bartel, and Ben Bartel, 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 offering for sale, sale, transportation or delivery for shipment, in commerce, of any wool product, as "wool product" and "commerce" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from failing to securely affix to or place on each product, a stamp, tag, label or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondents Irving-Frederick, Inc., a corporation, and Irving Bartel and Mrs. Joseph Nagel, individually and as officers of said corporation, Irving Bartel, Inc., a corporation, and Irving Bartel, Gerson Bartel, and Ben Bartel, 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 any stamp, tag, label or other means of identification affixed to any wool product subject to the provisions of the Wool Products Labeling Act of 1939 with intent to violate the provisions of the said Act.

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

IN THE MATTER OF

GLOTZER AND GLOTZER, INC., ET AL.

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

Docket C-678. Complaint, Jan. 13, 1964—Decision, Jan. 13, 1964

Consent order requiring retail furriers in Hartford, Conn., to cease violating the Fur Products Labeling Act by failing, in labeling, invoicing and adver-

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tising, to show the true animal name of fur and to use the term "Natural" where required; failing to show the registered identification of the manufacturer on labels and the country of origin of imported furs on invoices; invoicing "Spotted Cat" falsely as "Leopard Cat"; advertising prices as reduced from usual retail prices which were fictitious; failing to keep adequate records as a basis for pricing claims; substituting nonconforming labels for those originally affixed to fur products, and failing to comply in other respects 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 Glotzer and Glotzer, Inc., a corporation, and Isadore Glotzer, Sara Glotzer and William B. Glotzer, 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 Glotzer and Glotzer, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut.

Respondents Isadore Glotzer, Sara Glotzer and William B. Glotzer 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 240 Trumball Street, Hartford, 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 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:

1. 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.

2. 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.

3. 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.

4. Required item numbers were not set forth on labels, in violation of Rule 40 of said Rules and Regulations.

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

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 "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.

(c) 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 Hartford Courant, a newspaper published in the city of Hartford, State of Connecticut.

Among such false and deceptive advertisements, but not limited thereto were advertisements which failed to show the true animal name of the fur used in the fur product.

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 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. 10. By means of the aforesaid advertisements and other advertisements of similar import and meaning not specifically re-

ferred 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 said fur products were not reduced in price as represented 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 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. 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. 13. Respondents in substituting labels as provided for in Section 3(e) of the Fur Products Labeling Act, have failed to keep and preserve the records required, in violation of said Section 3(e) and Rule 41 of the Rules and Regulations promulgated under the said Act.

PAR. 14. 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

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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 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 Glotzer and Glotzer, Inc., 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 240 Trumbull Street, Hartford, Connecticut.

Respondents Isadore Glotzer, Sara Glotzer and William B. Glotzer are officers 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 Glotzer and Glotzer, Inc., a corporation, and its officers, and Isadore Glotzer, Sara Glotzer and William B. Glotzer, 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 the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

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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. 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.

3. 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.

4. 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.

5. 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 "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 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. 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, 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.

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 Glotzer and Glotzer, Inc., a corporation and its officers and Isadore Glotzer, Sara Glotzer and William B. Glotzer individually and as officers of the said corporation and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, 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:

A. Misbranding fur products by substituting for the labels affixed to such fur products pursuant to Section 4 of the Fur

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Products Labeling Act labels which do not conform to the requirements of the aforesaid Act and the Rules and Regulations promulgated thereunder.

B. Failing to keep and preserve the records required by the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in substituting labels as permitted by Section 3(e) of the said Act.

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

IN THE MATTER OF

K. P. INDUSTRIES, INC., ET AL.

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

Docket C-679. Complaint, Jan. 13, 1964—Decision, Jan. 13, 1964

Consent order requiring Chicago distributors of various automotive products, including a kit designated as "CHROME & ALUMINUM TOUCH-UP" consisting of two components, "MAGICHROME CLEANER" and "MAGICHROME," to cease representing falsely, in advertising and by the aforesaid trade names, that the products contained chrome and would restore chrome, stop rust and render metal impervious to weather, corrosion and salt, and fully guaranteed.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that K. P. Industries, Inc., a corporation, and Yale Engineering Company, a corporation, and William M. Karesh and Morton J. Smith, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, K. P. Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 900 North Franklin Street, in the city of Chicago, State of Illinois.

Respondent, Yale Engineering Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 900 North Franklin Street, in the city of Chicago, State of Illinois.

Respondents, William M. Karesh and Morton J. Smith, are officers of each of the said corporations. They formulate, direct and control the acts and practices of each of the said corporations. Their address is the same as that of the corporate respondents.

All of the respondents, both corporate and individual, have cooperated and acted together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of various automotive products, including a product designated as "Chrome & Aluminum Touch-Up" which is a kit consisting of two component parts designated as "Magichrome Cleaner" and "Magichrome", to jobbers, wholesalers and retail chain stores for resale to the public; both "Magichrome Cleaner" and "Magichrome" can be and are sold individually, but in the normal course of business, are sold as part of the kit.

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

PAR. 4. In the course and conduct of their business, and for the purpose of inducing sales of "Chrome & Aluminum Touch-Up", and the components, "Magichrome Cleaner" and "Magichrome", respondents have made certain statements and representations, of which the following are typical, but not all inclusive:

- a. CHROME & ALUMINUM TOUCH-UP
Amazing Chrome Refinishing Kit.
Refinishes Rusty Chrome
Cleans and Restores Dirty Chrome
Refinishes rusty chrome with a layer of glowing metal!
Cleans the original chrome, restoring its brilliant beauty!
Protects year 'round against weather, salt and corrosion!
Stops further rusting.

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Rusty chrome every motorist's problem * * *

Now YALE'S wonderfully simple and effective chrome Touch-Up kit answers this problem * * * So easy to use that anybody can get beautiful results immediately. Simply clean the chrome with magichrome cleaner, dab on magichrome, let dry, and polish gently to blend with remaining original chrome. Imagine! Beautiful chrome again, with a chrome Touch-Up Kit for only \$1.95.

- b. **MAGICHROME CLEANER**
Restores dirty chrome to its original beauty.
The most effective chrome cleaner on the market.
- c. **MAGICHROME**
Refinishes rusty chrome * * *
Contains powdered metal in a special base.
Sets in seconds, polishes to a glowing lustre.
Impervious to weather, corrosion, or salt.
Stops further rusting * * *
- d. Satisfaction guaranteed or money back!

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import but not specifically set forth herein, and by and through the use of the product names "Chrome & Aluminum Touch-Up", "Magichrome Cleaner", and "Magichrome", respondents have represented, directly and by implication, that:

1. "Chrome & Aluminum Touch-Up", "Magichrome Cleaner", and "Magichrome" contain chrome;
2. Their aforesaid products will not restore or refinish chrome;
3. The use of said products will stop rust and render metal impervious to weather, corrosion and salt;
4. The use of said products will remove rust instantly or effortlessly;
5. The said products are fully guaranteed in all respects.

PAR. 6. In truth and in fact:

1. "Chrome & Aluminum Touch-Up", "Magichrome Cleaner", and "Magichrome" do not contain chrome;
2. Their aforesaid products will not restore or refinish chrome;
3. Their aforesaid products will not stop rust and will not render metal impervious to weather, corrosion or salt;
4. Their aforesaid products will not remove rust instantly or effortlessly.
5. Their aforesaid products are not guaranteed in all respects and the nature and extent of the guarantee and the manner in which the guarantor will perform are not set forth.

Therefore, the statements and representations set forth in Paragraphs 4 and 5 hereof were and are false, misleading and deceptive.

PAR. 7. Respondents' said acts and practices further serve to place in the hands of others the means and instrumentalities through which the purchasing public may be misled with respect to the statements and representations set forth in Paragraphs 4 and 5 herein.

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

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

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and 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 K. P. Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the

State of Illinois, with its principal office and place of business located at 900 North Franklin Street, in the city of Chicago, State of Illinois.

Respondent Yale Engineering Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 900 North Franklin Street, in the city of Chicago, State of Illinois.

Respondents William M. Karesh and Morton J. Smith are officers of each of the said corporations, and their address is the same as that of the said corporations.

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

ORDER

It is ordered, That respondents K. P. Industries, Inc., a corporation and Yale Engineering Company, a corporation, their officers, and William M. Karesh and Morton J. Smith individually and as officers of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of the product designated as "Chrome & Aluminum Touch-Up" or the component parts thereof, "Magichrome Cleaner" and "Magichrome" whether sold under the same names or any other names, or any product of similar or like composition, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Chrome" or any other terms of similar import or meaning as part of a product name or trade name for such product, or representing in any other manner that respondents' products contain chrome.
2. Representing, directly or by implication:
 - A. That the product will restore or refinish automobile chrome;
 - B. That the product will stop rust or render metal impervious to weather, corrosion or salt;
 - C. That the product will remove rust instantly or effortlessly or that it will be effective in removing rust in any manner not in accordance with the facts;
 - D. That any of respondents' products are guaranteed, unless the nature and extent of the guarantee and the man-

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ner in which the guarantor will perform thereunder are clearly and conspicuously set forth.

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

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
MOTOROLA, INC.

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

*Docket 8473. Complaint, Mar. 23, 1962—Decision, Jan. 14, 1964**

Order requiring a Chicago distributor of radio and television sets and replacement parts therefor, to cease misrepresenting the capabilities, durability and superiority of its products, and reserving decision dealing with foreign origin of component parts.

COMPLAINT

PARAGRAPH 1. Respondent Motorola, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of Trade Commission, having reason to believe that Motorola, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Motorola, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 4545 West Augusta Boulevard, Chicago 51, Illinois.

PAR. 2. Respondent Motorola, Inc., is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of radio sets, television sets and replacement parts therefor to distributors for resale to retailers and the public.

PAR. 3. In the course and conduct of its business respondent now causes, and for some time last past has caused, its said products, when sold, to be shipped from its place of business in the State of

* Final order of March 28, 1968, further modified hearing examiner's initial decision, and dismissed for failure of proof the charges relating to foreign origin of component parts.

Illinois to purchasers thereof in various other States of the United States and in the District of Columbia and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the sale of its radio sets, television sets and replacement parts therefor, respondent has made certain statements with respect to the operating functions of said radio sets, television sets and replacement parts of which the following are typical:

A. Model 8x26 radio set.

* * * 9 times more selectivity * * *

* * * * *
 Like carrying a full 10-tube radio in your pocket! This pint-size power-plant packs 8 transistors and 2 germanium diodes.

* * * * *
 Plays hundreds of hours at peak performance on penlite batteries you buy for pennies.

B. Model L12 radio set.

500 hours on inexpensive batteries.

REVOLUTIONARY NEW VOICE FOR THE OUT-OF-DOORS New audio system with push-pull output delivers amazing tone quality with 6 times the audible output required for normal listening.

C. Model L14 radio set (also known as MOTOROLA RANGER 1000 radio).

Revolutionary new chassis and audio system * * *

* * * * *
 Plays 500 hours on inexpensive flashlight batteries.

* * * * *
 NEW FROM MOTOROLA Most powerful long-distance all-transistor portable.

D. Motorola television sets.

Golden Tube Sentry System * * * works automatically to protect every tube in the set against warm-up power surge * * * main cause of TV failure. It's engineered to eliminate 3 out of 4 service calls * * * triples TV life expectancy.

* * * * *
 Only Motorola Dealers get to sell TV with * * * NEW TUBE-SAVER ELECTRON GUN * * * that makes Golden "M" Picture Tubes 10 times more reliable than ordinary picture tubes.

* * * * *
 Respondent's Custom-Matic Tuner is

* * * the first tuner specifically designed for remote control.

* * * * *
 Motorola's exclusive new long-distance Custom-Matic Tuner * * * Never requires fine tuning as you go from station to station.

* * * * *

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New 4-Wafer Cascode Tuner. The only tuner to turn out a stronger signal than the one it picks up.

* * * * *
 A CLOSE-UP OF EXCLUSIVES IN THE ONLY TV LINE WITH COMPLETELY HAND-WIRED CHASSIS AND TUNER.

* * * * *
 ALL ACROSS THE LINE: THE MOST * * * inside * * *.

Finest combination of picture-making features in TV today.

—20,000 VOLTS OF PICTURE POWER puts a brighter picture on the screen * * *.

—180 VOLTS OF VIDEO DRIVE to give picture greater contrast.

E. Model X23 radio set.

Motorola proudly introduces Model X23 which to the best of our knowledge, is the smallest six transistor American brand radio * * * ever!

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

A. Its Model 8x26 radio set had 9 times more capability than other sets to select a desired radio station; was comparable in power output to a 10-tube radio; and would play hundreds of hours at peak performance on low priced batteries.

B. Its Model L12 radio set would perform for 500 hours on low priced batteries; and had a revolutionary and new audio system.

C. Its Model L14 radio set contained a revolutionary or new chassis and audio system; would play 500 hours on low priced batteries; and was the most powerful long-distance all-transistor portable available.

D. Its sentry system contained in certain of its receivers was a protective device that eliminated 3 out of 4 service calls, and tripled TV life expectancy; the picture tubes contained in certain of its receivers were constructed to last 10 times longer than comparable picture tubes; its Custom-Matic Tuner contained in certain of its receivers was the first tuner specifically designed for remote control and never required fine tuning; its 4-Wafer Cascode Tuner contained in certain of its receivers was the only tuner that turned out a stronger signal than the one it picked up; its 1960 television receivers represented the only television line with completely hand-wired chassis and all sets in its 1960 television line were equipped with 20,000 volts of picture power and 180 volts of video drive.

E. Its Model X23 was composed of essential and material parts manufactured in the United States.

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

A. Respondent's Model 8x26 radio set did not have 9 times more capability than other sets to select a desired radio station; was not

comparable in power output to a full 10-tube radio; and would not play hundreds of hours at peak performance on low priced batteries.

B. Respondent's Model L12 radio set would not perform for 500 hours on low priced batteries; and its audio system was one in general use in the radio industry and was not revolutionary or new.

C. Respondent's L14 radio set had a chassis and audio system that were in general use in the radio industry and were not revolutionary or new; would not play 500 hours on low priced batteries, and there were equally or more powerful transistor radio sets than the L14.

D. Respondent's sentry system was not a protective device that eliminated 3 out of 4 service calls or tripled TV life expectancy; respondent's picture tubes were not constructed to last 10 times longer than comparable picture tubes; respondent's Custom-Matic Tuner was not the first tuner specifically designed for remote-control and did require fine tuning; all competitive tuners turn out a stronger signal than the one picked up; respondent's 1960 television receivers were not all completely hand wired and were not all equipped with 20,000 volts of picture power and 180 volts of video drive.

E. Essential and material parts of respondent's Model X23 radio set are imported from Japan.

PAR. 7. In addition, in the course and conduct of its business, as aforesaid, respondent, before offering certain of its radio sets for sale, does not place markings on the said radio sets and their containers and does not disclose in its instructions and warranties of said sets or elsewhere that essential and material parts of said radio sets are imported from Japan. While certain encased functional parts of said radio sets bear markings indicating their manufacture in and importation from Japan, in all instances the markings are concealed or so small and indistinct that they do not constitute adequate notice to the public that such parts are not made in the United States.

PAR. 8. In the absence of an adequate disclosure that essential and material parts of a product, including radio sets, are of foreign origin, the public believes and understands that said essential and material parts are of domestic origin.

As to the aforesaid certain radio sets, a substantial portion of the purchasing public has a preference for said articles the essential and material parts of which are of domestic origin. Respondent's failure clearly and conspicuously to disclose the country of origin of essential and material parts of said articles of merchandise is, therefore, to the prejudice of the purchasing public.

PAR. 9. By the aforesaid acts and practices, respondent furnished or otherwise placed in the hands of retailers and others the means

and instrumentalities by and through which they may mislead the public as to the country of origin of said essential and material parts of certain of their radio sets.

PAR. 10. In the conduct of its business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of radio receivers, television receivers and replacement parts therefor of the same general kind and nature as those sold by respondent.

PAR. 11. The use by respondent of the aforesaid false, misleading and deceptive statements, representations and practices and the failure by respondent to disclose the foreign origin of material and essential parts of its radio sets have had, and now have, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of the respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce, in violation of Section 5 of the Federal Trade Commission Act.

Mr. Frank B. Dunn and Mr. Joseph P. Going for the Commission. Winston, Strawn, Smith & Patterson, by Mr. James L. Perkins, and Mr. Thomas Reynolds, Chicago, Ill., and Mr. William C. Fox, Jr., and Mr. Lewis Spencer, Franklin Park, Ill., for the respondent.

INITIAL DECISION BY MAURICE S. BUSH, HEARING EXAMINER

MARCH 21, 1963

The general issue in this matter is whether the respondent, a distributor of radio and television receivers, is in violation of the Federal Trade Practices Act¹ (a) by reason of numerous false statements and misrepresentations alleged to have been made by respondent with respect to the performance and other characteristics of said products for the purpose of inducing their sale and (b) by its failure to give adequate notice to the buying public that essential and material parts of certain radio sets it has marketed were not made in the United States. The various charges of the complaint and the evidence relating thereto and the conclusions thereon will be dealt

¹ Section 5(a)(1) of the Act, here pertinent, reads: "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful."

with serially below in the order shown in the complaint except that wherever possible two or more related issues will be grouped together in the interest of brevity.

The complaint herein was issued on March 23, 1962. The answer was filed on April 30, 1962, and an amendment to the answer was filed on August 1, 1962. Hearing and prehearing conferences were held over a continuous period of approximately six weeks in the months of June and July 1962 at Chicago, Illinois, following which there was one additional and final day of hearing on October 10, 1962, to take the testimony of a single witness who was unable to attend the hearings in Chicago due to illness. Thereafter proposed findings of facts, conclusions of law, and arguments in support thereof were filed by the parties. These have been carefully reviewed and considered and such proposed findings and conclusions which are not herein adopted, either in the form proposed or in substance, are rejected as not supported by the record or as involving immaterial matters. The facts hereinafter set forth are based on the entire record which consists of an original and supplemental stipulations of facts, a record of over 4,000 pages, and more than 175 exhibits. The great bulk of the testimony was received from electrical engineers, is technical in nature, and conflicting between the parties.

FINDINGS OF FACT

1. *Admitted Background Facts*

Respondent, Motorola, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 9401 West Grand, Franklin Park, Illinois. It is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of radio sets, television sets and replacement parts therefor to distributors for resale to retailers and the public. Its gross sales, including the sale of many products other than radio sets, television sets and replacement parts, totalled \$289,529,444 for the year 1959 and \$299,065,992 for 1960.

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

In the conduct of its business respondent is in substantial competition, in commerce, with corporations, firms and individuals in the sale of radio receivers, television receivers and replacement parts of the same general kind and nature of those sold by respondent.

Respondent, in the conduct of its business, and for the purpose of inducing the sale of its radio sets, television sets and replacement parts therefor, has made certain statements, hereinafter set forth, with respect to the operating functions of said products.

2. *Battery Life Issues*

On the factual issues here under consideration, the complaint charges that respondent has made certain false representations with respect to the service life of batteries suitable for use in certain models of radios it manufactures or assembles and distributes. The specific false representations charged by the complaint are the following:

(a) "Its Model 8x26 radio * * * will play hundreds of hours at peak performance on low priced batteries.

(b) "Its Model L12 radio set would perform for 500 hours on low priced batteries.

(c) "Its Model L14 radio set * * * would play 500 hours on low priced batteries."

Respondent has stipulated that it made each of the foregoing representations but denies they are false, misleading and deceptive.

Each of the above designated model radios was placed on the market in 1959. The representations in question were made in various advertisements, many of them in periodicals. The above-described representation with respect to the Model 8x26 radio has been discontinued since March 1960 and the manufacture of the model was discontinued in September 1960. The above-described representation with respect to the Model L12 radio has been discontinued since March 1960 and the manufacture of the model was discontinued in January 1960. The above-described representation with respect to the Model L14 radio has been discontinued since March 1960 and the manufacture of the model was discontinued in September 1959.

In the radio manufacturing industry it is customary for radio manufacturers, including respondent, to change radio models every year.

The three radio models here under discussion are portable transistor radios requiring dry cell batteries for their operation and will operate on such well-known brand batteries as the Ever-Ready and Ray-O-Vac. Respondent recommended Ever-Ready AA, Ray-O-Vac, Mallory, Mercury and Burgess batteries for use in the Model 8x26 radio and it is stipulated that the Models L12 and L14 will operate

on Ever-Ready batteries known as No. 635. In the battery life tests hereinafter described appropriate batteries were used in the involved Motorola radio sets.

As seen the representations in question relate to the service life of batteries which can be used in respondent's Model 8x26, L12 and L14 transistor radio sets.

There are two methods in common use by the radio manufacturing industry for determining the service life of batteries used in transistor radios. One of these is known as the "Life Test" method. "Life Tests" are actual performance tests, sometimes accelerated, which are designed to simulate the useful lives of radio batteries. In such tests, an actual radio is used, equipped with fresh batteries, and operated in cycles of two, four or more hours per day until the batteries become so exhausted from use that the music or voice coming from the radio is distorted.

The other method for determining the service life of batteries designed for use in transistor radios will be designated herein as the "Laboratory Data Test" method. It involves the use of data developed and compiled over a period of many years by laboratories of battery manufacturing companies from hundreds of tests on batteries for their life potentials. In such laboratory tests, the electrical current in the battery undergoing testing is drained in cycles of two, four, or more hours per day under various degrees of drainage measured in terms of milliamperes until the battery is exhausted and records are kept of the total number of hours required to reach the point of exhaustion on batteries so tested. In such tests no radios are used; the current from the battery is drained by means other than through the actual operation of a radio. Battery operated radios are designed by their manufacturers to use specified amounts of current drain in terms of milliamperes and to operate until the batteries reach a certain predetermined cut-off voltage point which is the point at which the voltage in the batteries has been so reduced that the radio set will no longer function satisfactorily. Given the current drain measurement in milliamperes and cut-off voltage point of any model radio set, the service life of the batteries suitable for use in such radio sets can be determined from pre-existing data developed under the "Laboratory Data Test" method.

The "Life Test" and the "Laboratory Data Test" methods for determining the service life of batteries used in radios give fairly reliable estimates of battery life under controlled conditions but of the two the "Life Test" method is the more reliable because it more closely simulates and approximates actual use of a radio by the radio listening public than the "Laboratory Data Test" method. In the

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"Life Test" method an actual radio is used for the test of battery life; in the "Laboratory Data Test" method, an actual radio is not used in determining battery life but instead a constant fixed resistance load is applied to the cells under a controlled temperature.

However, in actual every day use of battery radios by listeners, the service life of a radio battery may vary considerably from listener to listener because some users turn their radios on loud and others play theirs low and because some listeners leave their radios on continuously for very long periods of time and others play theirs for only a few minutes a day. Radios turned on to high sound volumes use up more current than radios operated on low sound volumes. Radios which are used continuously for long periods of time use up more of their batteries' total electrical energy than radios which are played intermittently. This is because ordinarily the total current of a battery will be greater if it is not drawn continuously and if frequent "rest periods" are allowed. Battery life is also affected by temperatures. Batteries used in temperatures above 70 degrees Fahrenheit last longer than those used in temperatures lower than 70 degrees Fahrenheit.

The record contains the results of "Life Tests" made on Motorola Models 8x26 and L14, but none on Model L12.

The life tests on Model 8x26 were made by Theodore Githens, a radio engineer with a company in competition with respondent who testified in this proceeding under subpoena in behalf of the Commission as did all other witnesses, also chiefly electrical engineers of competing companies, called by counsel supporting the complaint. For the past 23 years, Githens has been employed by the Zenith Radio Corporation as a radio engineer. It has been part of his job at Zenith over the years to test the functional characteristics of both tube and battery radios manufactured or under development by Zenith. It has also been part of his job to test the functional characteristics of radios manufactured by competing radio companies. This testing of both Zenith radios and competing brands of radios has included measurements for sensitivity, power output, selectivity, image rejection, and battery life. Competing radios are usually tested at the request of the sales department of Zenith but occasionally a Zenith radio engineer may initiate the testing of a competing brand of radio. Since the advent of the transistor radio some years ago, Githens has specialized at the Zenith laboratories in the electrical design and development of portable transistor radios and has engaged in the measurement of the service life of batteries used in transistor radios manufactured by Zenith and competing companies.

More than two years prior to the issuance of the complaint in this matter, Githens received for testing two Motorola Model 8x26 transistor radios from Zenith's sales department which were tested between 1958 and 1959 with the results hereinafter shown. These two identical model radios will hereinafter be designated as radios A and B for purposes of convenience. Githens in the regular course of his duties measured the two radios for their current drain and subjected the two sets to "life tests" for the determination of the service life of their batteries. Githens subjected radio A to two life tests and radio B to one life test.

On the basis of the tests made by Githens on radio A (Model 8x26) as reflected in the record, it is determined and found that radio A had a current drain of 20 milliamperes and that on its first "life test" radio A played a total of 132 hours before it stopped due to battery exhaustion and on its second "life test", the set played a total of $81\frac{3}{4}$ hours before it stopped due to battery exhaustion but that after 69 hours of the first test and after $71\frac{1}{4}$ of the second test, the radio "sounded terrible", that is, the listening quality of the set became unsatisfactory. In the two tests the radio was operated for various periods per day, ranging from an hour and a half to eight hours but more predominantly at cycles of three to four hours per day.

Similarly on the basis of tests made by Githens on radio B (Model 8x26) as reflected in the record, it is determined and found that radio B had a current drain of 19 milliamperes and that on the single "life test" to which it was subjected, the radio was played for a total of $71\frac{1}{2}$ hours at which point the sound output of the set deteriorated to such an extent that it was hardly intelligible.

As heretofore shown the only other of the three involved transistor radios on which there is "life test" evidence herein is with respect to Motorola Model L14. It will be recalled that the respondent advertised that the Model L14 "would play 500 hours on low priced batteries." The indicated "life test" on a Model L14 was also made in the Zenith laboratories by Zenith engineers but unlike the life tests on the Motorola Model 8x26 radios which were made long prior to the issuance of the complaint herein, the life test on the L14 was commenced just prior to the hearing of this proceeding at the request of counsel supporting the complaint.

The life test on the L14 radio was made principally by the aforementioned Githens and one George Fyler, who testified in behalf of the Commission with respect to the test procedure and results. Fyler, a Yale University graduate in electrical engineering, has been with Zenith since 1957. He had earlier employment as an electrical engineer with General Electric Company from 1927 to 1946 and by

Motorola from 1946 to 1957. Although his present field of specialization is television, he has had some 40 years of professional experience with radio batteries.

Githens and Fyler commenced a life or performance test on a Model L14 radio on May 4, 1962, equipped with fresh, new Ever-Ready batteries of the type called for in the L14. From measurements made by the two engineers just prior to the commencement of the life test, it is found that the radio had a current drain of 11 milliamperes. Between May 4 and July 15, 1962, the radio was operated in a Zenith laboratory for a total of 263½ hours at the rate of four hours per day except that in the first two weeks of the test the radio was not operated on week-ends. Following the expiration of 263½ hours of operation, the radio on July 16, equipped with the same batteries as it had from the beginning of the test, was brought to the hearing room for a physical demonstration of its playing quality before the examiner and was examined by Motorola engineers at the hearing for defects discernible to the eye with negative results before the demonstrations were started. At the hearing, various demonstrations, as evidenced by verbal descriptions thereof in the record, establish that the radio, following 263½ hours of prior operation, when turned on to its loudest volume could not be heard with intelligibility by persons in the hearing room standing at distances from the radio varying from 4 to 15 feet. Following these demonstrations, the radio was re-equipped with fresh new batteries and again played in the hearing room. With the new batteries, demonstrations, as verbally described in the record, establish that the radio could be heard at medium volumes in all parts of the large hearing room.

In the life test to which the L14 radio was subjected the radio—although played for a total of 263½ hours—had not been operated to the point where the radio would emit no sound whatever. The stipulated end point voltage of the L14 (that is, the point at which the L14 would no longer function satisfactorily) is 2.5 volts (or .41 per cell). Based on this figure and a graph in evidence (CX 103) which shows by a curve the decline of the voltage of the batteries in the L14 radio from their original voltage of 9 volts when new to 3.6 volts at the end of 263½ hours of playing and an imaginary further plotting of the curve to the end point voltage of 2.5 volts, Fyler in his testimony estimated, and the examiner now finds, that the radio would have quit running altogether at the end of about 350 hours of playing on the same batteries.

Summarizing, there has been set forth above the service life of batteries used in Motorola's Models 8x26 and L14 as determined

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under the "Life Test" or performance method of determining battery life.

The record also reflects estimates of the battery service life of Models 8x26 and L14 as well as the L12, as determined under the "Laboratory Data Test" method. For such estimates, counsel supporting the complaint adduced the testimony of Francis J. Wolfe, a battery expert and authority who is and has been associated with the manufacturers of Ever-Ready brand batteries for more than 40 years. He is also secretary of a standing committee of the American Standards Association known as "Committee C-18; Dry Cells and Batteries" which is charged with standardization activities on dry batteries under the sponsorship of the Bureau of Standards, U.S. Department of Commerce.

Relying on pertinent data developed in the Ever-Ready laboratories under the "Laboratory Data Test" method, as such data is summarized in CX 22 and CX 23, Wolfe estimated the battery life of the three involved Motorola radios to be as follows, if played at a low volume of sound, slightly above zero output (sometimes called "0 output" which is hereinafter defined) and barely discernible to the human ear:

Model numbers	Total battery life when played 2 hours per day	Total battery life when played 4 hours per day
8x26.....	88 hours.....	92 hours.
L-14.....	290 hours.....	310 hours.
L-12.....	416 hours.....	465 hours.

CX 22 and CX23, the aforementioned laboratory data sheets on which Mr. Wolfe relied for his above estimates of battery life, are essentially charts on the battery life of batteries designed for use in radios of the kind here involved. The Exhibits show total battery life at various listed rates of current drain discharges,² ranging from ten to twenty milliamperes in multiples of one, to an *end point voltage*³ of .5 volts per battery cell (among other end point voltages not pertinent here). The charts can be used for estimating the life

^{2, 3} For the convenience of the reader, the stipulated definitions of the phrases *current drain* and *end point voltage* are repeated below:

"*Current drain*, expressed in milliamperes, is the measure of current used by a radio (drained from the battery) while it operates, or the rate of flow of electricity from the battery. *End point voltage* is the point at which the voltage in batteries has been so reduced that the (radio) set will no longer function satisfactorily."

of batteries meant for use in a specified radio set *only* if the current drain and end point voltage measurements of the radio are supplied. In making his aforementioned estimates of battery life on the three involved radios, Mr. Wolfe assumed the measurements for current drain and end point voltage supplied to him at the hearing during his direct examination by counsel supporting the complaint for each of the three radio models.

Respondents accepts the data shown on CX 22 and CX 23 as valid for estimating battery life but the parties are in disagreement as to the proper *current drain* and *end point voltage measurements* to be assumed for the radios in question in the making of such estimates. Of the two measurements, Wolfe testified that the important measurement for him was the current drain measurement. The examiner finds that of the two measurements a radio's current drain measurement has more significance for estimating battery life than the radio's end point voltage.

Wolfe in his estimates of battery life assumed in his testimony on direct examination, pursuant to request of complaint counsel, that each of the three Motorola radios in question had an end point voltage of .5 volts per battery cell. The record, on the other hand, as established by the written stipulation of the parties, show that the end point voltages of Models 8x26, L12, and L14 are .55 volts per cell, .51 volts per cell, and .41 volts per cell, respectively. It is concluded and found that the differences between these figures and the end point voltage of .5 volts per cell used by Wolfe in making his battery life estimates are too small to make any significant differences in estimates of battery life but that in point of fact the .5 volts per cell figure used by Wolfe in his estimates of battery life of Models 8x26 and L12 are more favorable for longer life than the stipulated end point voltages of .55 volts per cell for the 8x26 and .51 volts per cell for the L12. We also note again our earlier finding that a current drain measurement is more significant for estimating battery life than the end point voltage measurement.

For the current drain measurements of the three Motorola radios, Wolfe in his testimony, pursuant to request of complaint counsel, assumed that the Model 8x26 had a current drain of 18 milliamperes at zero output (hereinafter defined), that the Model L12 had a current drain of 10 milliamperes at zero output, and that Model L14 had a current drain of 15 milliamperes at zero output.

The above stated current drain readings, or small variations therefrom, are the readings upon which counsel supporting the complaint rely. The evidence adduced by complaint counsel in proof of these readings is set forth below:

A. *Re Model 8x26*

1. Electrical specifications on the 8x26 issued by respondent, bearing dual dates of September 22, 1958 and November 4, 1959, show its *current drain* at various outputs as follows:

18 MA ⁴ at 0 output	} Average
40 MA at 100 MW ⁵ output	

20 MA at 0 output	} Maximum
58 MA at 100 MW output	

The word "output", shown above, is defined as the volume of sound at which a radio is played. "0 output", shown above and also known as "Zero Output" or "Zero Signal", means that a radio is turned on but at such a low level that no broadcast signals or sounds are coming through the radio. The strength of the sound heard from the speaker of a radio is measured in milliwatts. (These definitions and explanations are also applicable, wherever pertinent, below.)

The record shows that respondent on September 23, 1958 issued a "change notice" (Tr. 26 (c)) on the Model 8x26 radio one day after the original date (September 22, 1958) affixed to the radio's "Electrical Specifications" (CX 16) which contains the current drain measurements shown above. The "change notice" called for a "parts change" involving the substitution of another type of "bias resistor" for the one originally planned. Respondent in its Proposed Findings of Fact contends that the effect of this parts change "was to substantially reduce the radio's current drain from the levels stated on the specifications". The record shows that the "Electrical Specifications" (CX 16) issued on the 8x26 radio was again reissued more than a year later, on November 4, 1959, without any change in the current drain measurements shown in the specifications as of the date of its original issuance on September 22, 1958. It is found that the "parts change" of September 23, 1958, would not have the effect of requiring any changes in respondent's posted current drain measurements of the Model 8x26 as shown in Motorola's "Electrical Specifications" for the radio as set forth above.

2. A *Motorola Service Manual* issued by respondent on Model 8x26 in November 1958 shows its "Battery Drain" to be "18 ma (max)—with no input". Rephrasing the above to the phraseology heretofore used, it is found that the service manual states that Model 8x26 has an *average maximum current drain* of 18 MA at 0 output.

3. Tests conducted on two Model 8x26 radio sets in 1958 and 1959 by the aforementioned Zenith radio engineer Githens showed that

⁴"MA", by the stipulation of the parties, is the abbreviation for the word "milliamperes" and shall so be considered wherever it appears herein.

⁵"MW" is the abbreviation for the word "milliwatts" and shall so be considered wherever it appears herein.

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one set had a *current drain* reading of 20 milliamperes and the other, a reading of 19 milliamperes. It is found that these single readings for each of the two radios were taken when the radios were played at low volumes. This finding is based both on the testimony of Githens (Tr. 391-392) and the record as a whole which shows that when radio engineers quote a single current drain figure for a radio they generally mean to indicate the current drain of the radio at a low volume of playing. (The above finding that a current drain measurement will be taken to mean a reading at low volume where only one such measurement is noted for a radio, will also be applicable, wherever pertinent, below.)

4. A test made in June 1959 by the Electronics Division of Consumers Union of U.S., publishers of *Consumer Reports*, on a single set of the Model 8x26 radio showed the set to have a current drain measurement of 20 milliamperes when played at a volume considered loud enough to overcome noise which would exist on the street or on a picnic ground. Official notice is taken, and a number of respondent's advertisements show, that portable transistor radios are used and intended to be used to a large extent on the street or at such public places as a beach. From the testimony of Karl H. Nagel, chief of the aforementioned Division of Consumers Union and an electrical engineer of vast experience in the field of testing radio and television sets for the consuming public, it is found that the testing of a single radio for its current drain measurement is normally sufficient to establish the current drain reading for all radios of the same model as experience has shown that significant variations in current drain measurements among radio sets of the same model are not very likely. Consumers Union, a nonprofit organization, functions "to provide for consumers information and counsel relating to consumer goods and services". Its monthly magazine, *Consumer Reports*, which provides such consumer information with respect to specific competing branded merchandise, is well known to much of the consumer public. Its mode of operation is to buy competing consumer merchandise anonymously on the open market, to subject such merchandise to comparative tests, and to publish the results of the tests in *Consumer Reports*.

B. *Re Model L12*

1. Electrical specifications on the L12 issued by respondent on April 4, 1959, show its *current drain* measurements at various outputs as follows:

10 MA at 0 output	} Average
25 MA at 50 MW output	
12 MA at 0 output	} Maximum
32 MA at 50 MW output	

2. A *Motorola Service Manual* issued by respondent on the L12 in April 1959 shows its "Battery Drain" to be "10-12 ma (max) with no input signal." Rephrasing the above to the phraseology heretofore used, it is found that the service manual states that the L12 has an *average current drain* of 10 MA at 0 output and an *average maximum current drain* of 12 MA at 0 output.

3. A test made in April 1959 by a Zenith electrical engineer, Dwight J. Poppy, on a L12 model radio showed the radio to have a *current drain* measurement of 16 milliamperes at zero signal. The test was made by Poppy in the regular course of his routine duty to make measurements of the electrical characteristics of transistor portable radios manufactured by his employer Zenith and competing radio manufacturers and as part of his job as a design engineer in the field of transistor radios.

C. *Re Model L14*

1. Electrical specifications on the L14 issued by respondent on April 15, 1959 shows its current drain measurements at various outputs as follows:

15 MA at 0 output	} Average
56 MA at 300 MW output	
18 MA at 0 output	} Maximum
60 MA at 300 MW output	

2. A stipulation by the parties that the L14's current drain specifications are as in the measurement figures shown above.⁶ (Stip., par. 62) (The parties have not entered into similar stipulations with reference to the Models 8x26 and L12.)

3. A "life test" on an L14 radio for a period of 263½ hours in conjunction with a projection of the curve established by such operation for 263½ hours establishes a maximum battery life of about 350 hours for the L14 radio. (See findings above based on testimony of Zenith's engineer Fyler.)

Recapitulating, there has been set forth above findings of fact showing two sets of estimates of battery service life under evidence

⁶The record also contains a *Motorola Service Manual* on the L14 (CX 21 A-B) which shows lower current drain measurements for the L14 than that reflected in the aforementioned stipulation of the parties. Although cognizance has been taken of the Motorola service manuals on the Models 8x26 and L12 in the Findings of Fact above as such manuals relate to the current drain specifications for these two models, no cognizance is taken in the Findings of Fact herein of the current drain measurements shown in the *Motorola Service Manual* on the L14 (1) because the L14 Manual measurements for current drains are in variance with the measurements the parties have agreed to by stipulation as shown above, (2) because the L14 Manual predates the Motorola L14 Specifications, and (3) because respondent has not requested any findings of fact based upon the L14 Manual.

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adduced by counsel supporting the complaint. The first set of estimates, embracing only Motorola's Models 8x26 and L14 radios, was determined under the performance or "life test" method of determining battery life. The second set of battery life estimates, which embraces estimates for each of the three involved Motorola radio models, was determined under the "Laboratory Data Test" method under certain assumed current drain measurements as shown above. The evidence supporting such "assumed current drain measurements" has also been set forth above.

Respondent, in support of its defense that the longevity representations it has made with respect to battery life in the three involved Motorola radios are true and not false, misleading, and deceptive as alleged in the complaint, has not presented any evidence under the "life test" method on the battery life of the three radios but relies exclusively on evidence it has adduced on battery life in the three radios under the "Laboratory Data Test" method. This evidence stems from the expert testimony of respondent's battery expert, Joseph Vanko, who also as in the case of Wolfe, complaint counsel's expert witness, based his estimates of battery life on "assumed current drain measurements" for each of the three Motorola radios. The current drain measurements assumed by Vanko in making his estimates of battery life for the three Motorola radios were those supplied by the testimony of Richard J. Harasek, an electrical engineer in the employment of respondent, with some adjustments hereinafter described.

Starting first with the current drain measurements assumed by Vanko as derived from the testimony of Harasek, the background for such measurements is as follows. Harasek, a long time employee of respondent and its senior project engineer in charge of the design and development of Motorola portable transistor radios, caused an examination to be made in May 1962 of samples of the three involved Motorola radio models for their current drain measurements. These measurements were taken in anticipation of the hearing herein and for use as evidence at the hearing. Respondent does not have any earlier records of drain measurements on the three radio models, such as measurements made prior to or at the time the radios were first marketed in 1959 or at the times they were advertised for their alleged battery life longevity.

Harasek selected from inventory some six to eight radios of each of the three models, each group having been manufactured on or about the same day, and caused them to be carefully measured for

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their current drains. The radios thus measured showed average current drains as follows:

<i>Model No.</i>	<i>Average Current Drain at 0 output</i>
8x26.....	9.7 M.A.
L12.....	8.4 M.A.
L14.....	11.08 M.A.

Seeking support for Harasek's above current drain measurements, respondent employed Dr. Thomas Butler, an associate professor of electrical engineering at the University of Michigan, to make independent measurements of one radio of his own selection from each of the foregoing described groups of radios for current drains. Dr. Butler's measurements as established by his testimony in behalf of respondent showed current drains as follows:

<i>Model No.</i>	<i>Average Current Drain at 0 Output</i>
8x26.....	8 M.A.
L12.....	7.9 M.A.
L14.....	10 M.A.

Respondent's aforementioned witness Vanko, engineer manager of battery applications for Ray-O-Vac Company, relying on certain assumptions he was requested to make by counsel for respondent, estimated the battery life of the three model radios under the "Laboratory Data Test" method of assaying battery life as follows:

<i>Model No.</i>	<i>Total Battery Life</i>
8x26.....	250 to 260 hours
L12.....	545 to 580 hours
L14.....	510 to 550 hours

In making the above battery life estimates under the "Laboratory Data Test" method, Vanko made the following assumptions pursuant to request of counsel for respondent. He assumed for each of the three models (1) the appropriate Harasek current drain measurement (as shown above) with slight upward revision, (2) the appropriate stipulated end point voltage, and (3) that the radio is played at a volume sufficient to be heard in a room within three or four feet of the listener which is at a significantly higher volume than that assumed by complaint counsel's battery expert Wolfe in his estimates.

With respect to the volume of sound at which the involved radios would normally be played, it is found that respondent advertised its radios for outdoor use and that a transistor radio used outdoors has to be played at a louder volume than that involved in playing a radio indoors for comparable listening, with a consequent greater drain of electricity from the battery.

The record as a whole shows that the advertised battery life representations here involved were made without any requirement for

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prior substantiation or prior clearance on the truthfulness of said representations by responsible engineering personnel of respondent. From the record as a whole, it is further found that at the time that the advertisements in question were run respondent did not have in operation any plan or system which required advance clearance on proposed advertisement claims before they would be authorized for publication (Tr. 1730, 1751, and 3000).

SUMMARY OF CONFLICTING BATTERY LIFE ESTIMATES

Summarizing the advertised battery life on each of the involved radios and the conflicting expert testimony as to the estimated battery life of each and placing these conflicting estimates in juxtaposition, the indicated matter appears as follows:

AS ADDUCED BY COMPLAINT COUNSEL

Model No.	Advertised life	"Life Test" battery life	"Laboratory Data Test" battery life
8x26.....	"Hundreds of hours at peak performance on low priced batteries"	72 to 132 hrs.....	88 to 92 hrs.
L12.....	"500 hours on low priced batteries"	Not given test....	416 to 465 hrs.
L14.....	"500 hours on low priced batteries"	350 hrs ⁷	290 to 310 hrs.

⁷ Although the radio required 350 hours for complete exhaustion, it became unintelligible after 263½ hours of use.

AS ADDUCED BY RESPONDENT'S COUNSEL

Model No.	Advertised life	"Life Test" battery life	"Laboratory Data Test" battery life
8x26.....	Same as above.....	Not given test....	250 to 260 hrs.
L12.....	Same as above.....	Not given test....	545 to 580 hrs.
L14.....	Same as above.....	Not given test....	510 to 550 hrs.

DISCUSSION AND CONCLUSIONS

It is our conclusion that respondent's representation that "Its Model 8x26 radio * * * will play hundreds of hours at peak performance" is a false, misleading and deceptive representation, even under the most optimistic estimate contained in the record on that model's service battery life, namely, the estimate of respondent's battery expert, Vanko, that the radio would have a battery life of between

250 to 260 hours. It is not here necessary to define precisely the minimum multiple of "hundreds" of hours a radio must play on a set of batteries to fulfill a claim of "hundreds of hours" of playing time. It is sufficient to point out that in common parlance a radio which will play only a maximum of 260 hours is not one which plays "hundreds of hours at peak performance." It is also obvious that a radio whose batteries have reached the exhaustion point after 260 hours of operation has not been playing at "peak performance" for many hours before it played out at 260 hours. But for reasons which will appear below, Vanko's battery service life estimate of between 250 to 260 hours on the Model 8x26 is rejected in any event as being excessive. To complete the full developments of the facts about the 8x26, it is found by reason of the results of "life tests" or actual performance tests administered to that model radio that it would have a maximum battery life of 132 hours but would become unintelligible long before it had been played that many hours.

A more marked conflict of opinion as to battery life exists on respondent's Models L12 and L14 than on the 8x26 but the conflict of opinion on all three radios is due primarily to the fact that the battery experts for the two opposing parties assumed different current drain measurements for each of the three radios in making their respective battery life estimates. The evidence shows, if evidence is necessary for the obvious, that a radio which uses a large amount of current drain will have a shorter battery life than one which uses a smaller current drain. Complaint counsels' battery expert, Wolfe, in making his estimate, assumed the current drain measurements reflected in respondent's electrical specifications for each of the three radios. On the other hand, respondent's battery expert, Vanko, in making his estimate, assumed the much lower current drain figures supplied by respondent's chief project engineer, Harasek, as a result of measurements made under his supervision in 1962 shortly prior to the hearing herein and for the purpose of the hearing. This conflict of assumptions as to the measurements of current drain on each of the three radio models is hereby resolved in favor of the higher current drain measurements assumed by complaint counsels' expert witness, Wolfe, from respondent's own electrical specifications. Accordingly, the examiner finds and concludes that the true and correct current drain measurements of the three radios are those reflected in respondent's electrical specifications.

The above findings have been made because the current drain measurements contained in respondent's electrical specifications are deemed superior from a credibility standpoint to those now urged upon the examiner by respondent. Stated generally, the former are

entitled to greater credibility because they were in force and effect as official company instructions for the manufacture of the involved radios at the time the radios were being manufactured and at the time the advertisements in question with respect to their alleged battery life were being published and also because the current drain measurements contained in respondent's electrical specifications were also found with minor variations by qualified, disinterested persons through appropriate tests at the time the radios were being marketed by respondent, except that in the case of the L14 radio the corroboration was made in 1962. As shown under our "Findings of Fact," the latter included independent tests of the current drain measurements of the three radios by the engineering departments of Consumers Union and Zenith. The tests for current drain made by the Zenith engineers, except for the measurements on the L14 made at the request of complaint counsel, were made as part of their routine duties to check competing radios sent to them by Zenith's sales department. The described contemporaneous evidence of the current drains of the three radios from sources both inside and outside of respondent's organization dating back to the time when the present litigation was not even in sight is deemed and found far more persuasive and creditable than the current drain measurements taken by respondent in 1962 (after it had stopped the manufacture of the said models) in preparation for the hearing herein.

Disposition having been made in favor of the current drain measurements shown in respondent's electrical specifications, it follows and is found that Mr. Wolfe's battery life estimates on the three radios under the "Laboratory Data Test" method of determining battery life which are based on the current drain measurements found in the electrical specifications are true and correct and that Mr. Vanko's battery life estimates on the three model radios are not true and correct since they are based on less creditable current drain measurements. The further findings and discussion below will pertain to the Models L12 and L14 as the ultimate findings and discussion on the Model 8x26 was covered above, except that it should be noted that Mr. Wolfe's battery life estimate of 88 to 92 hours on Model 8x26 is accepted as the true and correct estimate of the battery life of the radio under the "Laboratory Data Test" method of determining battery life as against Mr. Vanko's estimate of 250 to 260 hours under the same method for assaying battery life. Mr. Vanko's estimate of 250 to 260 hours was cited above merely to show that even under that estimate respondent's Model 8x26 will not play "hundreds of hours at peak performance."

Based on Mr. Wolfe's testimony, it is found that the L12 radio (which unlike the other two radios was not subject to a "life test")

would have a maximum battery life of 465 hours. Since respondent advertised that the L12 would play "500 hours on low price batteries", it is found that such representation is false, misleading and deceptive. Mr. Wolfe's estimate of a maximum battery life of 465 hours on the L12 is not as close to the advertised life of 500 hours as might seem at first sight. This is because Mr. Wolfe's estimate was based on a playing of the L12 at slightly above zero output, that is, at a volume which is barely discernible to the human ear. It is evident that if the radio were played at a volume of sound comfortable to the ear that it would use more current and consequently the batteries in the radio would become exhausted long before 465 hours of playing and would become unintelligible to the human ear long before its exhaustion point.

Similarly based on Mr. Wolfe's testimony, it is found that the L14 radio would have a maximum battery life of 310 hours under the "Laboratory Data Test" method of determining battery life. It will be recalled that Zenith's engineer Fyler operated a L14 radio under a "life test" for a period of 263½ hours before he brought it to the hearing room for a demonstration of its then playing ability. In the hearing room under demonstration after 263½ hours of prior playing, the radio still functioned but was unintelligible to the human ear and the record through the testimony of Fyler shows that by an imaginary projection of the plotted curve in evidence the radio would continue to emit sound, albeit unintelligibly, until it had been played a total of about 350 hours when it would become "dead" altogether. It thus appears that Fyler's projection was on the generous side. Since respondent advertised that the L14 would play "500 hours on low priced batteries" and the facts show it would play a maximum of between 310 and 350 hours, it is found that such representation is false, misleading and deceptive.

2. "Selectivity" Issue

The complaint charges that respondent has falsely represented that:

Its Model 8x26 radio set had 9 times more capability than other sets to select a desired radio station.

The representation shown above was made through advertisements of the Model 8x26 by respondent which read as follows:

- (a) * * * has 9 times more power to select desired stations. reject unwanted stations * * *.
- (b) * * * 9 times more power to reject unwanted stations * * *.

Respondent admits that the above advertisements "constitute claims of superior 'selectivity' for respondent's 8x26 radio", but

denies that such claim of "superior selectivity, *as understood by the purchasing public*, is false." (Emphasis as supplied in respondent's proposed findings of fact, p. 28.)

It contends that counsel supporting the complaint has "utterly failed to prove that '9 times more selectivity' has an established meaning to the purchasing public, and that within such meaning respondent's claim is false." Amplifying its contention, respondent argues that the "falsity of advertising claims must be established *as they are understood by the average consumer*." (Respondent's proposed findings of fact, pp. 33-34.)

The initial question is thus, what do the involved ads mean to the lay purchasing public. It has long been settled that the meaning of an advertisement to the purchasing public can be determined from the advertisement itself and other relevant evidence in the record which aids in interpreting the advertisement, and that sample public opinion is not required for the interpretation. *Zenith Radio Corp. v. Federal Trade Commission*, 143 F. 2d 29 (7th Cir. 1944). From such consideration of the advertisements in question, it is found that *the purchasing public would understand* the advertisements as conveying a representation that respondent's Model 8x26 radio set has a *capability* to select and hold stations and to reject unwanted stations *nine times greater than that of any other radio set*. This finding is corroborated by the parties' own stipulated definition of "selectivity", to-wit, that characteristic of a radio which determines "the extent the radio is *capable* of providing the desired station without interference from other stations." (Emphasis supplied.)

From the above it follows and is found that respondent's above-shown advertisements constitute, as alleged in the complaint, a representation that "Its Model 8x26 radio set had 9 times more capacity than other sets to select a desired radio station."

The next or final question is whether the above representation is false, misleading and deceptive as alleged in the complaint. This inquiry will necessarily involve to some extent technical matter as the question of whether one radio has a better selectivity than other radios is an engineering question which must be resolved by expert testimony, that is, the testimony of electrical engineers who are skilled in making and interpreting selectivity measurements. The expert evidence on this is, as it is on all other issues herein, conflicting.

We have stated above one of the parties' stipulated definitions of the term "selectivity". The complete definition of the term, as agreed upon by the parties in their Stipulation of Fact, is as follows: "*Selectivity*. The characteristic of a radio that determines the extent

to which it is capable of selecting the signal on the frequency to which the radio is tuned and rejecting signals on other frequencies or, in other words, the extent the radio is capable of providing the desired station without interference from other stations. The degree of interference provided by the unwanted station will vary with both the signal strength of the interfering station and proximity of the interfering station to the desired station on the radio dial."

The background facts for an understanding of selectivity measurements are these. Every AM broadcast radio receiving set has a "Broadcast Band". A broadcast band is that band of frequencies⁸ in the spectrum between 550 kilocycles and 1600 kilocycles which are assigned all standard (AM) broadcasting stations operating within the United States, the assignments having been made by the Federal Communications Commission. The listener turns the radio on to the desired frequency or station on the broadcast band which may be on a channel anywhere between 550 and 1600 kilocycles and he will, of course, want that station to come through without interference from any other station on the broadcast band but as a practical matter the interference, if any, will come only from stations (frequencies) located on the band adjacent or close to the desired station, just as two airplanes traveling in the air within 100 feet of each other are more likely to collide than if they were 5000 feet apart.

In any given geographical area the Federal Communications Commission will assign channels to stations therein sufficiently far apart on the broadcast band to prevent interference with each other on a local listener's radio receiving set tuned to local radio stations. But the Federal Communications Commission has assigned the same or adjacent channels or frequencies to two or more stations located in different geographical areas because ordinarily these will not interfere with each other for the average urban listener who listens only to stations in his own geographical area. However, there are many listeners who reside in homes located in areas somewhere in between geographically separated stations which are adjacent to each other on the broadcast band. It is in such situations that the selectivity of a radio becomes important but selectivity is also especially important for portable transistor radios such as here under consideration because such radios are frequently used on trips away from the home.

Among radio engineers, selectivity is regarded as one of the three primaries in the design of a radio receiver set, the other two being sensitivity and fidelity.

⁸ "Frequencies" are units of electrical wave bands. The singular of the term, or "frequency", is defined as the number of vibrations or cycles per second.

The selectivity or ability of a radio to hold a station and to reject unwanted stations on channels adjacent to the desired station can be measured from any frequency in the broadcast band as the reference point but if only one such reference point is used, as is usually the case in normal selectivity testing procedure, it is taken from approximately the center of the broadcast band, that is, from the 1000 kilocycle frequency point thereon, because the selectivity at that central point on the band is fairly representative of the selectivity of all other frequency points on the band.

The record shows, and the parties are agreed, that there is a standard method or procedure for measuring the selectivity of a radio receiving set, which involves the use of a signal generator. This is an instrument used to produce radio frequency signals having known frequency values and a means of determining its power output⁹ at any radio frequency. In accordance with such standard procedures, all selectivity tests of record in this proceeding use the aforementioned 1000 kilocycles as the reference frequency. This is accomplished in the following manner: The receiver is tuned to 1000 kilocycles and the signal generator is also tuned to this frequency. The voltage control on the signal generator is adjusted so that some arbitrary voltage (usually 50 millivolts) is derived from the audio output,¹⁰ and the signal generator output voltage¹¹ is noted. The signal generator is then tuned to 990 kilocycles and its output voltage¹² increased until the meter in the audio output¹³ again reads 50 millivolts, and the signal generator output voltage¹⁴ again noted. This procedure is repeated for frequencies both above and below 1000 kilocycles. The data so obtained can be plotted and results in a selectivity curve of the type shown in Exhibit No. 64. It is to be noted that the higher the signal generator output voltage at frequencies removed from the reference 1000 kilocycles required to maintain the same audio output as at 1000 kilocycles, the better the receiver selectivity. *Put another way and one easier to follow in connection with the selectivity test measurements for the Model 8x26 radio set shown below, it should be noted that the smaller the frequency distance from the 1000 kilocycle reference frequency with an increase of signal generator power output, the more selective the receiver.*

⁹ "Power output" is a radio frequency voltage, or pressure, expressed in terms of volts as decimal parts of a volt.

¹⁰ "Audio output" is normally apparent as sound, but is also measurable as voltage through use of a suitable meter. The louder the sound, the higher the voltage, and vice-versa. See also similar definition of "audio output" in Stipulation of Facts, paragraph 35.

¹¹ Same as footnote 9.

¹² Same as footnote 9.

¹³ Same as footnote 10.

¹⁴ Same as footnote 9.

Thus a typical selectivity measurement as determined by a radio engineer might read:

$$\frac{\frac{2X}{7 \text{ KC}}}{1000 \text{ KC}} \qquad \frac{1000X}{59 \text{ KC}}$$

Translated so that lay readers may better understand the above, this would be revised to read: At a signal generator power output of twice (*i.e.* 2X) that used to establish the reference level at 1000 kilocycles, the frequencies at which the same receiver power output were obtained were 993 and 1007 kilocycles, respectively, and at a signal generator power output of one thousand times (*i.e.* 1000X) that used to establish the reference level at 1000 kilocycles the frequencies at which the same receiver power output were obtained were 941 and 1059 kilocycles, respectively. *Thus, for example, a frequency distance of 5 kilocycles at a two times (expressed above as 2X) power increase would indicate a more selective receiver than one whose frequency distance was 7 kilocycles at two times (2X) power increase. Similarly, a frequency distance at 49 kilocycles at 1000 times (expressed above as 1000X) the power increase would indicate more selectivity than a distance of 59 kilocycles at 1000 times (1000X) power increase.*

Counsel supporting the complaint relies on selectivity measurements made by Zenith engineers, in accordance with the above described standard procedure for measuring selectivity, on Motorola's Model 8x26 and two competing Zenith brand transistor radios known as Zenith Royal 500 and Zenith Royal 700 to establish its contention that the Model 8x26 does not have "9 times more capacity than any other sets to select a desired radio station". The Zenith tests here referred to were approximately contemporaneous with the marketing of the Model 8x26.

It is found that the selectivity test measurements made on the aforementioned model radios in accordance with standard procedures by Zenith radio engineers were made in the regular course of business by competent engineers for internal use by Zenith management in maintaining quality standards for its own products and without any idea that it would be used in litigation. It is further found that the radios so tested for their selectivity were representative of all radios of the same models and that the selectivity test measurements so made of such radios were representative of all nondefective, regular production radios of the same models. It is specifically found that the Zenith Royal 500 and 700 radios, whose selectivity measurements are shown below, were representative of all nondefective, production runs of the same model radios, although the particular radios of these models under test were taken from "production's trial runs on the

model". From the testimony received from Zenith's radio engineer Theodore Githens, who as shown above is supervisor of a group of Zenith engineers engaged in work on portable transistor radios, it is found that the selectivity measurements shown below, as reflected on Zenith test reports now in evidence as exhibits, are true and correct.

The aforementioned selectivity tests by Zenith engineers on the Motorola 8x26 transistor radio and two competing Zenith transistor model radios resulted in the following selectivity measurements:

Model	Date of test	1000KC	
		2X	1000X
Zenith Royal 500.....	1/31/57	7 KC	47.5 KC
Zenith Royal 700.....	12/12/57	5 KC	58.0 KC
Motorola 8x26.....	12/ 8/58	7 KC	59.0 KC

(See pages 86 and 87 above for lay explanations of these engineering selectivity readings. It will be remembered that the smaller the figure under the 2X and 1000X attenuations, the better the selectivity.)

Based on the above measurements, it is found that the Zenith Royal 500 transistor model radio which was on the market prior to the Motorola 8x26 had a superior selectivity to that of the 8x26. For all practical purposes, it is found that the selectivity of the Zenith Royal 700 is about equal to that of the Motorola 8x26. The accuracy of the above shown Zenith laboratory selectivity measurements of the Motorola 8x26 is largely corroborated by respondent's own selectivity specifications for the Motorola 8x26 which read as follows:

1000KC	
2X	1000X
$\frac{5}{5} \text{ KC (av.)}$	$\frac{58}{58} \text{ KC (av.)}$

Further evidence from the files of respondent gives additional substantiation to the accuracy of the Zenith engineers' selectivity measurements on the Motorola 8x26 and the Zenith Royal 500, as set forth above, and our conclusions therefrom that the Royal 500 had the superior selectivity. In the early part of 1960, or about two years prior to the issuance of the complaint herein, Motorola engineers made selectivity measurements on the 8x26 (and also on Motorola's Model 7x25 not here pertinent) and plotted a selectivity curve pursuant to such measurements on a piece of graph paper. That document is now in evidence as CX 64. Two years later in May 1962, respondent caused their engineers to make comparative selectivity measurements of the 8x26 and the Zenith Royal 500 which purport

to show that the 8x26 has superior selectivity. The latter measurements are in evidence as RX 22A. The testimony herein from the experts for both parties conclusively establishes that if the selectivity measurements of two years ago shown on the said CX 64 for the 8x26 is compared with the selectivity measurements of 1962 shown on the said RX 22A for the Royal 500, the Royal 500 shows up as having the superior selectivity. This again affirms the accuracy of the aforementioned Zenith selectivity measurements on the Motorola 8x26 and the competing Zenith Royal 500 and offers additional verification for the conclusion drawn therefrom that the Royal 500 has the superior selectivity.

The counter evidence adduced by respondent in support of its contention that the Motorola 8x26 radio had a "9 times" superior selectivity over the Zenith Royal 500 is rejected. This contention is based on comparative selectivity tests made in 1962 by respondent's radio engineers on the 8x26 and a Zenith Royal 500 radio upon which respondent relies to show that the 8x26 had superior selectivity over the Royal 500 on a "power" basis of comparison. The results of these tests are shown in the aforementioned RX 22A. The contention is rejected for a number of reasons. The tests were made two years after the respondent had stopped the manufacture of the 8x26 and were performed in preparation for the hearing herein. It is found that the Model 8x26 radios selected for testing at such late date cannot be accepted as being as representative of the same model radios as those which were tested by the Zenith radio engineers at the time the 8x26 was actually being manufactured, advertised and marketed. Similarly it is found that the selectivity measurements obtained in such tests by Motorola engineering personnel with the advance knowledge that they were to be used as evidence in defense of the charges here under consideration are not as creditable as those taken by Zenith engineers on the same model radio, when it was still being manufactured, in the regular course of duty in connection with keeping their employer informed about the quality of competing radios and maintaining quality standards for their employer and without any thought of their possible use in future litigation.

Another reason for rejecting respondent's exhibit RX 22 is that through it respondent seeks to show that its Model 8x26 has "9 times" the selectivity of the Zenith Royal 500. The evidence is conclusive that such attempts to express selectivity superiority in terms of a single, simple multiplication figure are unscientific and unrealistic and accordingly must be rejected. Mr. Willmar K. Roberts, Assistant Chief of the Laboratory Division of the Federal Communications Commission, testifying in behalf of the Government, stated the fol-

lowing in this connection: “* * * two dimensions, the width and height, are both wrapped up in selectivity but because there are two dimensions it is not simply possible for an engineer to come to a simple, single number by which he can say that one radio is so many times more selective than the other.” (Tr. 1119.)

Similarly, the aforementioned Dr. Butler, Associate Professor of Electrical Engineering of the University of Michigan testifying in behalf of respondent on the same matter, testified under cross-examination as follows:

Mr. Dunn, complaint counsel:

Q. It is true, isn't it, that in comparing the selectivity of two radios, you prefer to make use of selectivity curves for the two radios?

A. Yes, I do.

Q. Isn't this because selectivity has at least two dimensions [width and height] and you cannot characterize the selectivity of a radio by any single number, such as nine, or fifty, or any other number?

A. That is true.

Q. Isn't it true that organizations of radio engineers have not adopted standardized methods of evaluating or comparing the selectivity of radios in terms of single numbers or single ratios?

A. That is true.* * *. (Tr. 2156-2157.)

* * * * *

Q. Doctor Butler, I ask you to suppose that a radio engineer were to write you a letter, and in that letter to tell you that a certain radio is nine times more selective than another radio. As a radio expert, isn't it true that you would not have a complete understanding of what he meant?

A. That is true. (Tr. 2152.)

Finally, to allude to a matter heretofore referred to in a positive or affirmative sense (see first full paragraph on page 27) and here in a negative sense, RX 22A is rejected because the 1962 measurements reflected therein for the Zenith Royal 500 when compared with the 1960 Motorola measurements for the 8x26 in CX 64—rather than with the 1962 Motorola measurements on the 8x26 also shown in RX 22A—show that the Zenith Royal 500 has the superior selectivity. This is admitted by respondent's expert witnesses. It is thus evident that respondent's 1962 measurements of the Royal 500 when compared with respondent's own measurements of the 8x26 in 1960 when it was still being manufactured and there was no thought of the present litigation, establishes the superiority of the Royal 500's selectivity.

Respondent's only basis for its advertised claims that its 8x26 radio had “9 times” better selectivity than other radios was a comparative selectivity test it made in 1960 on its 8x26 radio and an earlier Motorola model radio known as the 7x25 which latter model is not in issue herein. This comparison was made because respondent's

engineers believed that their incorporation of a tuned RF stage (see definition in Stipulation of Facts, par. 32) in the design of the 8x26 would give it a better selectivity than the 7x25 which like many other radios of that time did not have a tuned RF stage. The results of this comparison reflected in the aforementioned CX 64 showed the 8x26 to have the superior selectivity but respondent made no comparative tests of the 8x26 with any other competing brand transistor radios, like the Zenith Royal 500, either before or during the time it advertised that its 8x26 had "9 times" greater selectivity than other sets in order to substantiate such claim. It is found that the comparison of the selectivity of the 8x26 with that of the 7x25 did not furnish a proper basis for the representation here under consideration.

In summary, Respondent's Exhibit 22A, purporting to show that the Motorola 8x26 model transistor radio has a "9 times" better selectivity than the Zenith Royal 500 transistor radio is rejected as being without probative value. This is not to say that the 8x26 does not have "good" selectivity; the record shows that it has but that is not the issue here. The issue is whether the 8x26 has "9 times more capability than other sets to select a desired station".

CONCLUSION

For reasons that appear from the above, it is our conclusion that respondent's representation that its Model 8x26 radio set had "9 times" more capability than other sets to select a desired radio station is false, misleading and deceptive.

3. "*Like 10 Tube Radio*" Issue

The complaint charges that respondent has falsely represented that:

Its Model 8x26 radio set was comparable in power output to a 10 tube radio.

The above charge is based on an excerpt from an advertisement by respondent of which the following is typical:

Like carrying a full 10-tube radio in your pocket! This pint-size power-plant packs 8 transistors and 2 germanium diodes. (Underscoring shown as it appears in ad.)

Respondent in its proposed findings of fact contends that the above excerpt is not fairly representative of the full ad because it omits the following sentence from the original text of the advertisement: "5 times more power to get more stations." It states that the excerpt plus the omitted sentence must be considered as the "full, complete and typical statement of respondent's claim" or representation with respect to the Model 8x26.

Respondent then denies that the excerpt when considered with the omitted sentence constitutes a representation as charged in the complaint that "Its Model 8x26 radio set was comparable in power output to a 10-tube radio". Indeed, respondent in its proposed findings of fact flatly "denies that it made any such claim". The key words in the charge are "power output". Respondent argues that the ad itself does not claim superior "power output" for the Model 8x26 radio set but only superior "sensitivity" which it contends (see respondent's reply brief at page 5) is not in issue under the pleadings of this proceeding because "there is no charge in the complaint relating to the sensitivity capabilities of the 8x26 radio".¹⁵ Respondent notwithstanding its argument that the radio's "sensitivity" is not in issue under the pleadings nevertheless saw fit to introduce under the "power output" charge here under consideration evidence relating to the "sensitivity" of its Model 8x26 radio designed to show that the radio had a sensitivity comparable to a 10 tube radio.

Counsel supporting the complaint, on the other hand, contend that the indicated omitted sentence from the excerpt of the ad set forth in the complaint is not the only omission and that the full ad as of record, particularly with the also omitted sentence reading "Audio transformer delivers 30% more audible volume without distortion", spells out a representation, as charged in the complaint, that the Model 8x26 radio was comparable in "power output" to a 10-tube radio. Proceeding on this interpretation of the ad and relying on certain stipulations of fact to establish the charge of the complaint under consideration, complaint counsel submitted its case-in-chief on such basis.¹⁶ Nevertheless, to counter the evidence offered by respondent to show that the 8x26 radio had a "sensitivity" comparable to a 10-tube radio, complaint counsel introduced rebuttal evidence designed to show the contrary.

Thus we are met at the outset with the necessity of determining what the ad really says or represents to the purchasing public. The examiner agrees with counsel for both parties that the nature of the ad's representations must be determined from its full text and not merely from the excerpt therefrom shown in the complaint. The full ad reads as follows:

¹⁵ Along the same line is the following statement in respondent's proposed findings of fact, page 39: "Although, of course, there is no issue in this case that respondent's 8x26 radio does not have *sensitivity* comparable to a 10-tube radio, RX 25 reports sensitivity measurements of the 8x26 radio and tube radios and shows them to be comparable. (R. 1646.) (Underscoring is respondent's.)"

¹⁶ See complaint counsel's Proposed Findings of Fact at page 21.

POCKET FULL OF POWER

Like carrying a full 10-tube radio in your pocket! This pint-size power plant packs 8 transistors and 2 germanium diodes. Extra amplifier transistor in RF stage produces 5 times more power to get more stations. 3-section gang Tuning Condenser has 9 times more power to select desired stations, reject unwanted stations. Audio transformer delivers 30% more audible volume without distortion. Plays hundreds of hours at peak performance. (Under-scoring shown as it appears in ad.)

As heretofore indicated under the battery life issue above, it is now firmly established that the Commission and its duly appointed hearing examiners are "not required to sample public opinion to determine what the petitioner [respondent] was representing to the public". Appropriate officials of the Commission have "a right to look at the advertisements in question, consider the relevant evidence in the record that would aid * * * in interpreting the advertisements, and then decide * * * whether the practices engaged in by the petitioner were unfair or deceptive, as charged in the complaint". *Zenith Radio Corp. v. Federal Trade Commission, supra.*

The examiner has carefully examined the full advertisement shown above and the variations thereof which appear in the record. Based on such examination and study, it is found that the advertisements in question constitute representations that the Model 8x26 radio is capable of bringing in (a) weak stations comparable to that of a 10-tube radio at a (b) volume or degree of loudness comparable to that of a 10-tube radio station. The first of these representations relates to the radio's "sensitivity" which is not directly involved under the charge at issue, namely, that the 8x26 has a "power output" comparable to that of a 10-tube radio. The second representation is definitely related to the "power output" charge of the complaint as will be seen below.

It is our finding that the average potential consumer will get an immediate impression from the heading of the above-noted advertisement which reads "Pocket Full of Power" and its opening sentence "Like carrying a full 10-tube radio in your pocket!" This impression, one very endearing to the heart of nearly every prospective small radio purchaser, will be that of a promise or representation that with a small transistor radio, the Motorola 8x26, he will be able to bring in (a) in volume (b) weak or distant stations comparable to that of a 10-tube radio. To the average radio user, the term "weak station" means "distant station"; the two terms are synonymous in his mind. Whether right or wrong from a technical point of view, in the public mind the ability of a radio to bring in (a) weak or distant stations (b) *in volume* is associated with the number

of tubes a tube radio has and a radio having 10 tubes is generally regarded as a "powerful" radio in these respects. This is, of course, why respondent in its advertisements compare the 8x26 to a 10-tube radio.

For the more careful reader this first impression will be reinforced by the body of the advertisement which gives the further impression of detailing the particulars in which the Model 8x26 radio is being compared with a 10-tube radio. Such reinforcement would come from the sentence in the body of the ad reading: "Audio transformer delivers 30% more audible volume without distortion."

Summarizing, it is our finding that the Motorola 8x26 transistor radio was represented in Motorola ads as being comparable in volume or loudness to a 10-tube radio. The parties are agreed by stipulation that the volume or loudness of a radio receiver set is that characteristic of a radio which is known as "audio output". The parties are further agreed that "audio output" is synonymous with "power output". More precisely "audio output" is defined by stipulation of the parties as being the " * * * term used with reference to a radio's 'volume' or 'loudness' capabilities. It is used to express the magnitude of the electrical energy which the radio is capable of delivering to its speaker. Thus, the greater the audio output of a radio, the greater is its volume capability".

It is accordingly clear that the ads in question contain representations that the Model 8x26 radio has a "power output" comparable to that of a 10-tube radio. There is thus no inconsistency as contended by respondent between the advertisement in question and the complaint's charge that respondent has represented that its 8x26 radio was comparable in "power output" to a 10-tube radio.

The issue is now narrowed to the question of whether the representation that the Motorola 8x26 radio is comparable to a 10-tube radio in "power output" is false as alleged in the complaint. This must be answered in the affirmative because respondent has stipulated that "The Motorola Model 8x26 radio does not have the audio output of any known 10 tube radio". The claim or representation is thus false.

Although the allegations of the complaint here under consideration do not technically charge the respondent with any misrepresentations with respect to the Model 8x26's "sensitivity", it is noted and found since the parties chose to litigate the question of the radio's "sensitivity" that the evidence clearly shows that the 8x26 does not have the sensitivity of a 10-tube radio. By stipulation, sensitivity is defined as " * * * the characteristic of a radio that determines the extent to which a radio is capable of receiving *weak or distant signals*. (Emphasis supplied.) The strength of radio signals in the air are

measured in units called microvolts per meter * * *. A radio's sensitivity is the measure of the weakest signal, expressed in microvolts per meter, which is capable of being reproduced satisfactorily by the radio. * * *".

Our above finding that the Motorola Model 8x26 radio does not have the "sensitivity" of a 10-tube radio is based on the sensitivity measurements of the 8x26 conducted by Zenith engineers in the regular course of their duties to test both Zenith and competing brands of radios. These sensitivity measurements by Zenith engineers on the 8x26 were made while the set was still being manufactured and long before the issuance of the complaint herein. Our finding is also based on the testimony of the aforementioned electrical engineer Karl H. Nagel, chief radio tester for Consumers Union, who testified that the 8x26 had only "fair" sensitivity compared to a "good" rating given by Consumers Union to five competing brands of transistor radios and that a 10-tube radio would have considerably greater sensitivity than the 8x26. Respondent's exhibit RX 25 designed to show that by tests made in 1962 shortly prior to the hearing herein that the 8x26 does have sensitivity comparable to 10-tube radio is rejected as being without probative value for reasons similar to those shown above for the rejection of other post-complaint tests in connection with prior issues discussed.

CONCLUSION

For reasons that appear from the above, it is our conclusion that respondent's representation that is Model 8x26 radio set was comparable in power output to a 10-tube radio is false, misleading and deceptive.

4. "Revolutionary New" Features Claim for Portable Radios

The Motorola products here dealt with are portable transistor radios known as Models L12 and L14, heretofore referred to in connection with battery life issues. Both were introduced for sale on March 16, 1959, but had relatively short lives as current models as their manufacture was discontinued in less than a year after their first introduction for sale. Portable transistor radios are not to be confused with pocket transistor radios as the portables are a good deal larger and heavier than the pocket models. For example, to give the dimensions of only one of the portables here involved, the L12 is $9\frac{3}{4} \times 6 \times 2\frac{3}{4}$ inches in size and about $3\frac{1}{2}$ pounds in weight.

The complaint charges that respondent has falsely represented that:

Its Model L12 radio set had a revolutionary and new *audio* system. (Emphasis supplied.)

and that:

Its Model L14 radio set contained a revolutionary or new [1] *chassis* and [2] *audio* system. (The numbers and emphasis supplied.)

Respondent admits that it made the above representations concerning the "audio systems" of its Models L12 and L14 and the "chassis" of its L14 but denies they are false. The term "audio system" relates to those components of a radio which have to do with the amplification of sound in frequencies which lie within the audible range of perception by the human ear. The term "chassis" refers to the configuration or arrangement of the working parts of a radio as mounted upon its metal frame.

We take up first respondent's claim that the audio systems of the L12 and L14 were "revolutionary and new". From the testimony of the aforementioned Richard J. Harasek, respondent's senior project engineer, it should be noted initially that the audio systems of the two radios are the same. Thus whatever is said about the audio system of one of the two radios would also be true of the other.

The record shows that the audio systems of the L12 and L14 were *not* "revolutionary and new" in the sense that the respondent was the first radio manufacturer to put a transistor radio on the market with an audio system like that of the L12 and L14. It is an undisputed fact that the Philco Corporation, a well-known competitor of respondent and a pioneer in the radio manufacturing business, manufactured and marketed a transistor radio with an audio system identical to that of the L12 and L14 about a year before latter were placed on the market for sale. The record also shows that respondent's Models L12 and L14 were not even the first model radios put out by respondent itself with an audio system like that of the L12 and L14. Respondent first introduced the audio system in question in its Model 7x25 and that model radio was placed on the market several months before the L12 and L14.

Wholly aside from the fact that the audio system common to the L12 and L14 was not at the time these radios were being manufactured revolutionary and new in the sense of being first of their kind on the market, the record shows that the audio system of the L12 and L14 was not revolutionary or new in a more fundamental sense. The record shows that there are three basic types or classifications of audio systems. They are known as (1) the Complimentary Symmetry Audio System, (2) the Class A Output Audio System, and (3) the Class B Push-Pull Output Audio System. From the testimony of both the expert witnesses appearing in behalf of the Government and the respondent, it is found that the audio system employed in the L12 and L14 is basically the aforementioned Class

B Push-Pull Output System, but due to a variation hereinafter explained the audio system of the L12 and L14 is sometimes described by electrical engineers as the Hybrid Complimentary Symmetry Audio System. The variation referred to is the elimination of the output transformer from the audio circuit which is normally incorporated in the Class B Push-Pull Output Audio System. The function of an output transformer is to energize or drive the loud speaker. Thus the audio system of the L12 and L14 do not have an output transformer and for this reason the audio system in the L12 and L14 is sometimes called the Hybrid Complimentary Symmetry Audio System but basically it remains the Class B Push-Pull Output Audio System, notwithstanding the elimination of the output transformer from its circuit, as is apparent from the following cross-examination of respondent's expert witness, the aforementioned Dr. T. W. Butler, professor of electrical engineering at the University of Michigan, by Mr. Dunn, complaint counsel:

Q. Dr. Butler, isn't it true that the principal difference between the hybrid system and the conventional Class B push-pull system is simply the elimination of the output transformer?

A. Yes, that is the principal difference, that is true.

Q. You will agree, then, that the hybrid complementary circuit is basically a Class B push-pull system?

A. Yes it operates as a Class B push-pull system. (TR. 2209)

The intriguingly named push-pull output audio system is simply a circuit of two transistors operating alternatively, that is, one operates while the other lapses into momentary nonoperation, one pulls while the other rests, very much like the electric bulbs in some signs go on and off in planned cycles.

The evidence shows that the Radio Corporation of America (RCA) began manufacturing radio sets containing the Class B Push-Pull Output Audio System, of which the L12 and L14 is but a variant, as early as 1954 and that between 1954 and 1958,¹⁷ RCA had placed on the market a total of 11 different radio set models employing the Class B Push-Pull Output Audio System.

It is thus evident that the basic audio system known as the Class B Push-Pull Output System, of which the audio systems in the L12 and L14 radios are merely samples, was on the market at least four or five years before the L12 and L14 were marketed in 1959. The radio manufacturing business is highly competitive. It is a fair conclusion from the record here that the major radio manufacturing companies, including respondent, put out new model radios each

¹⁷ It will be remembered that the L12 and L14 radios were placed on the market by respondent in March 1959.

year and that their aim is to do better than their competitors or at least keep on par with them in presenting any new developments in radios which would enhance sales. In these circumstances, it is readily apparent and is found that the audio system of the L12 and L14 radio when introduced in the market five years after RCA had used the same basic audio system in a marketed radio set, lost all right to be termed "revolutionary and new".

Respondent in its proposed findings of fact appears to impliedly agree that there was nothing revolutionary or new *from a technical point of view* about the Class B Push-Pull Output Audio System or its variant the Hybrid Complimentary Symmetry Audio System at the time the L12 and L14 radios were put on the market but argues that "There is no evidence of record that the *purchasing public* understands a new and revolutionary audio system is one that is 'original' or 'unique' and limited only to the first model sold. It is not sufficient that a *patent-conscious engineer* may attach such a restricted meaning to the phrase; the test is the customer's understanding of the phrase." (Emphasis supplied.)

Respondent is correct in its statement that no consumer evidence was presented to show what the purchasing public understands the representation "new and revolutionary audio system" to mean. But as heretofore indicated in connection with other issues herein, sample public opinion is not required for the interpretation of an advertisement. The message or meaning that an advertisement conveys to the prospective purchaser can be determined from the ad itself and other relevant evidence in the record. *Zenith Radio Corp. v. Federal Trade Commission, supra*. In this connection, it becomes necessary to examine the texts of the involved advertisements.

One of respondent's advertisements (CX 5 G) on the L12 radio set reads as follows:

REVOLUTIONARY NEW VOICE FOR THE OUT-OF-DOORS New audio system with push-pull output delivers amazing tone quality with 6 times the audible output required for normal listening.

Similarly, one of respondent's advertisements (CX 5 C) on the L14 radio set reads:

REVOLUTIONARY NEW VOICE FOR THE OUT-OF-DOORS New audio system produces tone quality never before heard in a personal portable.* * * Now Motorola's new revolutionary audio system actually assures 6 times the audible volume needed for normal listening * * * provides richest tone possible for outdoor reception * * *.

The emphasis of these ads is on the "voice" or "tone" of the L12 and L14. These are the words actually used in the ads. The ads then go on to describe the "tone" or "voice" of the two radios as

being "amazing" or of a quality "never before heard in a personal portable" or the "richest". The ads also definitely emphasize the easily *recognizable* superior sound quality for the average listener of the L12 and L14 by the claim that the radios "deliver 6 times the audible volume needed for normal listening". The ads attribute all of these benefits to the "Revolutionary New Voice" produced by the "New audio system" of the L12 and L14 radios. In summary it is found that the advertisements quoted above represent to the average prospective buyer that he will receive immediately recognizable superior tone quality in the L12 and L14 radios due to a new and revolutionary method of producing sound from a radio. The question thus is: Is it true that the L12 and L14 radios have an immediately recognizable superior tone quality for the average listener?

We will assume for purposes of the present discussion that the superior tone benefits claimed in the involved ads are to be attributed to the precise audio system employed by the L12 and L14 radios in 1959, namely, the Hybrid Complimentary Symmetry Audio System, which it will be recalled is essentially the same as the Class B Push-Pull Output Audio System, except that the former does not have an output transformer. It will also be recalled that the use of Hybrid Complimentary Symmetry Audio System in 1959 was relatively new since it was put to use commercially only a year prior to 1959 by one of respondent's competitors, Philco. More narrowly our question now is whether the L12 or L14 radio has the immediately recognizable superior tone claimed by respondent's ads due to its particular audio system (*i.e.*, the hybrid system.)

If the L12 and L14 radios actually had a superior audio system, it would be due to the elimination of the output transformer¹⁸ from the audio circuit because, as agreed to by expert witnesses for both parties, the only essential difference between the hybrid audio system and the push-pull audio system is the absence of the output transformer in the hybrid system and its presence in the push-pull system. From the evidence of record, it is found that the hybrid audio system used in the L12 and L14 system (or the equivalent fact that an output transformer is not used in such system) does not result in anything like the tone superiority claimed by respondent in its ads. On the contrary, the only difference resulting from the use of the hybrid audio system as distinguished from its parent push-pull audio system is a barely audible difference in the low frequency range of the radios. This is apparent from the following examination of

¹⁸ The record shows that the real engineering purpose in removing the output transformer from a transistor radio is to reduce the size of the radio because an output transformer has considerable bulk.

respondent's expert radio witness, the aforementioned Professor Butler, by complaint counsel Mr. Dunn:

Q. Now doesn't the elimination of the output transformer increase the power output of a radio only one or two decibels?

A. That is true.

Q. Isn't it a fact that one decibel is the smallest increase in volume that even an expert can detect by ear?

A. That is true.

Q. So then you will agree that elimination of the output transformer can increase the audio volume of a given radio by only one or two barely audible steps?

A. That is true. (Tr. 2209-2210.)

In summary it is our conclusion that there was nothing "new or revolutionary" for the consumer about the audio system of the L12 and L14 radios when these radios were put on the market in 1959 because the only improvement resulting from their hybrid audio systems over the parent push-pull audio system would be so slight that the average human ear would not catch it. Also, to repeat, there was nothing new about the L12's and L14's audio system from a radio engineering point of view.

We have dealt above with respondent's claim that the L12 and L14 radio had a new and revolutionary "audio system", but it will be recalled that the complaint also charges the respondent with falsely representing that its L14 radio had a "revolutionary or new chassis". It must be now assumed that respondent is conceding that its representation with respect to the chassis of the L14 was not true since respondent does not present any proposed finding thereon or any argument in its proposed findings of fact or reply brief to the contrary. At any rate the evidence of record conclusively shows that there was nothing revolutionary or new about the L14's chassis. This is established by the testimony of the aforementioned Mr. Roberts, assistant chief of the Laboratory Division of the Federal Communications Commission. Mr. Roberts also testified that there was nothing new about the L14's chassis and audio system when considered together.

CONCLUSIONS

It is our finding and conclusion that respondent's representation that its Model L12 radio set had a revolutionary and new audio system is false, misleading and deceptive.

It is our further finding and conclusion that respondent's representation that its Model L14 radio set had a revolutionary or new chassis and audio system is false, misleading and deceptive.