tion of the record below and the appeal briefs and after full consideration of the issues of fact and law presented, the Commission has concluded that the initial decision is correct except that the initial decision shall be modified by striking the third paragraph of Finding 17 at pages 7 and 8 [p. 682, 683 herein] of the initial decision. Accordingly, and as so modified,

It is ordered, That the initial decision of the hearing examiner, including the findings, conclusions, and order, be, and hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents shall, within sixty (60) days after service of the order herein upon them, file with the Commission a report in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF

CLAIROL INCORPORATED

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

Docket C-832. Complaint, Sept. 15, 1964—Decision, Sept. 15, 1964

Consent order requiring a major manufacturer of hair coloring and other beauty aids to cease discriminating in price between its customers competing in the same market area, and preticketing its products with deceptive prices.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated, and is now violating the provisions of subsection (a) of Section 2 of the Clayton Act, as amended (U.S.C., Title 15, Section 13), and Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Section 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Clairol Incorporated 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 1290 Avenue of the Americas, New York, New York. Respondent Clairol Incorporated is a wholly owned subsidiary corpora-

tion of Bristol-Myers Company, a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 630 Fifth Avenue, New York, New York.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale and distribution of beauty preparations, principally hair coloring products, hereinafter collectively referred to as beauty products. Respondent is now and has been, at all times referred to herein, one of the largest concerns in the United States in volume of sales of hair coloring products. Respondent sells its beauty products throughout the United States to a large number of customers purchasing such products for use, consumption, or resale. Respondent's customers include beauty salons, beauty supply dealers, beauty schools, department stores, drug wholesalers, and drug retailers.

COUNT I

Alleging violation of subsection (a) of Section 2 of the Clayton Act, as amended (U.S.C., Title 15, Section 13):

PAR. 3. Respondent sells and distributes its beauty products in commerce by causing said products to be shipped from its manufacturing plant located at Stamford, Connecticut, and to and from a warehouse located at Los Angeles, California, to purchasers thereof located in the several States of the United States and the District of Columbia. There is now and has been, at all times mentioned herein, a continuous course of trade in said products in commerce, as "commerce" is defined in the Clayton Act, as amended.

PAR. 4. In the course and conduct of its business in commerce, respondent is now, and has been, in substantial competition with other corporations, individuals, partnerships and firms, engaged in the manufacture, sale and distribution of beauty products, many of which are also engaged in commerce between and among the various States of the United States and the District of Columbia.

Many of the purchasers of respondent's products and customers of some of said purchasers are in substantial competition with each other in the use, consumption, distribution, or resale of said products within the trading areas where such purchase or customers of purchasers are located.

PAR. 5. During the period from April 1959, to the present, respondent, in the course and conduct of its business in commerce, has discriminated in price between different purchasers of its beauty products of like grade and quality by selling to some of its purchasers at prices substantially higher and less favorable than the prices charged to other

of its purchasers, some of whom are in competition with the favored purchasers in the use, consumption, distribution or resale of said products.

For example, respondent has classified certain of the purchasers of its products as beauty salons "chain," beauty jobbers, and beauty salons "non-chain." In making sales to the aforesaid beauty trade, respondent has designated a basic price known as "List Price" or "Regular Price" from which all trade discounts are calculated. On certain of respondent's largest volume products, beauty salons classified as "chain" pay "List Price" or "Regular Price" less a discount of forty (40) per cent and fifteen (15) per cent; whereas, beauty jobbers and beauty salons classified by respondent as "non-chain" pay "List Price" or "Regular Price" less a discount of only forty (40) per cent. On other of respondent's products the beauty salons classified as "chain" pay "List Price" or "Regular Price" less a discount of thirty-three and one-third (33⅓) per cent and fifteen (15) per cent; whereas, beauty jobbers and beauty salons "non-chain" pay "List Price" or "Regular Price" less a discount of forty (40) per cent.

PAR. 6. The effect of the discriminations in price made by respondent in the sale of its products, as hereinbefore set forth, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which the respondent is engaged, and in which said favored purchasers are engaged, or to injure, destroy or prevent competition with said respondent, or its purchasers who receive the benefits of such discriminations.

PAR. 7. The foregoing alleged discriminations in price made by respondent Clairol Incorporated in the sale of its products are in violation of subsection (a) of Section 2 of the Clayton Act, as amended.

COUNT II

Alleging violation of Section 5 of the Federal Trade Commission Act:

PAR. 8. Paragraphs Three and Four of Count I are incorporated herein by reference and made a part of this Count as fully and with the same effect as if set forth herein verbatim, except that the reference to the Clayton Act, as amended, is eliminated herein, and reference to the Federal Trade Commission Act is substituted therefor.

PAR. 9. In the course and conduct of its business as aforesaid, and for the purpose of inducing the purchase of its beauty products, respondent has made numerous statements in brochures and in sales material with respect to the prices of its said products and the savings resulting to purchasers of such products.

Typical and illustrative of the aforesaid statements are the following:

Offer For Limited Time Only
Miss Clairol Creme Formula
Reg. $9.00 doz.
Deal Price $7.20 doz.

Brochures and sales material containing the aforesaid statements have been distributed by respondent to beauty jobbers engaged in the resale and distribution of respondent's beauty products.

PAR. 10. By and through use of the above-quoted statements, and others of similar import not specifically set out herein, respondent represented that the higher stated price set out in said advertisements in connection with the term "Reg." was the actual, bona fide price at which the advertised product was offered for sale to beauty salons by respondent and its beauty supply dealers on a regular basis for a reasonably substantial period of time in the recent, regular course of business in the trade areas where the representations were made, that the "Deal Price" was a special price available for a limited time only, and that the difference between the higher price and the lower price represented savings to purchasers of the advertised product.

PAR. 11. In truth and in fact, the higher price set out in said brochures and sales material in connection with the term "Reg." was in excess of the price at which the advertised product had been sold or offered for sale by respondent and its beauty supply dealers on a regular basis for a reasonably substantial period of time in the recent course of business, and the difference between the higher and lower price did not represent savings to purchasers of said product. Additionally, said lower price was not a "Deal Price" available for a limited time only.

PAR. 12. The statements and representations as set forth in Paragraphs Ten and Eleven hereof were and are false, misleading and deceptive. By distributing brochures and sales material containing the aforesaid representations to its beauty supply dealers for use in making sales to beauty salons and others, respondent has placed in the hands of said dealers means and instrumentalities by and through which said dealers could, and did, mislead beauty salons as to the actual, bona fide price of respondent's beauty products and the savings to be realized by the purchase of said products.

PAR. 13. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors, and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive

acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

Decision and Order

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violations of subsection (a) of Section (2) of the Clayton Act, as amended, and of Section 5 of the Federal Trade Commission Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

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

1. Respondent Clairol Incorporated 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 1290 Avenue of the Americas, in the city of New York, State of New York. Respondent Clairol Incorporated is a wholly owned subsidiary corporation of Bristol-Myers Company, a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 630 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 respondent Clairol Incorporated, a corporation, its officers, agents, representatives and employees, directly or indirectly, through any corporate or other device, in or in connection with the sale of beauty products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Discriminating, directly or indirectly, in the price of such prod-

ucts of like grade and quality by selling to any beauty salon or to any distributor for supply to any beauty salon at net prices higher than the net prices charged any other purchaser who, in fact, competes in the use, consumption or resale of said products with the purchaser paying the higher price or with a customer of the purchaser paying the higher price.

It is further ordered, That respondent Clairol Incorporated, a corportion, its officers, agents, representatives and employees, directly or indirectly, through any corporate or other device, in connection with the sale, offering for sale, or distribution of beauty products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Using the words "Regular Price," "Reg.," or words of similar import, to refer to a former price, the amount of which is in excess of the actual, bona fide price at which such merchandise has been offered for sale on a regular basis for a reasonably substantial period of time in the recent, regular course of business in the trade area or areas where the representations are made; or misrepresenting in any manner the actual, bona fide price of such merchandise;

(2) Representing, with regard to prices other than introductory prices, that savings are afforded to purchasers unless the price at which such merchandise is offered constitutes a substantial reduction, and a reduction equal to any amount stated or otherwise directly or by implication represented, from the actual, bona fide price at which such merchandise was offered to purchasers on a regular basis for a reasonably substantial period of time in the recent regular course of business in the trade area where the representation is made;

(3) Representing, directly or by implication, that savings are afforded to purchasers by a special deal or introductory price unless respondent establishes that such is the fact;

(4) Representing directly or by implication that the selling price, special deal or any offer being advertised is limited in point of time or in any other manner unless such restriction or limitation is actually imposed, and adhered to, by respondent;

(5) Placing in the hands of beauty jobbers means and instrumentalities by and through which they may deceive and mislead the purchasing public concerning any such merchandise in the respects set out above.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission

a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

UNITED GARMENT MANUFACTURING CO.—MICHIGAN DIVISION ET AL.

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

Docket 8577. Complaint, June 19, 1963—Decision, Sept. 16, 1964

Order requiring two associated corporations with a manufacturing plant in Iron Mountain, Mich., engaged in manufacturing and selling sleeping bags, sporting goods and accessories, to cease and desist from misrepresenting the "cut" or size of their products, preticketing their merchandise with prices higher than usual prices generally prevailing in the trade area, using the word "scout" or other related words on their merchandise to imply endorsement by the Boy Scouts of America, furnishing other means to mislead the purchasing public, misrepresenting the time respondents have been in business, and using any words to imply that the respondents own or control any factory; and cease violating the Textile Fiber Products Identification Act by misbranding or falsely and deceptively advertising any of their textile fiber products, and failing in other respects to comply with labeling and advertising requirements of the Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that United Garment Manufacturing Co.—Michigan Division, a corporation, Lake-O-Woods Co., Inc., a corporation, and Edward Maslon, Dorothy Palluconi and Betty Maslon, individually and as officers of said corporations, Albert Maslon, individually and as an officer of United Garment Manufacturing Co., and Warren Barrett, individually and as an officer of Lake-O-Woods Co., Inc., hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in

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

PARAGRAPH. 1. Respondent United Garment Manufacturing Co.—Michigan Division is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota. Respondent Lake-O-Woods Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan. Said corporations have their office and principal place of business located at 100 W. Brown Street, Iron Mountain, Michigan.

Respondents Edward Maslon, Dorothy Palluconi and Betty Maslon are officers of both corporate respondents, whereas Albert Maslon is an officer of corporate respondent United Garment Manufacturing Co.—Michigan Division and Warren Barrett is an officer of corporate respondent Lake-O-Woods Co., Inc. They formulate, direct and control the acts and practices of the corporate respondents including the acts and practices hereinafter set forth. The addess of Albert Maslon is 11228 Sunset Boulevard, Los Angeles, California and that of Warren Barrett is 241 Case Avenue, Kingsford, Michigan. The address of Edward Maslon, Dorothy Palluconi, and Betty Maslon is the same as that of corporate respondents.

Corporate respondent United Garment Manufacturing Co.—Michigan Division, formerly United Garment Manufacturing Co.—Chisholm Division, was originally located at 316 West Lake Street, Chisholm, Minnesota, and after qualifying to do business in the State of Michigan on February 13, 1957 has been located at 100 W. Brown Street, Iron Mountain, Michigan.

All of the aforesaid respondents cooperate and act 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 manufacture, advertising, offering for sale, sale and distribution of sleeping bags, sporting goods and accessories to retailers for resale to the public.

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

PAR. 4. Respondents, for the purpose of inducing the purchase of their products, have engaged in the practice of using fictitious prices, misrepresenting the size of said products, misrepresenting the endorse-

ment and approval of some of said products, misrepresenting the nature, size and locations of said business and the length of time in which they have been engaged in said business, by various methods and means, typical but not all inclusive of which are the following:

(a) By attaching, or causing to be attached tickets or tags to their said sleeping bags upon which a certain amount is printed and by distributing, or causing to be distributed, to retailers, catalogs describing, among other things, respondents' sleeping bags and containing a stated price for each, thereby representing, directly or by implication, that the amounts so stated are the usual and regular retail price of said sleeping bags. Among and typical of the statements on the price tickets or tags attached thereto are the following:

"$15.00", "$20.00", "$25.00", "$40.00," "$45.00", and others; also listing a specified price after the words "List Price" on a price tag attached to the sleeping bag.

Among and typical of the statements contained in respondents' 1961 catalog:

"List $10.50", "List $11.50", "List $13.50", "List $14.50", "List $18.00", "List $19.00", "List $40.00".

In the manner aforesaid, through stating a specified price and also by using the words "List" or "List Price" followed by a specified price on the tickets or tags attached to said products and in their catalogs, and otherwise, respondents represented, and now represent, that said amounts were and are the prices at which the merchandise referred to were and are usually and customarily sold at retail.

In truth and in fact, the amounts stated on the tickets or tags and those set out in connection with the words "List" or "List Price" on tickets or tags and in their catalogs, and otherwise, were not the prices at which the merchandise referred to was usually and customarily sold at retail in the trade areas where such representations were and are made, but are in excess of prices at which said merchandise generally sells at retail in some of the trade areas where the representations were and are made.

(b) By attaching, or causing to be attached, labels to their said sleeping bags stating the "cut size" of the sleeping bags, which is almost invariably larger than the actual size of the bag in question. The term "cut size" when used in the manner alleged above, is confusing and tends to indicate that such a description is the actual size of the finished product. In truth and in fact, this is almost never the case, as the actual size of the finished product is smaller than the sizes set out on the labels.

(c) By attaching, or causing to be attached labels on certain of their

sleeping bags stating "Scout Sleeping Bag" and picturing a boy dressed in what appears to be the official uniform of the Boy Scouts of America with arm extended pointing to a sleeping bag pictured thereon which is duly unpacked and set up for use with a sylvan setting; by describing said sleeping bag in their catalog as "THE SCOUT," "THE EAGLE SCOUT," "THE SCOUT DELUXE" and "CUB SCOUT," respondents have thereby represented, directly or by implication, that said products have been officially approved for use for the Boy Scouts of America.

In truth and in fact, said products are not and have never been officially approved for use for the Boy Scouts of America as a part of the equipment of members of said organization.

(d) By listing in their catalogs and other advertising media:

OUR TWO MANUFACTURING AND SHIPPING LOCATIONS—Los Angeles, Calif., Iron Mountain, Michigan.
High Sierra Brand Made in the West.
High Sierra Brand Made in Los Angeles, Calif.

Respondents have thereby represented that they own, operate and control two manufacturing plants, one of which is located in the West, and at Los Angeles, California.

In truth and in fact, respondents do not own, operate or control a manufacturing plant in Los Angeles, California, nor "in the West" where their products sold in the Western Region of the United States are manufactured. Respondents' said products are manufactured at Iron Mountain, Michigan and are shipped to Los Angeles, California for trans-shipment to customers in the Western Region of the United States and are using the Los Angeles, California location as a basing point only for shipment of said products.

(e) By attaching, or causing to be attached to certain of said products a label on which it is stated: "A GREAT Lake-O-Woods sleeping bag since 1901 Manufactured by UNITED GARMENT MANUFACTURING CO. of Minneapolis, Minnesota" and another label with the same wording except for listing thereon the words "Manufactured by Lako-O-Woods Manufacturing Co. of IRON MOUNTAIN, MICHIGAN" in lieu of "Manufactured by UNITED GARMENT MANUFACTURING CO. of MINNEAPOLIS, MINNESOTA," respondents have thereby represented that corporate respondents have been in business since 1901, and have manufactured sleeping bags since 1901; that those products on which are attached the label with the legend "Manufactured by United Garment Manufacturing Company of Minneapolis, Minnesota" were manufactured by respondents in a factory or manufacturing establishment at that location.

In truth and in fact, corporate respondents have not been in business

since 1901, nor in manufacturing sleeping bags since 1901; and corporate respondent United Garment Manufacturing Co. does not own, operate or control a factory wherein said products are made or manufactured in Minneapolis, Minnesota, nor do respondents have a place of business at Minneapolis, Minnesota. Corporate respondent Lake-O-Woods Manufacturing Co., Inc., was incorporated under the laws of the State of Michigan on November 7, 1960, and corporate respondent United Garment Manufacturing Co.—Michigan Division, was incorporated under the laws of the State of Minnesota on March 30, 1953, and, accordingly, have not been engaged in business since 1901.

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

PAR. 5. By the aforesaid statements, representations, acts and practices respondents place in the hands of the uninformed or unscrupulous retailers means and instrumentalities by and through which they may mislead the public as to the usual and regular price, the size, the endorsement or approval of said products, the nature, size, and locations of respondents' business establishments and the length of time respondents have been in said business.

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

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, 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. 8. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5(a)(1) of the Federal Trade Commission Act.

PAR. 9. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondents have been and are now engaged in the introduction, delivery for introduction, manufacture for introduction, sale, advertising, and offering for sale, in commerce, and in the importation into the United States, of textile

fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products; as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 10. Certain of said textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products which were not labeled to show the words and figures plainly legible:

1. The true generic names of the constituent fibers present;
2. The percentage of each of said fibers present.

PAR. 11. Certain of said textile fiber products were further misbranded in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

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

(b) The required information as to fiber content was not set forth on the required label in such a manner as to separately show the fiber content of each section of textile fiber products containing two or more sections, in violation of Rule 25(b) of the aforesaid Rules and Regulations.

(c) The term "New" was used as descriptive of textile fiber products when the product or part so described was not composed wholly of new or virgin fibers which had never been reclaimed from any spun, woven, knitted, felted, bonded, or similarly manufactured product, in violation of Rule 35 of the aforesaid Rules and Regulations.

PAR. 12. Certain of said textile fiber products were falsely and deceptively advertised in that respondents in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote, and assist directly or indirectly in the sale or offering for sale of said products, failed to set forth the required information as to fiber content as specified by Sec-

tion 4(c) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among the aforesaid disclosures or implications as to fiber content, but not limited thereto, were the terms "duck," "flannel," and "poplin."

Among such textile fiber products, but not limited thereto, were sleeping bags which were falsely and deceptively advertised by the means of catalogs, price lists, and other printed matter distributed by respondents throughout the United States, in that the true generic names of the fibers contained in such products were not set forth.

PAR. 13. Certain of said textile fiber products were further falsely and deceptively advertised in violation of the Textile Fiber Products Identification Act in that they were not advertised in accordance with the Rules and Regulations promulgated thereunder.

Among such textile fiber products, but not limited thereto, were sleeping bags which were falsely and deceptively advertised, by means of catalogs, price lists, and other printed matter distributed by respondents throughout the United States, in the following respects:

(a) The required information as to fiber content was not set forth in the required information in such a manner as to separately show the fiber content of each section of textile fiber products containing two or more sections, in violation of Rule 25(b) of the aforesaid Rules and Regulations.

(b) Fiber trademarks were used in advertising textile fiber products, namely sleeping bags, containing more than one fiber and such fiber trademarks did not appear in the required fiber content information in immediate proximity and conjunction with the generic names of the fibers in plainly legible type or lettering of equal size and conspicuousness, in violation of Rule 41(b) of the aforesaid Rules and Regulations.

PAR. 14. The aforesaid acts and practices of respondents, as herein alleged in the aforesaid Paragraphs Ten, Eleven, Twelve, and Thirteen, are in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder and along with the other aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

Mr. Aaron R. Fodiman supporting the complaint.

Respondents *Mrs. Dorothy Palluconi*, *Mr. Albert Maslon* and *Mr. Warren Barrett* appeared in person. All other respondents failed to appear either in person or by attorney.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

MAY 12, 1964

In a complaint dated June 19, 1963, issued June 24, 1963, the Federal Trade Commission charged the corporate respondents, United Garment Manufacturing Co.—Michigan Division and Lake-O-Woods Co., Inc., and the respondents Edward Maslon, Dorothy Palluconi and Betty Maslon, individually and as officers of said corporations, and the respondent Albert Maslon, individually and as an officer of United Garment Manufacturing Co.—Michigan Division, and the respondent Warren Barrett, individually and as an officer of Lake-O-Woods Co., Inc., with violations of the Federal Trade Commission Act and of the Textile Fiber Products Identification Act. The alleged violations were concerned with deceptive pricing practices and deceptive labeling practices in connection with the sale and distribution of sleeping bags. It was alleged, also, that respondents made it appear, contrary to the fact, that they owned, operated and controlled two manufacturing plants.

The corporate respondents, United Garment Manufacturing Co.—Michigan Division and Lake-O-Woods Co., Inc., were duly served with the complaint on October 8, 1963 and July 23, 1963. The service was effected on the former by delivery to Betty Maslon at 17547 Tuba Street, Northridge, California, in her capacity as an officer thereof, and on the latter by delivery to one Morley Burnett, in his capacity as General Manager, at 351 West 45th Avenue, Denver, Colorado, he having affirmed that that is the present office and place of business of said corporation [Rules of Practice, Section 4.4(a)(1) (ii) and (iii)]. The complaint was served on respondents Betty Maslon and Edward Maslon by delivery of copies thereof to her personally on October 8, 1963, for the purpose of effectuating service on her and on her husband, Edward Maslon, she having stated that 17547 Tuba Street, Northridge, California (the place where she was served) is the permanent place of residence of her and her husband, Edward Malson [Rules of Practice, Section 4.4(a)(1) (ii) and (iii)]. The respondents Warren Barrett, Dorothy Palluconi and Albert Maslon also were duly served, but, as will appear below, the complaint is being dismissed against them.

Although, by Section 3.5 of the Rules of Practice, an answer

to the complaint must be served 30 days after service of the complaint, none of the respondents, corporate or individual, except Warren Barrett, has served, within the time provided, any answer or any motion addressed thereto. No notice of appearance within the meaning of Section 4.1(c) of the Rules of Practice has been filed with the Secretary. The respondents, other than Dorothy Palluconi, Albert Maslon and Warren Barrett are hereby ruled to be in default and to have waived their right to appear and contest the allegations of the complaint. The hearing examiner will, therefore, as provided in Section 3.5(c) of the Rules, find the facts to be as alleged in the complaint and enter this initial decision containing such findings, appropriate conclusions and order.

By ruling dated February 28, 1964, in response to a motion by counsel supporting the complaint, the hearing examiner held that the complaint should be dismissed as to the respondents Dorothy Palluconi and Albert Maslon. The basis for this ruling is to be found in sworn statements by these individuals to the effect that they had nothing to do with respect to, and had had no connection with, any of the practices alleged in the complaint. The sworn statements were supported by the certification of counsel supporting the complaint that he had concluded these respondents improperly had been made parties. He says that there is no evidence in the files of the Commission which would contradict the allegations set forth in the affidavits to the effect that Dorothy Palluconi and Albert Maslon had not in any way directed, controlled or formulated the acts, practices and policies of which complaint had been made.

The default procedure being followed in this decision was initiated by Commission counsel's motion requesting that the same be invoked against United Garment Manufacturing Co.—Michigan Division, Lake-O-Woods Co., Inc., Edward Maslon, Betty Maslon and Warren Barrett. This was filed on March 12, 1964, and served March 13, 1964. On March 19, 1964, while the application for default was pending, Commission counsel transmitted to the hearing examiner a letter presumably written by or on behalf of Warren Barrett, in which were set forth allegations suggesting that Barrett ought not to be held as a respondent in this proceeding. The hearing examiner was of the opinion that the form in which the Barrett communication had been submitted was not adequate to justify consideration by him other than to allow a reasonable time within which Barrett might make an application for the opening of his default. An order to this effect was entered on March 19, 1964. Barrett then submitted an affidavit dated March 25, 1964. This, although inartificially drawn, was regarded by

the hearing examiner as both an application for the opening of Barrett's default and for an order dismissing the complaint as to him. By document filed April 27, 1964, served April 28, 1964, entitled "Motion for Dismissal of Respondent Warren Barrett from the Complaint," Commission counsel moved that the charges against Warren Barrett, individually and as an officer of Lake-O-Woods Co., Inc., be dismissed on the ground that he improperly had been made a party-respondent to this proceeding. This document, filed by Commission counsel, is being regarded not only as a motion for dismissal but also as a consent to Barrett's motion for similar relief. Commission counsel states that he agrees that Barrett "had nothing to do with promotion, labeling, pricing, or catalogue designing of the corporate respondents"; that Barrett was a subordinate employee who received orders from and had to follow strictly orders given by respondent Edward Maslon; and that Barrett had severed all relations with Lake-O-Woods and Edward Maslon on September 19, 1962. Commission counsel states that the averments by Barrett in his application "are meritorious." From this the hearing examiner concludes that, as to Barrett, the situation is similar to that of respondents Dorothy Palluconi and Albert Maslon, and that there is no evidence in the files of the Commission which would contradict Barrett's allegations as to his activities in and position with the corporate respondents. The hearing examiner concludes, therefore, that the complaint ought also to be dismissed as respects the respondent Warren Barrett, individually and as an officer of Lake-O-Woods Co., Inc.

Now, therefore, in accordance with the Rules of Practice of the Federal Trade Commission, the hearing examiner makes the following

FINDINGS OF FACT

1. United Garment Manufacturing Co.—Michigan Division is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota. Lake-O-Woods Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan.

2. Lake-O-Woods Co., Inc., although it formerly had its office and principal place of business at 100 W. Brown Street, Iron Mountain, Michigan, now operates its business from and at 351 West 45th Avenue, Denver, Colorado. The record is not clear as to the present activities of United Garment Manufacturing Co.—Michigan Division, but, in view of the continued association of respondent Edward Maslon as an officer thereof, it is assumed that it, too, operates from and at 351 West 45th Avenue, Denver, Colorado.

3. Edward Maslon and Betty Maslon are officers of both corporate respondents. Edward Maslon and Betty Maslon are husband and wife, and they reside at 17547 Tuba Street, Northridge, California. They formulated, directed and controlled the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth.

4. United Garment Manufacturing Co.—Michigan Division was formerly United Garment Manufacturing Co.—Chisholm Division, and, prior to engaging in business in Michigan, had conducted its business from 316 West Lake Street, Chisholm, Minnesota.

5. All said respondents cooperated and acted together in carrying out the acts and practices hereinafter set forth.

6. They are now, and for some time past have been, engaged in the manufacture, advertising, offering for sale, sale and distribution of sleeping bags, sporting goods and accessories to retailers for resale to the public.

7. In the course and conduct of their business, they now cause, and for some time past have caused, their said products, when sold, to be shipped from the state in which they conduct their business to retailers located in various other States of the United States, and they 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.

8. For the purpose of inducing the purchase of their products, they have engaged in the practice of using fictitious prices, misrepresenting the size of said products, misrepresenting the endorsement and approval of some of said products, misrepresenting the nature, size and locations of their business and the length of time in which they have been engaged in it, by various methods and means, typical but not all inclusive of which are the following:

(a) By attaching, or causing to be attached tickets or tags to sleeping bags upon which a certain amount is printed and by distributing, or causing to be distributed, to retailers, catalogs describing, among other things, respondents' sleeping bags, and containing a stated price for each, thereby representing, directly or by implication, that the amounts so stated are the usual and regular retail price thereof. Among and typical of the statements on the price tickets or tags attached thereto are the following:

"$15.00", "$20.00", "$25.00", "$40.00", "$45.00", and others; also listing a specified price after the words "List Price" on a price tag attached to the sleeping bag.

Among and typical of the statements contained in respondents' 1961 catalog are:

"List $10.50", "List $11.50", "List $13.50", "List $14.50", "List $18.00", "List $19.00", "List $40.00".

In the manner aforesaid, by stating a specified price and also by using the words "List" or "List Price" followed as a specified price on the tickets or tags attached to said products and in their catalogs, and otherwise, respondents represented, and now represent, that said amounts were and are the prices at which the merchandise referred to were and are usually and customarily sold at retail.

(b) By attaching, or causing to be attached, labels to their said sleeping bags stating the "cut size" of the sleeping bags, which is almost invariably larger than the actual size of the bag in question. The term "cut size," when used in the manner alleged above, is confusing and tends to indicate that such a description is the actual size of the finished product.

(c) By attaching, or causing to be attached, labels on certain of their sleeping bags stating "Scout Sleeping Bag" and picturing a boy dressed in what appears to be the official uniform of the Boy Scouts of America with arm extended pointing to a sleeping bag pictured unpacked and set up for use with a sylvan setting; and by describing said sleeping bags in their catalog as "THE SCOUT," "THE EAGLE SCOUT," "THE SCOUT DELUXE" and "CUB SCOUT," respondents have thereby represented, directly or by implication, that said products have been approved officially for use for the Boy Scouts of America.

(d) By listing in their catalogs and other advertising media:

OUR TWO MANUFACTURING AND SHIPPING LOCATIONS—Los Angeles, Calif., Iron Mountain, Michigan.

High Sierra Brand Made in the West.

High Sierra Brand Made in Los Angeles, Calif.

respondents have thereby represented that they own, operate and control two manufacturing plants, one of which is located in the "West," and at Los Angeles, California, and one at Iron Mountain, Michigan.

(e) By attaching, or causing to be attached to certain of said products a label on which it is stated: "A GREAT Lake-O-Woods sleeping bag since 1901 Manufactured by UNITED GARMENT MAUFACTURING CO. of Minneapolis, Minnesota" and another label with the same wording except for listing thereon the words "Manufactured by Lake-O-Woods Manufacturing Co. of IRON MOUNTAIN, MICHIGAN" in lieu of "Manufactured by UNITED GARMENT MAUFACTURING CO. OF MINNEAPOLIS, MINNESOTA," respondents have thereby represented that said corporation has been in business since 1901, and has manufactured sleeping bags since 1901:

that those products on which are attached the label with the legend "Manufactured by United Garment Manufacturing Company of Minneapolis, Minnesota" were manufactured by respondents in a factory or manufacturing establishment at that location.

These representations were false because:

(a) In truth and in fact, the amounts stated on the tickets or tags and those set out in connection with the words "List" or "List Price" on tickets or tags and in their catalogs, and otherwise, as found in finding 8(a), were not and are not the prices at which the merchandise referred to was and is usually and customarily sold at retail in the trade areas where such representations were and are made, but were and are in excess of prices at which said merchandise generally sold and sells at retail in some of the trade areas where the representations were and are made.

(b) In truth and in fact, the actual size of the finished product to which reference is made in finding 8(b) is smaller than the size set out on the label.

(c) In truth and in fact, the products to which reference is made in finding 8(c) are not and have never been approved officially for use for the Boy Scouts of America as a part of the equipment of members of said organization.

(d) In truth and in fact, respondents do not own, operate or control a manufacturing plant in Los Angeles, California, nor "in the West" where their products sold in the Western Region of the United States are manufactured, as found to be represented in finding 8(d). Respondents' said products are or were manufactured at Iron Mountain, Michigan and are or were shipped to Los Angeles, California for transshipment to customers in the Western Region of the United States. They used the Los Angeles, California location as a basing point only for shipment of said products.

(e) In truth and in fact, said corporate respondents have not been in business since 1901, nor in manufacturing sleeping bags since 1901; and do not own, operate or control a factory wherein said products are made or manufactured in Minneapolis, Minnesota, nor do respondents have a place of business at Minneapolis, Minnesota. Corporate respondent Lake-O-Woods Manufacturing Co., Inc., was incorporated under the laws of the State of Michigan on November 7, 1960, and corporate respondent United Garment Manufacturing Co.—Michigan Division, was incorporated under the laws of the State of Minnesota on March 30, 1953. Accordingly, they have not been engaged in business since 1901.

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

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

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

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products which were not labeled to show in words and figures plainly legible:

a. The true generic names of the constituent fibers present;

b. The percentage of each of said fibers present.

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

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

(b) The required information as to fiber content was not set forth on the required label in such a manner as to separately show the fiber content of each section of textile fiber products containing two or more sections, in violation of Rule 25(b) of the aforesaid Rules and Regulations.

(c) The term "New" was used as descriptive of textile fiber products when the product or part so described was not composed wholly of new or virgin fibers which had never been reclaimed from any spun, woven, knitted, felted, bonded, or similarly manufactured product, in violation of Rule 35 of the aforesaid Rules and Regulations.

13. Certain of said textile fiber products were falsely and deceptively advertised in that respondents, in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote, and assist directly or indirectly

in the sale or offering for sale of said products, failed to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among the aforesaid disclosures or implications as to fiber content, but not limited thereto, were the terms "duck," "flannel," and "poplin."

Among such textile fiber products, but not limited thereto, were sleeping bags which were falsely and deceptively advertised by the means of catalogs, price lists, and other printed matter distributed by respondents throughout the United States, in that the true generic names of the fibers contained in such products were not set forth.

14. Certain of said textile fiber products were further falsely and deceptively advertised in violation of the Textile Fiber Products Identification Act in that they were not advertised in accordance with the Rules and Regulations promulgated thereunder.

Among such textile fiber products, but not limited thereto, were sleeping bags which were falsely and deceptively advertised, by means of catalogs, price lists, and other printed matter distributed by respondents throughout the United States, in the following respects:

(a) The required information as to fiber content was not set forth in such a manner as to separately show the fiber content of each section of textile fiber products containing two or more sections, in violation of Rule 25(b) of the aforesaid Rules and Regulations.

(b) Fiber trademarks were used in advertising textile fiber products, namely sleeping bags, containing more than one fiber and such fiber trademarks did not appear in the required fiber content information in immediate proximity and conjunction with the generic names of the fibers in plainly legible type or lettering of equal size and conspicuousness, in violation of Rule 41(b) of the aforesaid Rules and Regulations.

CONCLUSIONS

A. By the statements, representations, acts and practices set forth in finding of fact numbered 8, respondents United Garment Manufacturing Co.—Michigan Division, Lake-O-Woods Co., Inc., Edward Maslon and Betty Maslon place in the hands of uninformed or unscrupulous retailers means and instrumentalities by and through which they may mislead the public as to the usual and regular price, the size, the endorsement or approval of said products, the nature, size and locations of respondents' business establishments and the length of time respondents have been in said business.

B. In the course and conduct of their said business, and at all times

mentioned herein, said respondents have been engaged in substantial competition in commerce with corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by them.

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

D. The acts and practices of said respondents, as set forth in findings of fact numbered 10, 11, 12, 13 and 14, are in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder.

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

ORDER

It is ordered, That respondents United Garment Manfacturing Co.—Michigan Division, a corporation, Lake-O-Woods Co., Inc., a corporation, Edward Maslon and Betty Maslon, individually and as officers of said corporations, their officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the manufacture, offering for sale, sale or distribution of sleeping bags or other merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising, labeling, representing in a catalog or otherwise representing the "cut," "cut size" or dimensions of material used in their construction, unless such representation is accompanied by a description of the finished or actual size, with the latter description being given at least equal prominence;

2. Misrepresenting the size of such products on labels or in any other manner;

3. Utilizing the act or practice of preticketing merchandise at an indicated retail price, or otherwise setting forth an indicated retail price as to merchandise in any material disseminated or

intended for dissemination to the public, when the indicated retail price is in excess of the generally prevailing retail price for such merchandise in the trade area or when there is no generally prevailing retail price for such merchandise in the trade area.

4. Furnishing to others any means or instrumentality by or through which the public may be misled as to the usual and regular retail price of, the size of or endorsement or approval of respondents' merchandise;

5. Putting any plan into operation through the use of which retailers or others may misrepresent the usual and regular retail price of, the size of or endorsement or approval of respondents' merchandise;

6. Using the words or terms "List," "List Price," or any other words or terms of similar import, to refer to price of merchandise unless such amounts are the prices at which the merchandise is usually and customarily sold in the trade area in which such representations are made, or otherwise misrepresenting the usual and customary retail price or prices of respondents' merchandise in any trade area.

7. Using the words "scout," "eagle scout," "cub scout" or "the scout deluxe" or any other word or words of similar import or meaning, to designate, describe or refer to respondents' sleeping bags or other products, or otherwise representing that said sleeping bags or other products are sponsored, endorsed, or approved by the organization known as the Boy Scouts of America or that said sleeping bags or other products form a part of the equipment of members of said organization.

8. Misrepresenting the length of time respondents have actually been engaged in the business of manufacturing sleeping bags, or in any other business.

9. Representing in any manner that corporate respondents Lake-O-Woods Co., Inc., United Garment Manufacturing Co.—Michigan Division, or any other corporation have been engaged in business for any period of time prior to the date of the incorporation of same.

10. Using the words "High Sierra Brand Made in the West," "High Sierra Brand Made in Los Angeles, Calif.," "Manufactured by" or "Made by United Garment Manufacturing Co. of Minneapolis, Minnesota" or any other word or combination of words, so as to represent that they, or any of them, own, operate or control a plant or factory wherein such products are manufactured at the location stated, when such is not the fact.

11. Representing that they have a factory or manufacturing plant in which their said products are made in any location other than at its actual location.

It is further ordered, That respondents United Garment Manufacturing Co.—Michigan Division, a corporation, Lake-O-Woods Co., Inc., a corporation, Edward Maslon and Betty Maslon, individually and as officers of said corporations, their officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported of any textile fiber product, which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product," are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. Failing to affix labels to such textile fiber products showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

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

3. Failing to separately set forth the required information as to fiber content on the required label in such a manner as to separately show the fiber content of the separate sections of textile fiber products containing two or more sections where such form of marking is necessary to avoid deception.

4. Using the terms "New" or "Virgin" as descriptive of a textile fiber product, or any fiber or part thereof, where the product or part so described is not composed wholly of new or virgin fiber which has never been reclaimed from any spun, woven, knitted, felted, bonded or similarly manufactured product.

B. Falsely and deceptively advertising textile fiber products by:

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

2. Failing to separately set forth the information as to fiber content in the required fiber content disclosure in such a manner as to separately show the fiber content of the separate sections of textile fiber products containing two or more sections where such form of marking is necessary to avoid deception.

3. Using a fiber trademark in advertising textile fiber products containing more than one fiber without such fiber trademark appearing in the required fiber content information in immediate proximity and conjunction with the generic name of the fiber in plainly legible type or lettering of equal size and conspicuousness.

And it is further ordered, That the complaint be, and the same hereby is, dismissed as to the respondents Dorothy Palluconi, Albert Maslon and Warren Barrett, without prejudice to any further action on the part of the Federal Trade Commission should it be made to appear that remedial action against them is or will become necessary.

Decision of the Commission and Order to File Report of Compliance

The hearing examiner having filed his initial decision in this matter on May 12, 1964, and the Commission by order of June 16, 1964, having stayed the effective date thereof; and

The Commission having determined that the order to cease and desist contained in the initial decision should be modified and that the initial decision as so modified should be adopted as the decision of the Commission:

It is ordered, That the following order be, and it hereby is, substituted for the order contained in the initial decision:

It is ordered, That respondents United Garment Manufacturing Co.—Michigan Division, a corporation, Lake-O-Woods Co., Inc., a corporation, Edward Maslon and Betty Maslon, individually and as officers of said corporations, their officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the manufacture, offering for sale, sale or distribution of sleeping bags or other merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising, labeling, representing in a catalog or otherwise representing the "cut," "cut size" or dimensions of material used in their construction, unless such representation is accompanied by a description of the finished or actual size, with the latter description being given at least equal prominence;

2. Misrepresenting the size of such products on labels or in any other manner;

3. Preticketing said merchandise with any amount or price in excess of the price at which said merchandise is being offered for sale, or otherwise representing in advertising or labeling that said merchandise is being offered at retail at a reduction from a higher price, when the preticketed amount or represented higher price appreciably exceeds the highest retail price at which substantial sales of the merchandise are being made in the trade area in which respondents are doing business;

4. Using the words "scout," eagle scout," "cub scout" or "the scout deluxe" or any other word or words of similar import or meaning, to designate, describe or refer to respondents' sleeping bags or other products, or otherwise representing that said sleeping bags or other products are sponsored, endorsed, or approved by the organization known as the Boy Scouts of America or that said sleeping bags or other products form a part of the equipment of members of said organization;

5. Furnishing to others any means or instrumentality by or through which the public may be misled as to the prevailing retail price of respondents' merchandise or as to the size, endorsement, or approval of said merchandise;

6. Misrepresenting the length of time respondents have actually been engaged in the business of manufacturing sleeping bags, or in any other business;

7. Using the words "High Sierra Brand Made in the West," "High Sierra Brand Made in Los Angeles, Calif.," "Manufactured

by" or "Made by United Garment Manufacturing Co. of Minneapolis, Minnesota" or otherwise representing that they own, operate or control a plant or factory wherein such products are manufactured at the stated locations;

8. Representing that they have a factory or manufacturing plant at any place other than the place in which a factory or plant owned, operated or controlled by them is located.

It is further ordered, That respondents United Garment Manufacturing Co.—Michigan Division, a corporation, Lake-O-Woods Co., Inc., a corporation, Edward Maslon and Betty Maslon, individually and as officers of said corporations, their officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported of any textile fiber product, which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment, in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product," are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. Failing to affix labels to such textile fiber products showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

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

3. Failing to separately set forth the required information as to fiber content on the required label in such a manner as to separately show the fiber content of the separate sections of textile fiber products containing two or more sections where such form of marking is necessary to avoid deception.

4. Using the terms "New" or "Virgin" as descriptive of a textile fiber product, or any fiber or part thereof, where the product or part so described is not composed wholly of new or virgin fiber which has never been reclaimed from any spun, woven, knitted, felted, bonded or similarly manufactured product.

B. Falsely and deceptively advertising textile fiber products by:

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

2. Failing to separately set forth the information as to fiber content in the required fiber content disclosure in such a manner as to separately show the fiber content of the separate sections of textile fiber products containing two or more sections where such form of marking is necessary to avoid deception.

3. Using a fiber trademark in advertising textile fiber products containing more than one fiber without such fiber trademark appearing in the required fiber content information in immediate proximity and conjunction with the generic name of the fiber in plainly legible type or lettering of equal size and conspicuousness.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to the respondents Dorothy Palluconi, Albert Maslon and Warren Barrett, without prejudice to any further action on the part of the Federal Trade Commission should it be made to appear that remedial action against them is or will become necessary.

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

It is further ordered, That respondents United Garment Manufacturing Co.—Michigan Division, Lake-O-Woods Co., Inc., Edward Maslon, and Betty Maslon shall within sixty (60) days after service

upon them of this order file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

VIOBIN CORPORATION ET AL.

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

Docket 8579. Complaint, June 24, 1963—Decision, Sept. 16, 1964

Order dismissing complaint charging Monticello, Ill., distributors of "Viobin Wheat Germ Oil" and "Prometol," a wheat oil concentrate, with falsely advertising the beneficial and therapeutic effects of these preparations after it became apparent that the products used in the experiment of the chief prosecution witness were not those of the respondent.

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

PARAGRAPH 1. Respondent Viobin Corporation 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 in Monticello, Illinois.

Respondent Ezra Levin is an officer of the corporate respondent. He formulates, directs and controls the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and have been for more than one year last past, engaged in the sale and distribution of two products, designated and sold under the trade names of Viobin Wheat Germ Oil and Prometol, a wheat germ oil concentrate, which come within the classification of drugs and food as the terms "drug" and "food" are defined in the Federal Trade Commission Act.

PAR. 3. Respondents cause said preparations, when sold, to be transported 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. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of their said business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said preparations by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers, magazines and other advertising media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparations; and have disseminated, and caused the dissemination of, advertisements concerning said preparations by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical of the statements and representations contained in said advertisements, disseminated as hereinabove set forth, are the following:

Protect YOUR HEART!
VIOBIN Wheat Germ Oil Helps Heart Action—Improves Strength—Vigor.
PROVED 9 years—500 persons.
University Experiments.
REFUSE SUBSTITUTES—only *VioBin Oil PROVED* helpful. Send NOW—VioBin Story FREE BOOK #7. PROMETOL—8 to 1 vigor factor concentrate VioBin Oil. Same benefits—NO fat calories. Liquid & Capsules. VIOBIN Monticello, Illinois.

We need the essential unsaturated fat (linoleic acid), the plant sterols (phytosterol) that help reduce the cholesterol in the blood—these are found only in unrefined vegetable oils. We need the "vigor" factor that helps increase physical endurance and aids heart response. These are all found in the oil of the wheat.

* * * Viobin Oil helps the heart—gives more endurance—vigor-stamina.

Wheat germ oil (WGO) was found to be a valuable food supplement which helped the endurance of middle-aged men to run * * *.

* * * increase physical endurance and to improve heart action.

Viobin Wheat Germ Oil helped him lift more weight.

More efficient heart action as measured by the heart T-wave.

* * * more vigor * * * improved speed * * *.

* * * Viobin Wheat Germ Oil—a food—helps the heart to do its work and increase endurance, vigor, and stamina.

Any food substance that has been proved to help heart action and increase endurance and vigor should be part of your diet. So we say, IT'S JUST COMMON SENSE to take Viobin Wheat Germ Oil every day.

HEART DISEASE KILLS more people in the United States than any other disease. Most experts * * * blame it on cholesterol.

* * * * * * *

Scientists have shown by experiments that the essential unsaturated fat, linoleic fat, combines with cholesterol to remove it from the blood.

Viobin Wheat Germ Oil is one of the richest foods in essential unsaturated fat.

The value of wheat germ oil concentrate (Prometol) is clearly proved. For some reason (the possible inability to tolerate the wheat germ oil by some of the subjects) the wheat germ oil did not prove quite as effective as the concentrate. However, both Viobin Oil and Viobin Oil Concentrate show they increase endurance and help heart action.

PAR. 6. Through the use of said advertisements, and others similar thereto not specifically set out herein, respondents have represented, and are now representing, directly or by implication, that:

1. Viobin Wheat Germ Oil and/or Prometol has a beneficial effect upon the human heart.

2. Viobin Wheat Germ Oil and/or Prometol reduces cholesterol in the blood.

3. By the use of Viobin Wheat Germ Oil and/or Prometol individuals may increase their physical strength, vigor and endurance.

PAR. 7. In truth and in fact:

1. Viobin Wheat Germ Oil and/or Prometol has no beneficial effect upon the human heart.

2. Viobin Wheat Germ Oil and/or Prometol will not reduce the cholesterol content of the blood.

3. Viobin Wheat Germ Oil and/or Prometol will not increase the physical strength, vigor and endurance of anyone.

Therefore, the advertisements referred to in Paragraph Five were and are misleading in material respects and constituted and now constitute "false advertisements", as that term is defined in the Federal Trade Commission Act.

PAR. 8. The dissemination by respondents of the false advertisements, as aforesaid, constituted, and now constitutes, unfair and deceptive acts and practices in commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

Mr. Charles J. Connolly and *Mr. Edward F. Downs* for the Commission.

Mr. Solomon H. Friend of *Bass & Friend*, New York, N.Y., for the respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

AUGUST 12, 1964

CONTENTS

SUPPORTING REFERENCES

"Tr." refers to the official transcript.
CX refers to Commission Exhibits.
RX refers to Respondents' Exhibits.

I. The Complaint

1. On June 24, 1963, the Federal Trade Commission issued the complaint upon which the proceeding herein described is based, charging Viobin Corporation, a corporation, and Ezra Levin, individually, and as an officer of the Viobin Corporation, with violation of the Federal Trade Commission Act by the dissemination of false and misleading advertisements of two products called Viobin Wheat Germ Oil and Prometol, a wheat germ oil concentrate.

II. The Answer

2. The respondents' answer admitted the dissemination of advertisements which claim that their products help heart action and heart responses, increase endurance and improve stamina, vim and vigor, but

denied that the advertisements referring to the beneficial effects of the products in reducing cholesterol were typical of respondents' current advertisements. Respondents further denied that the advertisements were false and alleged that the claims of beneficial effect from the taking of Viobin Wheat Germ Oil and Prometol as stated in their advertisements were based upon reports and experiments conducted at the University of Illinois and other universities.

III. Respondents' Advertisements

3. Some of the statements and representations contained in respondents' advertising material, as alleged in the complaint and as shown in the Commission's Exhibits One to Five inclusive, are as follows:

Protect YOUR HEART!
VIOBIN Wheat Germ Oil Helps Heart Action—Improves Strength—Vigor.
PROVED 9 years—500 persons.
University Experiments
REFUSE SUBSTITUTES—only VioBin Oil PROVED helpful. Send NOW—VioBin Story FREE Book #7. PROMETOL—8 to 1 vigor factor concentrate VioBin Oil. Same benefits—NO fat calories. Liquid & Capsules. VIOBIN Monticello, Illinois.

We need the essential unsaturated fat (linoleic acid), the plant sterols (phytosterol) that help reduce the cholesterol in the blood—these are found only in unrefined vegetable oils. We need the "vigor" factor that helps increase physical endurance and aids heart response. These are all found in the oil of the wheat.

"* * * Viobin Oil helps the heart—gives more endurance—vigor-stamina.

Wheat germ oil (WGO) was found to be a valuable food supplement which helped the endurance of middle-aged men to run * * *.

* * * increase physical endurance and to improve heart action.

Viobin Wheat Germ Oil helped him lift more weight.

More efficient heart action as measured by the heart T-wave.

* * * more vigor * * * improved speed * * *.

* * * Viobin Wheat Germ Oil—a food—helps the heart to do its work and increase endurance, vigor, and stamina.

Any food substance that has been proved to help heart action and increase endurance and vigor should be part of your diet. So we say, IT'S JUST COMMON SENSE to take Viobin Wheat Germ Oil every day.

HEART DISEASE KILLS more people in the United States than any other disease. Most experts * * * blame it on cholesterol.

* * * * * * *

Scientists have shown by experiments that the essential unsaturated fat, linoleic fat, combines with cholesterol to remove it from the blood.

Viobin Wheat Germ Oil is one of the richest foods in essential unsaturated fat.

The value of wheat germ oil concentrate (Prometol) is clearly proved. For some reason (the possible inability to tolerate the wheat germ oil by some

of the subjects) the wheat germ oil did not prove quite as effective as the concentrate. However, both Viobin Oil and Viobin Oil Concentrate show they increase endurance and help heart action.

The complaint alleges that the said advertisements represent, directly and/or by implication, that:

a. Viobin Wheat Germ Oil and/or Prometol has a beneficial effect upon the human heart.

b. Viobin Wheat Germ Oil and/or Prometol reduces cholesterol in the blood.

c. By the use of Viobin Wheat Germ Oil and/or Prometol, individuals may increase their physical strength, vigor, and endurance.

The complaint further alleges that the aforementioned representations are misleading and constitute false advertising as that term is defined by the Federal Trade Commission.

IV. Prehearing Conference and Order Based Thereon

4. A prehearing conference was held on October 30, 1963, and an order based thereon was issued January 9, 1964, requiring counsel to exchange a list of the expert witnesses which they intended to call during the presentation of their respective cases-in-chief; the curriculum vitae of all expert witnesses; a list of all documentary material; and the results of tests each intended to offer in evidence.

V. Witnesses to be Called by Counsel Supporting the Complaint

5. Subsequently, counsel supporting the complaint informed respondents' counsel that he would call Professor Peter V. Karpovich, Research Professor of Physiology of Springfield College; Clayton Shay; Sherrod Shaw; Dr. Jacob Weissman; and Dr. William Kaufman, to testify concerning the study conducted by them dated March 23, 1961, entitled *Ergogenic Effect of Wheat Germ Oil and Effect of Wheat Germ Oil and Prometol Upon the Blood Cholesterol and Electrocardiogram.* It was also stated that counsel supporting the complaint would rely upon the testimony of Donald A. Kinderfather and the test conducted by him embodied in his report dated 1961, entitled *The Ergogenic Effect of Wheat Germ Oil on Adult Male Subjects in Four Programs of Physical Conditioning Activities.*

VI. Witnesses to be Called by Respondents

6. The respondents stated that they intended to call as witnesses for the presentation of their case-in-chief Professor Thomas Kirk Cureton, Jr., University of Illinois; Dr. Benjamin H. Ershoff, Uni-

versity of California; Dr. James Counsilman, Indiana University; Professor Charles Silvia, Springfield College; Dr. Cedric W. Dempsey, University of Arizona; Dr. Morris Brookens, Carl Clinic, Urbana, Illinois; Dr. George S. Barber, Brantford, Canada; Lt. Col. James W. Tuma, Marine Naval Base, Camp LeJeune, North Carolina; Edmund N. Bernauer, University of California; and Eric Banister, University of Illinois, to give testimony as to their opinions as to the beneficial effects of wheat germ oil and the studies conducted by them with reference thereto. In addition, respondents intended to call Dr. Francis G. Cornell, a statistician, to testify concerning the statistical significance of the studies conducted by respondents' witnesses and the lack of statistical significance of the studies conducted by Professor Karpovich and Mr. Kinderfather.

VII. Suspension of the Hearings and Order Dismissing Complaint

7. Hearings were scheduled to be held in Springfield, Massachusetts and Champaign, Illinois. On the third day of the hearings in Springfield, after Professor Peter V. Karpovich had been testifying on cross-examination for more than two days concerning the experiment which he had performed, it became apparent that the products used in the experiment had not been those of the respondents, that the methods used in the experiment were improper, and that the experiment had been conducted in an atmosphere of bias and prejudice. The hearing examiner, therefore, interrupted the cross-examination, temporarily excused Professor Karpovich from the witness stand, and asked counsel supporting the complaint if they did not wish to move for the dismissal of their case. Such action was prompted not only by the testimony of Professor Karpovich but by the additional fact that the testimony of all the other witnesses scheduled to appear in support of the complaint would be related, at least in a substantial part, to the experiment in question. Accordingly, the failure of Professor Karpovich's experiment or test was a failure of the entire case in support of the complaint.

8. Counsel supporting the complaint expressed both surprise and disappointment at the testimony as it had developed. They also recognized the various errors of the tests which Professor Karpovich had performed. They promptly moved for the dismissal of the complaint without prejudice of the right of the Commission to institute a further proceeding should newly discovered evidence and the public interest so require. The examiner forthwith promised that the complaint would be dismissed through the medium of the hearing examiner's initial decision and the hearing was thereupon terminated.

VIII. Proposed Findings as to the Facts

9. Opposing counsel submitted proposed findings as to the facts, proposed conclusions, and a proposed order. All proposed findings as to the facts have been considered by the hearing examiner, and those not incorporated in the initial decision, either verbatim or in substance, are hereby rejected. All counsel appear to be in substantial agreement concerning the major facts as shown by their proposed findings of facts.

IX. Identity of Respondents

10. Respondent Viobin Corporation 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 Monticello, Illinois.

11. Respondent Ezra Levin is an officer of the corporate respondent, and his address is the same as that of the corporate respondent. He formulates, directs, and controls the acts and practices of the corporate respondent.

X. Commerce

12. Respondents are now, and for several years have been, engaged in the manufacture, sale and distribution of various products, including the two products known as Viobin Wheat Germ Oil and Prometol, a wheat germ oil concentrate, both of which come within the classification of foods and drugs as those terms are defined in the Federal Trade Commission Act.

XI. Professor Peter V. Karpovich and His Qualifications

13. Professor Peter V. Karpovich, the only witness upon whose testimony this initial decision is based, testified concerning a study and report conducted by him and others entitled *Ergogenic Effect of Wheat Germ Oil and Effect of Wheat Germ Oil and Prometol Upon the Blood Cholesterol and Electrocardiogram* (CX 7). Professor Karpovich is a research professor of physiology at Springfield College, Springfield, Massachusetts, where he has taught physiology for a number of years (Tr. 20–A).

14. Professor Karpovich was born in Russia where he graduated in 1919 from the State Military Medical Academy. He came to the United States in 1925, studied at Springfield College, and received the degree of Master of Physical Education from that institute in 1927. In 1935 he became a citizen of the United States. Professor Karpovich has

never practiced medicine in this country and has never taken the examination required in order to practice medicine in this country. He explained that he preferred to remain in the field of research. He has, however, used the initials "M.D." after his name in numerous publications even though he has never received an "M.D." degree. He testified that he used the initials "M.D." in connection with his name because he thought his training in Russia was equivalent to that received by students upon whom the degree of Doctor of Medicine is conferred in American universities (Tr. 89, 151, 154–6).

XII. Solicited Grant from the Federal Trade Commission

15. Professor Karpovich informed the Federal Trade Commission in 1959 or 1960 that in his opinion the claims made by the respondents in their advertisements concerning the two preparations in question were not justified. Upon the basis of that conviction he requested the Commission to grant him a sum of money to defray the expenses of an experiment which he proposed to perform to test the value of those preparations and to determine whether the respondents' advertisements concerning those preparations were true or false. The Commission acceded to his request and paid Professor Karpovich, or Springfield College, $4,800. Professor Karpovich was given written instructions advising him of the necessity of retaining all the records of the test and of the test's substance. One of the most surprising aspects of Professor Karpovich's testimony was his admission that he had solicited the grant from the Federal Trade Commission not to conduct a study to verify the truth or falsity of respondents' advertisements, but rather "to verify" the work of Professor Cureton as reported in two articles by Professor Cureton published in *The Research Quarterly*, Vol. 26, No. 4, December 1955, and *Medicina Sportiva*, Vol. XIII, No. 10, October 1959 (RX 2, RX 3; Tr. 50, 51, 53). He admitted having an unfavorable opinion of wheat germ oil as a health aid even before he had run the test and stated that he opposed the use of all ergogenic aids as a matter of policy, regardless of their scientific validity (Tr. 27, 28, 124, 364).

16. Professor Cureton is a former student of Professor Karpovich who had left Springfield College and gone to the University of Illinois where he had become a full professor and head of that university's laboratory on physical fitness (Tr. 105). Professor Karpovich described Professor Cureton as "* * * brilliant, one of the hardest workers and one who would be a very important person in his profession * * *." Professor Karpovich described his relations with Pro-

fessor Cureton as "peculiar" (Tr. 104), and Professor Cureton as a person for whom he felt "fatherly responsibility" (Tr. 114). Professor Karpovich admitted that he had opposed Professor Cureton's membership in the American Physiology Society; that he had opposed Professor Cureton's membership in the American Academy of Sports Medicine; and that he had opposed the publication of an article by Professor Cureton in *The Research Quarterly* (Tr. 109–11, 143, 145). Professor Cureton was nevertheless admitted to both societies referred to and his article was published notwithstanding Professor Karpovich's objections. Professor Karpovich admitted he had opposed Professor Cureton's work supporting ergogenic aids (Tr. 104). He further admitted having risen many times at scientific meetings to contradict Professor Cureton (Tr. 106). Professor Karpovich further admitted that after he returned from a meeting at the University of Illinois he had informed the Federal Trade Commission that it was now more important to him than anything else to check on Professor Cureton's work (Tr. 360, 371–5).

XIII. Professor Karpovich's Experiment

17. The experiment which was to have determined the therapeutic value of respondents' Viobin Wheat Germ Oil and Prometol, and the truth or falsehood of respondents' claims therefor, was to have been conducted in substantially the following manner. Forty-four presumed healthy prisoners incarcerated in the Hampden County (Massachusetts) Jail were selected as the subjects of the experiment. Of this group of 44, 11 were supposed to have received doses of Viobin Wheat Germ Oil whereas a second group of 11 were supposed to have received Prometol. The other 22 prisoners were supposed to have received a similar appearing substance which was to be a placebo, that is, a substance which could have no effect whatsoever on the human body. The group of 44 prisoners were told that they were being given vitamins. One half of each group were to be given supervised physical exercises, whereas the other half were not. During the period in which the preparations were to be administered, various tests were to be conducted to measure the effect of the two preparations on the physical strength, vigor, and endurance of the participants in the test and upon the blood cholesterol and electrocardiogram (CX 7).

XIV. Professor Karpovich's Direct Examination

18. On direct examination Professor Karpovich testified in effect that respondents' Viobin Wheat Germ Oil and Prometol, the respondents' wheat germ oil concentrate, were not effective preparations for

the purposes for which they were advertised. His broad conclusion concerning respondents' advertisements were based primarily upon the study which he had conducted (Tr. 16, 99; CX 7).

XV. The Experimental Substance Used

19. On direct examination Professor Karpovich testified that he believed he had used wheat germ oil and Promotel as the test substances, although he was not sure that it was Viobin Wheat Germ Oil since he had lost the records of the purchase (Tr. 41, 43). He admitted that under his contract with the Federal Trade Commission he was required to use Viobin only and to preserve all records to prove the identity of the test substance in the event the result of the experiment was needed in litigation (Tr. 44, 324–5). It was shown, however, by reference to the actual invoices of the material purchased for the experiment that Professor Karpovich had not used Viobin, but instead had used a substance known as "Premo" at least for part of the experiment.

20. Evidence that Professor Karpovich changed the test substance was Professor Karpovich's letter to Dr. Torbin Yates, Vice President of Springfield College, informing Dr. Yates that Vitamin E would be used as the test substance (Tr. 434, 447–8; RX 27).

21. Furthermore, the laboratory notebook which allegedly contained the original entries for Professor Karpovich's experiment did not refer to wheat germ oil at all, but only to vitamins. Indeed, it did not mention any brand name of the test substance (Tr. 338, 447). Professor Karpovich claimed he had used the word "vitamin" as a code word, but it appears that this alleged code was never used in any correspondence with the Federal Trade Commission concerning his study (Tr. 444–5). Most significantly, the first time that Professor Karpovich had used the alleged code name "vitamin" was immediately after he had informed Dr. Yates that he was switching the test substance to Vitamin E (Tr. 446).

XVI. The Dosage

22. The testimony shows that Professor Cureton in his experiment with wheat germ oil at the University of Illinois had used a dosage consisting of 60 minims of wheat germ oil per day. The testimony further shows that the directions for use of the respondents' preparations suggested the taking of 60 minims of wheat germ oil per day. Although Professor Karpovich admitted that he conducted his experiment ostensively to check Professor Cureton's work, he used as

his dosage only 30 minims per day. He also stated that it was immaterial to him what the recommended dosage of the respondents' product might be (Tr. 48, 50, 408–10).

XVII. Placebo Used

23. In addition to changing the test substance used in his experiment and cutting the dosage of that substance to half that prescribed by the respondents for their preparations, Professor Karpovich did not use a proper placebo. His correspondence with the Commission during the early stages of the design of the test showed that he had considered using a placebo of cotton seed oil, of the same size, shape and color as wheat germ oil (Tr. 400). Subsequently, however, Professor Karpovich switched to a placebo consisting of ordinary candy of an entirely different color and dosage from the test substance (Tr. 387, 388, 419). The candy placebo was administered in a dosage of three pills a day, whereas the test substance was administered ten pills per day (Tr. 393). Moreover he had used a candy placebo which could help in exertions of long duration, an improper choice of a placebo if one were attempting to objectively measure the effect of a test substance on endurance (Tr. 400).

XVIII. The Torbin Yates Incident

24. The record shows that Dr. Torbin Yates, Vice President of Springfield College, wrote to Professor Karpovich opposing his undertaking the experiment for the Federal Trade Commission because Dr. Yates did not believe that Professor Karpovich was dealing completely accurately with the Commission. Dr. Yates, in a letter to Professor Karpovich, stated that he "* * * could not live with * * *" himself if he did not inform Professor Karpovich of his true feelings in regard to the proposed experiment. In reply to that letter it appears that Professor Karpovich informed Dr. Yates that the projected experiment would be undertaken despite Dr. Yates' objection. In order, however, to placate Dr. Yates, Professor Karpovich wrote a letter to him telling Dr. Yates the following: "You see, Torbin, if we find that the claims were false, then you will be in a very fine position with Mr. Palmer" (Tr. 428–30). It appears that Mr. Palmer, an elderly gentleman, was interested in wheat germ oil and was contemplating making a substantial contribution to Springfield College. It was further developed that Professor Karpovich thought when writing to Dr. Yates that a negative finding would cause Mr. Palmer to be more receptive to the idea of making a contribution to Springfield College

(Tr. 430). Obviously the attitude revealed by Professor Karpovich's letter is incompatible with an objective, unbiased experiment.

XIX. Conclusions of Law

Based upon a consideration of the entire record herein, the following conclusions of law are required.

1. Counsel supporting the complaint have failed to prove that the advertisements referred to in the complaint, except as to the advertisement marked Exhibit CX 5, are typical of the advertising currently being used by respondents.

2. Counsel supporting the complaint have failed to prove that respondents' advertising claims are false or misleading, or otherwise violative of the Federal Trade Commission Act.

3. The testimony and documentary evidence show that the experiment conducted by Professor Karpovich was not properly conducted and that the results thereof are not scientifically valid.

4. Counsel supporting the complaint have failed to prove that the acts and practices of respondents as alleged in the complaint constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

XX. Order

Because of the above facts and conclusions, it is imperative that the motion of counsel supporting the complaint to dismiss the complaint herein be granted. It is, however, equally imperative, in view of all the circumstances herein found, that the public interest be protected by a dismissal of the complaint without prejudice to the right of the Commission to issue a new complaint upon newly discovered evidence should future facts and the public interest so require. Accordingly,

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to bring a new complaint upon newly developed evidence should future facts and the public interest so warrant.

Order Dismissing Complaint

Neither counsel having appealed from the initial decision and order of the hearing examiner dismissing the complaint, and the Commission having determined that there are no grounds for reviewing the dismissal,

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

IN THE MATTER OF

JACQUES KREISLER MANUFACTURING CORPORATION ET AL.

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

Docket 8580. Complaint, June 28, 1963—Decision, Sept. 16, 1964

Order requiring a North Bergen, N.J., distributor of metal watchbands to cease failing to disclose the Japanese origin of its watchbands.

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 Jacques Kreisler Manufacturing Corporation, a corporation, and Tobias Stern, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Jacques Kreisler Manufacturing Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 9015 Bergenline Avenue, North Bergen, New Jersey, in the city of North Bergen, State of New Jersey.

Respondent Tobias Stern is president of the corporate respondent. He formulates, directs and controls the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of, among other products, metal watchbands to manufacturers and distributors of watches as well as to retailers for resale to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said watchbands, when sold, to be shipped from their place of business in the State of New Jersey to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain, and at all times herein mentioned have maintained, a substantial course of

trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Said watchbands consist in whole or in substantial part of components which were manufactured in, and imported from Japan. When offered for sale or sold by respondents, said watchbands do not bear disclosure showing that they are substantially of foreign origin.

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

As to the aforesaid articles of merchandise, a substantial portion of the purchasing public has a preference for said articles which are of domestic origin, of which fact the Commission also takes official notice. Respondents' failure to clearly and conspicuously disclose the country of origin of said articles of merchandise, or, substantial components thereof, is, therefore, to the prejudice of the purchasing public.

PAR. 6. By the aforesaid practices, respondents place in the hands of watch manufacturers, distributors and retailers, means and instrumentalities by and through which they may mislead the public as to the place of origin of said watchbands or the substantial components thereof.

PAR. 7. 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 same general kind and nature as that sold by the respondents.

PAR. 8. The use by respondents of the false, misleading and deceptive representations and practices hereinabove set forth, and the failure to disclose the foreign origin of their watchbands or of substantial components of their watchbands, have had, and now have, the capacity and tendency to mislead and deceive purchasers or members of the buying public in the manner aforesaid, and thereby to induce them to purchase respondents' watchbands.

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

Mr. Herbert L. Blume supporting the complaint.

Mr. Herbert Burstein of *Zelby & Burstein*, New York, N.Y., for the respondents.

INITIAL DECISION BY JOSEPH W. KAUFMAN, HEARING EXAMINER

MAY 25, 1964

This case involves, generally speaking, the omission to mark or otherwise disclose the foreign origin, Japan, of skeletons of metal [1] expansion watchbands, sold in the United States, allegedly in violation of Section 5 of the Federal Trade Commission Act.

The skeleton is the expansible part of an expansion watchband. It consists of links to which ornamental shells are in due time affixed, among other things.

Respondents' main contention is that their Japanese skeletons are not substantial parts of their watchbands, or at least of such of their watchbands as have only small skeletons attached to rigid ornamental "arms" [2] on each side, instead of large skeletons extending the full length of the watchbands. The hearing examiner rejects this contention, as he has a somewhat similar contention *In the Matter of Jacoby-Bender, Inc.*, D. 8587 (May 1, 1964), where, to be sure, the pertinent facts of record were less substantial than here.

Respondents also present a defense of discontinuance, based, however, on alleged discontinuance a few weeks prior to the issuance of the complaint. This defense is rejected by the examiner, as it also was in *Jacoby-Bender* (although there on alleged discontinuance, fortified by an affidavit, submitted over a year prior to the issuance of the complaint, but not by adequate proof as to subsequent behaviour).

Respondents herein also challenge the taking of official notice of consumer understanding and preference in connection with domestic merchandise as against foreign merchandise. They submit no opposing proof, but argue that any preference for domestic over Japanese goods is no longer the fact. In respect to official notice they also repeat their contention that small skeletons, at least, cannot be regarded as a substantial part of watchbands. The examiner rejects this challenge on official notice, as he did in *Jacoby-Bender*.

Respondents also challenge, in any event, the alleged individual liability of Tobias Stern, president of respondent corporation. Facts submitted by respondents compel a dismissal of the complaint as to respondent Stern. In the examiner's opinion, they indicate that the most that can be contended by complaint counsel is that Stern, owning about one-third, controls (actually not proved) through his family

---

[1] One type of small skeleton, CX 4B, varies by having some leather or simulated leather on top of the metal, *i.e.*, the part corresponding to arms.

[2] Respondents' brief, page 5; elsewhere referred to therein as "arm."

one-half, and only one-half of the stock. This is as against Jacques Kreisler, unnamed as a respondent (for unexplained reasons), who is roughly in the same position as to one-third stock ownership and unproved half-control through the members of his family. The facts also show that the corporation is a large well-organized entity with diversified management, if not diversified stock ownership as well—rather than a mere cover for individuals. Finally, the facts show, without contradiction (respondents supplied all the facts on this issue of individual liability), that respondent Stern did not formulate, direct and control the particular acts and practices alleged in the complaint.

The complaint herein issued on June 26, 1963, and was served shortly thereafter. A timely answer was filed denying, in effect, any present sale of watchbands with Japanese components, and also denying that Japanese skeletons, as used in the past by them, represented a substantial component of their watchbands; respondents also denied any possible individual liability of respondent Stern. A "Supplemental Answer and Statement of Counsel" admits use of Japanese skeletons or parts "since June 1, 1961," with discontinuance of "purchase and use" approximately June 1, 1963; it also again denies that the skeletons or parts are substantial components, setting forth some supporting cost figures. An "Amended Supplemental Answer and Statement of Counsel" supplements the cost figures, but expressly limits them to "Marengo" and "Da Vinci" watchbands, both of which contain small skeletons attached to rigid ornamental arms.

A rather detailed prehearing conference order, dated October 21, 1963, was issued herein, supplemented by two subsequent orders, directing the submission of various preliminary statements, lists of witnesses and exhibits, and stipulations of fact as might be arrived at, as well as directing meetings between counsel prior to the prehearing conference with the examiner. Counsel on both sides are to be commended for cooperating fully. The said order of October 21, 1963, also gave notice that the examiner would take official notice as alleged in the complaint, and so construed as to apply to a substantial component of a watchband.

The prehearing conference took place on November 12, 1963, after counsel conferred with each other as directed. The minutes of the prehearing conference consist of 107 pages, and are not public. Various lists and papers were submitted as had been directed, and were discussed. Exhibits, so far as then submitted, were tentatively marked. Official notice was taken by the examiner (Prehearing Minutes, pp. 92, 94). (In view of the Stipulation Between Counsel, later entered

into and signed, it was agreed at the hearing proper that, although the prehearing minutes may be consulted, they in general should not be resorted to except to resolve ambiguities (TR 11:16–24,[3] *i.e.*, of the minutes of the hearing proper).)

The Stipulation Between Counsel herein was filed on or about March 5, 1964, *i.e.*, after the hearing proper, revising the prior proposed stipulation (CX 5A–E). It may be described as follows: (1) It stipulates as to most of the basic facts in this case. (2) It stipulates that if respondents called Mr. William Klein, a vice president and the controller, he would testify that a small skeleton serves merely as a "clasp" (Stip. 18). (3) It stipulates that Mr. Klein, if called, would also testify as to the relative cost of skeletons and completed watchbands, particularly as set forth in RX 3 and RX 7. (There is also the post-hearing affidavit of Mr. Klein (RX 9A–B) setting forth cost figures in tabular form as to both small and large skeletons.)

The said Stipulation Between Counsel does not include any agreement that respondent Tobias Stern formulates, directs and controls the acts and practices of corporate respondents, as alleged in the complaint, as did the proposed stipulation (CX 5A–E), and as had been tentatively agreed by counsel on both sides (TR 6).

The hearing, which was somewhat pro forma, was held on February 26, 1964. Respondents' counsel announced, for the first time, that Mr. Stern refused to sanction the proposed agreement that he formulates, directs and controls. Said counsel also stated that Mr. Stern was ill in the hospital and could not immediately testify on the issue. Complaint counsel finally agreed to take an affidavit, in lieu of testimony, covering stock ownership and other pertinent items suggested by the examiner (TR 8, 29, 30). The hearing was otherwise largely taken up with receiving in evidence the actual exhibits in the case, which required, in some instances, detailed identification.

Pursuant to the agreements between counsel, there were filed, after the hearing, various papers, to wit, the signed Stipulation Between Counsel, including the agreement that Mr. Klein would testify that a small skeleton was merely a "clasp," and the following affidavits:

RX 8A–D—affidavit by Mr. Klein, negating respondent Stern's individual liability. (Accepted by complaint counsel in lieu of affidavit by Mr. Stern.)

RX 9A–B—affidavit by Mr. Klein and annexed schedule as to relative cost of skeletons, both large and small.

The Stipulation Between Counsel, including Mr. Klein's conclusion

[3] TR 11:16–24 means transcript (hearing minutes), page 11, lines 16 to 24.

as to "clasps," the aforementioned two affidavits, and the facts officially noticed, are in lieu of any testimony in this case (Stip. 19).[4]

Proposed findings and briefs were duly filed by both sides within the time allowed by the Rules.

FINDINGS OF FACT [5]

1. Respondent Jacques Kreisler Manufacturing Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 9015 Bergenline Avenue, North Bergen, New Jersey, in the city of North Bergen, State of New Jersey.

Respondent Tobias Stern is president of respondent corporation. He owns slightly more than ⅓ of its stock, and members of his family own additional stock, bringing the family interest to exactly ½, the same as the family of Jacques Kreisler, not a respondent, who himself owns slightly less than ⅓ and is treasurer of respondent corporation.

There is no proof, certainly no sufficient proof, that said respondent Tobias Stern "formulates, directs and controls the acts and practices" of respondent corporation as described and alleged in the complaint, and respondents' uncontradicted proof is to the contrary of said allegation. (In addition, there is also no public interest in naming said respondent Tobias Stern, individually, as a party to a cease and desist order herein.)

(The facts as to the alleged individual liability of said respondent Stern are analyzed in detail below in the Discussion part of this decision.)

2. Respondent corporation is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of, among other products, metal watchbands to manufacturers and distributors of watches, as well as to retailers for resale to the public. (Stip. 2) These watchbands are expansion watchbands.

3. In the course and conduct of its business respondent corporation now causes, and for some time last past has caused, its said watchbands, when sold, to be shipped from its place of business in the State of New Jersey to purchasers thereof located 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. (Stip. 3)

---

[4] Stip. 1S means Stipulation Between Counsel, paragraph 19.

[5] Findings 1 to 8 correspond to paragraphs One to Eight of the complaint.

4. Said watchbands in substantial numbers (Stip. 5, 11), measured by respondents' watchband business, have consisted—in substantial part, determined largely by the expansibility function (see Discussion below)—of components, to wit, skeletons, manufactured in, and imported from, Japan (Stip. 10, 12). When offered for sale or sold by respondents, said watchbands have not borne disclosure showing them to be substantially of foreign origin, nor has disclosure been made in any other way (Stip. 9).

5. In the absence of an adequate disclosure that a product, including watchbands, is of foreign origin, the public believes and understands that it is of domestic origin (of which fact the Commission took official notice in the complaint).

As to the aforesaid articles of merchandise, a substantial portion of the purchasing public has a preference for said articles which are of domestic origin (of which fact the Commission also took official notice in the complaint).

The aforementioned two categories of official notice, properly construed, in effect relate not only to products or articles as a whole, such as watchbands, but to substantial parts thereof, such as skeletons of watchbands. The examiner herein gave due and timely notice that he was taking official notice in this extended meaning (order dated October 21, 1963 (II–5)), and did take such official notice. Respondents offered nothing to disprove the facts noticed.

Accordingly, respondent corporation's failure to disclose clearly and conspicuously the country of origin of the skeletons of the watchbands herein is to the prejudice of the purchasing public, as alleged in the complaint.

6. By the aforesaid practices respondent corporation has placed in the hands of watch manufacturers, distributors, and retailers, the means and instrumentalities by which they may mislead the public as to the place of origin of the skeletons of said watchbands.

7. In the conduct of its business, respondent corporation has been in substantial competition, in commerce, with corportations, firms and individuals in the sale of products of the same general kind and nature as that sold by the respondent corporation.

8. The use by respondent corporation of the false, misleading and deceptive acts and practices, as hereinabove set forth, and the failure to disclose the foreign origin of its watchbands or substantial components of its watchbands have had, and now have, the capacity and tendency to mislead and deceive purchasers or members of the buying public in the manner aforesaid, and thereby to induce them to purchase respondents' watchbands.

9. All of the facts contained in the Stipulation Between Counsel herein are found as facts herein—many of them, of course, being already found in the foregoing Findings, *i.e.*, 1 through 8.

Discontinuance

10. Apparently, the purchase, use, and sale of said Japanese skeletons by respondents were already taking place in 1961, *i.e.*, manufactured "since June 1, 1961" (Supplemental Answer, par. 1). Respondent corporation was initially contacted by the Commission on November 27, 1961; this contact eventually resulted in the issuance of the complaint (Stip. 14). The aforementioned purchase, use, and sale of such Japanese skeletons by respondents was also taking place through 1962 and part of 1963.

11. After correspondence and personal contacts between respondents and the Commission staff (Stip. 13), the "purchase and use of Japanese components in the corporation's watchbands was discontinued approximately on June 1, 1963" (Supp. Answer, par. 3, apparently adopted by Stip. 13),[6] *i.e.*, just prior to the issuance of the complaint on June 28, 1963.

12. There is nothing in the Stipulation, any proof in this case, or the answer, that respondent corporation discontinued anything but the "purchase and use" of undisclosed Japanese components, *i.e.*, there is no proof that it discontinued *selling* watchbands containing undisclosed Japanese components.

13. After issuance of the complaint "there were approximately 50,000 watchbands containing Japanese skeletons—unmarked as to foreign origin—in the hands of watch manufacturers, distributors, or retailers" (Stip. 6), said watchbands serving as potential "instrumentalities of deception" (Finding 6, *supra*).

14. Even if the discontinuance by respondent corporation of merely "purchase and use" of Japanese skeletons is evaluated, somehow or other, as equivalent to discontinuance, or substantial discontinuance, of the practices herein complained of, it would not be voluntary discontinuance in good faith but merely discontinuance only after the Commission's hand was already on respondent's shoulder. (See Discussion below.)

---

[6] Actually there is no clear-cut statement in the Stipulation, or any affidavit, that respondents discontinued anything at all. But apparently counsel agreed on a conclusion that there was some kind of limited discontinuance, *i.e.*, of purchase and use at the time stated.

DISCUSSION

Certain issues involved herein may now be discussed and the relevant facts analyzed.

Skeletons as a Substantial Part

Point 1 in respondents' brief, and no doubt their main point, is that the skeleton is not a substantial part of their watchband. This question will now be considered in detail.

Varieties of Watchbands.—Complaint counsel, for his proof as to watchbands containing undisclosed Japanese skeletons sold by respondents, has relied on three types, each with the trade name Adjust-O-Matic, represented, respectively, by CX 4A, 4B and 4C. Respondents have relied on two types, with the respective trade names of Marengo and Da Vinci, represented by RX 1 and 2, and respondents' entire counterproof and argument, particularly on the issue of substantiality, is expressly predicated on these two styles with skeletons containing only 11 links each, *i.e.*, small skeletons with rigid ornamental arms. All five types are identified by respondents (Resp. brief, p. 3, bottom) by their respective exhibit numbers as manufactured by them.

The five types of watchbands are listed in the following tabulation, showing respectively the exhibit number, trade name and number of links in the skeleton:

Trade name	Exh. No.	Links in skeleton
Adjust-O-Matic	CX 4A	11
Do	CX 4B	16
Do	CX 4C	32
Marengo	RX 1	11
Da Vinci	RX 2	11

All five types have "arms" except CX 4C, the one shown having 32 links and except that CX 4B has leather-like extension, on metal, instead of arms proper. (There is also a CX 4D, with 32 links and no "arms," although not included in the stipulation (Stip. 12) as being "typical and representative.")

General Finding of Substantiality.—The examiner has found the skeletons of all these watchbands are substantial components thereof—*i.e.*, whether the skeletons contain 32 links and are attached to no arms on the watchband, or whether, on the other hand, they contain 16 or 11 links attached to arms or extensions. Respondents argue to the contrary, particularly as to skeletons with 11 links, and more particularly, those skeletons containing 11 links which are to be found in Marengo and Da Vinci watchbands.

Expansibility (Function).—The examiner's finding of substantiality is based primarily on the expansibility function of the skeleton in any of these expansible metallic watchbands—whether the skeleton has 11, 16, or 32 links, and whether or not it is attached to arms or the like on the watchband.

The unique and distinguishable feature of the metal expansion watchband is obviously its ability to expand and contract within the requirements for daily use. The expansible feature exists solely by virtue of the skeleton, whether the skeleton has many links or a few. The essence of the skeleton is a series of link-like springs joined together, link by link, so as to exercise the proper tension and expansibility. The addition to these springs, properly joined, of the decorative metal covering, of plates, and also of various mechanical services, so as to make them into a finished skeleton and part of an actual watchband cannot vitiate the aforedescribed essence of the skeleton. Reference may be made to Trade Practice Conference Rules, Metallic Watch Band Industry, 16 CFR § 60.4, footnote 3, which applies to skeletons generally including, by its wording, a skeleton the length of which is a "substantial portion" of the watchband's length, and which reads as follows:

> Parts which are to be considered as substantial include the skeletons or interliners of the expansion type bands, whether of the entire length of the band or but a substantial portion of such length, and whether caps and end pieces are affixed thereto before or after the importation of such skeletons or interliners.

Respondents in this case do not seem to argue against the substantiality of skeletons in general. They try, rather, to distinguish between large skeletons and small skeletons attached to arms in the watchband proper. Respondents claim, incidentally, although without actual proof, that small skeletons typify the larger part of their watchbands.

Watchband Arms (Style Appeal).—The examiner, however, based on his examination of the relevant exhibits, rejects respondents' argument, as to the 11 link skeleton and specifically those of Marengo and Da Vinci bands, that "the expansible feature is not controlling in consumer acceptance" but that the controlling factor "is the design of the rigid portion of the band (the arm) which is stylized for consumer appeal and acceptance," *i.e.*, so that the "use of expansible links serves only as a substitute for a conventional clasp as is used in the case of an ordinary leather band" (Resp. brief, p. 5). It is the examiner's opinion that, granted that the arms have style appeal, nevertheless a 32-link skeleton with its polished shells has its own comparable style appeal. It is the examiner's opinion that, except in a most strained sense, the 11-link skeleton is no more a substitute for a clasp than a 32-

line skeleton, and that the skeleton's dominant and essential function is to provide expansibility in all watchbands, whatever the size of the skeleton and whatever incidental function the skeleton may have in dispensing with a clasp or in providing extra style.

The examiner rejects as evidence the self-serving conclusion to the contrary of Mr. Klein (Stip. 18). In particular, after examining the various watchbands and skeletons, the examiner rejects Mr. Klein's conclusion that the skeleton of 22 links or less "serves merely as a substitute for a clasp." It almost seems that respondents reach out for the word "clasp" in an attempt to bring it within the wording, although it does not come within the meaning, of a sentence contained in the opinion of the *Heller* case, *infra*. 191 F. 2d 954, 956 (C.A. 7th, 1951).

Other Parts Claimed to be Substantial.—Again picking out the Marengo (RX 1) and Da Vinci (RX 5) styles, each with skeletons of 11 links plus arms, respondents point out (Resp. brief, p. 4) that there is a "large variety of separate components (Exhibit Nos. RX 2A–J, RX 6A–F) constituting the entire band." They conclude from this that "the skeleton is an infinitesimal part of the entire band," *i.e.*, "by examination of the watchbands" (Resp. brief, p. 3).

The examiner's opinion is to the contrary. None of these other parts, so far as the record shows, bear on the expansibility function, which has here been found to be controlling on the question of substantiality.

For instance, the decorative metal covering and plates added to the skeleton proper, *i.e.*, to the springs, properly joined, do not detract anything from the functional essentiality of the skeleton in an expansion watchband. Nor, to take another part, does the protective mesh do so; this is the part which respondents are referring to in their brief, although without record support, as being of German origin in certain watchbands (Resp. brief, p. 2).

Secondly, these other parts do not vitiate the substantiality of the skeleton in any important respects apart from the expansibility function, such as relative size and cost, which will now be discussed.

Relative Size.—Even an 11-link skeleton is, unexpanded, one-third the circumference of the full watchband, as the examiner has directly observed on viewing the pertinent Marengo and Da Vinci exhibits—which is substantial in size, relatively speaking, by ordinary standards. Moreover, if fully expanded, the 11-link skeleton is definitely the larger part of the watchband, as the examiner has observed by fully expanding the Marengo and Da Vinci watchband exhibits—although he does not stress this particular point.

Cost of Production (Relative Cost).—Respondents have supplied figures to the effect that the production cost of Marengo and Da Vinci

skeletons are respectively, by their percentage computation, 7.6% and 5.8% of total factory cost (Resp. brief, p. 4).

In the examiner's opinion, the fact that production cost of the skeleton is not a major part of the cost of the watchband, *i.e.*, in some of the watchbands, to wit, Marengo and Da Vinci with 11-link skeletons, is hardly controlling on the question as to whether the skeleton is a substantial part of the watchband. Whatever weight may be given to this factor it would seem that more weight is to be accorded to the expansibility function of the skeleton as part of an expansion watchband.

In arriving at the percentage cost production of Marengo and Da Vinci watchbands, containing 11-link skeletons, respondents show in the figures submitted by them that a Marengo skeleton cost them $.166 compared to a total manufacturing cost for the band of $2.171, and a Da Vinci skeleton cost them $.133 as compared to a total manufacturing cost of the band of $2.274 (RX 9B).

However, to begin with, there is nothing to show that these figures are typical of other watchbands. Indeed, the figures in respondents' tabulation (RX 9B) for other watchbands, when compared with the Marengo and Da Vinci figures, tend to indicate that the Marengo and Da Vinci figures are peculiar to these styles, with their rigid ornamental metal arms and only 11 links to a skeleton—certainly as contrasted with watchbands containing no rigid arms and 32 or more links.

In other words, the Marengo and Da Vinci figures seem to reflect the extra cost of the rigid arms, both in material and labor, which take the place of many of the full number of skeleton links, and to reflect the concomitant lesser cost of a skeleton containing only a relatively few links. This extra labor cost is further reflected in "extra factory overhead" figured at 200% of total labor. For instance, the figures in respondents' tabulation (RX 9B) show the following, to pick out two contrasting styles:

	Marengo (11 links)	Citation (34 links)
Material		
Skeleton	$.166	$.333
Other material	.807	.387
Total	.973	.720
Loss (10%)	.097	.072
Labor		
Labor	.334	.139
Loss (10%)	.033	.014
Factory overhead		
200% of total labor	.734	.306
Factory mfg. cost	2.171	1.251
* * * * *	*	*
Wholesale price	5.50	3.25
Retail price	15.00	8.95

It will be noted in the tabulation (RX 9B) that figures are supplied, in all, for five different brands of respondents' watchbands, tabulated as follows to show the number of links to the skeleton, and the ultimate retail selling price:

	Retail price
Marengo (11 link)	$15.00
Da Vinci (11 link)	15.00
Twin Line (16 link)	12.50
Lido (22 link)	9.95
Citation (34 link)	8.95

An examination of all the figures in the tabulation indicates a progression of extra cost, including labor (and overhead estimated thereon), of the watchbands as the number of links of the skeletons become smaller. However, it must be noted that none of these watchbands except Marengo and Da Vinci are in evidence; the watchbands relied on by complaint counsel are Adjust-O-Matic.

Accordingly, all that the figures in the tabulation apparently indicate, so far as consumers are concerned, is that the public is willing to pay extra for expansible watchbands with stylish arms—the longer and more ornamental the arms the more the public will pay—provided that the shorter and therefore cheaper skeletons perform the required expansibility function. In the examiner's opinion, this proves little more than that the public would be willing to pay extra for diamonds or other precious stones on the rigid arms, but at the same time would not, of course, accept the watchband if it did not have the necessary and essential expansible skeleton component.

Adjudicated Cases.—Respondents cite *Heller & Sons, Inc.*, 47 F.T.C. 34 (1950) for the proposition, by way of analogy, that it is not necessary to show the origin of imported glass beads inasmuch as the identity of the glass beads is lost in the manufacture of the final product. Actually, holding in *Heller* is more affirmative, namely, that it is necessary to show the origin of imported imitation pearls as contrasted with imported glass beads processed in the United States into imitation pearls. It is the examiner's opinion that the imported expansible skeleton is definitely more analagous to the imported imitation pearls than to the imported glass beads. The consumer here wants an expansible skeleton, *i.e.*, to operate an expansion watchband, just as the consumer wants to wear at least a semblance of a pearl necklace, not merely a string of glass beads.

To be sure, the consumer in the case at bar may, in addition, desire ornamented arms, adding to the cost, with a reduced skeleton—but the consumer still wants an expansible skeleton, even though small, in order to have an expansion watchband.

Moreover, the identity of the skeleton, even a small skeleton, is plainly not lost in the manufacture of the watchband—in the examiner's opinion, based on his own observation of the exhibits, although entirely contrary to respondents' contention in their brief.

Respondents also cite the *Heller* case, as passed on by the Court of Appeals, affirming the Commission below—191 F. 2d 954 (C.A. 7th, 1951). However, it turns out that they cite it for the statement in the court's opinion that the "consumer purchases an imitation-pearl necklace not because of * * * the clasp which joins its ends, but because of the imitation pearls which are thus assembled * * *" (p. 956). Respondents then characterize at least their small skeletons as being merely "clasps," a conclusion already rejected by the examiner herein as apparently merely an attempt to come within this wording, although it does not come within its meaning.

Respondents cite *Segal* v. *F.T.C.*, 142 F. 2d 255 (C.C.A. 2nd, 1944), also affirming the Commission below (34 F.T.C. 218). The case involves the importation of Japanese lenses for cheap spectacles and sunglasses, later fitted into frames in the United States.

Respondents cite the case, despite its requirement of disclosure, because the opinion states that it agrees with the argument that disclosure would not be required if "marking would be positively misleading, unless indeed it was so qualified as to be ineffective" (p. 255). The opinion points out that this "is not the case with lenses used in spectacles," and respondents here contend that this is indeed the case—*i.e.*, that marking would be misleading or ineffective—with skeletons, or at least small skeletons, used in watchbands.

In attempting to distinguish the present case from *Segal*, respondents are perhaps relying on the sentence in that case reading as follows (pp. 255–6):

> That is not the case with lenses used in spectacles; the frame is merely the carrier of the lens, which is the only element of importance, and which does not lose its identity either in appearance or in function.

At least as to Marengo and Da Vinci watchbands, with only 11-link skeletons and rigid ornamental arms, respondents in effect argue that unlike the lenses in spectacles, skeletons are not the "only element of importance" in watchbands. However, even if this should be strictly so, the hearing examiner, as already indicated, regards the skeleton as the dominant element of importance—even if not the only such element—due to its expansibility function; and, of course, he regards it as indeed the only element of importance so far as expansibility of the expansible watchband is concerned, irrespective of the size of the skeleton or the size or other attributes of any arms.

Moreover, the examiner holds, using the language of *Segal*, that

any watchband herein with 11 links "does not lose its *identity* either in appearance or in function" (our emphasis), despite respondents' contention to the contrary. So far as appearances are concerned, the skeleton, as observed in the completed watchband, clearly retains its identity as such even when it contains only 11 links. So far as function is concerned, namely to provide expansibility, the continued identity of the skeleton, after becoming part of the watchband, is unassailable.

Again using the words of *Segal*, it is the examiner's opinion that disclosure herein would not be "positively misleading, unless indeed it was so qualified as to be ineffective." Incidentally, the order signed by him herein provides for an alternative of labeling or tagging the watchband, which gives much greater opportunity for clear and explicit disclosure, and also enables the disclosure to be removed from the merchandise by the ultimate buyer.

Respondents' final argument that to conclude that the skeleton, or a small skeleton, is a substantial component is to "distort dictionary and other definitions" is without merit in the examiner's opinion, on all the facts as herein analyzed. Moreover, since the Commission has issued the complaint herein largely to protect the consumer, it is eminently appropriate that "substantial" be defined according to what the consumer would regard as substantial in purchasing an expansion watchband, namely, the skeleton which makes expansibility possible.

The case closest in facts to the present case is *Baldwin Bracelet Corporation* v. *F.T.C.*, D. 8316 (Oct. 2, 1962) [61 F.T.C. 1345], *affirmed* 325 F. 2d 1012 (C.A., D.C., 1963). That case involves metal expansion watchbands (p. 1), as here. The skeleton was made in Hong Kong (p. 9), giving the bands the "expansibility" found to be, although on expert testimony, "the essential element of an expansion watchband" (p. 9). However, the tube ends and also the gold-filled top shells (in one of the two types) were affixed in Puerto Rico, where, also, the "polishing" of the finished band was performed (p. 7). The watchbands in that case were held to be "substantially manufactured in Hong Kong" (p. 9).

In the two sentences devoted to this case (Resp. brief, pp. 5–6) respondents declare that their Marengo and Da Vinci watchbands differ from the *Baldwin* watchbands. The examiner agrees that they differ, *i.e.*, by reason of the "arms" to which small skeletons are in due time attached. However, in the examiner's opinion, after careful consideration, the difference is a matter of degree which reasonably and fairly can be, and hereby is, found not to call for a different conclusion than that reached in *Baldwin*.

The examiner also agrees with respondents that the facts *In the*

Matter of Manco Watch Strap Co., Inc., D. 7785 (March 13, 1962) [60 F.T.C. 495], are not helpful on the issue of substantiality in the present case. This is because the entire watchband, not merely the skeleton, was made in the foreign country under the facts proved in *Manco*.

Individual Liability of Respondent Stern

The complaint alleges in paragraph 1 as follows:

Respondent Tobias Stern is President of the corporate respondent. He formulates, directs and controls the acts and practices hereinafter set forth.

The answer admits that he is president (par. 1), but it is denied therein that he formulates, directs and controls.

Complaint counsel has submitted no proof that respondent Stern formulates, direct and controls, except that he is president (admitted by answer) and except that he attended one conference with other watchband manufacturers to discuss and review the Trade Practice Rules for the industry (Stip. 15).

Respondents, although they do not have the burden of proof, produced proof in the form of an affidavit (RX 8A–D) by William Klein, a vice president of the corporate respondent, which definitely negates the allegation that respondent Stern formulates, directs and controls, as set forth in the complaint, and certainly negates any possible presumption favoring the proposition. The examiner's further comments here will follow the order of presentation of facts in this affidavit by Mr. Klein.

According to the affidavit, respondent Stern owns slightly more than one-third of the stock of respondent corporation, to wit, 38.05%. Members of his family own the balance of one-half of the stock, to wit, 11.95%.

Balancing this, however, Jacques Kreisler owns slightly less than one-third, to wit, 28.41%, and "members of his family" own the balance of one-half of the stock, to wit, 21.59%.

The affidavit also states (pp. 1–2): "The stock owned by members of Mr. Stern's family is owned outright by them and is under their sole control. Tobias Stern has no power with respect thereto. * * * As in the case of members of Mr. Stern's family the members of Mr. Kreisler's family own their stock outright and the stock is under their sole control."

The allegation of the complaint that Stern formulates, directs and controls, is not proved, *i.e.*, by stock ownership and control alone, since at the very most he formulates, directs and controls, if at all, only together with Jacques Kreisler, and in actuality formulation, direction

and control is at the very most equally divided between the Stern and Kreisler families. The members of the two families, furthermore, are stated to have sole or exclusive control of their own respective holdings, thus negating even fifty-fifty control by Stern and Kreisler.

Just why Jacques Kreisler is not made a respondent herein, in the complaint directed against the Jacques Kreisler Manufacturing Corporation, is a mystery to the examiner. This factor by itself makes it quite impossible for the examiner conscientiously to evaluate Stern's actual power status in the affairs of the corporate respondent and particularly to determine it to be a controlling one.

Of course, ownership of stock of itself is not necessarily proof of formulation, direction and control—however much it may persuade, say, where an individual and his wife own 100% of the stock of a small corporation. Moreover, complaint counsel's intimation in his brief that Stern has a superior position to Kreisler because he himself owns more than one-third whereas Kreisler owns less than one-third of the stock, is without merit, as neither minority interest could of itself be controlling.

The same equal division between the two families appears in the setup of the board of directors which, as a matter of law, is vested with the control and operation of the corporation. Stern and a member of his family are two of the four members of the board of directors. Kreisler and a member of his family are the other two members. (RX 8B).

The two top officers of the corporation are Stern and Kreisler. Stern is president and Kreisler is treasurer. It is well known that the treasurer of a corporation may often be a more powerful figure than the president, who may be only a figurehead. The examiner cannot agree with complaint counsel that the president of a corporation—particularly of a "two-family" corporation as here—is to be deemed vested with authority to formulate, direct and control. Rather, he agrees with complaint counsel's more fundamental statement (brief, p. 5, 1st par.) that basic power lies with the board of directors, as agents for the stockholders.

There are six other officers of the corporation, a secretary and five vice presidents. Although the affidavit does not so state, it may well be that these officers, particularly the five vice presidents, are members, or representatives, of both families.

In addition, according to the affidavit, there is a so-called executive committee, although the examiner discounts the legal significance thereof in this case. The executive committee is composed of all eight officers, meeting periodically to review and establish policy for a

particular matter, and is not, according to the affidavit, controlled by any one person, including Mr. Stern (RX 8C). The examiner agrees with complaint counsel that this is not the usual type of executive committee, such as one composed of part of the board of directors, an interim body acting under direction of the board, or a steering committee. Even as described in the affidavit, the so-called executive committee fits in the examiner's surmise of a corporation perhaps controlled by two persons, Mr. Stern and Mr. Kreisler, but actually controlled at best, on the facts set forth in the affidavit, by the two families.

Of much greater significance than this so-called executive committee is the fact that the firm is not just a small family corporation with few employees, if any. It has 600 employees. It has appropriate departmental heads—sales manager, advertising manager, director of market research, production supervisor, chief engineer, purchasing agent and quality control engineer. It retains accountants and attorneys.

A corporate setup such as one indicated by these facts, including what would appear to be at most a loose two-family control, makes most unlikely any circumvention of a cease and desist order against the corporation by the setting up of a new corporation by respondent Stern.

The affidavit (CX SD) also states that the importing of skeletons was the direct result of recommendations, not by respondent Stern, but by the vice president in charge of export operations. The matter, according to the affidavit, was then reviewed by the various departmental heads, who submitted their analyses and opinions to the executive committee for review and decision, in the further light of legal counsel.

This, in the examiner's opinion, means two things. First it means that respondent Stern did not initiate the idea of importing foreign skeletons, nor is there any proof that he formulated it or the actual practices followed. Secondly, it means that, although it can be conjectured that he did vote for them and although he undoubtedly did stand by while the practices took place, the decision was, to follow the reasoning set forth above, not his alone, but at the very most perhaps his and Kreisler's, and actually in a rough sense that of the two families.

There are two aspects of this question as to whether an officer of a corporation, which has been held by the Commission to have violated the law, should be held individually liable. First, there is the question as to whether the officer formulated, directed and controlled the acts and practices constituting violation by the corpora-

tion. Secondly, and perhaps more important, there is the question as to whether the public interest requires that an order be entered against the officer individually—considering that he is expressly bound by the order in any event as an officer, even though not designated by name.

In view of both the divided ownership of respondent corporation here and of its size and organizational setup, as well as the almost complete absence of any affirmative proof as to Stern's formulation, direction and control of the unlawful practices, it seems quite impossible for the examiner to hold him individually liable on any reasonable basis. Secondly, on the issue of public interest, the examiner would adhere to this conclusion even assuming that individual liability can attach, by reason of public interest, on less than a full and clear showing of individual formulation, direction and control, as actually alleged in the complaint in this case.

Complaint counsel herein cites no cases in support of his contention that respondent Stern should be held individually liable. Respondents cite and quote *In the Matter of Wilson Tobacco Board of Trade*, 53 F.T.C. 141, 190 (1956).

Although it is announced in decisions of the Commission quoted below that it has "wide discretion" in determining the necessity of imposing individual liability on an officer of a corporate violator, it is also definitely indicated that individual liability will not be imposed in the absence of "special circumstances" indicating a likelihood that the officer will cause evasion of the order against the corporation, or in the absence of some "special reason" why individual liability should be imposed.

In the Matter of Maryland Baking Company, 52 F.T.C. 1679, 1691 (D. 6327; 1956), the Commission states:

> The record does not reveal that Joseph Shapiro dominated respondent corporation or that he, in an individual capacity, was responsible for the acts and practices alleged to be unlawful. That he was Chairman of the Board and Treasurer of respondent corporation is not enough to show an individual responsibility. There is no showing, moreover, of any *special circumstances* which would indicate a likelihood that Joseph Shapiro would cause an evasion of the order against the corporation. He is, in any event, bound by the order as a corporate officer. In the absence of some *special reason* for naming Joseph Shapiro personally, the order against the corporation, and its officers, representatives, agents, and employees, would seem to be adequate. (Emphasis ours.)

In the Matter of Kay Jewelry Stores, Inc., 54 F.T.C. 548, 560–1 (D. 6445; 1957) the Commission, citing *Maryland Baking*, stated in a per curiam opinion:

The Hearing Examiner based his conclusion on individual liability upon the fact that the complaint alleged and the answer admitted that the individual respondents are officers and directors of the corporations, and that said individuals formulate, direct and control the policies, acts and practices of the corporate respondents. The record is devoid of any other evidence or showing of circumstances to support a conclusion that individual liability should attach.

We do not consider the foregoing facts alone sufficient justification in this instance for including the officer respondents as respondents in their individual capacities. The Commission has *wide discretion* in determining the necessity of attaching individual liability to insure the full effectiveness of an order to cease and desist. But where there is no record evidence showing justification and where "no other circumstances appear pointing to the necessity of directing the order against these parties in their individual as distinguished from their official capacities", their inclusion as individuals should not be approved. (Emphasis ours.)

The citation to the matter in quotation marks is from *Wilson Tobacco Board of Trade, supra.*

It is true that in a fairly recent case, *In the Matter of Product Testing Company, Inc.* (D. 8534, Feb. 17, 1964) [64 F.T.C. 857], the Commission did impose individual liability on the corporate officer. However, in that case the officer owned the majority of the stock, the rest being owned by his father. Moreover, on the actual proof in that case, it is quite clear that there were both "special circumstances" and "special reason" for holding the officer personally liable.

Moreover, reference may also be made here to *Pati-Port, Inc. and Wolf* v. *F.T.C.* (C.A. 4, January 17, 1963; D. 7665). In that case the court upheld the Commission in imposing individual liability on the president of the respondent corporation, stating that:

it would seem in cases of this sort to be a futile gesture to issue an order directed to the lifeless entity of a corporation while exempting from its operation the living individuals who are responsible for the illegal practices.

However, it is submitted that the facts of that case are distinguishable from those of the case at bar, even bearing in mind that respondent Stern here stood by while the corporate respondent's illegal practices were taking place as did the officer respondent in *Pati-Port, Inc.*

Discontinuance—Likelihood of Resumption

The original contact of the Commission with respondents, leading ultimately to the issuance of the complaint, was on November 27, 1961 (Finding 10). It was over a year and a half before the claimed, although incomplete and meagerly documented, discontinuance of the unlawful acts. After correspondence between respondents and the Commission staff the "purchase and use of Japanese components in the

corporation's watchbands was discontinued, approximately on June 1, 1963" (Answer, par. 3, as adopted by Stip. 13 in reference to undisclosed components). But there is no intimation that the *sale* by respondents of watchbands containing undisclosed Japanese components was discontinued as of even that time.

Even this claimed, although incomplete and weakly documented, discontinuance was just prior, by a few weeks, to the issuance of the complaint herein, June 28, 1963.

Moreover, respondents agree that about 50,000 of the watchbands containing undisclosed Japanese skeletons were in the hands of watch manufacturers, distributors or retailers even after issuance of the complaint (Stip. 6; Finding 13). Even if respondents' or respondent corporation's incomplete discontinuance were to be regarded as actual discontinuance, it would be discontinuance only when "the law's hand was already on its shoulder" (*In the Matter of Coro, Inc.* (D. 8346, p. 15, November 6, 1963)) [63 F.T.C. 1164]. Such tardy discontinuance, complete or incomplete, does not augur well for the withholding of a cease and desist order. Except in a very exceptional case, it strongly indicates that an order should issue.

Such discontinuance, or purported discontinuance, cannot easily be construed as a voluntary discontinuance in good faith. It is an act of repentance and mending of ways after being caught, warned, allowed ample time for discontinuing, and still continuing until after the Commission has, presumably, more or less decided to take legal action. "Dismissal is rarely warranted * * * where a party waits until the Commission has acted and only then discontinues his illegal practice." *In the Matter of Ward Baking Co.*, 54 F.T.C. 1919, 1920 (D. 6833; 1958).

The purported discontinuance, moreover, was, as already indicated, not discontinuance of the unlawful acts alleged in the complaint, to wit, selling watchbands in commerce containing undisclosed Japanese components. Obviously, on this proof in support of respondents' special defense of discontinuance, the fact is that the corporation continued to sell its watchbands with undisclosed Japanese skeletons even after June 1, 1963, and after the issuance of the complaint shortly thereafter—perhaps for quite some time thereafter.

Moreover, since respondents admit at least that approximately 50,000 such watchbands were in the hands of manufacturers, distributors or retailers subsequent to the issuance of the complaint, these watchbands continue to serve as instrumentalities (complaint Six) of deception placed in their hands by or through respondents. There is not the slightest suggestion that respondents either attempted to get

these watchbands back, or to advise those holding them to make disclosure.

Under the circumstances of claimed discontinuance herein, regarded even as completed and fully proved, it can hardly be found that the challenged practices "have been surely stopped under circumstances which assure that there is no reasonable likelihood of resumption," the second element of the defense (*In the Matter of Tung-Sol Electric*, D. 8514, p. 15, affirmed by the Commission, September 12, 1963) [63 F.T.C. 632]. Any discontinuance under the circumstances shown here has been too halting and too late to be regarded very seriously.

There is an additional circumstance, which also is not favorable to respondents' defense. Respondent corporation is the second largest manufacturer of watchbands in the United States (Stip. 8). Accordingly, it is reasonable to believe that it either now exports watchbands to countries outside the United States, or may well do so in the future, particularly watchbands with Japanese skeletons not encountering American predilections against foreign merchandise. The corporation is by law under no prohibition, of course, against importing Japanese skeletons. Likewise it is by law under no prohibition against exporting watchbands containing Japanese skeletons, origin undisclosed, nor, presumably, from selling them. However, even if these acts are altogether lawful, there would always be the reasonable possibility that substantial quantities of such imported Japanese skeletons could be diverted inadvertently, if not deliberately, to watchbands sold in the United States instead of being exported.

Such possibility cannot be ruled out as mere conjecture. Respondents have presented their defense as to discontinuance without revealing the actual facts, and largely by pointing in a stipulation to a statement of discontinuance in their answer. This invites reasonable conjecture on an issue such as likelihood of resumption as part of the question of discontinuance.

In the light of the above discussion, it accordingly appears to be abundantly clear that from whatever angle this subject is pursued. respondents' defense of discontinuance must be disallowed.

OFFICIAL NOTICE

Respondents attack (Resp. brief, pp. 7–9) the official notice taken herein, construed or extended to include the skeleton of the watchband, on the ground that *In the Matter of Manco Watch Strap Co., Inc.* (D. 7785, March 13, 1962) [60 F.T.C. 495], sanctioning official notice, "is not applicable since the item involved there was a complete metal expansion band whose origin was foreign" and Commission

precedents sanction such official notice only "where the complete item has been manufactured in the foreign country or where the essential component of the item has been manufactured in the foreign country." However, even according to respondents' views, the question thus turns out to be whether the expansible skeleton—even a small skeleton attached to rigid arms—is "the essential component" of the expansion watchband. The examiner believes that it may reasonably be held to qualify under this test, although the finding and conclusion here is that the skeleton, of whatever type in the present matter, is *a* substantial component of the watchband. This simply invokes the whole question of substantiality, which has been fully discussed herein, and is probably determinative of the official notice question.

It may also be in order to observe here that *Manco* does not purport to cover the entire subject of notice which may be taken by the Commission. Such notice may be said to include, depending on nomenclature, not only official notice, but judicial notice, and also, lastly, the general power to declare presumptions or to note matters of common knowledge. As a possible example of the last, reference may be made to *In the Matter of Federal Cordage Company*, 49 F.T.C. 1312, 1321 (D. 5951; 1953) where, citing only "common knowledge" the Commission in effect took notice as to consumer understanding and preference in a non-disclosure case.

Respondents have one, and only one, further argument, namely, that "the standard employed by Japanese manufacturers have improved immeasurably and the consuming public in many instances accepts items of Japanese origin as being equivalent to, or better than, similar items manfactured in the United States," pointing out as examples "transistors, cameras, etc." The argument must be disregarded because it is not supported by proof. Under § 3.14 [7] of the Rules of the Commission, where official notice is taken "opportunity to disprove such noticed fact shall be granted any party making timely motion therefor." Respondents made no such motion, nor did they avail themselves of the opportunity to disprove the official notice taken herein. Respondents had ample notice, both from the complaint itself and the prehearing conference proceedings of the taking of official notice. They chose to rely solely on the question as to whether or not the Commission, or the hearing examiner, has the power to take the official notice.

CONCLUSIONS OF LAW

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

---

[7] § 3.14(d).

2. The complaint herein states a cause of action and this proceeding is in the public interest, subject to the dismissal of the complaint as against respondent Tobias Stern, individually.

3. Respondent Jacques Kreisler Manufacturing Corporation has not established its affirmative defense, to wit, of discontinuance, and there is sufficient likelihood of further acts and practices by it found herein to be unlawful.

4. The acts and practices of respondent Jacques Kreisler Manufacturing Corporation, as herein found, have been to the prejudice and injury of the public, and presumably of the competitors of said respondent, and have constituted 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.

5. An order to cease and desist shall issue against said corporate respondent, as well as against such other persons described or indicated in the below order.

6. The complaint is dismissed as to respondent Tobias Stern, individually.

COMMENTS ON ORDER

The proposed order of complaint counsel is adopted as the order in this case except as follows:

1. Respondent *Tobias Stern* is not named individually in the below order; this results in the omission of the following in the prefatory part of the proposed order ", and Tobias Stern, individually and as an officer of said corporation, and" and also in the change to "agents" from "respondents' agents."

2. The below order relates only to dealings in watchbands, and to accomplish this, the words "or any other products," appearing in the prefatory part of the proposed order, are deleted. The examiner believes that on the actual facts and proof in this case it is unnecessary in the public interest to order that the respondent corporation cease and desist in connection with products other than watchbands.

3. In the portions of the below order which provide an alternative to marking or stamping the products themselves, the wording used is "likely to be observed" instead of "to be likely observed."

ORDER

It is ordered, That respondent Jacques Kreisler Manufacturing Corporation, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of watchbands,

in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale, selling or distributing any such products which are substantially, or which contain a substantial part or parts, of foreign origin or fabrication without affirmatively disclosing the country or place of foreign origin or fabrication thereof on the products themselves, by marking or stamping on an exposed surface, or on a label or tag affixed thereto, of such degree of permanency as to remain thereon until consummation of consumer sale of the products, and of such conspicuousness as likely to be observed and read by purchasers and prospective purchasers making casual inspection of the product.

2. Offering for sale, selling, or distributing any such product packaged, or mounted in a container, or on a display card, without disclosing the country or place of foreign origin of the product, or substantial part or parts thereof, on the front or face of such packaging, container, or display card, so positioned as to clearly have application to the product so packaged or mounted, and of such degree of permanency as to remain thereon until consumation of consumer sale of the product, and of such conspicuousness as likely to be observed and read by purchasers and prospective purchasers making casual inspection of the product as so packaged or mounted.

3. Placing in the hands of manufacturers, distributors, retailers, and others, means and instrumentalities by and through which they may deceive and mislead the purchasing public concerning any merchandise in the respects set out above.

It is further ordered, That the complaint be and hereby is dismissed as against respondent Tobias Stern, individually.

FINAL ORDER

The hearing examiner having filed his initial decision herein on May 25, 1964, and in the absence of any appeal from the initial decision, and the Commission by order dated June 16, 1964, having stayed the effective date of the initial decision with respect to Tobias Stern, individually, and by order dated June 30, 1964, having stayed the effective date of the initial decision with respect to Jacques Kreisler Manufacturing Corporation, and now having determined that this case should not be placed on its own docket for review:

It is ordered, That the initial decision of the hearing examiner filed May 25, 1964, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the complaint against respondent Tobias Stern, individually, be, and it hereby is, dismissed.

It is further ordered, That the motion of respondent Jacques Kreisler Manufacturing Corporation filed July 24, 1964, requesting that the complaint herein be dismissed be, and it hereby is, denied.

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

IN THE MATTER OF

GEORGE FROST COMPANY ET AL.

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

Docket C-229. Complaint, Sept. 11, 1962—Decision, Sept. 16, 1964

Order reinstating consent order dated Sept. 11, 1962, 61 F.T.C. 517, requiring sellers in Shirley, Mass., to cease using such expressions as "Genuine Cowhide" and "Solid Finished Cowhide Belts" for products made of split leather, and to cease selling such products without conspicuously disclosing that they were made of split leather.

FINAL ORDER

The Commission, by order issued July 17, 1963 [63 F.T.C. 2203], having reopened this proceeding and stayed the effective date of the final order to cease and desist previously entered herein, said action having been taken in response to respondents' request that the compliance provision of their final order be made inoperative until the Commission has instituted action to correct certain alleged industry-wide practices; and

The Commission, on June 27, 1964, having promulgated a Trade Regulation Rule relating to misbranding and deception as to leather content of waist belts, and having determined that the order to cease and desist previously entered herein is consistent with the requirements of said rule; and

The Commission having therefore concluded that, in the public interest, the order to cease and desist should now be made effective and that the date upon which respondents should be required to be

in compliance therewith should coincide with the date upon which said rule becomes effective as to the same practices:

It is ordered, That the order to cease and desist contained in the decision of the Commission issued September 11, 1962 [61 F.T.C. 517], shall become effective with the issuance of this order.

It is further ordered, That respondents herein shall on or before January 1, 1965, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the provisions of the order issued September 11, 1962.

IN THE MATTER OF

ALPER FURS, 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-833. Complaint, Sept. 17, 1964—Decision, Sept. 17, 1964

Consent order requiring manufacturing furriers in Chicago to cease violating the Fur Products Labeling Act by failing, on labels and invoices, to show the true animal name of furs in fur products and to use the term "Natural" for fur that was not bleached or dyed; labeling fur products with fictitious price; invoicing furs deceptively as "Broadtail" and "Sable"; failing to show in newspaper advertisements when fur was artificially colored; and failing in other respects to comply with requirements of the Act.

COMPLAINT

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

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

Respondents Max Alper, Percy Alper and Mildred Alper 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 manufacturers, wholesalers and retailers of fur products with their office and principal place of business located at 190 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 violation of Section 4(1) of the Fur Products Labeling Act in that they were falsely and deceptively labeled or otherwise falsely and deceptively identified in that labels affixed to fur products, contained representations, either directly or by implication that the prices of such fur products were reduced from respondents' former prices and the amount of such purported reduction constituted savings to purchasers of respondents' fur products. In truth and in fact, the alleged former prices were fictitious in that they were not actual, bona fide prices at which respondents offered the products to the public on a regular basis for a reasonably substantial period of time in the recent regular course of business and the said fur products were not reduced in price as represented and savings were not afforded purchasers of respondents' said fur products, as represented.

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

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

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

(a) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth 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 completely set out on one side of labels, in violation of Rule 29(a) of said Rules and Regulations.

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

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

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 to show the true animal name of the fur used in the fur product.

PAR. 7. 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.

Also among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products which were invoiced as "Sable" when in fact the fur contained in such fur products was American Sable or American Marten which are different names for the same animal.

PAR. 8. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

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

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

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

PAR. 9. 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 Chicago Tribune, a newspaper published in the city of Chicago, State of Illinois.

Among such false and deceptive advertisements, but not limited thereto, were advertisements which failed to show that the fur contained in the fur product was bleached, dyed or otherwise artificially colored fur when such was the fact.

PAR. 10. Respondents falsely and deceptively advertised fur products by affixing labels thereto which represented either directly or by implication that prices of such fur products were reduced from respondents' former prices and the amount of such purported reduction constituted savings to purchasers of respondents' fur products. In truth and in fact, the alleged former prices were fictitious in that they were not the actual, bona fide prices at which respondents offered the fur products to the public on a regular basis for a reasonably substantial period of time 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 purchasers, in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of the Rules and Regulations.

PAR. 11. 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. 12. 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. 13. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

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

1. Respondent Alper Furs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 190 North State Street, in the city of Chicago, State of Illinois.

Respondents Max Alper, Percy Alper and Mildred Alper are officers of the said corporation and their address is the same as that of the 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 Alper Furs, Inc., a corporation, and its officers, and Max Alper, Percy Alper and Mildred Alper, 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 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. Representing, directly or by implication on labels, that any price, whether accompanied or not by descriptive terminology, is the respondents' former price of fur products when such amount is in excess of the actual, bona fide prices at which respondents offered the fur products to the public on a regular basis for a reasonably substantial period of time in the recent regular course of business.

2. Misrepresenting in any manner the savings available to purchasers of respondents' fur products.

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

4. Failing to affix labels to fur products showing in words and in 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.

5. 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.

6. 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.

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

8. 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.

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

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices as the term "invoice" is defined in the Fur Products Labeling Act showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

2. Setting forth 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 products.

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

4. Failing to set forth the term "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 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.

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 whether accompanied or not by descriptive terminology is the respondents' former price of fur products when such amount is in excess of the actual, bona fide price at which respondents offered the fur products to the public on a regular basis for a reasonably substantial period of time in the recent regular course of business.

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.

Is 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

COTTON CITY WASH FROCKS, INC.

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

*Docket C-834. Complaint, Sept. 18, 1964—Decision, Sept. 18, 1964**

Consent order requiring a New York City distributor of wearing apparel to cease violating Sec. 2(d) of the Clayton Act by granting substantial allowances for the promoting and advertising of its products to certain department stores and others who purchased its products for resale while not making proportionally equal allowances available to all competitors of those so favored. The effective date of the order has been postponed until further order of the Commission.

COMPLAINT

The Federal Trade Commission, having reason to believe the respondent named in the caption hereof has violated and is now violating the provisions of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C., Title 15, Section 13), and it appearing to the Commission that a proceeding by it in respect thereto is in the interest of the public, the Commission hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. The respondent is a corporation engaged in commerce, as "commerce" is defined in the amended Clayton Act, and sells and distributes its wearing apparel products from one State to customers located in other States of the United States. The sales of respondent in commerce are substantial.

PAR. 2. The respondent in the course and conduct of its business in commerce paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services and facilities furnished by or through such customers in connection with their sale or offering for sale of wearing apparel products sold to them by respondent, and such payments were not made available on proportionally equal terms to all other customers competing with favored customers in the sale and distribution of respondent's wearing apparel products.

PAR. 3. Included among, but not limited to, the practices alleged herein, respondent has granted substantial promotional payments or allowances for the promoting and advertising of its wearing apparel

*This order was made effective on Aug. 9, 1965, see *Abby Kent Co., Inc., et al.*, Docket No. C-328, et al., Aug. 9, 1965, 68 F.T.C. 393.

products to certain department stores and others who purchase respondent's said products for resale. These aforesaid promotional payments or allowances were not offered and made available on proportionally equal terms to all other customers of respondent who compete with said favored customers in the sale of respondent's wearing apparel products.

PAR. 4. The acts and practices alleged in Paragraphs One through Three are all in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Commissioner Elman did not participate.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and subsequently having determined that complaint should issue, and the respondent having entered into an agreement containing an order to cease and desist from the practices being investigated and having been furnished a copy of a draft of complaint to issue herein charging it with violation of subsection (d) of Section 2 of the Clayton Act, as amended; and

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

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

1. Respondent Cotton City Wash Frocks, Inc., is a corporation organized and existing under the laws of the State of Massachusetts, with its office and principal place of business located at 1350 Broadway, New York 18, New York.

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

ORDER

It is ordered, That respondent Cotton City Wash Frocks, Inc., a corporation, its officers, directors, agents and representatives and

employees, directly or through any corporate or other device, in the course of its business in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

(1) Paying or contracting for the payment of anything of value to, or for the benefit of, any customer of the respondent as compensation or in consideration for advertising or promotional services, or any other service or facility, furnished by or through such customer in connection with the handling, sale or offering for sale of wearing apparel products manufactured, sold or offered for sale by respondent, unless such payment or consideration is made available on proportionally equal terms to all other customers competing with such favored customer in the distribution or resale of such products.

It is further ordered, That the effective date of this order to cease and desist be and it hereby is postponed until further Order of the Commission.

IN THE MATTER OF

PREMIER KNITTING CO., INC.

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

*Docket C-835. Complaint, Sept. 18, 1964—Decision, Sept. 18, 1964**

Consent order requiring a New York City distributor of wearing apparel to cease violating Sec. 2(d) of the Clayton Act by granting substantial allowances for the promoting and advertising of its products to certain department stores and others who purchased its products for resale while not making proportionally equal allowances available to all competitors of those so favored. The effective date of the order has been postponed until further order of the Commission.

COMPLAINT

The Federal Trade Commission, having reason to believe the respondent named in the caption hereof has violated and is now violating the provisions of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C., Title 15, Section 13), and it appearing to the Commission that a proceeding by it in respect thereto is in the interest of the public, the Commission hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. The respondent is a corporation engaged in com-

*This order was made effective on Aug. 9, 1965, see *Abby Kent Co., Inc., et al.*, Docket No. C-328, et al., Aug. 9, 1965, 68 F.T.C. 393.

merce, as "commerce" is defined in the amended Clayton Act, and sells and distributes its wearing apparel products from one State to customers located in other States of the United States. The sales of respondent in commerce are substantial.

PAR. 2. The respondent in the course and conduct of its business in commerce paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services and facilities furnished by or through such customers in connection with their sale or offering for sale of wearing apparel products sold to them by respondent, and such payments were not made available on proportionally equal terms to all other customers competing with favored customers in the sale and distribution of respondent's wearing apparel products.

PAR. 3. Included among, but not limited to, the practices alleged herein, respondent has granted substantial promotional payments or allowances for the promoting and advertising of its wearing apparel products to certain department stores and others who purchase respondent's said products for resale. These aforesaid promotional payments or allowances were not offered and made available on proportionally equal terms to all other customers of respondent who compete with said favored customers in the sale of respondent's wearing apparel products.

PAR. 4. The acts and practices alleged in Paragraphs One through Three are all in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and subsequently having determined that complaint should issue, and the respondent having entered into an agreement containing an order to cease and desist from the practices being investigated and having been furnished a copy of a draft of complaint to issue herein charging it with violation of subsection (d) of Section 2 of the Clayton Act, as amended, and

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

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

1. Respondent Premier Knitting Co., Inc., is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at 1410 Broadway, New York, New York.

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

ORDER

It is ordered, That respondent Premier Knitting Co., Inc., a corporation, its officers, directors, agents and representatives and employees, directly or through any corporate or other device, in the course of its business in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

(1) Paying or contracting for the payment of anything of value to, or for the benefit of, any customer of the respondent as compensation or in consideration for advertising or promotional services, or any other service or facility, furnished by or through such customer in connection with the handling, sale or offering for sale of wearing apparel products manufactured, sold or offered for sale by respondent, unless such payment or consideration is made available on proportionally equal terms to all other customers competing with such favored customer in the distribution or resale of such products.

It is further ordered, That the effective date of this order to cease and desist be and it hereby is postponed until further Order of the Commission.

IN THE MATTER OF

REGAL KNITWEAR CO., INC.

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

*Docket C-836. Complaint, Sept. 18, 1964—Decision, Sept. 18, 1964**

Consent order requiring a New York City distributor of wearing apparel to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act by such practices as granting substantial promotional payments, for the advertising

---

*This order was made effective on Aug. 9, 1965, see *Abby Kent Co., Inc., et al.*, docket No. C-328, et al., Aug. 9, 1965, 68 F.T.C. 393.

of its products, to certain department stores and other favored customers while not making proportionally equal allowances available to all competitors of favored customers. The effective date of the order has been postponed until further order of the Commission.

COMPLAINT

The Federal Trade Commission, having reason to believe the respondent named in the caption hereof has violated and is now violating the provisions of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C., Title 15, Section 13), and it appearing to the Commission that a proceeding by it in respect thereto is in the interest of the public, the Commission hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. The respondent is a corporation engaged in commerce, as "commerce" is defined in the amended Clayton Act, and sells and distributes its wearing apparel products from one State to customers located in other States of the United States. The sales of respondent in commerce are substantial.

PAR. 2. The respondent in the course and conduct of its business in commerce paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services and facilities furnished by or through such customers in connection with their sale or offering for sale of wearing apparel products sold to them by respondent, and such payments were not made available on proportionally equal terms to all other customers competing with favored customers in the sale and distribution of respondent's wearing apparel products.

PAR. 3. Included among, but not limited to, the practices alleged herein, respondent has granted substantial promotional payments or allowances for the promoting and advertising of its wearing apparel products to certain department stores and others who purchase respondent's said products for resale. These aforesaid promotional payments or allowances were not offered and made available on proportionally equal terms to all other customers of respondent who compete with said favored customers in the sale of respondent's wearing apparel products.

PAR. 4. The acts and practices alleged in Paragraphs One through Three are all in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and subsequently having determined that complaint should issue, and the respondent having entered into an agreement containing an order to cease and desist from the practices being investigated and having been furnished a copy of a draft of complaint to issue herein charging it with violation of subsection (d) of Section 2 of the Clayton Act, as amended; and

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

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

1. Respondent Regal Knitwear Co., Inc., is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at 1333 Broadway, New York, New York.

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

ORDER

It is ordered, That respondent Regal Knitwear Co., Inc., a corporation, its officers, directors, agents and representatives and employees, directly or through any corporate or other device, in the course of its business in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

(1) Paying or contracting for the payment of anything of value to, or for the benefit of, any customer of the respondent as compensation or in consideration for advertising or promotional services, or any other service or facility, furnished by or through such customer in connection with the handling, sale or offering for sale of wearing apparel products manufactured, sold or offered for sale by respondent, unless such payment or consideration is made available on proportionally equal terms to all other cus-

tomers competing with such favored customer in the distribution or resale of such products.

It is further ordered, That the effective date of this order to cease and desist be and it hereby is postponed until further Order of the Commission.

IN THE MATTER OF

HOUSE OF MARBET, INC., ET AL.

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

Docket 8578. Complaint, June 19, 1963—Decision, Sept. 24, 1964

Order dismissing—the allegations not sustained—complaint charging sellers of aluminum siding, furnaces, roofing material and other home improvement products to the public with representing falsely that purchasers would not be required to make payments when unemployed, that the selling price and installation cost represented the total amount of the purchaser's obligation, that purchasers would receive a gift of merchandise after signing a contract of purchase, and that their products were 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 House of Marbet, Inc., a corporation, and Marco Scoratow, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent House of Marbet, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at Federal and Blue Ridge Streets, Natrona, Pennsylvania.

Respondent Marco Scoratow is an officer of the corporate respondent, House of Marbet, Inc. He formulates, directs and controls the acts and practices of the corporation, including the acts and practices hereinafter set forth. His address is the same as that of the said corporate respondent.

PAR 2. Respondents are now, and for more than two years last past have been, engaged in the advertising, offering for sale, sale and distribution of aluminum siding, furnaces, roofing material and other home improvement products to the public.

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

PAR. 4. In the course and conduct of their business, as aforesaid, respondents employ salesmen or representatives who call upon prospective purchasers and solicit the sale of respondents' products. In the course of such solicitation, said salesmen or representatives have made many statements or representations, directly and by implication, for the purpose of inducing, and which have induced, the purchase of respondents' products. Typical, but not all inclusive of such statements or representations are the following:

(1) That purchasers would not be required to pay the full amount of the periodic payments due on financial obligations assumed in connection with the purchase of respondents' products at any time when said purchasers were unemployed as a result of strikes or for various other reasons;

(2) That the selling price of respondents' products and the cost of installation thereof represented the total amount of the purchaser's financial obligation;

(3) That purchasers would receive a gift of a specified article of merchandise or other item after contracting with respondents for the purchase of respondents' products;

(4) That aluminum siding and other products sold by respondents were fully guaranteed for specified periods of time.

PAR. 5. In truth and in fact:

(1) Many of the purchasers of respondents' products were required to pay the full amount of the periodic payments due on financial obligations assumed in connection with the purchase of respondents' products when they became unemployed;

(2) Purchasers of respondents' products who financed their purchase were required to pay interest and other financing charges and, therefore, the total amount of their financial obligation was substantially in excess of the selling price of respondents' products and the

cost of installation thereof. Respondents' salesmen or representatives, in many instances, have obtained the signatures of purchasers on contracts, promissory notes, deeds of trust and other instruments and agreements incidental to such financing and have not apprised said purchasers of the terms and conditions of such instruments or agreements or that purchasers would be required to pay financing costs in addition to the selling price of respondents' products and the cost of the installation thereof;

(3) Many purchasers of respondents' products did not receive the promised gift of a specified article of merchandise or other item after contracting with respondents for the purchase of respondents' products;

(4) The aluminum siding and other products sold by respondents are not fully guaranteed nor do such guarantees as are offered extend for the period of time specified. Respondents' salesmen or representatives, when advising a purchaser that a product is guaranteed, do not disclose the identity of the guarantor, the nature and extent of the guarantee and the manner or the manner in which the guarantor will perform thereunder.

Therefore, the statements and representations referred to in Paragraph Four hereof were, and are, false, misleading and deceptive.

PAR. 6. 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 same general kind and nature as those sold by respondents.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, 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. 8. 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.

Mr. Robert J. Hughes supporting the complaint.

Mr. Allen S. Gordon of Pittsburgh, Pa., for the respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

MAY 7, 1964

The complaint which issued in this proceeding on June 19, 1963, alleges that respondents violated Section 5 of the Federal Trade Commission Act in the course of selling, in interstate commerce, home improvement contracts to purchasers located in the State of Pennsylvania and in various other States of the United States. As a result of a clarification made at prehearing conferences, complaint counsel stated that he would attempt to prove only oral misrepresentations made at or about the time that the purchasers of the home improvements signed the contracts therefor.

Respondents' misrepresentations alleged in Paragraph "FOUR" of the complaint are:

(1) That purchasers would not be required to pay the full amount of the periodic payments due on financial obligations assumed in connection with the purchase of respondents' products at any time when said purchasers were unemployed as a result of strikes or for various other reasons;

(2) That the selling price of respondents' products and the cost of installation thereof represented the total amount of the purchaser's financial obligation;

(3) That purchasers would receive a gift of a specified article of merchandise or other item after contracting with respondents for the purchase of respondents' products;

(4) That aluminum siding and other products sold by respondents were fully guaranteed for the specified periods of time.

Whereas according to Paragraph "FIVE" of the complaint, "in truth and in fact:"

(1) Many of the purchasers of respondents' products were required to pay the full amount of the periodic payments due on financial obligations assumed in connection with the purchase of respondents' products when they became unemployed;

(2) Purchasers of respondents' products who financed their purchase were required to pay interest and other financing charges and, therefore, the total amount of their financial obligation was substantially in excess of the selling price of respondents' products and the cost of installation thereof. Respondents' salesmen or representatives, in many instances, have obtained the signatures of purchasers on contracts, promissory notes, deeds of trust and other instruments and agreements incidental to such financing and have not apprised said purchasers of the terms and conditions of such instruments or agreements or that purchasers would be required to pay financing costs in addition to the selling price of respondents' products and the cost of installation thereof;

(3) *Many* purchasers of respondents' products did not receive the promised gift of a specified article of merchandise or other item after contracting with respondents for the purchase of respondents' products; (Italic supplied.)

(4) The aluminum siding and other products sold by respondents are not fully guaranteed nor do such guarantees as are offered extend for the period of time

specified. Respondents' salesmen or representatives, when advising a purchaser that a product is guaranteed, do not disclose the identity of the guarantor, the nature and extent of the guarantee and the manner or the manner in which the guarantor will perform thereunder.

For greater ease in writing, and later in reading, this initial decision, these alleged deceptions or misrepresentations are referred to as the (1) "waiver," (2) "cost," (3) "gift," and (4) "guarantee" misrepresentations or deceptions. This abbreviated nomenclature refers to the misrepresentations articulated in Paragraphs FOUR and FIVE of the complaint.

Section 7(c) of the Administrative Procedure Act provides *inter alia*, "Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. * * *" "No * * * order [shall] be issued except * * * as supported by * * * reliable, probative, and substantial evidence."

Section 3.14 of the Rules of Practice for Adjudicative Proceedings of the Federal Trade Commission provides "Counsel supporting the complaint shall have the burden of proof, but the proponent of any factual proposition shall be required to sustain the burden of proof with reference thereto." Applying the quoted sections of the Administrative Procedure Act and of the Rules of Practice of the Federal Trade Commission to the above quoted sections of the complaint, the examiner must review the evidence in this record having in mind that the burden in this proceeding was upon complaint counsel to prove by reliable, probative and substantial evidence that:

(1) *Many* of the purchasers of respondents' products were required to pay the full amount of the periodic payments due on financial obligations due in connection with respondents' products when they became unemployed, and that respondents had represented to such purchasers, contrary to the fact, before they signed the contract, that they would not have to pay.

(2) That purchasers of home improvement contracts from respondents who signed agreements therefor were required to pay and did pay substantially more for the home improvements than the purchasers were led to believe they would have to pay.

(3) That *many* of the purchasers of the home improvement contracts did not receive a gift of a specified article of merchandise which they had been promised as an inducement to signing the home improvement contract.

(4) That the aluminum siding and other products which the respondents sold were not fully guaranteed nor were such guarantees for the period of time specified, nor did respondents' salesmen, when ad-

vising a purchaser that a product was guaranteed disclose the identity of the guarantor, the nature and extent of the guarantee and the manner or manner in which the guarantor would perform thereunder.

In order to sustain the alleged "guarantee" misrepresentation complaint counsel must have proven that the guarantees, as represented to prospective purchasers by respondents' salesmen, constituted an unfair method of competition, or an unfair and deceptive act or practice in commerce.

As previously mentioned, at the prehearing conferences complaint counsel stated (and at all times thereafter adhered to) his position that the alleged deceptive representations were made *only orally* in conversations by respondents' salesmen during the period of time, and prior, to the time that the purchasers of the home improvements signed contracts therefor. It is asserted that such allegedly deceptive representations induced the buyers to sign the home improvement contracts. Hearings were convened in Pittsburgh, Pennsylvania, December 2, 1963, through December 10, 1963, inclusive. Additional hearings were set by the hearing examiner but were cancelled when additional exhibits were placed in the record on February 7, 1964, by stipulation.

Proposed findings and conclusions have been filed. The hearing examiner heard and observed the witnesses in the hearing room and on the witness stand. He observed their demeanor and their manner of answering questions. He was able to and did form an opinion as to their reliability and credibility. He was also able to and did form a judgment as to the weight and probative value of the testimony of each of the witnesses. He has considered the reliability, credibility and probative value of the witnesses' testimony in making his findings of fact. Proposed findings not made herein in the form proposed, or in substantially that form hereby are rejected. Any motions heretofore made and not previously ruled upon hereby are denied. The undersigned hearing examiner has carefully considered the entire record, including the exhibits, the pleadings and the testimony of the witnesses. Based upon the entire record in this proceeding, the hearing examiner makes the following:

FINDINGS OF FACT

1. Individual respondent, Marco Scoratow, of Warehouse Builders, 418 East Eighth Avenue, Munhall, Pennsylvania, brokers of discount paper, graduated from the University in 1944 (Tr. 19). Thereafter he was employed by the General Electric Company in Pittsburgh, Pennsylvania, for a short time. Subsequently he engaged in the business of selling and installing home heating and air conditioning equipment,

doing business as ENGINEERING HEATING AND AIR CONDITIONING COMPANY. Marco Scoratow in some instances, used the corporate form to conduct his various businesses, and in some instances he operated as a sole proprietorship. Whether operating as a sole proprietorship or as a corporation, Scoratow has always been the true owner and proprietor of the business. HOUSE OF MARBET, INC., is only one of several corporations used by Scoratow in conducting his businesses. In every instance in which Scoratow conducted his business through the use of the corporate form, he was either the sole or controlling stockholder of the corporation. Scoratow formulated, directed and controlled the acts and practices of all of the corporations and the sole proprietorships which he owned, including the present corporate respondent the House of Marbet, Inc. (hereafter HOM). The names and forms which Scoratow has used in conducting his businesses include:

A. *Engineering Heating and Air Conditioning Company*, from 1949 to 1963.

B. *Marbet Heating Company*, a sole proprietorship, doing heating and air conditioning work selling G.E. equipment, furnaces and air conditioners (Tr. 19).

C. *Marbet Heating & Air Conditioning Company*, a sole proprietorship. At the time of Scoratow's appearance on the witness stand, he stated that (Tr. 21) Marbet Heating and Air Conditioning Company had gone out of business. However, at least 14 of the home improvement contracts in evidence which were negotiated in the name of "House of Marbet, Inc.," provide at the end for their approval or acceptance not by HOM but by "Marbet Heating & Air Conditioning Company" (see CX 2, CX 3, CX 11, CX 13, CX 14, CX 16, CX 17, CX 20, CX 21, CX 27, RX 12, RX 14, RX 22 and RX 23).

D. *Stuart Homes, Inc.* (Tr. 35), a corporation, was active from the middle of 1962 to mid-1963, for the purpose of constructing homes and placing home mortgages. At the time of his appearance Scoratow testified that Stuart Homes, Inc., was inactive, although still in existence.

E. *Charmwood, Inc.*, manufactured and installed kitchens (Tr. 36). At the time of his testimony, Scoratow did not know whether Charmwood, Inc., was legally in existence or had been legally dissolved.

F. *Everlast Products Company*, a brokerage house for Vista Stone, acted as a factory agent for Hollywood Manufacturing Company which manufactured Vista Stone. Scoratow was sole proprietor of Everlast Products Company and testified that that company had gone out of business.

G. *The House of Marbet, Inc.*, the corporate respondent. From 1959 until April 30, 1962, Scoratow sold home improvement contracts under the name of The House of Marbet, Inc. This was a corporation organized and doing business under the laws of the State of Pennsylvania. Scoratow did not remember the names of the other officers of the corporation (Tr. 14).

2. Although the corporate respondent, HOM, may have ceased to transact business, and may, as of now, be legally dissolved under the laws of the State of its incorporation, Pennsylvania, the ease and frequency with which Scoratow has moved in and out of sole proprietorships, corporations and any other business forms which suit his business convenience at any particular time, compels a finding that if Scoratow should, in the future decide to reenter the business of selling home improvements, or home improvement contracts, he could reactivate the House of Marbet, or form another corporation with a similar name to sell such home improvement contracts. The record does not contain official government documents setting forth precise and exact legal status of any of the seven different businesses above named. Such defenses, therefore, as abandonment, or lack of public interest in this particular proceeding, which may have been asserted, inferentially or directly, on behalf of the corporate respondent HOM or on behalf of Scoratow are rejected as being contrary to the evidence. Scoratow was the "moving force" behind HOM and dictated the policy it would follow (Tr. 15). HOM promoted the sale and installation of home improvement jobs. HOM on its own credit, purchased the material, and, with its own funds, paid the labor used in completing the jobs. In some instances HOM subcontracted out the home improvement jobs. In such instances, HOM might not have used its own funds to buy the materials or pay the labor.

3. Individuals who sold the home improvement contracts for respondents were in several separate categories: herein for convenience referred to as (a) canvassers, (b) salesmen, and (c) solicitors. Neither the canvassers, salesmen, nor solicitors were employees of respondents. Canvassers were independent contractors who financed all of their own operations, including the operation of their automobiles, and paying the salesmen. If any oral misrepresentations were made to prospective buyers of home improvements, such oral misrepresentations were made either by the canvassers, salesmen, or solicitors. Scoratow personally never made to any buyer of any home improvement any of the misrepresentations alleged in the complaint.

4. Respondents usually paid the canvassers 75% of the net profit on each home improvement contract (see Tr. 614). Respondents pur-

chased the contracts from the canvassers, and assumed full responsibility for making the home improvements and otherwise completing the seller's obligations under the contracts in a satisfactory manner. Respondents purchased the aluminum siding, the furnaces, the roofing, and all other required equipment and building materials on respondents' credit. The equipment and material was billed to respondents and paid for by respondents. In some instances respondents paid for the labor used to install the equipment and materials (Tr. 16), but when an entire home improvement job was subcontracted out respondents usually negotiated a single all-inclusive price with the subcontractor. Respondents were liable to and paid the subcontractors this negotiated price. Subcontracting out the jobs did not relieve respondents from their legal obligations as sellers under the home improvement contracts.

5. However, not all home improvement contracts sold by the salesmen were actually carried out by respondents. In some instances respondents subcontracted the entire job and paid the subcontractor a flat fee for the particular job (Tr. 43–49, incl.).

6. The "salesmen" were employees of the "canvassers." The precise basis upon which the canvassers compensated the salesmen is not clearly set out in this record but is of no substantial legal consequence. Sometimes a home improvement contract was sold through the joint efforts of more than one salesman, or a salesman and a canvasser. The "solicitors" were usually the persons who made the initial contact with a prospect, to determine whether it would be worth a salesman's time to call upon the prospect.

7. Respondents furnished their canvassers a "pitch book" which outlined the sales "pitch" to be made by the salesmen to prospective buyers. These "pitch books" were available to and used by the salesmen and the canvassers. These "pitch books" contained specimen copies of the guarantees which were issued by each of the guarantors. The specimen guarantees as set forth in the pitch books include Exhibits CX 4, CX 5, CX 6, CX 7A, CX 7B, CX 8A, CX 8B, CX 9A, CX 9B, CX 10, CX 19A and CX 19B, CX 29B and CX 29C, and these were usually shown by the salesmen to the prospective buyers when the buyer raised the question of a guarantee.

8. Within the context of the Federal Trade Commission Act, and the legal interpretations of it, Scoratow was, and is, legally responsible for the consequences of all representations made by the canvassers, salesmen and solicitors who sold and attempted to sell his home improvement contracts. This responsibility attached, and remains, whether Scoratow was, and is, doing business as an individual,

or as a sole proprietorship, or as a corporation, *i.e.*, as Marbet Heating & Air Conditioning Co., or the House of Marbet, Inc.

9. "Scoratow salesmen" as used herein means those persons individually, or in the aggregate, who solicited, promoted, negotiated, and effectuated the sale of home improvements to the buyers thereof.

10. Respondents furnished their canvassers, who in turn furnished their salesmen, a complete set of papers or forms for effectuating sales of the home improvement contracts. These forms included "MECHANICS INSTRUCTION SHEETS" (CX 1); "ENGINEERING CONTRACTORS" (CX 2); "CUSTOMER COMPLAINT FORM" (RX 26); "CUSTOMERS MODERNIZATION CREDIT APPLICATION" (RX 36, RX 38); "DISBURSEMENT SHEET" (RX 39); "CONDITIONAL SALE CONTRACT" (RX 40). The canvassers, salesmen and solicitors represented to prospective buyers that respondents were the sellers. Prospective buyers were led to believe and did believe that respondents were the sellers of the home improvements.

11. Although a few witnesses in support of the complaint denied that they had signed some of these documents, the answers of these same witnesses, upon cross-examination, made it appear that these witnesses had not recalled all the facts accurately. For instance, certain information listed upon these credit applications (RX 36, RX 38) could have been obtained only from the witnesses themselves. The witnesses admitted that they must have been the ones who supplied the credit information. The examiner finds that all complaint witnesses signed a complete set of the papers required to buy the home improvements. Without such signatures respondents would not have approved the sale nor would General Electric Credit Corporation have financed the purchases.

12. The House of Marbet, Inc., the corporate respondent, secured its charter to do business in the State of Pennsylvania on October 9, 1959, and ceased selling home improvement contracts to the public after April 30, 1962 (Tr. 52). At the time of Scoratow's appearance on the witness stand HOM had ceased doing business, although it had not been legally dissolved under the laws of the State of Pennsylvania.

13. During the period from November 9, 1959, to September 30, 1960 (HOM's fiscal year ran from October 1 to September 30), respondents made home improvement sales to customers in the amount of $3,602,165.19, of which 2% represented sales to purchasers located outside of the State of Pennsylvania. From October 1, 1960, to September 30, 1961, respondents made home improvement sales to consumers in the amount of $4,417,285.12, of which amount 2% represented sales to home improvement purchasers located outside the State of Pennsylvania. From October 1, 1961, to April 30, 1962,

respondents made home improvement sales in the amount of $754,-078.03, of which amount 2% represented sales to home improvement purchasers located outside the State of Pennsylvania (see Tr. pp. 7–10).

14. During the period of time that Scoratow did business as the House of Marbet, Inc., he generated in excess of 5,000 home improvement contracts providing for General Electric Credit Corporation (GECC) installment credit to the home improvement buyers. These contracts were sold to General Electric Credit Corporation in Pittsburgh, Pennsylvania. Of this number, approximately 100 contracts "more or less" represented business outside the State of Pennsylvania (Stein testimony, Tr. 765, 766).

15. In the course and conduct of their business, respondents caused their products, when sold, to be shipped from their places of business in the state of Pennsylvania to purchasers thereof located in various other States of the United States.

16. In the conduct of their business, at all times relevant to this proceeding, respondents were in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by respondents (Tr. 33, 34).

17. Until on or about April 30, 1962, respondents maintained a substantial course of trade in their products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

18. The Federal Trade Commission has jurisdiction over the parties to and the subject matter of this proceeding. This proceeding is in the public interest.

19. Respondents used television and newspaper advertisements to solicit home improvement sales (Tr. 23 and 24). The leads generated through radio and television advertising were turned over by respondents to their canvassers. No charge has been asserted that respondents made any misrepresentations in their television and newspaper advertising.

20. The following purchasers of home improvement contracts testified in support of the complaint:

Mrs. Dorothy Smarra, Hermine, Pa. (Tr. 56)
Mrs. Kenneth Rugg, Confluence, Pa. (Tr. 102)
Mrs. Lena Delpiere, McDonald, Pa. (Tr. 109)

FROM NEW CASTLE, PENNSYLVANIA:

Mr. Ira Gene Brown (Tr. 123)
Mr. James W. Curwin (Tr. 133)
Mrs. Viola Hamett (Tr. 149)
Florence M. Barlett (Tr. 157)

FROM STEUBENVILLE, OHIO:

Nicholas Giannaras (Tr. 174)
Charles M. Miller (Tr. 196)
Lucille Whitlock (Tr. 223)

FROM IRONDALE, OHIO:

Francis Dye (Tr. 238)
David R. Young (Tr. 285)
William R. Beckwith (Tr. 316)

FROM WEIRTON, WEST VIRGINIA:

Samuel J. Iaquinta (Tr. 340)
Lucy Brewer (Tr. 370)
Paul F. Leszun (Tr. 411)
Ethel and Harold Reed (Tr. 430)
Mrs. Mary E. Sartor (Tr. 443)
Edward Rowe (Mary C. Renner), New Cumberland, W. Va. (Tr. 390)
Gerald I. and Dolly Nelson, Cameron, W. Va. (Tr. 493)
Gale W. Scheetz, Follansbee, W. Va. (Tr. 529)

21. Respondents produced as their witnesses Scoratow's canvassers or salesmen who had participated in negotiating most of the contracts listed in the above paragraph. Some of respondents' witnesses were canvassers and some were salesmen. All were available for cross-examination by complaint counsel.

22. Respondent Scoratow testified. The man in his office responsible for seeing that the contracts were faithfully performed, Frank Pagnotta (Tr. 620) testified and Walter Stein, of General Electric Credit Corporation in Pittsburgh, who handled the Scoratow-House of Marbet papers testified (Tr. 760).

23. The canvassers and/or salesmen who testified, and the contracts as to which they testified were:

Canvasser, salesman or solicitor:	*Contract*
Gerald Schall (Tr. 549)	Smarra.
Marvin Fink (Tr. 567)	Barlett.
Bernard Harris (Tr. 606)	Nelson.
E. K. Hughes (Tr. 646)	Rugg.
Paul William Standley (Tr. 653); Habib Aschi (Tr. 678).	Dye, Beckwith, Young.
Joseph S. Miller (Tr. 689)	Brown, Brewer, Rowe, Sartor (Jeter), Scheetz, Leszun.
Virgil Bua (Tr. 741)	Delpiere, Reed.

24. Purchasers of home improvements signed an agreement for their respective home improvements on House of Marbet, Inc., letterhead with the familiar General Electric (GE) circle on each side reading, *inter alia*,

787 Initial Decision

ENGINEERING CONTRACTORS

To:

[Here are several small lines for the names and addresses of purchasers.]

The undersigned Seller hereby agrees to sell and install [here is a blank space for writing in the work to be done, and the equipment, such as siding, drain spouts, furnaces, roofing, etc. to be installed] in conformance with the specifications of a proposal (No. _____ and attached hereto to be submitted) which is made a part of this contract, on the premises of the Buyer as described in said proposal, for a total price of $ _____ to be paid as follows:

$ _____ upon acceptance of this contract, and

$ _____ upon _____, and

$ _____ upon completion of the installation.

All payments must be made promptly.

Title to the property which is the subject of this contract (except electrical wiring, ducts, piping embedded in walls, floors or ceiling installed by Seller, which shall become part of the building and are not any part of the property to which title is retained as hereinafter provided) shall not pass to Buyer until said price is fully paid in cash; and property shall remain strictly personal property and nothing (anything which may be done by the parties hereto to the contrary notwithstanding) shall prevent the Seller from removing same, or so much thereof as Seller, in its sole discretion may determine, from any premises to which it may be attached, upon any breach of this contract.

Buyer authorizes any attorney or prothonotary to appear in any court of record in the United States and confess judgment, as of any time, as of any term, in the amount of the unpaid balance owing under this contract against the Buyer and in favor of the Seller and waives the issue of process and all rights of appeal as well as property exemption laws.

There is no agreement, verbal or otherwise, which is not set down herein, and there are no warranties other than those contained in the proposal referred to above; no waivers or modifications shall be valid unless written upon or attached hereto. (Italics supplied.)

This agreement shall not become effective or binding on the Seller until approved by one of its officers, or other authorized executive.

In case of customer's default in agreement, equipment, eligible to be removed and cost of such billed to customer.

All quotations are current market prices and are subject to change within 30 days.

In case of cancellation of this contract, 20 per cent of the total amount of job will be retained.

Executed in triplicate this _____ day of _____, 19__. The parties intend to be legally bound hereby.

Witness (or Attest):

_____ (Seal)
Buyer's Signature (or Title of Company)

By _____
Title (if any)

Attest:

Accepted and approved:
MARBET HEATING & AIR CONDITIONING CO.

By _____
_____
Title

Copies of the above contract are in evidence for the following: CX 2, Whitlock; CX 3, Dye; CX 11, Young; CX 13, Beckwith; CX 14, Iaquinta; CX 15, Brewer; CX 16, Leszun; CX 17, Reed; CX 20; RX 43 (Jeter) Sartor; CX 23, Nelson; CX 27, Scheets; RX 2, Smarra; RX 12, Delpiere; RX 14, Curwin; RX 16, Barlett; RX 22 and RX 23, Miller; RX 49, Brown; RX 52, Rowe.

25. After these agreements were signed they had to be approved by respondents. If so approved, respondents subsequently sold them to General Electric Credit Corporation (hereafter GECC), in Pittsburgh without recourse (Tr. 790). GECC completed its credit check of the buyers based upon information in the "Customers Modernization Credit Application" which was completed at the time the contract was signed (see RX 36 and RX 38 for specimens of these forms).

26. Respondents did not accept all contracts submitted to them by the canvassers, salesmen and/or solicitors (Tr. 615). GECC did not buy all the contracts submitted to them by respondents.

27. After the contracts were approved by respondents the contracts were sold, without recourse, to GECC. The contracts and other related papers were turned over to GECC. Starting in June 1960 GECC sent the home improvement buyers two communications reading as follows:

Dear Customer:

Your dealer, _____, has presented your contract for purchase indicating completion of all work as listed on your contract. You will shortly receive a coupon book from our Canton, Ohio Service Center outlining our insurance coverage and your payment schedule.

Payments will run_____months at $_____, with first installment due _____. This will constitute our only terms agreement. If you have any question, this should be clarified immediately as no other paying arrangement can subsequently be accepted.

We are pleased to handle your account and will look forward to hearing from you if we may be of further service in any manner.

Very truly yours,

GENERAL ELECTRIC CREDIT CORP.,
PROPERTY IMPROVEMENT DEPT.

(RX 56)

RX 55 reads:

NOTICE OF PROPOSED PURCHASE OF PROPERTY IMPROVEMENT CONTRACT

We have approved for purchase the Property Improvement Contract which you entered into with _____, (the Dealer), under date of _____, whereunder the Time Price Balance is $_____, payable in _____ installments of $_____ each, together with the accompanying judgment Note in like amount and payable in like installments, subject to our being furnished with the Completion Certificate mentioned below. Upon our actually purchasing the Contract

and Note, a coupon book indicating payment due dates and other information will be forwarded to you.

We do not inspect the installation of the improvements and the performance of the work covered by the Contract but will purchase the Contract only upon the Dealer furnishing us with a *Completion Certificate* signed by you, acknowledging that the same have been completed to your satisfaction and we will rely on such signed certificate in effecting the purchase. *You should be certain, therefore, that you do not sign the Completion Certificate until you are satisfied that the installation and work have been fully completed.*

The Contract does not include any charge for insurance against damage to your property by fire, flood, etc. To substantiate that your property is adequately covered, we request that you furnish us with a copy of your current Fire Insurance Policy.

Should you have any questions of any nature regarding this transaction, please notify us immediately.

Very truly yours,

GENERAL ELECTRIC CREDIT CORP.,
PROPERTY IMPROVEMENT DEPARTMENT,
Credit Manager.

28. Thereafter, GECC sent the buyers a payment book showing the number of monthly payments required and the amount of each monthly payment. The record does not contain substantial evidence that any of the 22 buyers who testified ever complained to GECC that the payments set forth in RX 55 and RX 56, forms which they received or in the installment payment books which they received were at variance with the representations made by Scoratow salesmen. Two buyers complained to GECC because the work was not satisfactorily completed (Mrs. Dorothy Smarra), and that the furnace had not been installed as it should have been (Mr. Iaquinta). Complaint counsel has failed to prove by a preponderance of reliable, probative and substantial evidence in this record that Scoratow salesmen ever misrepresented to any purchaser the cash price of any home improvement contract, or the cost of the improvements if paid in 54 or 60 equal monthly installments to GECC. None of the witnesses who testified paid for the improvements on a cash basis. Some did arrange for a "six months skip" payment which postponed commencement of the payments for six months and required 54 instead of 60 monthly payments. The six months skip plan is in the GECC book (RX 57). The 54 monthly payment plan did require higher monthly payments than the 60 month plan, and purchasers eventually made up, or paid for the interest on the loan which had been postponed during the first six months. All this appears on RX 57 which Scoratow salesmen used in computing payments due.

29. A brief summary of some of the highlights of the testimony is as follows:

MRS. DOROTHY SMARRA, of Herminie, Pa., a witness in support of the complaint, testified that she and her husband entered into a home improvement contract with respondents on September 10, 1959, RX 2 (Tr. 65), for asphalt siding, new box gutters, changing of windows and fixing of leaking roof (Tr. 61), to be paid in 60 payments over a period of 5 years (Tr. 61, 62); that the sale was an installment time sale and not a cash sale (Tr. 88); that she was informed that the cash price would be about $2,049 for the job (Tr. 88, 89); that she knew that there would be financing charges on a time installment sale (Tr. 89); and that the siding and box gutters were guaranteed for 20 years (Tr. 62, 63). Mrs. Smarra's complaint was that the box gutters were not properly installed and were tarred (Tr. 95, 100, 101, 102). The Smarra contract provides for 60 payments at $46.23 (Tr. 65). Gerald Schall, the Smarra salesman, testified that the Smarras requested Glatex siding (Tr. 551); that $2,049 was the cash price; that the Smarras could not pay cash and requested installment credit financing (Tr. 552); that he used a General Electric chart, in the presence of the Smarras and informed them that the payments for the cash price of $2,049 would be 5 years or 60 months at $46.23; that 60 payments at $46.23 was written on the contract prior to the signing thereof (Tr. 552); that no guarantees were made to the Smarras since they had already decided upon Glatex siding and were just trying to find the lowest price. In her correspondence with GECC (RX 8A, RX 8B), Mrs. Smarra never mentioned guarantees nor objected to the financing arrangements. The Smarras knew that the cash price was $2,049, and knew that there would be financing and interest charges on an installment credit sale. The Smarras requested the Glatex siding; knew the product, and were not induced to buy the product on any representations as to guarantees.

MRS. KENNETH RUGG, of Confluence, Pa., was a witness in support of the complaint. She and her husband contracted with respondents in January 1960 (Tr. 103) for a fuel oil furnace (Tr. 104). Mrs. Rugg's testimony concerned the oral representation as to what their obligations would be if Mr. Rugg were out on strike and did not have any work. RX 10 dated February 5, 1960, is a written statement by Kenneth Rugg that the job was completed and satisfactory (Tr. 108). E. K. Hughes, the Rugg salesman, testified that he never represented to the Ruggs that there would be a clause in their contract so that if Mr. Rugg were laid off that the Ruggs would not have to make any payments during the period that he was laid off. Hughes testified that he only represented to the Ruggs, by way of illustration, that during the prior steel strike GECC "went along with the steel workers

and GECC would go along with customers who had bona fide reasons for asking for extensions of time to make payments" (Tr. 647, 648). The evidence shows this was a true statement.

MRS. LENA DELPIERE, of McDonald, Pa., a witness in support of the complaint, testified that in July 1959, she and her husband contracted to have a furnace installed by respondents (Tr. 111); that respondents offered a free swimming pool (Tr. 111); that she did not receive the swimming pool (Tr. 112); that she had forgotten about it and was not interested in the swimming pool (Tr. 112); that RX 11 had written thereon free swimming pool and that the cash price of the job was $1,086 (Tr. 120); that she purchased the furnace on an installment credit basis and knew that she had to pay interest charges (Tr. 120); she testified that during the 6 month skip period during which time no payments were to be paid, interest was to be charged to her (Tr. 120). Mrs. Delpiere's complaint was that she did not receive a free swimming pool which was listed on RX 11 as a contractual obligation of the respondents, and that she was charged interest during the 6 month skip period which increased her interest rate on the five year installment contract. She had no complaint about the interest which was charged for the period of 4½ years or 54 months after the 6 month skip period. Mrs. Delpiere's half-hearted complaint was that interest was charged during the six month skip period even though she knew it would be assessed. The contract, RX 12, stated on its face thereof that if it were paid before the due date that there would be no interest charges. Virgil Bua, the Delpiere salesman, testified that $1,086 was the cash price (Tr. 744, 745); that if the customer paid within 6 months, $1,086 would be the cash price of the job without any interest charges (Tr. 745); that if the customer did not pay before the due date, that the job would be financed on a 54 month skip plan, and that the GECC chart provides for interest during the 6 months in which no payments are made (Tr. 745); that the interest charges for the 6 months during which no payment is made is included in the interest charges for the subsequent 54 months (Tr. 746); and that since the free swimming pool was stated in the contract a free swimming pool should have been given to the customer (Tr. 745). There was no misrepresentation as to a gift. The gift item was written into the contract and was a contractual obligation of the respondents. Complaint counsel might have pressed Mrs. Delpiere to find out why she did not make an effort to get the free swimming pool. It would appear that she simply was not sufficiently interested.

IRA GENE BROWN, of New Castle, Pa., a witness in support of the complaint, testified that respondents put siding on his house (Tr. 124)

about four years prior to his testifying; that it was his impression that if he became unemployed because of a strike, his regular monthly payments to GECC would be postponed until he returned to work (Tr. 124). Brown had no occasion to test the strike waiver because he had never been laid off or on strike (Tr. 124). Brown signed a promissory note after the workmen completed the job (Tr. 125). He received a 20-year guarantee on the stone and aluminum siding, but the guarantees were not delivered in writing (Tr. 126). Storm doors were not satisfactorily installed and the transom over the door and plaster job around the picture window were not finished as promised (Tr. 126, 127). The Vista Stone and aluminum siding were satisfactory (Tr. 127). Brown had been told that the siding would save heat and fuel. It did save heat and fuel (Tr. 127). Joseph S. Miller, the Brown salesman, testified that the $2,800 on RX 49 was the cash price; the contract eventually provided for 60 payments of $64.40 per month (Tr. 695). The GECC chart reveals that $2,800 installment credit for 5 years requires 60 monthly payments of $64.40 (Tr. 695, 696). The terms of the installment financing was discussed with Miller's customers and the customers knew that they had to pay financing charges and interest for installment credit (Tr. 696, 697). Miller maintained a good relationship with his customers. Twenty percent of his business was referral business (Tr. 698). Miller testified that he made no warranties on siding to customers other than the warranties in the sales pitch book shown to the customers. Miller testified that he never represented there was a 20-year warranty on ALCOA siding because ALCOA never gave such a warranty (Tr. 700). There was a 20-year warranty on Vista Stone in the sales pitch book (Tr. 700, 701). Miller testified that the only warranties he had given to customers were the manufacturers' warranty (Tr. 701). RX 49 indicates the Browns borrowed $1,750 to pay for the home improvements and $1,050 for payment of other obligations. The total loan or amount stated in the contract was $2,800 (Tr. 693, 694). The Browns did not complain about the financing charges.

JAMES W. CURWIN, of New Castle, Pa., a witness in support of the complaint, testified that in 1958 or 1959 he bought aluminum siding, a stone front and storm windows from respondents (Tr. 134). The job cost $3,000 (Tr. 134). Curwin received his book from GECC showing total payments in excess of $3,000 (Tr. 135). Curwin claimed he was not informed about the financing charges (Tr. 135). Curwin, a Staff Manager of American General Life Insurance Company (Tr. 137) at the time of the contract, January 25, 1960, was an agent with Knights Life Insurance Company (Tr. 137). He went to work for Knights in

1958 (Tr. 138). Curwin had attended the University of Pittsburgh for two years (Tr. 138, 139). He was buying a home which was being financed by a mortgage (Tr. 139, 140); and had on many occasions made personal loans from various lending institutions prior to making his loan from GECC (Tr. 140, 141) Curwin knew that interest was paid on loans from lending institutions (Tr. 141); that the price of around $3,000 for the job was to be financed for 60 months (Tr. 141); that he was required to pay interest for the 60 months (Tr. 141); that RX 14 dated January 25, 1960, was the contract between the Curwins and respondents (Tr. 142). In RX 15 dated March 28, 1960, Curwin stated that as to the installers "Both men did an excellent job and were courteous and cooperative in all matters concerning the above."

MRS. VIOLA HAMETT, of New Castle, Pa., a witness in support of the complaint, testified that she and her husband purchased a General Electric gas furnace from respondents in November, 1959 (Tr. 151). CX 1 shows a 20-year guarantee and a 1 year free service guarantee in writing for the furnace (Tr. 152). There had been no occasion for service on the furnace (Tr. 153). Mrs. Hamett indicated she believed that if she or her husband were laid off from work or unemployed for any reason that they could send in $1 a month and that would cover something (Tr. 153). The furnace had been operating satisfactorily since installation (Tr. 156). There was no occasion for forbearance of payment on account of unemployment (Tr. 156). No representation had been made to her that she would get a written guarantee other than that written in the contract (Tr. 156). Mrs. Hamett understood the contract contained the entire agreement between the parties (Tr. 156). The Hamett's 20 year, and 1 year free service, guarantee was in their contract and not made in oral representation. The Hametts had not tested the guarantee because there had been no occasion to ask respondents or the manufacturers to perform thereunder. She believed there had been a representation that in case of unemployment she would not have to make any payments on her contract. There had been no occasion to test the truthfulness or untruthfulness of this representation. She had had no occasion, at any time, to request a forbearance of payment on account of unemployment. As far as this record shows the forbearance representation to this witness is not proven to have been false or misleading.

FLORENCE M. BARLETT, of New Castle, Pa., a witness in support of the complaint testified that in the fall of 1960 she purchased ALCOA aluminum siding and a stone front (Tr. 158) from respondents. The salesman represented that the stone siding was guaranteed not to crack but it did crack two weeks after installation. Mrs. Barlett testified

that although she complained, nothing was ever done about it (Tr. 158); that the salesman represented that the guarantee on the stone siding was 20 years (Tr. 159), but that she did not remember anything about a guarantee on the aluminum siding (Tr. 159). Mrs. Barlett further testified that the salesman had said that if she or her husband were laid off from work or unemployed they were to pay $1 a month until her husband got back to work; that this statement was not true because GECC required her to make her full monthly payments (Tr. 160); and that the stone has never been fixed (Tr. 162). She testified that GECC informed her that the stone company went bankrupt and that they could do nothing about the stone guarantee (Tr. 161).

RX 16 is the Barlett contract (Tr. 164). RX 17A, RX 17B, RX 18, RX 19, RX 20, and RX 21 are letters from the Barletts to GECC complaining about the stone and stating that payments could not be made because Mr. Barlett was unemployed. These letters do not mention guarantees or representations of forbearance during unemployment made by the salesman (Tr. 162, 163, 164, 165, 166, 167, 168, 169). RX 16 shows a cash price of $2,440 or $62.49 for 54 months if paid by means of an installment loan. The Barletts had not complained about the financing and interest charges.

MARVIN FINK, the Bartlett salesman, testified that he gave no warranties on ALCOA siding (Tr. 572); that Vista Stone was manufactured by Hollywood Manufacturing Company and had a 20 year conditional warranty (Tr. 573, Tr. 574); that the only warranties that would be given on Vista Stone would be those contained in the sales pitch book (Tr. 573, 574). Fink stated that the warranties would be represented to the customers as stated in the sales pitch books (Tr. 574, 575); that he did not represent to the Barletts that there would be forbearance of their payments on account of unemployment if they paid $1 per month; and that there was a misunderstanding on this subject (Tr. 575). Fink testified that during the steel strike of 1959 GECC made concessions to their deserving customers based upon payment of a $1 per month forbearance fee by GECC borrowers unemployed as a direct result of the strike. That steel strike ended in November 1959. The Barlett contract was written September 26, 1960. Fink believed he may have mentioned the $1 forbearance practice of GECC in order to demonstrate the good will which GECC had shown for their deserving borrowers (Tr. 576). Fink testified the $1 forebearance practice was not publicized by him to make sales (Tr. 576, 577). Fink testified that selling home improvements is a highly competitive business. Many salesmen may have visited the home improvement

buyers including the Barletts. Representations attributed to Fink by the Barletts may have been made by some other salesman (Tr. 577). It was Fink's experience as a salesman of home improvements that customers are seldom interested in warranties on well known products, such as ALCOA siding, Rubberoid roofing, and General Electric furnaces (Tr. 578). It is significant that in the Barlett correspondence there is not one statement about guarantees and the strike plan.

NICHOLAS GIANNARAS, of Steubenville, Ohio, testified in support of the complaint that in 1959 before the steel strike he purchased aluminum siding and roofing from respondents (Tr. 176). Giannaras had an understanding that in case of a strike induced unemployment that he had to let the GECC payments go. There was a strike and Giannaras had to pay interest on the house (Tr. 177). Giannaras was offered as a premium and bonus for the signing of the contract a radio and two tickets to the ball game. He received silverware and dishes (Tr. 177, 178). The $2,900 cash price was financed through the Mellon Bank at $62 a month for 5 years (Tr. 182). Giannaras testified that he knew that he had to pay the bank extra for financing, that it would be over the $2,900 so that the financed job would cost $3,700, and that if he paid cash the price would be $2,900 (Tr. 183). At page 177 Mr. Giannaras testified: "No, I wasn't going to pay cash for it, but I made an understanding in case of a strike or anything goes wrong, that I have to let it go, and he agreed to that. So, there was a strike and I had to pay interest on the house." It is difficult to determine how such testimony proves any of the charges in the complaint.

CHARLES M. MILLER, of Steubenville, Ohio, testified in support of the complaint that on July 14, 1959, he contracted with respondents for aluminum siding, Vista Stone and a new roof (Tr. 197–198) at $2,195 for the aluminum siding and $675 for the roof (Tr. 198). Miller claimed he did not know the installment credit price until he received the payment book from GECC showing payments of $65.32 a month for the 60 months (Tr. 199). Miller claimed the salesman said nothing about a guarantee (Tr. 200); that he and his wife were purchasing their own home and were financing it with a mortgage (Tr. 203); that he knew that financing charges were paid on installment loans (Tr. 203); that he had made various loans from finance companies (Tr. 203), and had paid financing charges thereon (Tr. 204); that he had signed various papers and documents at the lending institutions where he borrowed money (Tr. 204); that he was to finance the HOM contract for 5 years or 60 months (Tr. 204); that RX 24 was a purchase money mortgage (Tr. 215); the financing charges were not filled in (Tr. 211); he could tell from examining the purchase money mortgage

that it contained provisions for financing charges and monthly payments (Tr. 215). Miller identified RX 22, his contract setting forth a contract price of $2,195 for the siding and Vista Stone (Tr. 207): He identified RX 23 dated August 17, 1959, as the contract for the roof for $685 (Tr. 208). Miller identified RX 25 as a letter from him dated July 21, 1960, to GECC complaining that the siding was coming apart, and stating that he would not make any payments until the job was corrected (Tr. 218). Miller identified RX 26 (Tr. 219), RX 27 (Tr. 220), and RX 28 (Tr. 221) complaining about the work. Mr. Miller was a 1952 graduate of West Virginia State College. Although he was employed as a laborer at Weirton Steel, Wierton, West Virginia, at the time of the hearing the examiner finds that Mr. Miller was not deceived by any oral representations made to him at the time he signed the home improvement contracts with respondents. He was an educated man, a college graduate, had utilized installment credit financing previously and was not mislead, or deceived by statements of Scoratow salesmen. Reference is made to the testimony on page 221 where Mr. Hughes asked Mr. Miller the following question as to his education: "Do not take this next question the wrong way, it is just important in the context of this hearing, how far did you get in school, sir?"

The testimony of Mr. Miller was offered to show that he knew nothing about financing charges. Mr. Miller understood the nature of the documents that he was signing. He knew that financing charges would be paid in addition to the cash price.

LUCILLE WHITLOCK, of Steubenville, Ohio, a witness in support of the complaint, identified CX 2 (as well as RX 29 withdrawn, a duplicate of CX 2), a contract dated February 12, 1960, with respondents for Vista Stone and aluminum siding for the sum of $2,300 cash, or $52.24 per month for 60 months. Mrs. Whitlock testified that she knew that she was required to pay $52.24 a month (Tr. 223), but she did not remember whether 60 months was on the contract (Tr. 233). CX 2 clearly states $52.24 for 60 months.

FRANCIS DYE, of Irondale, Ohio, testified in support of the complaint that by contract with respondents dated April 30, 1959 (CX 3; Tr. 240), he purchased Duralum siding. The contract figure of $1,925 included a loan of $600 cash to him to complete two rooms and $1,325 cash for the cost of siding (Tr. 241). In installments the payments were $43.41 a month (Tr. 241). There was a 20-year guarantee (Tr. 242). The salesman represented to him that if he were laid off or on strike, a few dollars per month would be all he would be required to pay to obtain a forbearance (Tr. 243). Dye was laid off for eleven months and GECC gave him extensions on his payments (Tr. 243).

Dye's payment book called for payments of $48 a month (Tr. 244). Dye had made personal loans from other lending institutions in which he had paid financing charges and signed various documents (Tr. 244, 245). Dye financed with GECC on the 6 month skip plan. Dye testified that the salesman told him that the payments would be $43.41 a month (Tr. 246, 247), whereas his payments were $48 and some cents for 54 months (Tr. 247). The purchase money mortgage dated April 30, 1959 (RX 30), provided for 54 monthly payments of $48.45 beginning October 30, 1959 (Tr. 249). The difference between $48.45 and $43.41, as monthly payments, was due to the 6 months' skip period during which Dye made no payments, RX 31A and 31B, 32, 33, 34A and 34B are Dye's letters to GECC explaining that his payments were not regular by reason of his unemployment or sickness. These letters do not refer to strike insurance (Tr. 251, 252, 253, 254). Although Dye identified his signature on RX 30, he could not remember signing the document (Tr. 254, 255, 256). Paul W. Standley, the Dye salesman, employed by Habib Aschi as a salesman (Tr. 654), testified that $1,925 was the cash price (Tr. 655); that he discussed financing arrangements with Dye on the 6 month skip plan (Tr. 656); that he represented to Dye that in case of strike or lay off that it would be satisfactory to pay interest each month (Tr. 657); that he worked from April 1959 to December 1959 for the respondents (Tr. 658), and that he showed Dye the manufacturer's warranty which was set forth in his presentation book (Tr. 658).

DAVID R. YOUNG, of Irondale, Ohio, testified in support of the complaint that he entered into a contract with respondents on May 12, 1959, for asbestos siding for $960 and for a personal loan of $800 to be used to pay off his home. These contracts totalled $1,760 (CX 11, CX 12; Tr. 286, 287, 288, 289, 290). Young's payment book from GECC provided for 54 payments at $44.30 a month (Tr. 291). Young testified the salesman told him that his payments would be $32 per month (Tr. 291); that if he were laid off or on strike, he would not have to make his monthly payments upon payment of $2 or $3 per month during the period of lay off or strike (Tr. 292). Young was laid off and GECC extended his payments three or four different times (Tr. 292). Young received a 15-year guarantee on the ALCOA aluminum siding (Tr. 292, 293). He testified there was no complaint about the siding. It was good (Tr. 293). Young received $615 of the $800 (Tr. 294). Young knew the $1,760 was to be paid upon completion of the installation, and also knew that his contract was a 6 month skip contract (Tr. 297, 298), payable "in either 5 years or 5½ years" (Tr. 297, 298, 299). Young testified he signed a modernization credit

application (RX 36; Tr. 308, 309). Young testified he understood that the interest charges were to come out of the $800 which was loaned to him; that he received $615 out of the $800 personal loan and intended to sue for the $185. RX 37A to RX 37P, inclusive, are letters from Young to GECC requesting an extension for payments on account of his being laid off. These letters contain no mention of forbearance of payments on account of lay offs, guarantees for Alcoa siding, nor financing charges of GECC (Tr. 312, 313, 314, 315).

PAUL W. STANDLEY, Young salesman, testified that the $1,760 price was the cash price; that he explained the monthly payments, financing charges, and the 6 month skip plan to Young. He represented there would be a 15-year guarantee on the asbestos siding.

HABIB ASCHI testified that in 1959 he instructed his salesmen to tell customers that in the event of a steel strike, the customers, for some nominal payment, or payment of interest, might have their regular monthly payments waived or postponed. This waiver would have to be arranged with GECC (Tr. 683, 684). There was a set of manufacturers' warranties in the pitchbook which was shown to the customer. These warranties showed the type of product, the name of the company, and the extent of the warranty (Tr. 686).

WILLIAM R. BECKWITH, of Irondale, Ohio, a witness in support of the complaint, testified that he made a contract (CX 13) with the respondents on May 23, 1959 (Tr. 317) for the installation of Asphalt Rocktex (Tr. 318). Beckwith stated that the salesman, Paul Standley, represented that the total cost, including financing charges was $2,350 (Tr. 319); that Standley represented that if Beckwith were laid off, upon payment of a couple of dollars a month Beckwith might have his regular monthly payments deferred (Tr. 320). Beckwith further testified that the siding was guaranteed for 15 years (Tr. 321), and that the siding job was not properly done (Tr. 321). CX 13 shows that $2,350 was the cash price to be paid upon completion of the installation (Tr. 323). Beckwith testified at the hearing on December 4, 1963 (about 4½ years after the contract), that he had made nine payments of $59.08 each, which establishes that GECC gave Beckwith many extensions of payments due. Beckwith understood the six month skip plan. It was explained to him in detail (Tr. 326, 327). Beckwith understood he would be required to pay $2,350 when the job was completed (Tr. 327, 328). He had other experiences with lending institutions, and knew he would be required to pay interest and financing charges (Tr. 328, 329). Beckwith signed the contract on May 23, 1959, and was laid off June 1, 1959, for a period of 14 months (Tr. 331). Beckwith gave the credit information on his credit application (Tr.

336–40). Paul W. Standley, the Beckwith salesman, testified that $2,350 was the cash price (Tr. 660); that it was financed on a six month skip plan; that he represented to Beckwith that if he were laid off that he might be able to make arrangements with GECC to defer the payments. Standley warranted the asbestos siding for 15 years because that was the manufacturer's warranty in his presentation book. Standley explained to Beckwith what his monthly payments would be for a 54 month period and took a credit report from him (Tr. 660–61).

SAMUEL J. IAQUINTA, of Weirton, West Virginia (Tr. 340, et seq.; CX 14), a Commission witness, owned 5 separate parcels of real estate, including one at 306 Chester Street, New Cumberland, West Virginia. The substance of Iaquinta's complaint was that respondents did not complete installation of a gas furnace in the New Cumberland home. The installation was not made because Iaquinta made it impossible for respondents to install the furnace. Iaquinta refused to complete the interior of the house in a condition to receive the furnace, in that he did not complete the plastering around the ducts, nor did he install electric power to operate the furnace's electrical components. Iaquinta wanted respondents' installers to use the electrical current run in over a makeshift wire strung in from an adjoining house. Iaquinta would have have respondents violate the building and fire codes, which respondents refused to do. Iaquinta also represented to respondents that he had this house up for sale. Respondents agreed to wait six months and if the sale was completed within that time respondents would accept a cash payment of $975. The house was not sold so the cash price was financed through GECC. At the time of his appearance on December 3, 1963, Iaquinta still owed $825 on his contract, which is dated February 10, 1960. Obviously GECC had been more than liberal in waiving Iaquinta's payments as they became due, even though Iaquinta owned four parcels of income producing real estate. From February 10, 1960, until December 3, 1964, Iaquinta had made only a very few payments. He paid $150 on a $975 obligation over a period of 46 months.

Iaquinta was completely sophisticated in the entire area of installment financing, having utilized that credit device for buying both real and personal property.

LUCY BREWER, of Weirton, West Virginia, a witness in support of the complaint, testified that her husband and she entered into a contract with the House of Marbet at monthly payments of $70.55. She knew that her monthly payments would be high, but not how much until she got her book (Tr. 376); that the job was for siding and storm

doors (Tr. 373); that they were in the habit of borrowing money and paying interest to lending institutions (Tr. 376); that she did not remember what the salesman told her about payments and contract price (Tr. 388), that she had no knowledge of the transaction since her husband took care of all the financial arrangements (Tr. 388, Tr. 389). Her husband was in court, but was not called to testify (Tr. 388, Tr. 389). Joseph Miller, the Brewer salesman, testified that the total contract price of $3,106.25 included disbursements of $1,506.25 and $1,600 for the cost of the job (Tr. 702); that he told the Brewers that their payments would be $70.55 a month for 5 years and that the job would be financed through General Electric Credit Corporation (Tr. 703). The Brewers knew what their monthly payments would be since it was written on the contract offered in evidence by the Government as CX 15 (Tr. 373).

EDWARD ROWE, of Cumberland, West Virginia, a witness in support of the complaint, testified that in 1960 respondents installed siding and new windows (Tr. 391); that the cost of the job was $1,800 plus $600 to pay off some bills; that he knew that it was to be financed and knew that he had to pay interest charges (Tr. 393); that the salesman did not tell him how much interest he had to pay (Tr. 394); that he received a payment book from General Electric for 60 payments at $55.08 a month, which totaled $3,304.80 (Tr. 394); that he had borrowed money from other lending institutions (Tr. 398, Tr. 399), that he made arrangements for a 5 year loan (Tr. 399, Tr. 400), that he signed at the same time a Deed of Trust, RX 41, note and contract, and that he knew that he would have to pay $55.08 for a 5 year period (Tr. 405). Mr. Rowe testified that all the papers were complete and all the blanks filled in when he signed them (Tr. 409).

PAUL F. LESZUN, of Weirton, West Virginia, a witness in support of the complaint, testified that he was a letter carrier in the United States Post Office (Tr. 411); that he entered into a contract dated April 4, 1960 with respondents, CX 16 (Tr. 414, Tr. 415, Tr. 416); that the cost of the job was $1,300 (Tr. 416); that he expected to pay interest (Tr. 416); that the salesman did not tell him anything about the interest, but that the salesman told him that the payments would be $32.70 for 54 months (Tr. 417); that he had put on his house asbestos siding, stone, and storm door in the basement, and that the salesman stated that the work would be guaranteed for 20 years (Tr. 418); that he never requested a guarantee after the work was completed (Tr. 419), that he gave the salesman credit information (Tr. 419, Tr. 420); that the loan was for 5 years on the 6 month skip plan (Tr. 420, Tr. 421), that he executed a Deed of Trust dated June 9, 1960 voluntarily,

RX 42, in which the payments were the same as set forth in the book received from General Electric Credit Corporation (Tr. 423, Tr. 427); and that no work guarantees were written in the contract (Tr. 428). Joseph Miller, salesman on the Leszun contract, testified that $1,300 was the cash price (Tr. 710); that $32.78 a month included the interest charges (Tr. 711); that he did not guarantee the whole job for 20 years; but that under his policy of selling, he would have given Mr. Leszun the same warranties which were given by the manufacturer of the products sold (Tr. 711).

ETHEL REED, of Weirton, West Virginia, a witness in support of the complaint, testified that she entered into a contract with respondents dated April 6, 1959, for a furnace, CX 17 (Tr. 432), and as shown on CX 18, Mechanic's Instruction Sheet, the heat exchanger was unconditionally guaranteed for 20 years (Tr. 433); that the furnace was operating properly since installation (Tr. 437); that the salesman only guaranteed the heat exchanger for 20 years (Tr. 438), that two years later, respondents placed Vitramic siding on her house (Tr. 442). On page 443, the following testimony appears:

TRIAL EXAMINER. I see. What is the nature of your complaint, if any, about your relationship with the House of Marbet?

The WITNESS. Well, the only thing is that several people have told me that I paid too much for both jobs. That I probably could have gotten it done cheaper at other places.

TRIAL EXAMINER. Do you think they misrepresented how much you should have to pay for the job? Did they misrepresent how much you had to pay for the job?

The WITNESS. Well, no, I suppose they told me what it was, and I just don't have much business sense about things like that.

TRIAL EXAMINER. Thank you very much.

Virgil Bua, the Reed salesman, testified that the heat exchanger was guaranteed for 20 years, which guarantee was put in writing (Tr. 750). At page 750 the following testimony appears:

Q. In other words, not only did you tell the customer that the Heat Exchanger was guaranteed for 20 years, but you specifically put that in your writing and contract?

A. That is what I am supposed to do. Anything verbally I was instructed to tell the customer these facts and write it down. In other words, when I would leave the home, I asked them, do you people know what you have bought from me; do you know how much it cost; do you know what your monthly payments are; do you know what you are getting for your money; and, they would agree.

Mr. Bua did not guarantee the whole furnace for 20 years, he only represented that the heat exchanger was guaranteed for 20 years and the electrical parts of the furnace for one year (Tr. 751).

MARY E. SARTOR, of Weirton, West Virginia, a witness in support of the complaint, testified that she entered into a contract dated April 2, 1960, CX 20 (Tr. 446) with the respondents for siding, gutters and roofing (Tr. 447); that she did not pay cash and financed it by a mortgage (Tr. 447) and understood that she would pay $1,695 (Tr. 447); that she knew she had to pay interest when she borrowed money (Tr. 448); that the salesman said nothing about interest (Tr. 448); that she owed $1,695 on the contract (Tr. 448); that she signed two different contracts (Tr. 449); that the salesman told her that her payments would be $38.58 a month, but it was $38.98 when she got her payment book (Tr. 450); that she did not remember the salesman telling her how many months she would pay the $38.58 (Tr. 452); that no guarantee was made on the siding (Tr. 450, Tr. 451); that RX 43 is a contract dated April 18, 1960, and signed by Mary E. Jeter, that RX 44 is a Conditional Sales Contract dated April 18, 1960, and signed by Mary E. Jeter, which Conditional Sales Contract shows a cash price of $1,695 and financing charges of $643.80, or a total of $2,338.80, that RX 44 was filled out at her home on April 18, 1960, and properly executed and left with her and given by her to her attorney (Tr. 455, Tr. 456). Joseph Miller, the Sartor salesman, testified that the reason for the two contracts with Mary Sartor was that the property was titled in the name of Mary Jeter (Tr. 712, Tr. 713), that the two contracts were for the same job (Tr. 713), that the price including interest would be $2,314.80 (Tr. 714), and that two years after this job he sold Mrs. Jeter and her husband a G. E. furnace (Tr. 715).

GERALD I. NELSON, of Cameron, West Virginia, a witness in support of the complaint, testified that he entered into a contract with respondents on May 11, 1960, CX 21 (Tr. 465, Tr. 466); that Bernard Harris was the salesman (Tr. 466); that he signed a disbursement sheet, CX 22, dated May 11, 1960 (Tr. 466); that he contracted for concrete work on his house (Tr. 467); that he entered into a second contract dated January, 1961, CX 23 (Tr. 468, Tr. 469), that the job was to be financed through GECC and that to his knowledge the price of $2,050 included interest (Tr. 470). The contracts state the monthly payments and the number of months. The first contract, CX 21, providing for 60 payments of $47.15 was marked "Void." The second contract, CX 23, states "the balance of $1,100—finance 48 mo. at $29.75 per month." Nelson testified that he financed the job for 5 years and expected to pay interest for 5 years (Tr. 480); that he knew from May 11, 1960, that the contract was for 60 payments at $47.15 as set forth in CX 21 (Tr. 481), that he signed the Deed of Trust, RX 48A through D, at the time Mr. Pagnotta came to make settlement with him, which Deed of

Trust from General Electric Credit Corporation stated that he owed $1,428 payable at the rate of $29.75 a month until the entire sum was paid (Tr. 485); that he signed the contract on account of fear of his children being injured on account of the physical condition of the premises (Tr. 489); and that he did not know whether the Deed of Trust was filled in when he signed it (Tr. 490). Bernard Harris, the Nelson salesman, testified that $2,050 was the cash price (Tr. 609), that 60 payments at $47.15 represents the installment financing price (Tr. 609); that he, Harris, computed the monthly payments for 60 months from the General Electric Credit Corporation rate chart (Tr. 610); that Nelson knew that the job was to be financed through General Electric Credit Corporation and knew that he was to make payments of $47.15 for 60 months (Tr. 610); and that in all his contracts he, Harris, inserted the monthly payments and the period of time of the contract (Tr. 611). Frank W. Pagnotta respondents' expediter, testified that he settled the Nelson contract for $1,100, which was the cash price, and that the customer financed the job for 48 months at $29.78 a month (Tr. 623, Tr. 624).

FRED BURGESS, of Daniels, West Virginia, a witness in support of the complaint, testified that respondents made a deal with him whereby his house would be a sample for advertisement purposes (Tr. 495); that he would receive $50 for each and every job that went up in his area (Tr. 495); that he contracted for aluminum siding, picture window and two storm doors (Tr. 494, Tr. 495), that he denied his signature on CX 24 dated August 11, 1960 (Tr. 496), that he signed no papers (Tr. 497); that respondents paid off his obligations in the amount of $1,495 (Tr. 498); that he was out of work and that insurance would pay off his obligations (Tr. 498); that he understood that he received $1,500 as a gift for the use of his house for advertising (Tr. 499), that aluminum siding was put on his house, two storm doors, front and back, and one picture window (Tr. 501), that a 17 foot awning across the front porch was promised but never put in (Tr. 501), that he was to receive a mixer at wholesale price which he never received (Tr. 515, Tr. 516), that the aluminum siding was guaranteed not to peel or crack (Tr. 517), that the entire transaction was oral between him and Mr. Tyler and that he did not sign any contracts (Tr. 520); that he never agreed upon a price for the job and never signed any papers for the price (Tr. 520, Tr. 521), that there was no agreement as to financing charges (Tr. 524), that he received $1,495 for use of his house of sample purposes (Tr. 524, Tr. 525), that he never signed any contracts obligating him to pay anybody (Tr. 525), that he never paid any money to General Electric Credit Corporation (Tr. 526), because he never obligated

himself to pay General Electric Credit Corporation (Tr. 526). This Burgess evidence is found not to be creditable. The witness' demeanor on the witness stand and all the surrounding objective facts do not support the facts as testified to by Burgess.

GALE W. SCHEETZ, of Follansbee, West Virginia, a witness in support of the complaint, testified that he entered into a contract dated May 21, 1960, for a roofing job (Tr. 530); that under the terms of his contract, CX 27 he was to make 60 payments of $40.04 (Tr. 531); that he was informed of the interest charges which was figured out by the salesman (Tr. 533); that he figured out the price of the job as $2,400 or $2,500 (Tr. 533); that the roof was guaranteed for life by the salesman (Tr. 533); that he never had trouble with the roof and that it was a good roof (Tr. 534); and that he never made any complaints about the roof (Tr. 534). Joseph Miller, the Scheetz salesman, testified that he computed the charges with Mr. Scheetz and the job was financed for 60 months at $40.05 per month (Tr. 716), and that the roof was a Ruberoid Interlock roof and that it was guaranteed as set forth in the sales book (Tr. 716, Tr. 717).

MERVIN SNYDER of Jones and Brown Inc., Pittsburgh distributors of building materials for the Tri-State area a witness in support of the complaint testified that CX 4, 5, 6, 7, 8 and 9 were warranties that were in active use by the companies stated therein at the time he gave them to the Commission which was during May 1961 (Tr. 263, Tr. 264). He testified that respondents purchased all its aluminum siding from Jones & Brown (Tr. 271). Prior to March 1960, Duralum siding was sold to the respondents (Tr. 272). After March 1960, Alcoa siding was sold to the respondents (Tr. 272). Alcoa does not issue any guarantees in writing but there is an unwritten guarantee that Alcoa will stand behind its products (Tr. 273). Snyder represented to the respondents that Alcoa was a good product and Alcoa would stand behind any reasonable complaint on its product (Tr. 273, Tr. 274). "Alcoa has never let me down." Respondents purchased all their roofing material from Jones & Brown (Tr. 275). Respondents used only "top notch quality" building materials (Tr. 275). Snyder stated that even though a customer or dealer might not have secured any certificates or warranties for products purchased by the dealer from his company the certificates and warranties would, nevertheless, extend to the customer and be honored (Tr. 276, Tr. 277). The Altex Corporation 20 year warranty related to the Duralum siding (Tr. 282). The Mastic Corporation 15 year warranty applied to insulated siding (Tr. 283). The following specimens of warranties are in evidence:

CX 4, Wind Warranty of The Rubberoid Co.
CX 5, 15 year warranty for plastic surfaced siding.
CX 5, 15 year warranty for mineral surfaced siding.
CX 7A, 7B, Alcoa Noninsulated Siding certificate.
CX 8A, 8B, Alcoa Insulated Siding certificate.
CX 9A, 9B, Altex Corporation, 20 year warranty.

Counsel stipulated that CX 29A through C show that as to General Electric Gas Furnaces, a one-year warranty is given with every General Electric Gas Furnace and the "Thermal Trap" Heat Exchanger is backed by a written ten-year warranty, and as to General Electric Oil Furnaces, a one-year warranty is given with every General Electric Oil Furnace and the "Vertifin" Heat Exchanger is backed by a written ten-year warranty.

THE ALLEGED "WAIVER" MISREPRESENTATION

30. In order for the "waiver" representation to be actionable under the Federal Trade Commission Act, complaint counsel must have proven in this record that the salesmen's representations that GECC would waive payments in the event of unemployment caused by strike (or other indicated causations) was in fact a *mis*representation, *i.e.*, that GECC would not and did not waive or extend the payments due when the borrower became unemployed on account of a strike. Twenty-two (22) witnesses testified in support of the complaint. Complaint counsel has the burden of proving, as he has alleged in his complaint, that "many" (complaint, page 3 [p. 788 herein], Paragraph Five (1)) of *respondents'* customers out of the more than 5,000 he sold, were required to make their monthly payments even though they were unemployed on account of a strike. The complaint language is imprecise, within the context of this record. Neither respondents nor Scoratow salesmen represented that failure to pay because of unemployment for any reason, would constitute grounds for waiver of payments. Neither Scoratow salesmen, respondents, nor GECC represented, or inferred, that they were including unemployment insurance as an unwritten covenant in every sales contract.

31. The gravamen of complaint counsel's "waiver" misrepresentation seems to be that respondents represented, contrary to the fact, that buyers of home improvements from them would "not be required to pay the full amount of the periodic payments due * * * when said purchasers were unemployed as a result of strikes or for various other reasons" (complaint, p. 2) [p. 788 herein], whereas "*many* were required to pay the full amount of the periodic payments * * * when they became unemployed" (complaint, p. 3) [p. 788 herein]. (Italics supplied.)

32. The examiner cannot believe that complaint counsel intended in the above language to assert that Scoratow salesmen orally represented to prospective buyers that every home improvement contract had an unwritten clause providing unemployment insurance. Such assertion would be absurd—and certainly not proven in this record. On the other hand, if complaint counsel sought in the quoted language to assert that Scoratow salesmen represented that GECC would be very liberal in granting forbearance to its borrowers who were unable, because of circumstances beyond their control, to make their regular monthly payments, then such representations were neither false, misleading, nor deceptive because GECC in fact had and practiced a liberal policy of granting relief from periodic payments to deserving borrowers who became unemployed after they had obtained installment credit from GECC.

33. Walter E. Stein of GECC testified (Tr. 762, *et seq.*) that in the early part of January 1959 there was talk of a steel strike in the Tri-State (Pennsylvania, Ohio and West Virginia) area, and GECC's previous experiences with strikes had made GECC conscious of the fact that talk of such a strike "had serious effects upon the buying power of the public." GECC was quite concerned and could feel curtailment in consumer buying (Tr. 763) and in GECC's business. For the duration of the strike GECC permitted some signers of some installment paper, which it had purchased to pay $1 per month in return for which the regular monthly payments due under the contracts would be extended or "waived" for one month. Mr. Stein testified (Tr. 764, *et seq.*):

Q. Did your company make any extensions based on your $1.00 strike plan during the steel strike, and a reasonable time thereafter?

A. Yes, sir.

Q. And if a customer would orally state to you, or state in writing, that some dealer, salesman, had informed them of this $1.00 strike plan, would you recognize that representation?

A. Definitely. As long as they were involved directly with the steel strike, or indirectly. Of course, we had many customers also who were not directly affected, or indirectly affected, by this strike. Actually, we requested these people if they had financial difficulties at that particular time to pay the normal extension charge if so granted.

Q. And what would the normal extension charge be?

A. It would be one half per cent of their unpaid balance of their account.

Q. Now, when your customers, your unemployed generally by reason of illness, or laid off, or for other good reasons, cannot make their payments, what is your policy with respect to these circumstances?

A. Well, sir, we would have to be satisfied in our judgment that these were bona fide customer problems, and certainly if they were bona fide, we recognize them and work with the customer in offering an extension, or rewriting their account to fit into their current budget.

Q. Have you, at any time, on any home improvement contract bought from the House of Marbet, given any extension of time, or adjusted monthly payments in case of need?

A. Oh yes. I would say currently, and in the past, our extensions on accounts would run somewhere around 80, 90, to 100 a month.

HEARING EXAMINER GROSS. Eighty, ninety, to one hundred per month?

The WITNESS. That is right. We have rewritten since that particular time we started into this business, the home modernization business, and we separated this from our former operations. I would say about 750 accounts that we have written due to certain consumer problems, requesting lower payments, and this economic slump we faced in the past two or three years. We have had to adjust their installments to their income.

Q. Could you give us a reasonable estimate as to about how many home improvement contracts you purchased from the House of Marbet from the time that they started to do business, say from about 1958 through April 30, 1962?

A. Well, this would be difficult to say. I have no records to refer to. Going from memory here, I would say approximately in excess of 5,000 accounts more or less.

HEARING EXAMINER GROSS. With the House of Marbet?

The WITNESS. Well, from Marbet and Company.

By Mr. GORDON:

Q. Would that be the House of Marbet and Marco Scoratow?

A. That is right.

34. Scoratow salesmen did not misrepresent when they told prospective purchasers that, under certain circumstances, the purchasers could have their monthly payments extended. The testimony of Mr. Stein is uncontradicted in the record, that GECC had given relief from the payments as contracted for, to 750 different accounts—or 80, 90 to 100 a month. It is reasonable to assume that out of the more 5,000 Scoratow contracts which it purchased, GECC would in the natural course of events have a few borrowers whose reasons for asking waiver of payments were not good reasons. Some borrowers probably took advantage of GECC's liberal waiver policy. Likewise it is also probably true that a few deserving buyers who were entitled to some temporary relief from payments did not receive such relief.

35. The evidence fails to substantiate the complaint's charge that:

Many (meaning many of the 22 witnesses who testified) of the purchasers of respondents' products were required to pay the full amount of the periodic payments due on financial obligations assumed in connection with the purchase of respondents' products when they became unemployed.

Stein's unrebutted testimony is that those whose unemployment was directly attributable to a strike, did have their monthly payments deferred, as had been represented. It is also uncontradicted in the record that GECC showed compassion for other Scoratow customers whose inability to pay was not directly related to strike caused unemployment.

36. Several of complaint counsel's witnesses had in fact been the beneficiaries of GECC's liberal forebearance or waiver policy. For instance, during a period of *54* months *Beckwith* had made only *9* payments of $59.08 (Tr. 320, 325, 330, 331). *Dye* testified (Tr. 243, lines 16 & 17): "we did get an extension." In RX 37K see GECC's offer to *Young* to "extend your account as requested." *Brown* had never had occasion to test whether the waiver was misrepresented because he had never been laid off (Tr. 124). For the *Hamett* contract see Tr. 153, 156; the *Bartlett* contract see Tr. 162–169, inclusive, and Tr. 575–577, inclusive. For the *Young* contract, Exhibits RX 35–RX 37P, both inclusive, are documents prepared at or about the dates they bear, and give an accurate picture of Young's relationship with GECC. Young's failure to perform under his agreements with GECC were treated very sympathetically by GECC.

37. The alleged "waiver" misrepresentation should be dismissed for failure of proof.

THE ALLEGED "COST" MISREPRESENTATION

The complaint asserts that Scoratow salesmen represented

> that the selling price of respondents' products and the cost of installation thereof represented the total amount of the purchaser's financial obligation;

Whereas,

> in truth and in fact, * * * purchasers of respondents' products who financed their purchase were required to pay interest and other financing charges and, therefore, the total amount of their financial obligation was substantially in excess of the selling price of respondents' products and the cost of installation thereof. Respondents' salesmen or representatives, in many instances, have obtained the signatures of purchasers on contracts, promissory notes, deeds of trust and other instruments and agreements incidental to such financing and have not apprised said purchasers of the terms and conditions of such instruments or agreements or that purchasers would be required to pay financing costs in addition to the selling price of respondents' products and the cost of the installation thereof;

38. It is not clear precisely what alleged "cost" misrepresentations, actionable under the Federal Trade Commission Act, complaint counsel seeks to enjoin in this proceeding. Implicit in the language of the complaint, quoted above, would appear to be charges: (A) that the true cost of installment financing, vis-a-vis, cash payment upon completion of a job was withheld from the buyers; (B) that Scoratow salesmen concealed from the buyers the true nature of the instruments which they were signing, *i.e.*, second mortgages on their homes—which somehow injured them; (C) that Scoratow salesmen falsely repre-

sented that it would not cost the buyers any more to pay for the home improvements in monthly installments over a period of five years than it would cost them if they paid cash upon completion of the installation. The buyers testified that he or she knew installment buying was more expensive than a cash payment. If they did not know they should have known because that fact was made clear to them by the Scoratow salesmen, and also appears on the face of the contracts which the buyers signed.

39. Complaint counsel has sought to imply that Scoratow salesmen deceived prospective purchasers by leading such purchasers to believe that the items which they were buying would not cost them as much as they actually did cost them. Complaint counsel infers that because Scoratow salesmen initially quoted a cash price, whereas, eventually all of the purchasers paid on the installment plan, Scoratow thereby misrepresented to prospective buyers the cost of the home improvements. This is *non sequitur*. Witnesses in support of the complaint testified that they did understand, and it is found that they understood, that if they paid on the installment plan they would have to pay more than if they paid cash. For instance, see Tr. 552.

40. A "six months skip" type of financing was offered by GECC to prospective buyers under which they "did not have to make any payments for the first six months of the contract." What the "six months skip" plan amounted to in net result, and what it was represented by the salesmen to the buyers to be, was that the time at which payments commenced under the contracts was postponed for six months and the loan plus interest, instead of being repaid GECC in 60 monthly installments, was repaid in 54 monthly installments.

41. The evidence proves and the examiner finds that the cost of the contracts, if paid on an installment basis, was accurately and precisely stated to the buyers on at least four separate occasions: *First*, at the time that the salesman wrote up the basic initial agreement of purchase, captioned "Engineering Contractors"; *second*, at the time that GECC mailed out to the purchaser RX 56 (Par. 27, *supra*) ; *third*, at the time GECC mailed out to the purchaser RX 55 (Par. 27, *supra*), and *fourth*, at the time that GECC mailed to the buyers their payment books. There is no substantial evidence that any of the 22 buyers listed in paragraph 20 above at any time complained to GECC that GECC was not setting forth accurately the number and amount of the monthly payments arranged with Scoratow salesmen.

42. RX 57, GECC's schedule of monthly payments was used by all Scoratow salesmen to compute the monthly payments required to finance home modernizations. It indicates that on a $1,000 unpaid bal-

ance on a contract, the purchaser would pay $23 per month for sixty months, or $1,380. The borrower paid an extra $380 to borrow $1,000 for five years, or $76 per year. However, there is no allegation in the complaint, nor was any evidence offered to prove that Scoratow or his salesmen ever attempted to or did represent that the cost of borrowing the $1,000 for five years was any less than $76 per year. United States Senate Bill 750, "The Truth in Lending Bill," designated as a "bill to assist in the promotion of economic stabilization by requiring the disclosure of finance charges in connection with extensions of credit," is presently pending before the full Senate Banking and Currency Committee, on a report by the Subcommittee. The full Committee met on April 9, 1964, but took no action on the bill. S. 750 attempts to mandate installment lenders, somehow, to alert installment borrowers more forcefully to the exact cost of installment credit. In this proceeding, however, it has not been charged, nor proven, that Scoratow salesmen ever misrepresented to a borrower the cost of installment credit.

43. Several purchasers of home improvement contracts from Scoratow borrowed enough money not only to pay for the home improvements, but also borrowed additional money to pay other outstanding financial obligations. In some instances, all of these other outstanding financial obligations were consolidated into one loan which included the installment payment price of the home modernization improvements. In those instances where other obligations were paid off by loans in addition to the home modernization loans, such other outstanding obligations may have included interest and financing charges, imposed at the time that the prior loans had been negotiated. When other unpaid installment credit obligations were financed through GECC home improvement loans, the borrowers probably paid interest on interest. In the Dye contract, CX 3, a six months skip contract, the salesman included in the cash price of $1.925, a loan of $600 which was turned over to Dye to finish 2 rooms in his house. Dye paid $1,325 for the Duralum siding, but borrowed the additional $600 to finance improvements he was going to make himself (Tr. 654). The contract provides for $1,965 to be paid upon completion of the installation. This $1,925 contract price was financed with a loan from GECC (Tr. 565). The Beckwith job in CX 13 is also a six months skip job. The cash price of $2,350 was financed (Tr. 660).

44. David Young purchased asbestos siding for $960 and borrowed an additional $800 to pay off the balance due on the mortgage on his home. This total obligation of $1,760 was financed by a GECC six months skip plan of $44.30 per month for 54 months. RX 37A to RX 37P, inclusive, a series of Young's letters to GECC and some GECC

replies, concern themselves solely with Young's inability to keep up his payments. Nowhere in these letters does Young complain about the higher cost of financing vis-a-vis the cash price, nor any failure of Scoratow to make good on any warranty. According to this series of exhibits GECC, *inter alia*, in reply to Young offered "to extend your account as requested" (see RX 37K dated Dec. 2, 1959).

45. Pages 492 and 493 of the Federal Reserve Bulletin for April 1964 gives, as of February 1964:

Consumer credit outstanding	$68, 786, 000, 000
Non-installment credit	15, 234, 000, 000
Installment credit	53, 552, 000, 000
Installment credit held by:	
Commercial banks	21, 799, 000, 000
Sales finance companies	13, 788, 000, 000
Other financial institutions	11, 867, 000, 000
Repair and modernization loans held by:	
Commercial banks	2, 316, 000, 000
Finance companies	154, 000, 000
Other financial institutions	865, 000, 000
Total	3, 335, 000, 000

The average retail credit installment purchaser, including buyers of Scoratow home improvements apparently was and is not as much interested in the total cost of the products or service they purchase as they were and are in the answer to "How much is it going to cost me each month?"

46. The purchasers of respondents' products who borrowed money from GECC to pay for them, repaid their loans from GECC in either 54 or 60 monthly installments. Such borrowers were required to pay and did pay interest and other financing charges. The total cost of home improvements paid for on an installment credit basis was "substantially" more than if such improvements had been paid for in cash at the time the improvements were installed. The purchasers understood that installment payments in 54 or 60 months were substantially more than a cash payment.

47. It was not been proven by reliable, probative and substantial evidence in this record that Scoratow salesmen ever represented to any prospective purchaser that the cash price of the home improvements, was the same as the price if the cost were financed for five years in monthly installments. Nor is there any reliable, substantial and probative evidence in this record that any of the 22 purchasers who testified in support of the complaint were led to believe, and did believe, at the time that they signed the "Engineering Contractors" form, upon the

basis of representations made to them by Scoratow salesmen, that the cash price of the home improvements and the 60 month installment payment price of the home improvements were identical.

48. Scoratow salesmen may in one or two instances—but not in *many* instances—as alleged in the complaint, have obtained the signatures of prospective purchasers to a deed of trust (a mortgage) without apprising the purchasers of the details of such instruments and agreements. The evidence preponderates in favor of a finding that the signatures to such mortgages as were executed were obtained by GECC's representatives and not by Scoratow salesmen (see witness Harris' testimony, Tr. 616: see Pagnotta's testimony, Tr. 639). GECC's interest in obtaining additional security for a few of the uncertain loans is normal, and constitutes part of every-day business procedures.

49. In every instance, at the time that the purchaser of the home improvement contract signed the basic document captioned "Engineering Contractors," a copy of the same document was left with the prospective purchaser, and some of the salesmen testified that in a few instances they told the purchasers that they would delay a few days before turning the contracts into the Marbet office, to afford the purchasers an opportunity to study the contract further and reconsider it (Tr. 672).

50. Under this "cost" charge in the complaint, counsel has failed to prove by reliable, probative and substantial evidence in this record any false, misleading and deceptive statement which is actionable under the Federal Trade Commission Act and legal interpretations thereof.

THE ALLEGED "GIFT" MISREPRESENTATION

51. Two witnesses testified in substantiation of this charge in the complaint. Lena Delpiere testified (Tr. 118) that the salesman promised her a "free swimming pool." RX 11, the Mechanic's Instruction Sheet for the Delpiere job, has the words "free swimming pool" written across the bottom. There was no attempt to deceive Mrs. Delpiere because the promise was put in writing. Nevertheless when the witness was asked whether she had ever called respondents to find out why the swimming pool had not been delivered, she replied: "I still can't say for sure. * * *" (Tr. 118). Obviously the swimming pool, undescribed in this record as to value or type, was of no substantial moment to Mrs. Delpiere.

52. Nicholas Giannaras, the other "gift" witness, testified (Tr. 177) a radio and 2 tickets to the ball game were offered to him as "a

premium or a bonus for signing the contract." He received instead "silverware and dishes." The record is silent as to whether Giannaras ever complained that the wrong bonus or premium had been delivered to him. In the absence of evidence to the contrary, we may assume that the silverware and dishes were as valuable as the radio and two tickets to the ball game, and were just as acceptable to Mr. Giannaras. Perhaps *Mrs.* Giannaras preferred the silverware and dishes to the radio and tickets to the ball game.

53. Walter E. Stern, Pittsburgh branch manager of GECC, testified that from about 1958 through April 30, 1962, GECC purchased "in excess of 5,000 accounts more or less" from respondents (Tr. 765). He further testified (Tr. 766–767):

Q. Were there any complaints from customers. to your office about not receiving any gifts that might have been promised to them by various salesmen?

A. Yes, we had some complaints.

Q. About how many would you say?

A. Oh, I would say half a dozen or so.

Q. And what did you do in those half dozen instances?

A. Well, in those particular instances, we would notify the dealer of the customers complaint, or request, and the dealer would see that they received their gift as promised.

54. The "Gift" misrepresentation set forth in Paragraphs Four and Five of the complaint that respondents promised that "purchasers would receive a gift of specified article of merchandise or other item after contracting with respondents for the purchase of respondents' products; * * * when in truth and in fact * * * *many* purchasers of respondents' products did not receive the promised gift of a specified article of merchandise or other item after contracting with respondents for the purchase of respondents' products" has not been proven by reliable, probative and substantial evidence in this record, and such charge in the complaint must be dismissed for failure of proof.

THE ALLEGED "GUARANTEE" MISREPRESENTATION

55. The complaint asserts that Scoratow salesmen represented:

That aluminum siding and other products sold by respondents were fully guaranteed for specified periods of time.

Whereas,

in truth and in fact * * * the aluminum siding and other products sold by respondents are not fully guaranteed nor do such guarantees as are offered extend for the period of time specified. Respondents' salesmen or representatives, when advising a purchaser that a product is guaranteed, do not disclose the identity of the guarantor, the nature and extent of the guarantee and the manner or the manner in which the guarantor will perform thereunder.

56. Scoratow testified at Tr. 538 as follows: Hollywood Manufacturing Company gave a twenty-year guarantee on the Vista Stone and at Tr. 539:

> Well, the identical warranty that was given to us was given to the customer. * * * Well the customer did get it, they would have gotten it from Hollywood Manufacturing Company, by one of the sales persons who was involved in the sale. * * * Well I would say that some salesmen give the guarantee, and others do not give guarantees unless they are asked for it. That would have to be a generalization. I do not know.

57. At Tr. 540 Scoratow testified that he had a complete book containing specimens of the guarantees and it was turned over to Mr. Dolan of the Federal Trade Commission. Complaint counsel was not able to produce the material that had been turned over to Dolan by Scoratow. At Tr. 542 Scoratow testified as to the guarantee on General Electric furnaces purchased from Marbet.

> * * * General Electric would give a guarantee on all of the parts, and they would give a ten-year warranty on the Heat Exchanger. Now, I would give a 20-year warranty on the Heat Exchanger and the salesmen were told to write that in the contracts, and that was given directly from me, the House of Marbet, to the customer, a 20-year guarantee on the Heat Exchanger.

Scoratow testified (Tr. 543) that he had had *one* claim by customers under the guarantee which he had offered on the Heat Exchanger. "I changed the complete Heat Exchanger without any cost whatsoever to the customer."

58. The twenty-year warranty on the Heat Exchanger which Scoratow offered applied only to the cast iron and stainless steel Heat Exchangers which were in General Electric LP–84 oil furnaces and LC oil furnaces. Scoratow had such complete confidence in the excellence of these particular Heat Exchangers that he authorized his salesmen to write the twenty-year warranty on the specification sheets (Tr. 544). The written guarantee from the General Electric Company would usually be in an envelope attached to the furnace at the time that the furnace was delivered to the customers' premises, and the guarantee would be with the furnace.

59. General Electric gave a "product warranty" (CX 19A, 19B), which was a guarantee of replacement of parts or controls. The General Electric "product warranty" was part of the pitch book which Scoratow salesmen showed to the customers.

60. The salesman Fink testified (Tr. 572) that when he made sales he had with him the general sales books put out by the companies whose products he was selling. He gave no warranties on ALCOA siding because a certificate in the back of the ALCOA book has a list of certain

things that ALCOA will do or will not do and, "of course, this is the only thing that they have in their sales book." CX 7A and 8A are siding certificates of the Aluminum Company of America for ALCOA non-insulated, and insulated siding.

The only warranties that would be made are the ones that are in the vista stone siding book, because it is a sales book. It has the pictures of homes done in vista stone, and of course as you go through the book with the customer this is the selling procedure, at the end of the book—if I am not mistaken—is the conditional warranty, and there are some points in this conditional warranty that we used for sales purposes. I mean, they were very good points. I think it is a 20-year warranty, conditional warranty. (Tr. 573–574.)

61. Fink testified that some of his customers would look at the warranty and other customers were not interested in it. If a customer were interested in a warranty Fink disclosed the warranty to the customer as it was printed on the certificate and in the sales pitch book. Fink testified that in his experience as a salesman of home improvements for approximately ten years he had very few requests for warranties where the manufacturers of the products sold were well known, such as ALCOA siding, Rubberoid roofing and General Electric furnaces (Tr. 578). Fink always carried pitch books with him and these were the books he followed in making his sales presentations (Tr. 586). He did not make it a point to see to it that the customer always received a warranty, unless the customer asked for it (Tr. 587).

62. Bernard Harris testified that he always tried to follow the pitch books in making a sales presentation to the customer (Tr. 617–618).

63. Paul Standley testified (Tr. 658) in connection with the *Dye* contract that the salesman had a pitch book which had a specimen of the warranty of the company whose products were being sold. Although he did not read the warranty to prospective buyers, he showed the warranty to the customer while he was writing the contract. If the customer wanted to read the warranty "it was right there on the table" for them to read. "I never gave any warranty other than the manufacturers' warranty." In connection with his sale of the Beckwith *contract* (CX 13) for asbestos siding (cash price $2350), Stanley recalled that the asbestos siding had a warranty issued by the manufacturer of the siding. This warranty was exhibited by him to Beckwith (Tr. 660–661). He wrote a six months skip financing contract for Beckwith. In connection with the *Young* contract (CX 11) (cash price $1,760), Standley wrote a six months skip installment financing plan. He told Young there was a fifteen-year warranty on some asbestos siding. The manufacturers' warranty which was in

Stanley's sales pitch book was shown to Young in the same manner the warranties were exhibited to Beckwith. It appeared that the fifteen-year warranty of the asbestos siding is what the manufacturer gives. Standley did not deliver copies of the warranties to his customers personally but he was "under the impression that either the manufacturers, or the House of Marbet would send it to them. That was my impression." (Tr. 671.)

63. Stein of GECC testified (Tr. 767):

> I could only think of actually one complaint that is outstanding in my mind as far as warranties, and that would be one customer requested a 99 year guarantee on their aluminum siding. That is the main reason I remember that request. It seemed quite ridiculous.

64. Complaint counsel has failed to prove by a preponderance of reliable, probative and substantial evidence, in this record, that "respondents' salesmen * * * when advising a purchaser that a product is guaranteed, do [did] not disclose the identity of the guarantor, the nature and extent of the guarantee and the manner or the manner in which the guarantor will perform thereunder."

65. Stein of GECC testified (Tr. 767, 768):

> Q. What were the nature of most of the complaints, if any, that you received on these home improvement jobs for the dealer House of Marbet in this case?
>
> A. Well, the nature of the majority of the complaints would be that of storm doors not closing properly. These are more or less in the adjustment area.
>
> Naturally, it has been our experience and financing this type of business, you are performing many jobs that are being sold to the customer, there are going to be adjustments after this job is completed. We looked at them and treated them as complaints, so they would naturally be taken care of immediately. There were aluminum storm doors that needed adjusting, gutters and downspouts that worked loose, storms, heavy ice in the winter time would melt and come down and maybe rip them loose. There were corners on aluminum siding through the expansion and contraction of the metal through the summer time, it would pop the corners. These were all minor things. Certainly the customer is entitled to this service, and we notified the dealer, and he corrected them.

66. Mervin Snyder of Jones and Brown, Inc., a Commission witness, *inter alia*, testified that respondents used only "top notch quality" building materials; and that even though a customer might not have secured from the Scoratow salesmen a certificate of warranty for products sold by respondents, nevertheless, the manufacturers of the products would honor the warranty, even though a specimen copy thereof had not been delivered to the ultimate consumer (p. 34 [pp. 816, 817 herein], *supra*). Scoratow was selling prime quality merchandise of firms of nationally good reputations, who would back up their merchandise, if necessary. Stein's testimony concerning the absence of claims based upon the warranties further substantiates this finding.

67. Complaint counsel produced only *22* witnesses to testify in support of at least four different categories of complaints. Respondents sold more than *5,000* home improvement contracts. The testimony of complaint counsel's 22 witnesses weighed against the entire record is *de minimis*. It also fails to prove the charges in the complaint.

68. No inferences have been drawn from complaint counsel's allusion to the involvement of two Scoratow salesmen in the Federal Housing Administration's so-called "PM" list. Guilt "by association," or "listing" is certainly foreign to this field of trade regulation law, and contrary to the entire system of jurisprudence under which these proceedings are conducted. Had complaint counsel desired to produce a witness from FHA to testify as to the salesmen's lack of credibility, he had ample opportunity to do so. He was invited by the hearing examiner to do so (Tr. 557). A second series of hearings which were tentatively set by the hearing examiner were canceled by agreement of all counsel.

69. It appears that Scoratow's first name is "Morris" instead of "Marco." (Tr. 17.) Wherever the first name "Marco" is used to refer to Scoratow instead of "Morris," it is found that it refers to Morris Scoratow; "Marco" Scoratow and "Morris" Scoratow are the same person.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction over the parties to and the subject matter of this proceeding. This proceeding is in the public interest.

2. Counsel supporting the complaint has failed to prove by reliable, probative and substantial evidence the violations of the Federal Trade Commission Act charged against respondents in the complaint issued in this proceeding.

It is, therefore,

ORDERED

that the complaint be and it hereby is dismissed.

Decision of the Commission

This matter has been heard by the Commission upon the appeal of counsel supporting the complaint from the hearing examiner's initial decision holding that the allegations of the complaint had not been sustained and ordering that the complaint be dismissed. The Commission has considered the entire record, including the briefs and oral argument of counsel, and has determined that the initial decision is

appropriate in all respects to dispose of this proceeding and that the appeal of counsel supporting the complaint should be denied.

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

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

IN THE MATTER OF

SCOTT MITCHELL HOUSE, INC., ET AL.

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

Docket 8591. Complaint, Aug. 22, 1963—Decision, Sept. 24, 1964

Order dismissing for failure of proof, complaint charging Yonkers, N.Y., distributors of various articles of merchandise with representing falsely, in promotional materials including newspaper and magazine advertising, that light bulbs and grinding mills were unconditionally guaranteed for stated periods, that the "Magi-Carver" electric knife had a substantially superior performance to the conventional carving knife, and that the Robinia Tree was suitable for shade and ornamental purposes.

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 Scott Mitchell House, Inc., a corporation, and Juanita Linet, individually and as an officer of said corporation, and David Wittels, individually and as General Manager of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Scott Mitchell House, 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 415 South Broadway, in the city of Yonkers, State of New York.

Respondent Juanita Linet is an officer of the corporate respondent and Respondent David Wittels is general manager of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices here-