IN THE MATTER OF

PIONEERS, INC., ET AL.

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

Docket 6190. Complaint, Mar. 11, 1954—Decision, May 16, 1956

Order dismissing, on the ground that the allegations were unsustained by the greater weight of the evidence, complaint charging a manufacturer in Oakland, Calif., with making false representations in advertising concerning the properties of its "Battery AD-X2" battery additive designed to be used in lead-acid storage batteries.

Mr. R. P. Bellinger and *Mr. William M. King* for the Commission.
Ellis, Houghton & Ellis and *Mr. Wilbur N. Baughman*, of Washington, D. C., for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

1. This proceeding involves a product known as "Battery AD-X2," an additive designed for use in lead-acid storage batteries. The Commission's complaint, issued March 11, 1954, charges respondents with the making of numerous misrepresentations in the advertising of their product, including statements that a condition known as "sulfation" is the direct or indirect cause of most battery failures, that the product beneficially affects this condition and reduces the harmful effects thereof, and that as a result batteries function better and last longer, operating with less heat, less water loss, cleaner plates, less shedding of active material from the plates, less danger of buckled plates, etc., and that through the use of the product batteries which have failed because of sulfation can be restored to useful service. After the filing of respondents' answer, challenging all of the material allegations of the complaint and denying any misrepresentation of the product, numerous hearings were held and much testimony and other evidence received, both in support of and in opposition to the complaint. The case was then argued orally before the hearing examiner, and is now before him for final consideration and decision.

2. While respondents challenge the interpretation placed upon their advertising by the complaint, insisting that the quoted excerpts from the advertisements are taken out of context and misconstrued, the examiner is of the view that the construction placed upon the advertising by the complaint is substantially correct provided two things are constantly kept in mind. The first of these is that all of respondents' claims for their product are conditioned upon the

product's being used according to their directions, and the second, that respondents emphasize that the product is for use only in batteries which are mechanically sound, no claim being made that the product will be of any benefit to batteries not in such condition.

3. At the heart of the proceeding is this matter of sulfation. This is so because all of respondents' claims for their product are based upon the asserted effects of the product on sulfation and on conditions allegedly resulting from sulfation. The first two questions which must be answered are: first, what is sulfation; and second, to what extent is sulfation a cause of failure of lead-acid storage batteries, that is, is it a major or minor cause of battery failure?

4. First, what is sulfation? In order to answer this question it is necessary that consideration be given briefly to the component parts and the principle of operation of a lead-acid storage battery. Such a battery may consist of one or any number of cells. Essentially, each cell is composed of a positive plate and a negative plate. The positive plate contains lead peroxide and the negative plate sponge lead. These materials are known as the "active materials" of the battery. However, these materials cannot function—become active—unless they are accompanied by a third element. This third element is the electrolyte, which is a solution of sulfuric acid and water. When a cell is on discharge, as, for example, when the lights on the automobile containing the battery are switched on, the sulfuric acid acts on the active materials on both the positive and negative plates and the result is a new compound known as lead sulfate. It is this lead sulfate which supplies or releases the electrical energy of the battery.

5. Thus the "sulfating" of a lead-acid battery, that is, the formation of lead sulfate, is an essential and normal process in the battery without which it would not work. But this is not the end of the matter. The active materials, when placed on the plates, are in the form of rather soft, spongy, porous substances. However, as the battery begins to age, these materials tend to become hard, crystalline and brittle. This tendency may be accelerated by certain external causes, such as overcharging or undercharging of the battery, excessive heat, etc. It is this hardening process which is known as sulfation. Or as stated in the complaint, "The word 'sulfation' is a colloquial name for the formation of hardened lead sulfate in a cell."

6. Next, to what extent, that is, how frequently, is sulfation the cause of battery failure? There is no doubt that it is one of the causes. To quote again from the complaint, "It [sulfation] is one of the causes of battery failure, especially in decreasing battery efficiency." While Dr. Walter J. Hamer, Chief of the Electro-chemistry Section of the National Bureau of Standards, expressed the opinion (not without

support from other witnesses) that relatively few battery failures are due to sulfation, this view is opposed to the great weight of the evidence. It is impossible upon the present record to fix percentages as to the various causes of battery failure, but it appears certain that sulfation, if not the major cause, is at least one of the major causes. Some of the harmful effects of sulfation which cause or may cause battery failure are loss of active material from the plates, excessive heat, greater water loss, buckled plates, decreased porosity of the material on the plates, and formation of sediment or "mud" in the bottom of the cells, with possible short-circuiting of the battery.

7. The principal ingredients in respondents' product are magnesium sulfate and sodium sulfate. Small quantities of magnesium oxide and barium sulfate are also present. In addition, chemical analyses of the product reveal the presence of a number of "trace" elements, that is, elements present in extremely small or minute quantities.

8. Respondents' place of business is located in Oakland, California. Their product was first placed on the market in 1947. It was the result of the joint efforts of respondent Jess M. Ritchie and Dr. Merle Randall (now deceased), who at that time was, or shortly prior thereto had been, a Professor of Chemistry in the University of California. It appears that these individuals, or one of them, had purchased rights to a battery additive from a third party, but the product proved unsatisfactory and was discarded. After extensive experimentation the present product was produced and placed on the market. It was originally called "Protecto-Charge," the name being subsequently changed to "Battery AD-X2." Some 500,000 packages (treatments) of the product have been sold, the great bulk of the sales being to industrial users, that is, industrial plants, including battery shops. Very few sales are made direct to the general public. One package (containing three envelopes of the product) is regarded as sufficient for the ordinary three-cell automotive battery. The directions for use appearing on the package are:

1. Clean top of battery and posts.
2. Cover plates with water.
3. Empty one envelope to each cell.
4. Dissolve AD-X2 on top of plates with battery syringe.
5. IMMEDIATELY start motor and charge for 30 minutes, to blend AD-X2 with battery acid as sulfation preventative.
6. Fully charge at not more than 10 amps, when charger is used.

9. There is no contention on behalf of the Commission that the product does any harm to a battery. The question is whether the product is neutral (without any significant effect) or whether it does in fact have the beneficial effects claimed by respondents. The most

important issue raised by the complaint is whether use of the product will cause a battery to last longer, and this issue would appear to be closely related to the other issues raised by the complaint. If the product does in fact cause a battery to operate better, that is, with less sulfation, less loss of active materials, less heat, less water loss, less sediment, etc., it would seem to follow that the use of the product lengthens the life of the battery. And, conversely, if the use of the product causes a battery to last longer, it would seem reasonable to conclude that the battery is operating better and with less handicap due to sulfation and its effects. The evidence as to the effect or lack of effect of the product falls into two general categories—scientific evidence, and the testimony of users of the product.

SCIENTIFIC EVIDENCE IN SUPPORT OF COMPLAINT

10. The strongest evidence in support of the complaint comprises certain laboratory tests of the product made by the National Bureau of Standards. These tests were begun in March, 1952 and continued at intervals for approximately one year. There were ten tests, five of them being designated "electrical tests" and five "physical chemistry tests." At various times both used batteries and new batteries were employed in the tests. Where necessary throughout the tests, adequate "controls" appear to have been maintained, that is, batteries not treated with respondents' product were used along with batteries treated with the product, so that any differences in behavior in the two groups of batteries could be observed. The tests covered a wide range, including tests to determine the effect of respondents' product on sulfation, battery life, storability of batteries, temperature, water loss, capacity, sediment, charge and discharge, solubility of lead sulfate in battery electrolyte, etc. The conclusion drawn by the Bureau of Standards from the results of the tests was that respondents' product is without merit, that it has no beneficial effect, certainly no significant beneficial effect, on lead-acid batteries.

11. Dr. Hamer, basing his testimony upon the results of the tests and also upon his general knowledge in the field, testified that in his opinion the product was incapable of producing the effects claimed for it by respondents.

12. While it is possible to find some flaws and imperfections in the testing procedure, they are of a minor nature and do not operate to invalidate the tests. On the whole, the tests appear to have been well designed and properly conducted. There is, however, as will be seen later, a serious question as to whether conditions existing in the day to day operation of automotive batteries in the field can be duplicated

sufficiently in the laboratory to make laboratory tests conclusive as to actual field operation.

13. Respondents' attacks upon the fairness and objectivity of the Bureau of Standards are rejected as without foundation. No good reason appears for questioning the good faith or the scientific integrity of any of the personnel of the Bureau who were connected with the tests, practically all of whom appeared as witnesses in the present proceeding.

14. A test of the product was also made by Dr. Reginald S. Dean, who operates a private research and testing laboratory in Riverdale, Maryland, under the name Chicago Development Corporation. Dr. Dean is a consulting engineer, holds the degree of Ph.D. in physical chemistry, and has had wide experience in the field of electrochemistry and electro-metallurgy. He has seen service in both Government work (Bureau of Mines) and in private industry. The test in question was made by Dr. Dean for Consumers Research, Inc. While it appears that a prior test of the product had been made by him at the instance of respondents, the results of this test are not in evidence. There is direct conflict between the testimony of respondent Ritchie and that of Dr. Dean as to whether the results of the former test were favorable or unfavorable to the product.

15. The Consumers Research test took place during the period August 7 to September 20, 1953. Sixteen cells from discarded automotive batteries were selected and arranged in comparable pairs as nearly as possible. Eight of the cells, one in each pair, were treated with respondents' product, the remaining eight being left untreated for use as controls. However, it was found that two of the latter group were defective and these two were discarded. This left only six cells for control purposes, and it was therefore necessary that two of the control cells be doubly paired—that is, that each be used as a control for two treated cells. All of the fourteen cells were sulfated to some extent, but no estimate of the degree of sulfation was attempted. During the test period all of the cells were uniformly subjected to varying rates of charge and discharge and the behavior of the cells noted. At intervals measurements were taken as to specific gravity, temperature, and other factors. The conclusion reached by Dr. Dean was that there was no significant difference between the behavior of the treated cells and that of the untreated. Basing his answers upon both the test and his general knowledge, he testified in substance that in his opinion respondents' product was without merit.

16. Another test of respondents' product was made by William H. Hand, who operates a private research and testing laboratory in Nyack, New York. Mr. Hand is a chemist and physicist and holds a

B.S. degree. He has at times acted as a consultant to battery manufacturers, and he also manufactures batteries which bear his own name. Mr. Hand testified that around 1949 or 1950 respondent Ritchie, in company with another person, came to his place of business in Nyack; that Mr. Ritchie gave him a circular advertising the product AD-X2 and also left with him four packages of the product; that while Ritchie was there he (Ritchie) selected a used battery from a number in the laboratory and demonstrated with this battery how the product should be applied.

17. Hand further testified that some four years later, in March 1954, he received an inquiry about the product from one of his customers and he decided to make a test of the product, using the packages of the material which Ritchie had previously left with him. For the test he selected three new three-cell batteries which had been made in his own shop and which were in as nearly perfect condition as possible. Through a process of charging the batteries and then permitting them to remain idle, a substantial amount of sulfation was purposely built up in them. Two cells in each of the batteries were then treated with the product in accordance with the oral directions which he said had been given him by Ritchie, the third cell being left untreated as a control. At intervals during the test period of approximately two months, the batteries were subjected to charge and discharge and the behavior of the several cells noted. Observing no difference between the behavior of the treated cells and the untreated, Mr. Hand concluded that the product was "neutral," that is, that it neither helped nor harmed the batteries.

18. One aspect of Hand's testimony on which there is sharp controversy is his identification of respondent Ritchie, both in his original testimony and when recalled in rebuttal, as the person who visited his laboratory in 1949 or 1950 and left the advertising circular and the packages of the product. Ritchie in his own testimony denied that he had ever been in Nyack, that he had ever seen Hand prior to Hand's appearance as a witness, and that he had ever given Hand any packages or any advertisement of the product. Ritchie further testified that for a period of several years, which included the period of time referred to by Hand, he (Ritchie) was not out of the States of California, Arizona and Nevada. This latter statement is corroborated by the testimony of Mrs. Jess M. Ritchie and by that of William M. Hager, a former business associate of Ritchie's in Pioneers, Inc.

19. The examiner finds it unnecessary to decide this issue, which may present only a question of accuracy of memory rather than a question of veracity. The important matter here is whether in con-

ducting his test Hand used the product AD-X2 or some other product, not whether the material was obtained from Ritchie or from some other source. There appears to be no adequate reason to doubt that the material used was AD-X2. If the material was obtained from Ritchie it would have been about four years old at the time it was used in the test, as the alleged meeting of Hand and Ritchie took place in 1949 or 1950 and the test was not conducted until 1954. Whether the lapse of such a period of time would affect the product does not appear to be disclosed by the record.

20. At the instance of respondents, tests of their product were also made by Dr. T. P. Dirkse, Professor of Chemistry in Calvin College, Grand Rapids, Michigan. Dr. Dirkse holds the degrees of A.B., A.M., and Ph.D., his graduate work having been done in general and physical chemistry. He has been at Calvin College continuously since 1947. The tests in question were begun in May 1951. There were three tests in which a total of twenty-three batteries were used. In the first test there were nine batteries, of which five were treated with AD-X2, the remaining four being left untreated as controls. In the second test ten batteries were used, divided equally as between treated and untreated. The third test included four batteries, two treated and two untreated. All of the batteries were used batteries and some of them were supplied by respondents and by their local distributor in Grand Rapids.

21. In the several tests the batteries were subjected to charge and discharge and their behavior noted. Dr. Dirkse observed no appreciable difference in the behavior of the treated batteries as compared with the untreated, and he was therefore of the opinion that the product was neutral, neither beneficial nor harmful. He recognized, however, that the tests probably were not extensive enough to be conclusive. It appears to have been contemplated that in the test only one cycle of charge and discharge would be used, although Dr. Dirkse did on his own responsibility subject some of the batteries to additional cycles. His statement on this point was as follows:

> I suggested as I recall to Mr. Ritchie in a letter, that probably it would be better to engage in a longer term test. See, the tests I carried out for him involved charging and discharging. That is what we call one cycle and I detected no difference on the batteries that I had between treated and untreated. In a few cases I ran a few more cycles and still detected no difference, but in no case did we run, you might say, the battery very far along. So, I felt that it might have been well to institute a series of tests whereby a longer range study of the effect of Ad-X2 on battery operation, battery characteristics, amount of servicing the battery would require and so on and so on, might be helpful and might show up these differences that were claimed, but I had not been able to detect. (Tr. 3275)

SCIENTIFIC EVIDENCE ON BEHALF OF RESPONDENTS

22. At the request of the United States Senate's Select Committee on Small Business, tests of respondents' product were made by the Massachusetts Institute of Technology, Boston, Massachusetts. These tests, made during the latter part of 1952, were conducted by Professor Harold C. Weber, Professor of Chemical Engineering in the Institute, who appeared as a witness in the present proceeding. In its report to the Committee the Institute summarized the results of the tests as follows:

(a) Among the cells in any chosen battery, all cells in such battery having been subjected to the same previous history, except for treatment with AD-X2, treated cells showed larger capacities than did untreated cells, both being subjected to the same conditions of discharge.

(b) When AD-X2 was added to cells containing sediment, the amount of sediment decreased both while the battery was on charge and when it was not on charge.

(c) Cells treated with AD-X2 when on charge presented a markedly different appearance from those on charge without treatment. The gas evolved in the treated cells was in the form of minute bubbles, while that evolved in the untreated cells was in bubbles estimated to be 4 to 10 times as large as those evolved in the treated. The liquid surface in the treated cells presented a different appearance from that in the untreated cells.

(d) The surface of a negative plate in a treated cell was distinctly softer than the surface of a similar plate in an untreated cell, both having been subjected to the same charge conditions. Often, softening was first evident near the edges of the negative plate.

(e) Under similar charge conditions, treated cells lost less liquid than untreated cells.

(f) Under identical conditions of charge, treated cells operated 2 to 5 degrees Fahrenheit cooler than did untreated cells.

(g) During charge, and starting with discharged cells, treated cells gave higher hydrometric readings than did untreated cells, the differences being greater than could be explained on the basis of the treating material added.

(h) When AD-X2 was added to a cell containing a diluted electrolyte, as in a discharged cell, the conductivity of the electrolyte increased. (Resp. Ex. 39, p. 2)

23. Under the heading "Limitations of Laboratory Results" the report contained the following:

The difficulty of duplicating in the laboratory results obtained in the field is well recognized in engineering work. The laboratory evaluation of a material such as AD-X2 is further complicated by the great variation in the samples subjected to test, even though every effort be made to so select test units as to minimize such variation. Usually, an evaluation of how a product will act under field conditions can be obtained only after extensive laboratory experimentation. Even after such experimentation, it is common practice in engineering work to subject products to field tests. How a given innovation will perform under use conditions is the true test of its worth. For this reason, laboratory findings must be supplemented by field use data if a true evaluation is to be obtained. (Resp. Ex. 39, p. 10.)

24. Professor James A. Beattie, Professor of Physical Chemistry in the Institute, also testified. Professor Beattie had observed the tests made by Professor Weber and had also made personally some experimental studies of the effect of respondents' product on lead-acid batteries. His views were summarized as follows in a letter addressed to Professor Weber:

In conclusion, I would say that the addition of AD-X2 certainly does have an effect on the behavior of a lead acid battery. From my brief contact with the work, I cannot say that this effect is correlated with a beneficial action from the standpoint of the normal use of such a battery. I feel that the latter can be determined only after the examination and statistical evaluation of extensive field tests. (Resp. Ex. 39, p. 25.)

25. The soundness of the Institute's conclusions from a statistical viewpoint is attested by two other members of the faculty of the Institute—Professor G. P. Wadsworth and Dr. J. G. Bryan, both of whom testified in the proceeding.

26. The views of the Institute as to the duplication of field conditions in the laboratory, and as to the necessity for field tests in evaluating respondents' product, apparently are not shared by the scientific witnesses introduced in support of the complaint. The view of the Commission's experts appears to be that laboratory tests, properly conducted, can duplicate field conditions sufficiently to make such tests reasonably accurate as to results which would be obtained in the field and, specifically as to respondents' product, that there is no necessity of conducting field tests in order to determine the merit of the product.

27. On the other hand, tending to support the Institute's view is a statement in the "Battery Service Manual," official publication of the Association of American Battery Manufacturers, that "It is not possible to duplicate car service conditions in the laboratory * * *." (Resp. Ex. 62, p. 11.)

28. A fair appraisal of the Institute's tests would appear to be that, while the tests do not purport to determine the commercial utility of respondents' product, they do indicate definitely that in the laboratory the product is capable of affecting a battery beneficially and to a significant degree. This is in sharp contrast to the Commission's scientific evidence, which is to the effect that the product is neutral, incapable of any significant effect.

29. At the instance of respondents, tests of their product were also made by the United States Testing Company, Inc., of Hoboken, New Jersey, a commercial testing laboratory which has been in business some seventy-five years. The tests were made under the supervision of one of the company's engineers, Mr. A. S. Mindes, who holds a Bachelor of Science degree in electrical engineering from New York

University. The tests included tests made both in Baltimore, Maryland, and in the company's laboratories in Hoboken. The Baltimore tests were begun on October 5, 1951, and concluded three days later, on October 8, 1951. These tests, which were made at the place of business of respondents' Baltimore distributor, consisted essentially of tests on eighteen new "shelf-sulfated" batteries, that is, batteries which although unused had through age developed a substantial amount of sulfation.

30. The eighteen batteries were divided into two comparable groups of nine each, those in one group being treated with respondents' product and those in the other group being left untreated. All batteries in both groups were then charged for twenty hours, after which some of the batteries from each group were measured for specific gravity and cell voltage and then subjected to cranking tests, that is, they were tested to ascertain how long they would crank an automobile motor before becoming discharged. While recognizing that the Baltimore tests were not extensive enough to warrant definite conclusions as to the merits of respondents' product, the company did feel that the results of the tests indicated that the addition of the product to mechanically sound sulfated batteries serves to increase their charging and discharging efficiency, and to cause them to operate at slightly lower temperatures during charging.

31. The tests of the product made by the company in its laboratories in Hoboken were made during the latter part of 1952, and were much more extensive than the Baltimore tests. In these later tests three groups of batteries were used, two of the groups comprising ten batteries each and the third group twelve batteries. The twelve battery group and one of the ten battery groups were made up of discarded sulfated batteries. The other group of ten was made up of new batteries. One-half of the batteries in each group were treated with respondents' product, the remaining half being left untreated. After subjecting the batteries to various tests, all batteries in each group being subjected to the same testing procedure, and after visual inspection of the batteries, the company concluded that the use of respondents' product results in substantial benefit to lead acid batteries, the conclusions being summarized as follows:

> The use of Battery AD-X2 as an additive is effective, because it increases the charging and discharging efficiency, reduces the internal operating temperatures, does not harm lead acid batteries, and reduces shedding of active material. (Resp. Ex. 55, page 1.)

32. Testimony on behalf of respondents was also given by Professor S. E. S. El Wakkad, who is Professor of Physical and Inorganic Chemistry in Cairo University, Cairo, Egypt, from which institution

he holds a Ph.D. degree. He is presently a research fellow in the University of Pennsylvania and is also consultant to the Electric Storage Battery Company, of Philadelphia, makers of the Exide battery. Professor El Wakkad testified that sulfation is a well recognized cause of battery failure, that among its other harmful effects sulfation increases the resistance of a battery to charging and increases the "gassing" of the electrolyte, which in turn causes peeling or shedding of the active materials from the plates. He concurred in the view of the Massachusetts Institute of Technology as to the difficulty of reproducing field conditions in the laboratory. It will be recalled that respondents' product contains a number of trace elements, and Professor El Wakkad testified that the presence of trace elements can materially affect electro-chemical processes; that mixtures of magnesium sulfate and sodium sulfate aid in the reconversion of lead sulfate to lead and lead peroxide, and that this action may be due to the presence of trace elements in the compounds.

33. Finally, there was testimony on behalf of respondents by Dr. Bryan E. Conway, Assistant Professor of Chemistry in the University of Pennsylvania. Dr. Conway holds a number of academic degrees, including a Ph.D. degree from London University, and has done extensive research and lecture work both in London and in the United States. He has been particularly interested in the subject of the effects of trace elements on electro-chemical processes. He concurred in Professor El Wakkad's view that the presence of trace elements may materially affect such processes, and that compounds of magnesium sulfate and sodium sulfate may assist the reconversion of lead sulfate to lead and lead peroxide.

USER TESTIMONY IN SUPPORT OF COMPLAINT

34. Eleven persons who had used respondents' product testified in support of the complaint. The witnesses were:

(*a*) A motorcycle dealer and repairman in New York City who had used the product in several motorcycle batteries, the batteries being from two to three years old.

(*b*) The master mechanic of the Fire Department of West Hartford, Connecticut, who used the additive in two batteries, one two years old, the other sixteen months old.

(*c*) A battery shop operator in Boston, Massachusetts, who treated three batteries with the product.

(*d*) The garage supervisor of the Railway Express Agency in Boston, who used the product in twenty batteries, ten of them being new batteries and ten used batteries.

(*e*) A chemist in the employ of the Bell Telephone Company in Allentown, Pennsylvania, who used the additive in one new battery in his own automobile.

(*f*) An automobile dealer and garage operator in Berlin, Pennsylvania, who treated eight used, sulfated batteries with the product.

(*g*) A battery shop operator in Pittsburgh, Pennsylvania, who used the product in ten or twelve batteries.

(*h*) A foreman in a plumbing equipment plant in Cleveland, Ohio, who purchased one package of the product, kept it some ten months, and then used it to treat the battery in his own car.

(*i*) The maintenance superintendent of a glass manufacturing plant in Indianapolis, Indiana, who used the additive in one battery.

(*j*) A battery shop operator in Detroit, Michigan, who treated three batteries with the product.

(*k*) A battery man for a large trucking company in Chicago, Illinois, who used the additive in one battery.

35. The testimony of these witnesses in substance was that they had observed no benefit from the use of the product, certainly no significant benefit. It appears, however, that in at least three of the eleven instances respondents' directions for use of the product were not followed, particularly as to the amount used in certain large-type batteries. In a fourth instance, the testimony is weakened materially by reason of the fact that the witness claimed that the additive had seriously damaged the battery. There is no suggestion in any of the scientific evidence, either for the Commission or for respondents, that the product is capable of such result. In a fifth instance, the witness, subsequent to his testimony, placed a new order for a substantial amount of the additive, apparently being in doubt as to the adequacy of his former test of the product.

USER TESTIMONY ON BEHALF OF RESPONDENTS

36. Some forty-five users of the product testified on behalf of respondents. The witnesses were:

(*a*) The chief electrical engineer of Gillette Safety Razor Company, Boston, Massachusetts.

(*b*) The plant superintendent of United-Carr Fastener Corporation, Boston, manufacturers of metal fasteners.

(*c*) The experimental and development engineer of Market-Forge Company, Boston, manufacturers of heavy industrial electric trucks and hotel and hospital equipment.

(*d*) The operations supervisor of Lever Brothers Soap Company, Boston.

(*e*) The electrical engineer of Quincy Market Cold Storage and Warehouse Company, Boston.

(*f*) The operating engineer of the Watertown, Massachusetts, plant of the same company.

(*g*) The plant engineer of the Walter Baker Chocolate Division of General Foods Corporation, Boston.

(*h*) A battery repairman in the employ of Atlantic Battery Company, Boston, manufacturers of batteries.

(*i*) The foreman of transportation at the Naval Air Station, Quonset Point, Rhode Island.

(*j*) The shop foreman of the Electric Lines and Lights Department of the City of Somerville, Massachusetts.

(*k*) The chief electrician of the Boston Army Base.

(*l*) The fleet superintendent of Capital Motor Transportation Company, Boston.

(*m*) The plant engineer of Reed & Barton Corporation, silversmiths, Taunton, Massachusetts.

(*n*) An electrician in the Hyde Park, Massachusetts, plant of Westinghouse Electric Company.

(*o*) The chief electrician of a paper manufacturing plant, Boston.

(*p*) The public buildings superintendent, United States Public Health Service Hospital, Brooklyn, New York.

(*q*) A wholesale and retail dealer in spare automobile parts, including batteries, Washington, D. C.

(*r*) A battery shop operator in Arlington, Virginia.

(*s*) The maintenance superintendent of the Wichita Transportation Corporation, operator of the public transportation system in Wichita, Kansas.

(*t*) The batteryman for the same company.

(*u*) The master mechanic of a large construction company, Oakland, California.

(*v*) The engineer in charge, Radio Division, Electrical Department of the City of Oakland.

(*w*) A batteryman who has worked in battery shops in several Navy installations.

(*x*) A witness who is in charge of the rebuilding of used equipment for a tractor and equipment corporation in California.

(*y*) The chief of the Planning Section of the United States Army Transportation Corps in the San Francisco area, the witness having formerly been Port Engineer for the San Francisco Port of Embarkation and also maintenance engineer for several large industrial and shipping companies.

(*z*) The electrical engineer for the Port of Oakland, California.

(*aa*) A service station and battery shop operator in Oakland.

(*bb*) The electrician for Cutter Laboratories, Berkeley, California.

(*cc*) A witness who has served as master mechanic for several construction and transportation companies in California.

(*dd*) The general manager of the bus lines in the City of Vallejo, California.

(*ee*) The maintenance superintendent of the same company.

(*ff*) The foreman of the battery shop in the Benicia, California, Arsenal of the United States Army.

(*gg*) The maintenance superintendent of a cement manufacturing plant in Permanente, California.

(*hh*) A general contractor in Crockett, California.

(*ii*) A businessman in Crockett, California, who is a sponsor of the Sea Scouts, a branch of the Boy Scouts of America, and who testified as to the use of respondents' product in batteries of several boats belonging to the organization.

(*jj* and *kk*) Two employees of a shipyards company in San Francisco who testified as to the use of respondents' product in batteries in a number of ships and automobiles.

(*ll*) The chief engineer of a large plywood manufacturing plant in Eureka, California.

(*mm*) A witness who formerly operated a battery shop in San Francisco and who had also had wide experience with batteries in the United States Army.

(*nn*) A paving contractor in Washington, Pennsylvania.

(*oo*) A manufacturer of storage batteries in Cleveland, Ohio.

(*pp*) A contractor in Indianapolis, Indiana.

(*qq*) A battery shop operator in Detroit, Michigan.

(*rr*) A building contractor in Grand Rapids, Michigan, who formerly operated a battery shop.

(*ss*) A teacher of automotive mechanics in a high school in Chicago, Illinois, who is also technical editor of two battery trade publications and who has made numerous tests of respondents' product in the high school workshop.

37. The testimony of these witnesses in substance was that they had made extensive use of respondents' product in their respective plants and motor vehicles, and that they had observed definite and substantial benefits resulting from its use; that the product caused their batteries to last longer, take a charge better, operate more efficiently, with less sulfation, less heat, less water loss, less "gassing" of the electrolyte, less shedding of active materials from the plates, etc. There was substantial testimony to the effect that through the use of the additive battery costs had been materially reduced. Numerous

instances were cited by the witnesses in which batteries which apparently had lost their usefulness and were about to be discarded were, through the use of the additive, reclaimed and restored to active service. Nor was the testimony of the witnesses limited to automotive batteries. Some of the strongest testimony was in regard to large stationary batteries and batteries used in "fork-lift" or industrial trucks, that is, trucks used inside industrial plants for moving and stacking materials and commodities. Both of these types of batteries are frequently very expensive, costing up into the hundreds or even thousands of dollars.

38. In addition to this testimony, there was testimony from some five of respondents' distributors in various areas as to favorable results observed by them from the use of the product, the testimony of the distributor in the Boston area being particularly impressive, despite his obvious and frankly acknowledged interest in the proceeding.

39. There was also extended testimony from William M. Hager (already referred to), formerly Executive Vice-President of the corporate respondent, and from respondent Jess M. Ritchie. Mr. Hager is a graduate of the engineering school of Princeton University and has had wide experience in engineering and construction work, including the operation and maintenance of lead-acid batteries. There is no doubt that from a practical viewpoint Mr. Ritchie is also an expert on lead-acid batteries. Both of these witnesses testified as to many tests made of their product in their place of business in which favorable results had been obtained, and also as to numerous instances in which they had treated batteries with the product for customers and obtained substantial and beneficial results.

CONCLUSIONS

The issue here presented is a difficult one. There unquestionably is very substantial scientific evidence supporting the complaint, the most impressive being that supplied by the National Bureau of Standards, for which agency the examiner has great respect. But there is also substantial scientific evidence on behalf of respondents, particularly that supplied by the Massachusetts Institute of Technology, probably the outstanding institution of its kind in the United States. The greater weight of the scientific evidence is on the side of the complaint.

On the other hand, the overwhelming weight of the user testimony is with the respondents. And it is highly important to recognize that in this case the user testimony is not mere "consumer" or "public" testimony as those terms are usually understood in Federal Trade Commission proceedings. Here respondents' user witnesses are not mere members of the general public; with few exceptions they are

plant superintendents, shop foremen, chief electricians, master mechanics, battery shop operators, etc. They are, from a practical viewpoint, experts on lead-acid batteries. Their aggregate experience with respondents' product includes thousands of batteries. No other case has come to the examiner's attention in which so large a volume of substantial and reliable user testimony was adduced.

From a scientific viewpoint there are of course valid objections to this user testimony. The most serious is that usually controls were not maintained, that is, untreated batteries maintained along with the treated, so that any differences in the behavior of the two groups could be observed. A further objection is that usually adequate records were not maintained. But after recognizing the validity of these objections and discounting the testimony accordingly, there still remains a very substantial body of reliable and probative evidence attesting the merit of the product. And such evidence would appear to be particularly significant and helpful in the present case, in view of the conflict in the scientific evidence.

Considering the record as a whole, it is concluded that the complaint has not been sustained by the greater weight of the evidence. The legal principle decisive of the case is that of the burden of proof.

ORDER

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

OPINION OF THE COMMISSION

By ANDERSON, Commissioner:

The hearing examiner held that the allegations of the complaint were not sustained by the greater weight of the evidence, and the initial decision filed by him provides for dismissal of this proceeding. The appeal of counsel supporting the complaint requests that we reverse that decision. Respondents also have filed appeal. Their appeal does not challenge the results reached below but interposes objection to certain of the initial decision's findings and conclusions and excepts to various rulings made by the hearing officer under which evidence was received in instances and excluded in others adversely to respondents' contentions in respect thereto.

The respondents manufacture and sell in interstate commerce an additive known as Battery AD-X2, for use in lead-acid storage batteries. Respondents were insistent upon protection of the trade secret concerning the formula and making of Battery AD-X2. The objection of counsel for respondents to the request made by counsel supporting the complaint for the formula was sustained by the hearing examiner. However, admissions by respondents in their answer to

the complaint, and a number of analyses of record, established the fact that magnesium sulfate and sodium sulfate are its principal ingredients but that additionally present in small quantities are magnesium oxide and barium sulfate and a number of "trace" elements.

The complaint under which this proceeding was instituted charges that the respondents have made various misrepresentations in their advertising as to the benefits afforded by use of the product. Illustrative of the various advertising representations which the complaint alleges to be false and misleading, and in violation of the Federal Trade Commission Act accordingly, are statements to the effect that AD-X2 will restore mechanically sound dead batteries to useful life, will increase the power and capacity of sulfated batteries which are free from mechanical defects and will lengthen the life of new batteries. We concur in the hearing officer's conclusions to the effect that the complaint's allegations as to the import and meaning of the challenged advertising statements are substantially correct interpretations. Since the respondents' legal responsibility for their dissemination is clear from the record, the issues remaining for decision concern the truth or falsity of the questioned advertising statements; and the basic question presented in this connection relates to whether the use of the respondents' additive in lead-acid storage batteries will significantly combat, reduce or prevent sulfation and serve thereby to beneficially influence their life or performance.

The formation of lead sulfate in a battery cell is a normal process and integral to the release of its electrical energy. When it forms excessively as a hard and brittle coating on the plates, whether as a result of aging or improper operational conditions, this process is known as sulfation. Conflicting views were expressed by various witnesses as to the frequency with which sulfation is responsible for battery failure, and the hearing examiner concluded that sulfation is one of its major causes. Because it is undisputed that battery failure may result from sulfation, further consideration of the evidence bearing on sulfation's role of relative frequency in that regard appears unwarranted. It is clear, too, that its harmful effects, in instances, include loss of active material from the plates, excessive heat, buckled plates and formation of sediment or "mud" in the bottom of the cells, with possible short-circuiting of the battery.

During the hearings, both counsel supporting the complaint and the respondents introduced testimony and evidence relating to laboratory experiments and scientific tests and studies, many of which were designed to compare the behavior of batteries or cells treated with the respondents' product with similar untreated units. Since the contentions advanced in the appeals relate in substantial part to the

conclusiveness and weight which we should accord to the evidence concerning them, brief summaries in respect thereto are appropriate.

The experimental results submitted by counsel supporting the complaint included reports of tests conducted at the National Bureau of Standards. Those experiments were performed at intervals over approximately a period of a year ending in 1953, five being designated as electrical tests and five as physical chemistry tests. Both new batteries and used batteries, including discarded batteries capable of taking a charge, were utilized in the course of those investigations. Also received into the record was testimony relating to experiments conducted by Dr. Reginald S. Dean, who operates a research and testing laboratory in Riverdale, Maryland, to others by Mr. William H. Hand, a chemist, physicist and manufacturer of batteries, who has a research laboratory in Nyack, New York, and to those performed by Dr. T. P. Dirkse, a professor of chemistry.

The scientific evidence relating to laboratory tests, as presented by respondents, included tests conducted at the Massachusetts Institute of Technology at the request of the Select Committee on Small Business of the United States Senate. Received likewise were others conducted under the supervision of an engineer on the staff of the United States Testing Company, Inc., Hoboken, New Jersey, which is a commercial testing laboratory.

The conclusions and interpretations drawn by the National Bureau of Standards from its tests and experiments were that the respondents' product has no significant beneficial effect on lead-acid batteries, and is without merit. The studies conducted by Dr. Dean, Mr. Hand and Dr. Dirkse were less extensive in scope, but their conclusions likewise were to the effect that their respective tests did not indicate that any significant or beneficial effects are afforded by use of respondents' product.

On the other hand, the report on the tests conducted at the Massachusetts Institute of Technology included conclusions to the effect, among others, that cells treated in the experiments showed larger capacities than untreated ones, that treated cells lost less liquid and that decreases in their sediment levels were visually noted, and that the treated category operated at temperatures slightly cooler than the untreated cells. While the report stated that the experiments indicated that the product affected battery behavior, implicit in the report was an acknowledgment to the effect that the range of experimental conditions covered by the tests was insufficient for conclusions as to commercial utility of the product. According to that report and the testimony relating to these studies, any correlation between effects observed in the experiments and possible benefits under conditions of

normal use were matters to be determined only after examination and statistical evaluation of extensive field tests. The report submitted by the United States Testing Company, Inc., was to the effect that respondents' product is an effective additive for lead-acid storage batteries and serves, among other things, to increase charging and discharging efficiency, and reduce internal operating temperatures. Those studies were begun in October, 1951, and completed in January, 1953.

In their appeal, respondents contend that the reports of tests conducted by the National Bureau of Standards and a summary in respect thereto were erroneously received as exhibits. Many of the Bureau's personnel who participated appeared as witnesses in this proceeding and testified as to their roles in the conduct of those experiments. These challenged exhibits were competent and their admission was proper. Respondents also request, in effect, that we find that the Bureau's experiments were uncertain and dubious in their nature and results, and that the range of testing conditions did not reach areas most relevant to normal operating or service conditions or pertinent to respondents' advertising claims.

As found by the hearing examiner, however, the Bureau's studies covered a wide range. The tests were designed in a manner which afforded evaluations and determinations as to the effect of respondents' product on sulfation, battery life, storability of batteries, temperature, water loss, capacity, sediment, charge and discharge, and solubility of lead sulfate in battery electrolyte. Being comparative tests, they of course, were not designed to furnish data as to the life expectancies of treated and untreated batteries in terms of years and months. We think that the tests conducted by the National Bureau of Standards must be regarded as well designed and conducted with proper controls, and, as did the hearing officer, we reject as wholly unfounded respondents' challenges to the fairness and objectivity of the personnel participating in the tests. In our view, there is ample record basis for conclusions that the interpretations of the test results to which their testimony related represented their sincere opinions on those matters, and respondents' contentions to the contrary are rejected.

It was concluded in the initial decision that, of the scientific evidence received in the hearings, greater weight should be accorded to that presented by counsel supporting the complaint. On the other hand, the hearing officer was impressed by the testimony of various users who were called by the respondents and recounted their experiences with the product. Numbered among the 45 witnesses called in this category by the respondents were plant and maintenance superintendents, shop foremen, chief electricians, and battery shop operators.

In view of the conflict in the scientific evidence, the hearing examiner deemed the user evidence attesting to product merit to be particularly significant, and he, accordingly, held the complaint's allegations to be unsustained by the greater weight of the evidence. Recognizing that the burden of proof is on the proponent of the complaint, we regard the hearing examiner's order of dismissal as sound and correct in the circumstances of this case. Counsel's appeal therefrom is denied and the order below is being affirmed.

To the extent that certain of our foregoing determinations, in effect, affirm various findings contained in the initial decision adversely to the contentions made by the respondents in their appeal, respondents' exceptions to those findings are denied; and also without merit are the additional objections interposed by respondents to other findings and conclusions of the hearing officer. Respondents' exceptions to designated evidentiary rulings of the hearing examiner likewise have been considered. These rulings, however, are free from prejudicial error and based on valid legal grounds. None of the respondents' exceptions to procedural matters herein are well taken, and they are denied in their entirety.

The appeals are denied and the initial decision affirmed, and our accompanying order provides for dismissal of the complaint.

Commissioner Kern did not participate in the decision of this matter.

FINAL ORDER

Respondents and counsel supporting the complaint having filed their cross appeals from the initial decision of the hearing examiner in this proceeding; and this matter having come on to be heard upon the record including briefs and oral argument; and the Commission having rendered its decision denying said appeals and affirming the initial decision:

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

Commissioner Kern not participating.

IN THE MATTER OF

R. D. ANDERSON DOING BUSINESS AS GUARANTEED SILVERWARE DISTRIBUTORS AND AMERICAN SILVERWARE BUREAU

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

Docket 6200. Complaint, Apr. 8, 1954—Decision, May 17, 1956

Order requiring a seller in Mayfield, Ky., of silverware and certificates redeemable in silverware, to cease representing falsely through his agents employed to solicit retail dealers—

(1) That he was the agent of the International Silver Co. which had adopted a redeemable certificate sales plan to advertise its well-known "Rogers Bros. 1847" silverware, and that that brand of silverware would be furnished to holders of certificates;

(2) That he would furnish to the purchaser of certificates a complete set of 52 matched pieces of such silverware in a tarnish-proof chest for display purposes, after which it would be the property of the purchaser; and

(3) That dealers approached by his salesmen had been specially selected by him to distribute such certificates in a specific trade area and that the redemption plan would be made available to only one purchaser in that area.

Mr. Frederick McManus for the Commission.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 8, 1954, issued and subsequently served its complaint upon the respondent named in the caption hereof, charging him with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of said Act. On June 1, 1954, respondent filed answer to the complaint which, in effect, denied those allegations of the complaint charging violations of the Act.

Thereafter hearings were held in regular course at which testimony and other evidence in support of the allegations of the complaint were received by the above-named Hearing Examiner theretofore designated to act by the Commission, said testimony and evidence being duly recorded and filed in the office of the Commission. Respondent, while exercising his right of cross-examination of Commission witnesses, offered no testimony or evidence in opposition to the charges contained in the complaint.

On May 10, 1955, counsel in support of the complaint rested his case in chief and on September 19, 1955, at a regularly scheduled hear-

ing, the respondent personally appeared and executed and filed an "Admission Answer," duly placed of record herein, by the specific terms of which he: (1) withdrew his denial answer filed June 1, 1954, as aforesaid; (2) admitted all of the material allegations of fact set forth in the complaint; (3) waived further hearings as to said facts; (4) waived all intervening procedure, and, (5) agreed that the Hearing Examiner proceed to an initial decision and an order to cease and desist.

Thereafter the Hearing Examiner proceeded with his consideration of the case on the basis of the record, consisting of the complaint and admission answer (and not considering the testimony and evidence so as aforesaid of record, the Hearing Examiner being of opinion that such consideration thereof is not necessary in order to arrive at a decision and the issuance of a proper order) and finds that this proceeding is in the public interest wherefore he makes the following findings as to the facts, conclusions drawn therefrom, and order:

FINDINGS AS TO THE FACTS

1. R. D. Anderson is an individual doing business as Guaranteed Silverware Distributors and American Silverware Bureau, with a place of business at 1210 South 10th Street, Mayfield in the State of Kentucky. Respondent is now, and for five years last past has been, engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia of silverware and certificates, cards or coupons redeemable in silverware.

2. Respondent, in the course and conduct of his business and in order to promote the sale of his silverware, has adopted a scheme or plan which provides that retail dealers may purchase from him certificates, cards or coupons which he agrees to accept, together with a stipulated sum of money, in payment for silverware. Respondent agrees to cause to be imprinted upon said certificates, cards or coupons the firm name of the retail dealers who purchase said certificates, cards or coupons and said retail dealers agree to furnish or give said certificates, cards or coupons to the retail dealers' customers as a premium for purchases of merchandise from said retail dealers. Respondent agrees to remit to said retail dealers a bonus or commission of 15% of the amounts received by respondent from the retail dealers' customers in payment for silver and to give a set of 52 pieces of matched silverware to each retailer who purchases 20,000 certificates, cards or coupons.

3. Respondent causes such silverware and certificates, cards or coupons with which such silverware is redeemable, to be shipped and

transported from respondent's place of business in the State of Kentucky to purchasers thereof located in various other States of the United States and the District of Columbia. Respondent maintains a constant current of trade and commerce among and between the various States of the United States and the District of Columbia, in the sale and distribution of said silverware and certificates, cards or coupons.

4. Respondent, in the course and conduct of said business, is now, and at all times herein referred to has been, in substantial competition with other individuals and with corporations, partnerships and firms engaged in the sale and distribution of silverware and certificates, cards or coupons redeemable in silverware.

5. It is, and has been, the practice of respondent, when carrying on his business under the trade names hereinabove described, to employ agents or salesmen to solicit retail dealers. Said agents or salesmen, acting in the scope of their employment and under the direction and supervision of said respondent in connection with the offering for sale and selling said certificates, cards or coupons have represented to the prospective purchaser, to induce said purchaser to purchase said certificates, coupons or cards, that the respondent, doing business as Guaranteed Silverware Distributors and American Silverware Bureau, is the agent of or connected with the International Silver Co., manufacturer of silverware, and that said manufacturer has adopted a redeemable certificate, card or coupon sales plan as a method of advertising its well known "Rogers Bros. 1847" silverware and that the silverware furnished to the holders of certificates, and/or coupons will be said brand; that respondent will furnish to the purchaser of certificates, cards or coupons, a complete set of 52 matched pieces of such silverware in a tarnish proof chest for display purposes after which same will be the property of the purchaser; that dealers approached by respondent's salesmen have been specially selected by respondent to distribute such certificates, cards or coupons in a specific trade area and that the silverware redemption plan will be made available to only one purchaser in such trade area.

6. All of said representations as above set forth and many other similar representations not specifically mentioned herein are deceptive, false and misleading in material respects. In truth and in fact, the respondent is not in any manner connected with any manufacturer of silverware except as a purchaser of silverware. The certificates, cards or coupons sold by respondent are not an advertising method adopted by any manufacturer of silverware but are a scheme promulgated by respondent to sell silverware. The silverware sold by respondent is not "Rogers Bros. 1847" silverware but is "Rogers &

Bros." a different and less expensive brand of silverware. The silverware furnished to purchasers of respondent's certificates, cards or coupons are not complete sets of silver or of the same style and pattern and consist of substantially less than 52 pieces. The chests in which the silver is contained are not tarnish proof. Dealers offered the certificates, cards or coupons and the silver redemption plan are not specially selected. On the contrary, respondent offers to sell and sells said certificates, cards or coupons and makes the redemption plan available indiscriminately wherever he can find a purchaser.

7. The use by respondent of the foregoing false, misleading and deceptive statements has the capacity and tendency to lead retailers into the erroneous and mistaken belief that said statements and representations are true and into the purchase of substantial quantities of respondent's silverware redemption certificates, cards or coupons because of such erroneous and mistaken belief. As a result thereof substantial trade in commerce has been unfairly diverted to respondent from his competitors and substantial injury has been done to competition in commerce.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair and deceptive acts and practices, and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondent, R. D. Anderson, doing business as Guaranteed Silverware Distributors, or American Silverware Bureau, or under any other name, and respondent's agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of certificates, cards, coupons, or silverware, or any other merchandise, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner that he is agent for, or representative of, or is in any other manner connected with, the International Silver Company or any other manufacturer of silverware.

2. Representing that the said certificates, cards, or coupons are a part of, or connected in any way with, any sales plan or method of advertising adopted by any manufacturer of silverware or by anyone other than the respondent.

3. Representing that the silverware which will be furnished to purchasers of the said certificates, cards, or coupons or to the holders thereof, is any different brand, or is any different in style or quantity, or in any other way, from that which is actually furnished or that the chests furnished to said purchasers are tarnish proof.

4. Representing that the retail dealers to whom said certificates, coupons, or cards are offered are especially selected or that respondent's silverware redemption plan will be made available to only one purchaser in any given trade area.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Sec. 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 17th day of May 1956, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

ROBERT G. BUSSE TRADING AS LINCOLN INSTITUTE AND LINCOLN TRAINING SERVICE

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

Docket 6413. Complaint, Sept. 14, 1955—Decision, May 17, 1956

Consent order requiring a Pekin, Ill., seller of correspondence courses intended to prepare students for Civil Service examinations, to cease falsely representing, on postal cards and circular letters and by statements of sales agents, that his school was connected with the United States Civil Service Commission, that completion of his course guaranteed graduates positions therein and in desired geographical locations, that vacancies existed, and that starting salaries were higher than was the fact; and to cease misrepresenting the character of his school through use of the word "Institute" in his trade name, among other things.

Before *Mr. Robert L. Piper*, hearing examiner.
Mr. William A. Somers for the Commission.
Mr. E. B. Green, of Pekin, Ill., for 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 Robert G. Busse, an individual trading as Lincoln Institute and Lincoln Training Service, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Robert G. Busse is an individual trading and doing business as Lincoln Institute and Lincoln Training Service, with his principal place of business located at 514 Court Street, Pekin 1, Illinois.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the sale and distribution of a course of study and instruction intended for preparing students thereof for examination for certain Civil Service positions in the United States Government, which said course is pursued by correspondence through the United States mails. Respondent, in the course and conduct of said business, causes said course of study and instruction to be sent from his place of business in the State of Illinois to, into and through

various other States of the United States to purchasers thereof located in such other States.

There has been at all times mentioned herein a substantial course of trade in said course of study and instruction so sold and distributed by respondent in commerce between and among the various States of the United States.

PAR. 3. In connection with the sale of said course of study and instruction respondent has made, published and caused to be published, certain advertising material, including postal cards and printed circular letters, distributed to prospective students in States other than the State of Illinois, in and by which many representations have been made and are made in regard to said course of study and matters and things connected therewith. Typical representations made in such advertising are the following:

I AM VERY MUCH INTERESTED IN CIVIL SERVICE. I am a United States Citizen. Please send full information and list of positions.

THOUSANDS OF MEN AND WOMEN NEEDED. Prepare Now for GOVERNMENT POSITIONS. Start High as $4,479.00 First Year. Men and Women Ages 18 to 50 THIS IS YOUR OPPORTUNITY!! Civil Service Offers Security, Good Salaries, Pay Raises, Promotions, Paid Sick Leave, Long Vacations with Pay, Liberal Pensions.

Prepare now for examinations in your vicinity. Grammar school sufficient for many jobs. Stay on present job while training. Instruction now available if you qualify. Some of the hundreds of different jobs are:

Rural Mail Carriers
Post Office Clerks
Mail Carriers
Railway Mail Clerks
Border Patrolmen
Customs Service
Forest Service
Guards
Postmasters—2, 3, 4 Cl.
Clerks
Stenographers
Typists
Ass't Meat Inspectors
Livestock Inspectors
Accountants
Internal Revenue Service
Immigration Service
Store Keepers
Warehousemen
and Many others

Our Field Representatives must adhere to strict schedules. A few days may go by before one of them will call on you. If you must be away from home, be sure to leave word with a member of your family or a neighbor where you can be reached. We want him to make only one call if possible. In the meantime, check three or more positions you are interested in before he arrives. He will let you know whether or not you can qualify.

It is expected that 800,000 to 1,000,000 Federal positions will be available during the next few years. Written examinations will be held for many permanent Civil Service positions, and both veterans and non-veterans will be eligible for appointment.

* * *

Clerks, Storekeepers, Inspectors, Guards, Forest Rangers, Rural Mail Carriers, City Carriers, Stenographers, Typists and many, many other types of workers are employed by the thousands.

Respondent disseminates to prospective purchasers of his said course of study a list of Civil Service positions setting out representations as to Age, Education, and Salaries with respect to positions in the Postal, Law Enforcement, Clerical, Accounting, Custodian, and other services, and the following direction:

Some Typical Civil Service Positions

Look over this list thoroughly. Check the age and educational requirements. In this way you can select the positions you believe you are fitted for. Our Field Representative will advise you whether or not you can qualify.

Men and women	Age	Education	Salaries up to—
POSTAL POSITIONS			
Post office clerk	18–50	Grammar school	$4,070
Rural mail carrier	18–50	do	5,412
Postmaster:			
2d class	21–62	do	5,370
3d class	21–62	do	4,298
4th class	21–62	do	2,380
CLERICAL POSITIONS			
Clerk-accounting, information and receptionist, customs, filing, mail, personnel, purchasing and procurement, leave and payroll, supply, time, traffic and transportation:			
Grade 1	18–62	do	2,980
Grade 2	18–62	do	3,230
Grade 3	18–62	do	3,430
Grade 4	18–62	do	3,655
Grade 5	18–62	do	4,160
Grade 6	18–62	do	4,545
Stenographer-Typist	18–62	do	3,655
Typist, junior	18–62	do	3,230
Messenger	18–25	do	2,980
Business machine operator	18–53	do	3,430
Clerk-stenographer	18–53	do	4,160
OTHER POSITIONS			
Accountant and auditor	18–62	High school	4,160
Statistical clerk	18–62	do	3,430
Junior professional assistant	18–35	University	4,160
Library assistant	18–62	High school	3,430
Student nurse	18–30	do	2,200
Hospital attendant	18–45	Grammar school	3,430
POSTAL POSITIONS			
Postal transportation clerk (railway, air, boat, and highway).	18–35	do	4,270
City mail carrier	18–50	do	4,070
LAW-ENFORCEMENT POSITIONS			
Inspector of customs	21–45	do	4,545
Patrol inspector, trainee	21–35	do	4,955
Port patrol officer	21–45	do	4,035
Immigration inspector	21–45	do	4,545
Meat inspector Livestock inspector Virus serum inspector	18–62	do	3,430
Guard-patrolman	21–62	do	3,655
Correctional officer	21–45	do	4,035
Security inspector (atomic energy)	21–35	do	4,160
OTHER POSITIONS			
Zone deputy collector	18–62	High school	4,160
Storekeeper	18–62	Grammar school	4,545
Stock clerk	18–62	do	3,655

* * * * * *

"LINCOLN INSTITUTE
Preparation for Successful Civil Service Careers
Federal—State—Municipal
Robert G. Busse, B. S. M.B.A.
Director.
Pekin 1, Illinois

* * * * * *

Postage will be paid by
"LINCOLN INSTITUTE
P. O. Box 390
Pekin, Illinois.
Executive Offices

PAR. 4. By means of the foregoing representations and others similar thereto but not herein specifically set out, and by the use of the trade name Lincoln Institute, and by use of the words and phrases "Director" and "Executive Officer," respondent represents and implies that his said business is a branch of, or connected with, the United States Government or the United States Civil Service Commission; that many positions in the United States Civil Service are vacant, including those specifically listed in said "Some Typical Civil Service Positions," and are available to all applicants; that many thousands of appointments will be made during the next few years; that veterans and non-veterans can qualify therefor and that successful application therefor can be effectuated through respondent's course of study; that salaries are as high as $5,412.00 a year and that a grammar school education is the only thing necessary, together with the respondent's course of instruction; that checking said list will enable prospective students to determine for what positions they are qualified and that respondent's so-called Field Representatives are qualified and competent to advise said prospects as to their qualifications for positions in the Civil Service.

PAR. 5. In the course and conduct of said business, as aforesaid, respondent employs sales agents or representatives who call upon prospective purchasers and endeavor to sell said courses of study.

In the course of such solicitations said sales agents or representatives orally represent and imply to prospective purchasers of said courses of study:

1. That Lincoln Institute and Lincoln Training Service are connected with, or are branches of the United States Civil Service or of the United States Government or some agency thereof;

2. That respondent's said sales agents or representatives are employees of the United States Civil Service Commission or have some official connection therewith;

3. That the completion of respondent's course of study makes persons eligible for appointment to, or assures them of, or guarantees, United States Civil Service positions;

4. That after the completion of said course, enrollees are assured of employment immediately or within a short time;

5. That persons completing respondent's course of study are assured of obtaining passing grades in Civil Service examinations; that they will be qualified for Civil Service positions; that they are assured of obtaining employment in the Government; that they will obtain employment in geographical areas selected by them.

PAR. 6. All of said statements, representations, implications and practices were and are grossly exaggerated, false, deceptive, and misleading. In truth and in fact:

Neither respondent, nor his school, nor any of his agents or representatives are connected in any manner whatsoever with the United States Civil Service, the United States Government or any agency thereof. While there may be frequent announcements for Civil Service examinations, there are many positions including those specifically listed in respondent's advertising and postal cards and circulars, which are not open to applicants generally, but are either restricted to persons of veteran status or require special physical and educational qualifications and practical experience. The starting salaries for positions listed by respondent are, in many instances, substantially less than stated. The completion of said course of study does not make enrollees eligible for appointment to said positions or assure them of, or guarantee them appointment to, United States Civil Service positions immediately or at any time after completing said course of study or in any particular location.

Prospects do not lose the opportunity to enroll because sales agents are pressed for time and will not return for further solicitation, but may enroll at any time they choose.

PAR. 7. The use of the word "Institute" in the trade name of respondent is misleading in that it implies the operation of a resident institute of learning with a staff of competent, experienced and qualified educators offering instruction in philosophy, the arts, sciences and other subjects of higher learning.

In truth and in fact, respondent does not operate an "Institute" in the accepted sense of that term. Respondent offers no training or instruction in philosophy, the arts, sciences or the learned subjects. No basic, thorough or competent instruction is given in residence in any subject of learning by competent and qualified educators. The subject matters in which respondent's students are prepared are not of the extent properly to be included in the term of higher education.

Respondent's course of study is given exclusively by correspondence and consists of a series of lessons on a general information type of Civil Service examination.

PAR. 8. Respondent is now, and at all times mentioned herein has been, in substantial competition with other individuals and with corporations, partnerships and firms engaged in the sale in commerce of courses and instructions by correspondence.

PAR. 9. The use by the respondent of the aforesaid statements and representations has had and now has the tendency and capacity to confuse, mislead and deceive members of the public into the erroneous and mistaken belief that such statements are true and to induce them to purchase respondent's course of study in said commerce on account thereof. As a direct result of the practices of respondent, as aforesaid, substantial trade in commerce is and has been diverted to respondent from their competitors and injury has been and is done to competition in commerce between and among the various States of the United States.

PAR. 10. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of competitors of respondent and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on September 14, 1955, charging him with having violated the Federal Trade Commission Act. After being served with said complaint, respondent appeared by counsel and entered into an agreement, dated March 21, 1956, containing a consent order to cease and desist, disposing of all the issues in this proceeding without hearing. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with Section 3.25 of the Rules of Practice of the Commission.

Respondent, pursuant to the aforesaid agreement, has admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondent waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in ac-

cordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that said agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the same are hereby accepted and ordered filed upon becoming part of the Commission's decision pursuant to Sections 3.21 and 3.25 of the Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondent is an individual, doing business under the trade names of Lincoln Institute and Lincoln Training Service, with his office and principal place of business located at 514 Court Street, in the City of Pekin, State of Illinois.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That the respondent, Robert G. Busse, individually and doing business under the name of Lincoln Institute and Lincoln Training Service, or any other name, and his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of courses of study and instruction, intended for preparing students thereof for examination for Civil Service positions under the United States Government, or any similar courses of study, do forthwith cease and desist from:

1. Representing, directly or by implication:

(*a*) That respondent, his school, his agents or representatives, or any one of them, have any connection with or are a part of the United States Civil Service Commission or any other agency of the United States Government.

(*b*) That the completion of respondent's course of instructions assures or guarantees a position in the United States Civil Service or makes them eligible for appointment to such position.

(*c*) That positions in said Civil Service may be obtained through respondent's school after completion of the course of instruction immediately or at any time.

(*d*) That persons who complete respondent's course of instruction are assured of obtaining passing grades in Civil Service examinations or that they will be qualified for Civil Service positions.

(*e*) That there is any assurance that persons who complete respondent's course of instructions and obtain Civil Service positions will be employed in any particular geographical area.

(*f*) That any specific Civil Service positions are available to all applicants or that any Civil Service position which requires appointees to have veterans status or certain physical, mental, educational or experiential qualifications is generally available and may be obtained by persons not meeting such requirements.

(*g*) That vacancies exist in, or that appointments will be made to, any United States Civil Service position contrary to fact; or that the number of positions available or vacant or to which appointments will be made in said Civil Service or any branch thereof is greater than is actually the fact.

(*h*) That prospective students lose the opportunity to enroll for respondent's course of study unless they enroll at the time of the first visit of respondent's agent or representative.

(*i*) That the starting salary for any United States Civil Service position is greater than it is in fact.

2. Using the words and phrases of "Director," "Executive Offices," or representing by any similar means, that his business has any connection with the United States Government or any branch or agency thereof.

3. Using the word "Institute" or any word or term of similar import or meaning as part of respondent's trade name, or as a part of the name of the respondent's school.

4. Soliciting, procuring or accepting contracts for respondent's course of study, without permitting prospects to read the same fully and thoroughly before the signing of such contract by the prospect.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 17th day of May 1956, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

NATIONAL CASUALTY COMPANY

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

Docket 6311. Complaint, Mar. 11, 1955—Decision, May 21, 1956

Order requiring an insurance company with main office at Detroit, Mich., selling policies through some 350 to 400 independent insurance agencies throughout the nation, to cease misrepresenting the duration, coverage, and benefits of its accident and health insurance policies, and the physical requirements for policyholders in printed brochures and advertising matter sent to agents for use in soliciting prospects.

Mr. J. W. Brookfield, Jr. and *Mr. Donald K. King* for the Commission.

Mr. John F. Langs, of Detroit, Mich., for respondent.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Complaint herein issued March 11, 1955, charging respondent with misrepresenting its accident and health policies by soliciting their sale through printed brochures and advertisements which stressed or mentioned only maximum benefits or coverage while omitting actual policy exclusions or limitations thereby deceiving or misleading prospects into purchasing policies not as extensive or secure as they believed, in violation of Section 5 of the Federal Trade Commission Act (Title 15, U.S.C.A. 45). Answer admitted descriptive facts alleged and denied misrepresentation, and jurisdiction to proceed.

On the issues joined two hearings were held to complete proponent's proof, at the close of which respondent's counsel moved to dismiss the complaint for lack of jurisdiction and insufficient proof to constitute a prima facie case. The jurisdictional attack was two-pronged and founded on the language of so-called Public Law 15, 79th Congress (Title 15, U.S.C.A. 1011–15). The contentions were that since respondent is a Michigan corporation and Michigan by statute expressly prohibits the acts alleged in the complaint there was none of respondent's business that was not "regulated by State law," and that even if the Michigan statute be held to have no extraterritorial regulation that, nevertheless, respondent's business was fully regulated by the separate law of each state where it does business. The first contention was denied substantively, the second solely because at least one state where respondent does business, Mississippi, admittedly has no regulation whatever. The second ground of the motion that no prima

facie case had been shown was denied on the merits, and subsequently two additional hearings were held for the reception of respondent's evidence, proof taking was closed and proposed findings of fact and conclusions were submitted by all counsel, on consideration of which, with the rest of the record herein, the Hearing Examiner finds that this proceeding was brought in the public interest and makes the following:

FINDINGS AS TO THE FACTS

1. Respondent National Casualty Company is a corporation organized, existing and doing business under the laws of the State of Michigan with its office and principal place of business at 422 Majestic Building, Detroit 26, Michigan. It is a stock company incorporated for the purpose of selling accident, health, and all types of casualty insurance, being licensed to sell such policies in all States of the United States, the District of Columbia, and Hawaii, through resident agents located therein. The company does not sell life insurance and its casualty insurance is not involved in this proceeding. In 1953 respondent received premiums of $15,519,025 and in 1954 premiums of $16,208,154 on its accident and health policies.

2. Respondent uses the agency system of selling its insurance policies by solicitation from 350 to 400 direct but independent insurance agencies throughout the nation who operate under contract of the respondent on commission only, in nonexclusive territories, and for this purpose respondent prepares, sends and ships to these agents direct mailing cards, stuffers, one page lead sheets, form letters, applications with tear sheets and throw aways. The majority of this is shipped by mail to the agent in bulk for his use and dissemination. Something less than five percent of respondent's direct mail advertising is disseminated by respondent directly from its own offices in Detroit to members of the public on behalf of its agents, and at their request, to obtain leads from prospects. Generally, the company bears the expense of printing advertising prepared by it but the agent assumes the cost of dissemination. The record does not show exactly what printed material was mailed directly by respondent from Detroit to prospects, as hereinafter found in Paragraphs 9, 12, 15, 19, and 23. All it shows is that something less than five percent of respondent's business was done that way. For the purposes of this discussion therefore, it is assumed that some of those mailings were of the printed material hereinabove found to be misleading or deceptive.

3. Eighty percent or more of all respondent's accident and health policies are issued by it from its home office after receipt, checking, and consideration by it of the prospect's signed application which has

been secured by the agent. Any policy issued by respondent is forwarded to the agent for delivery to the insured. A very small number of respondent's agents may issue policies directly but respondent's home office has subsequent veto power over them after consideration of the application and policy which have been forwarded to it by the issuing agent.

4. Respondent now maintains and for the past several years has maintained substantial course of trade in insurance policies in commerce as "commerce" is defined in the Federal Trade Commission Act between and among each of the States of the United States.

5. Premium collection is the agent's responsibility, only five percent or less being remitted directly to the respondent, and this because of unusual or temporary situations. Premium notice forms are printed by respondent and furnished free of charge to all agents who mail them out locally. Very few such notices are mailed by respondent directly.

6. To procure business, these agents mail locally respondent's direct mailing pieces to likely prospects, secure leads thereby and otherwise, then call and personally solicit the prospect, or they are distributed personally by the agent. Although respondent's advertising pieces exemplified in the record may be primarily for the agent's aid and benefit in his solicitation, there is no doubt that they are also shown in a substantial number of instances to prospects to induce purchase and with that effect. Respondent's agents may locally advertise also but only with prior approval by respondent's home office. The latter does not furnish leads to its agents except on rare occasions. Occasionally also, it will mail out advertising direct from Detroit at the request of some agent because of temporary or unusual circumstances which make it more feasible to do so than to have the mailing done by the agent. Respondent's renewal business is just as important to respondent as its new business.

7. The insurance commissioner of Michigan inspects respondent's acts, practices, and files about every four years but this inspection is primarily the accounting phase of respondent's business and respondent's officials do not know whether respondent's advertising is examined or not. Respondent's officials have nothing to show approval of respondent's advertising by the Michigan insurance commissioner. In any event it was never submitted to him for approval. Respondent does not submit its advertising to the insurance commissioner of the State of Michigan for approval before it is used. Respondent's business was not inspected by the insurance commissioner of the State of Michigan during the time covered by the complaint herein. By mutual agreement of counsel the years 1953 and 1954 are the period involved.

8. To arouse interest in, and induce purchase of its insurance policies, respondent, in the manner indicated above has made numerous statements and representations in its advertising pieces. Those alleged to be false, deceptive or misleading by the complaint herein, fall roughly into five categories: (1) termination date; (2) physical condition; (3) complete coverage; (4) dollar amounts; (5) specific time covered.

9. Under the first category respondent has represented:

No increase in premium because of age.
No decrease in benefits because of age.
Lifetime accident benefits.
For employed men and women ages 16 to 69 years inclusive.
Life indemnity accident coverage.
For individuals or family groups—ages 1 day to 69 years.
Security plan with lifetime benefits.
I understand this peace of mind and security will be mine from the first day—even for life.
We have removed all age termination limits from the policy.

10. Some of these circulars were distributed by respondent directly or through its agents in all states and the District of Columbia. Respondent's officials testified that the statements set out in Paragraph 9 supra, are representations with respect to benefits, not duration; that they were used to differentiate respondent's policies from policies of other companies which have age limitations more narrow than respondent's and to overcome any impression of these narrower limits which might have been built up in the public mind by old advertising of others when the limitations were more narrow.

11. Whatever the intent, these statements can reasonably be expected to give a substantial number of readers the definite impression that the policy will continue in effect so long as premiums are paid at least until age 69, or even for life, with full indemnification. To those past 45 years particularly this is a most material and important consideration. The fact is that respondent's policies all provide that they may be terminated by respondent at its sole option at the end of any premium period. Two of these policies may be cancelled at any time by respondent. The finding is that the representations made are deceptive and misleading.

12. The second category of alleged misrepresentations involves the statement "no medical examination required" appearing in ten different circulars distributed by respondent in all states and the District of Columbia. It has been used by respondent for 14 years or more, and by accident and health companies for 20 years. Respondent adopted it because accident and health insurance has become widespread only in the last twenty-five years. In its early days, people

had the impression that because life companies required a preliminary medical examination, respondent would also. People "hesitated buying because they feared it might require a medical examination." "I think it has been (used) merely primarily, let us say, to convey to people that you could get this insurance without going through a lot of red tape."

13. The quoted statement is unqualified as to time, condition or circumstances. Yet respondent's policies all provide that no benefits will be paid for loss resulting from sickness, the cause of which is traceable to a condition existing prior to, or within 15 to 30 days after the effective date of the policy, and that "the company shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pending of any claim hereunder." Respondent's accident policies require that "the loss shall result directly and independently of all other causes" to show which, the insured may have to submit medical evidence, obtainable only by medical examination.

14. Medical examinations are a groundless fear to many people, especially those approaching or in middle age, when functional degenerations set in. They are a nuisance to others. To everyone, any statement about a medical examination is most material. It would have been a simple and inexpensive matter to have added the words "before issuance of the policy" to the quoted statement. The bare representation carries, in the Hearing Examiner's opinion, the definite impression that respondent insures without regard to the prospect's physical condition either before or after issuance of the policy. Such being not the fact the statement is definitely misleading and deceptive.

15. Under the third category in Paragraph 8 supra, respondent has represented that its policies provide:

The most complete and broadest coverage at the lowest rates.

Monthly benefits up to $300.00 per month paid from first day of sickness or accident plus $300.00 per month for hospitalization.

Hospital room and board for 100 days for each sickness or accident. Your choice of plans paying from $5.00 to $12.50 per day. Pays full benefit even if your hospital room costs less.

Guaranteed monthly income for sickness.

Guaranteed monthly income for accidents.

When I am sick $600.00 a month as long as three months.

New modern all-inclusive hospital surgical nurse protection.

Occupational and non-occupational accidents fully covered.

Full coverage on or off the job.

Full coverage for female diseases.

You should be fully protected against these expenses.

16. The policies, to sell which, these representations were issued, contain exclusions and limitations which belie "most complete" or

"broadest coverage," "fully protected," "first day of sickness," etc. This indemnity for sickness is payable only for one "which is contracted or begins after this policy has been in force not less than thirty days from its date." Preexisting illness as well as illness during the first thirty days of policy life is consequently excluded. Excluded also are sickness caused by venereal disease, injury resulting from air travel on other than a scheduled or common carrier, suicide or its attempt, selfinflicted injuries, diseases or accidents to the female organs, injuries or illness occurring outside the United States and Canada. Indemnity payments are limited (reduced benefits) when illness or accident is due to tuberculosis, paralysis, hernias, female disease or mental derangement. Some exclude benefits for sickness or accident covered by Workmen's Compensation Acts, others pay only proportional indemnity, if other insurance is carried. Sickness or accidental injury must wholly and continuously disable and prevent the insured from performing any and all duties pertaining to his or her occupation. Specified indemnities for loss of limb or eye provide for immediate and automatic termination of the policy upon payment thereof. In each instance, these exclusions, exceptions and limitations appear in some of respondent's policies, in some instances, in all of its policies exhibited in the record.

17. Advertising pieces containing the excerpts set out above were disseminated either by direct mail (something less than five percent) or shipped to agents and by them distributed in all states in some instances, in a number of states in other instances.

18. The discrepancies between promise and policy set out in Paragraphs 15 and 16 supra, are obviously material and in the opinion of the Hearing Examiner may well be reasonably expected to give a prospect an impression of wider and fuller coverage then he gets. To that extent they are deceptive and misleading.

19. In the category of "dollar amounts" respondent has represented in its advertising pieces, financial benefits for loss, as follows:

Surgical operations, whether performed in or out of the hospital, are paid up to $300.00 in addition to hospital benefits. Full benefits are paid to all insured members of the family group.

Surgery bills from $5.00 to $300.00 for sickness or accident.

Pays surgical operation expenses $300.00.

Surgical plan to $300.00.

Three choices of surgical operation benefits; $5.00 to $150, $7.50 to $225.00, $10.00 to $300.00.

Your doctor's bills paid at home, at hospital, at doctor's office.

$10.00–$300.00 available surgical operation fees.

Pays surgical operation fees up to $150.00.

Who pays these bills? You should be fully protected against all these expenses. Never before has such protection been offered.

20. Through such statements, respondent has represented, among other things, that the policies to which they refer provide indemnity up to a maximum sum of $300 for any operation serious enough to cost such an amount.

Respondent's policies do not so provide. Under the terms of the policies, payments on account of surgical operations are in accordance with a schedule of fixed fees for different types of operations. Of the numerous operations listed, varying with the different policies from forty-seven to ninety, only a very small number (ranging from two to six on the different schedules) call for payments of as much as $150 or $300 (depending on the amount of premium paid). By way of contrast, the operations for which payments of $25.00 or less are provided, regardless of the actual cost to the policyholder, range from twenty-one in the case of one of the schedules to forty-three in the case of another. Furthermore, according to the terms of the policies, no payments will be made for tonsillectomy, adenoidectomy, appendectomy, herniotomy, hemorrhoidectomy, or for operations for any injury or disease of the female generative organs unless the policy shall have been in force for not less than six months from date of issue. None of these limitations or conditions is disclosed in the advertising.

21. Most of the representations set out in paragraph 19 were distributed in all states; others only in some states.

22. Respondent's representations referred to in paragraphs 19 and 20 have the tendency and capacity to mislead and deceive, and, in the absence of an accompanying schedule clearly disclosing the payments for which the policies provide, are false and deceptive.

23. The last category of alleged misrepresentations "specific time covered" are exemplified by the following:

Monthly income up to $300.00 for total disability from sickness paid from first day for two years with no confinement required at any time.

Monthly income up to $300.00 for total accident or confining sickness disability paid from first day for as long as disabled—even for life.

When you are disabled by accident or sickness—what do you need most?

CASH!

Economy Disability Policy

The simple economical way to obtain basic

Income Protection

Sound protection—low cost

For Accident — Accident income $...... per month

Total Disability—full monthly benefit for 12 months

Partial Disability—½ monthly benefit for one month

For Sickness — Sickness income $...... per month

Confining total disability—full monthly benefit for six months
Non-confining total disability—full monthly benefit for one month

Your security—
If injured or sick
you are protected while at work or away from work—benefits paid in addition to compensation and group insurance—24 hour every day protection.
Guaranteed monthly income for accidents.
Guaranteed monthly income for sickness.
Monthly benefits up to $300 per month paid from first day of any sickness or accident.
Sickness indemnity; total disability full monthly indemnity for two years.

24. These representations reasonably give the impression of indemnification in a specific amount for a definite period of time. "From the first day for two years," "From the first day as long as totally disabled—even for life," "Accident income $........... per month," etc., reasonably convey that impression.

25. Respondent's policies themselves, however, confer the indemnity promised only if the insured is wholly and continuously disabled by sickness and prevented thereby from performing any and every occupation or employment plus being under the personal attendance of a doctor. Obviously, there is much illness and disability which does not meet these requirements, especially during convalescence. Some of respondent's policies require continuous confinement to the house, before respondent will pay. Other exclusions are any indemnity for more than one month where loss is due to tuberculosis, hernia, paralysis, or mental derangement; no sickness which began before thirty days after policy issuance; disability arising more than 5, 20, or 30 days after the accident; maternity benefits only after policy has been in effect ten months—in other words, respondent gets ten months' premiums before it has to pay for loss of time for maternity. All of these exceptions, exclusions, and limitations, seem to the Hearing Examiner to be highly important to substantial segments of prospects, and unlikely to occur to them as exceptions. The representations reasonably give the impression of definite amounts for a definite time, and to that extent are misleading and deceptive.

26. All of these representations were distributed in a substantial number of states.

27. Respondent's executive vice-president, its director of agencies, its claims adjuster, and its general agent in Detroit, Michigan, all of whom had been in the accident and health insurance business for many years, all testified that they had never personally received any complaint from any insured or from any prospect as to being misled or deceived by any of respondent's representations; that no such com-

plaint had come to them officially through company channels; that no such complaint had ever been received from the insurance commissioner of any state; and that many of these representations had been used up to 20 years, all of them over a period of years. This, of course, is not conclusive. Deception may have occurred without resulting in written or formal complaint and there may have been complaints also to local agents which were not forwarded to respondent. Furthermore, this evidence at most goes only to show an absence of actual deception. Under many decided cases, actual deception is not essential, it is sufficient if there is a reasonable probability of deception. *Bockenstette* v. *F.T.C.*, 134 F. 2d 369, 371; *Empire Oil & Gas Corp.* v. *U.S.*, 136 F. 2d 868, 872; *Jacob Siegel Co.* v. *F.T.C.*, 150 F. 2d 751, 755. That respondent's advertising was used largely to distinguish its coverage from those of life companies, or those of other health and accident companies is immaterial, as if the fact that there was no deliberate intent to deceive. Intent is immaterial in this type of case. *F.T.C.* v. *Algoma Lumber Co., et al.*, 291 U.S. 67, 81.

28. Respondent also defends on the basis of abandonment or voluntary cessation. The record shows that respondent is a member of the Health and Accident Underwriters Conference, that a standing subcommittee on ethics and practices prepared a code of ethics for such insurance practice, including advertising, that such code was thereafter adopted by the executive committee of the conference in May 1954, of which executive committee, respondent's executive vice-president was then, and had been, for many years a member. The record further shows that thereafter respondent began to discard and discontinue such of its printed material as came within the condemnation of that code, although some of them are still in use. On that basis, respondent claims this proceeding to be moot and not in the public interest and moves dismissal.

29. Dismissal on this ground is discretionary with the Commission —it is not a matter of right, nor does it defeat jurisdiction. *Sears, Roebuck Co.* v. *F.T.C.*, 258 F. 307–10; *F.T.C.* v. *Standard Educational Society, et al.*, 86 F. 2d 692, 697; *National Silver Co.* v. *F.T.C.*, 88 F. 2d 425, 427; *Hershey Chocolate Corporation* v. *F.T.C.*, 121 F. 2d 968, 971; *Philip R. Park* v. *F.T.C.*, 136 F. 2d 428. The very fact that an industry committee saw in this printed material the reasonable probability that it might mislead, even though there had been no complaint thereof to respondent in 10–20 years, reinforces the examiner's opinion that, some of it, as above set out, does so. Respondent's discontinuance confirms this. There is nothing in the record to indicate it may not be resumed, in the same or dangerously similar form. The record shows that these "sales aids" are constantly undergoing

change, revision, discontinuance, replacement with new ideas, etc. The public interest requires, it seems to this examiner, that it be made sure that it cannot be resumed in any manner.

30. The protection which this respondent sells, while not so vital as life insurance, is nevertheless as important to the insured as his income. An insurance policy is an intangible, incapable of sensory perception like furniture or clothing. It is a series of mental images, imperfectly conveyed by words. "One picture is worth a thousand words" or as Mr. Dooley described documents generally, decades ago—just a "mess of words." The sheer quantity of language in a policy is per se confusing to a layman. The pressure for conciseness and precision, produces plausibly plain but actually technical language. Expressions such as "due proof of loss;" "if any time limitation of this policy with respect to give notice of claim or furnishing proof of loss is less than that permitted by the law of the state;" "resulting from accidental bodily injury effected directly and independently of all other causes" have rather definite meanings to lawyers, underwriters, and claims adjusters but are not fully understood by laymen. As the Court said in *U.S.* v. *Sylvanus*, 192 F. 2d 96, "It goes without saying almost that it is extremely difficult for a layman to understand the terms and conditions of such policies as these * * *." Similar judicial comments are legion. Hence respondent's argument that its agents carry specimen policies when selling and sometimes, or always, show them to prospects, is of little merit. As the same Court said on this point "That the policy holders by reading their policies, might have ascertained the conditions and limitations contained therein would not alter the fact, that the policies had been misrepresented, nor would it absolve defendants from responsibility for having made and transmitted such misrepresentations." For these same reasons, the guardian of the public interest in preventing misrepresentation or even misapprehension must be more vigilant, more careful, and more stringent than in other cases of alleged misrepresentation.

CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction over all of the respondent's acts and practices alleged in the complaint to be unlawful.

2. The public interest in the proceeding is clear and substantial.

3. The use by respondent of the statements and representations, found herein to be false and deceptive, with respect to the terms and conditions of its policies of insurance, and its failure to reveal the limitations of the coverage of said policies, have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said state-

ments and representations are true and to induce the purchase of said policies of insurance because of such erroneous and mistaken belief.

4. The aforesaid acts or practices of respondent as above set forth are all to the prejudice and injury of the public and constitute unfair and deceptive acts or practices within the intent and meaning of the Federal Trade Commission Act.

ORDER

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

1. That any such policy may be continued in effect by the insured upon payment of stipulated premiums, indefinitely or for any stated time, unless full disclosure of any other provision or condition of termination contained in the policy is made conspicuously, prominently, and in sufficiently close conjunction with the representation as will fully relieve it of all capacity to deceive.

2. That no medical examination is required, unless the respondent actually insures the policyholder without regard to his physical condition before or after issuance of the policy; or otherwise representing that the condition of the insured's health at the time of issuance of the policy will not be considered by the respondent in determining its liability thereunder, or that the respondent will not, as a claims practice, require proof of good health of the insured at the time of issuance of the policy.

3. That any policy provides for payment in full or in any specified amount or for payment up to any specified amount for any medical, surgical or hospital service, unless the policy provides that the actual cost to the insured for that service will be paid in all cases up to the amount represented, or unless full disclosure of the schedule of payments for which the policy provides is made conspicuously, prominently, and in sufficiently close conjunction with said representation as will fully relieve it of all capacity to deceive.

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

It is further ordered, That respondent, National Casualty Company, 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 therewith.

OPINION OF THE COMMISSION

By SECREST, Commissioner:

This is a proceeding in which the respondent was charged with having misrepresented the coverage and benefits afforded by its health and accident insurance policies. After appropriate hearings, during which evidence in support of and in opposition to the charges was received and a number of motions to dismiss the complaint were denied, the hearing examiner filed his initial decision from which both counsel in support of the complaint and the respondent have appealed. Presented for review are the examiner's findings and conclusions both as to the extent of the Commission's jurisdiction over the respondent's advertising practices and as to the tendency and capacity of the representations involved to mislead and deceive.

The respondent, a Michigan corporation, is licensed to sell, and does sell, its health and accident insurance policies in all of the states of the United States and in the District of Columbia and Hawaii. It carries on its business through an agency system composed of some 350 to 400 agencies located in each of the several states, and the respondent prepares and sends to its agents, for dissemination to prospects, advertising material in the form of direct mail cards, stuffers, lead sheets, form letters, applications with tear sheets and throwaways. In addition, and at the request of its agents, the respondent disseminates something less than five percent of its direct mail advertising directly from its own offices in Detroit to members of the public located throughout the country. As a general rule, the company issues its policies from its home office after receipt of signed applications therefor which have been obtained and forwarded to it by the agents, and the policies, when issued, are mailed to the agents for delivery to the purchasers.

For the purpose of inducing the purchase of its insurance policies, the respondent, in the manner indicated, has made numerous statements and representations with respect to the coverage and benefits provided by the policies. The complaint alleged that certain of these were false and deceptive and that the dissemination thereof constituted a violation of the Federal Trade Commission Act. Grouping the challenged representations into five categories, the examiner found that those in four of the categories were deceptive and misleading, while those in the fifth were not. He held further, however, that the

Commission's jurisdiction extends only to the respondent's advertising disseminated by direct mail and to its transactions in Mississippi, Rhode Island, Missouri, Montana and the District of Columbia, and he restricted the operation of the order to cease and desist contained in his initial decision accordingly.

The basis of the hearing examiner's conclusion as to the Commission's limited jurisdiction is that Congress, in enacting the McCarran-Ferguson Act (Public Law 15, 79th Congress, 15 U.S.C.A. § 1011–15), gave to the states, if they chose to exercise it, full regulation of the insurance business in all its phases (except where such state regulation is, as a matter of law, impossible or clearly ineffective, such as control over the United States mails), and that each of the states other than those named fully regulates the business of insurance by legislative enactment, with the result that as to transactions in such states the Commission's jurisdiction has been withdrawn. On this question the Commission, on April 24, 1956, fully expressed itself in its decision in the matter of *The American Hospital and Life Insurance Company*, Docket No. 6237. The views there stated are equally applicable here, and for the reasons set forth in that decision the examiner's conclusions in this case on the jurisdictional question are rejected.

This leaves for consideration the examiner's decision on the merits. As stated in the initial decision, the respondent's advertising representations which were alleged to have been false and deceptive had to do with continuation of the policies, physical condition of the insureds, extent of coverage, dollar amounts payable for operations, and time periods for which monthly payments could be expected. As to all except those dealing with dollar amounts payable for operations, the examiner held that the representations have been misleading and deceptive. With respect to the representations concerning dollar amounts payable for operations, his holding was otherwise.

Contending that its advertising statements, when read in context, are literally true and, further, that evidence of actual deception is lacking, the respondent in support of its appeal relies principally on the arguments (1) that the questioned advertising was disseminated almost exclusively in states having laws regulating the business of insurance, and (2) that the use of certain of the other material has been abandoned pursuant to a code of advertising ethics adopted by the Health and Accident Underwriters Conference, of which the respondent is a member, rendering the issuance of an order to cease and desist unnecessary.

The hearing examiner's conclusions that the respondent's claims and representations are misleading and likely to be deceptive are not seriously contested. The fact that certain of the statements, when

considered alone, may be true, is no justification for their use where the over-all impression created thereby is false. *P. Lorillard Company* v. *Federal Trade Commission*, 186 F. 2d 52 (C.A. 4, 1950). As said by the Supreme Court in *Donaldson, Postmaster General* v. *Read Magazine, Inc., et al.*, 333 U.S. 178, 188 (1948):

"Advertisements as a whole may be completely misleading although every sentence separately considered is literally true. This may be because things are omitted that should be said, or because advertisements are composed or purposely printed in such a way as to mislead." Nor is it necessary that actual deception be proved or found in a proceeding under Section 5 of the Federal Trade Commission Act. A showing that the advertisements in question have a tendency or capacity to deceive is all that is required. *Progress Tailoring Co., et al.* v. *Federal Trade Commission*, 153 F. 2d 103 (C.A. 7, 1946). And this, we think, the examiner correctly found to be the case.

In its decision in the matter of The American Hospital and Life Insurance Company, the results of which are applicable here, the Commission held that the respondent's advertising representations disseminated in interstate commerce are subject to the Commission's jurisdiction regardless of the existence of state regulations covering the intrastate dissemination of the same material. The fact that the respondent prepared, assembled and mailed to its agents in the various states, for local distribution, advertising material containing all of the statements alleged to have been false is undenied, and there can be no doubt that by so doing the respondent was engaging in an interstate commercial activity. In the view the Commission takes of its jurisdiction, the further fact that some of the representations may not have been made in states not having regulatory statutes is wholly immaterial, and the respondent's argument on this point is accordingly rejected.

The contention that the proceeding is moot and devoid of public interest because of discontinuance of use of certain of the representations is likewise without merit. As pointed out by the examiner, dismissal of a proceeding on the ground of discontinuance is discretionary with the Commission. In the exercise of its discretion, the Commission must necessarily consider, among other things, whether there is a likelihood that the practice found to have been unlawful will be resumed in the absence of an order prohibiting it—and this, in turn, is governed by "all the facts which include the attitude of respondent towards the proceedings, the sincerity of its practices and professions of desire to respect the law in the future and all other facts." *Eugene Dietzgen Co.* v. *Federal Trade Commission*, 142 F. 2d 321, 330 (C.A. 7, 1944), cert. denied, 323 U.S. 730. The record dis-

closes that of the 45 separate pieces of advertising material introduced into evidence, containing statements of the kind alleged in the complaint to have been deceptive, 28 were still being used as of the date the complaint was issued. Moreover, it has been the respondent's contention throughout this proceeding that its advertising, including advertising it no longer uses, has not been deceptive or in any manner unlawful; and that the respondent has offered no assurances of any kind that it will not resume the use of all of the questioned representations once this proceeding is disposed of. The respondent's argument that "The strongest assurance the purchasing public can have that it will be treated fairly will be found in an aware dedication of a company to its public responsibility" is not convincing in the light of the numerous claims which have been found on this record to have been false and deceptive, and the Commission is in full agreement with the examiner that the public interest requires the issuance of an appropriate order to cease and desist under these facts.

In paragraphs 19 to 22, inclusive, of the initial decision, the examiner discusses the respondent's advertising statements with respect to the dollar amounts payable to its policyholders for losses due to operations. These statements, the complaint alleged, and counsel in support of the complaint now contends, are false and deceptive because they represent, contrary to fact, that the policies provide indemnification for each and every operation up to an amount of $300. The examiner, however, being of the opinion that the contended for impressions are "far-fetched" and "not reasonably to be expected," read the statements as meaning that some, but not necessarily all, of the insured's surgical expenses will be paid on a sliding scale or schedule ranging from $5.00 to $300.00, and accordingly found that the statements accurately reflect the coverage provided by the policies. The question for determination now is which of these conflicting points of view is more nearly correct.

The respondent's advertising statements of financial benefits payable under its policies for losses due to operations are as follows:

Surgical Operations, whether performed in or out of the hospital, are paid up to $300.00 IN ADDITION TO HOSPITAL BENEFITS. FULL benefits are paid to all insured members of the family group.

SURGERY BILLS from $5.00 to $300.00 for sickness or accident.

Pays surgical operation expense up to $300.00.

Surgical plan—to $300.00.

Three choices of surgical operation benefits $5.00 to $150.00, $7.50 to $225.00, $10.00 to $300.00.

Your Doctor Bills Paid AT HOME, AT HOSPITAL, AT YOUR DOCTOR'S OFFICE.

$10 to $300 Available Surgical Operation Fees.

Pays surgical operation fees up to $150.00.

Who Pays These Bills? YOU SHOULD BE FULLY PROTECTED AGAINST ALL THESE EXPENSES. * * * NEVER BEFORE HAS SUCH PROTECTION BEEN OFFERED.

The policies to which these statements refer clearly do not provide for payments up to $300 for every operation, but have attached to them riders containing schedules of various amounts payable for specified types of operations (at least two of the policies have the schedules included in the policies themselves). The number of operations covered by the schedules varies from forty-seven in the case of one to ninety in the case of two others, and the number for which the maximum amount of $150 or $300 is payable (depending on the amount of premium paid) varies from two in some instances to six in some of the others, with the operations for which payments of $25.00 or less are provided running from 21 to 43. In the case of a tonsillectomy or adenoidectomy, the typical allowance under the schedules is $25,00, and even this amount is not paid, nor will payment be made for an appendectomy, herniotomy, hemorrhoidectomy, or operations for any injury or disease of the female generative organs, unless the rider shall have been in force for not less than six months from date of issue.

In considering a similar situation in *The American Hospital and Life Insurance Company* case, we said:

"Appraising this advertisement as it is likely to be read by unsuspecting, incautious members of the purchasing public, we gain the impression that the policy will indemnify up to a maximum sum of $150 for any surgical operation serious enough to cost such an amount. Thus, if a tonsillectomy cost $50, we would think it reasonable to expect that one insured by the policy would be protected to that extent. The advertisement is therefore deceptive and misleading in that it promises benefits which the policy does not corroborate."

Our conclusion is no different here. As the courts have uniformly recognized, it is not the trained and experienced experts who need protection, but the members of the buying public who, in making purchases, are governed largely by appearances and general impressions. Furthermore, the ultimate impression upon the mind of a reader arises from the sum total of not only what is said in an advertisement but also of all that is reasonably implied. *Charles of the Ritz Dist. Corp.* v. *Federal Trade Commission*, 143 F. 2d 676 (C.A. 2, 1944). And it seems obvious to us that the statements referred to, especially when read in conjunction with such superlatives as "The Most Complete Coverage," "Complete Protection," "All Inclusive Hospital—Surgical—Nurse Protection," and "Maximum Protection at Moderate Cost," which have also appeared in the respondent's

advertisements, are almost certain to mislead readers into thinking they are getting protection which the policies do not provide. The respondent's practice of describing in its advertising the maximum benefits that may be received under the policies without disclosing the schedule of payments for which the policies actually provide is thus unfair and deceptive within the meaning of the Federal Trade Commission Act.

The appeal of counsel supporting the complaint is granted, the appeal of respondent is denied, and the initial decision will be modified in conformity with this opinion.

Commissioners Gwynne and Mason dissented.

FINAL ORDER

Counsel in support of the complaint and respondent, National Casualty Company, having respectively filed their cross-appeals from the initial decision of the hearing examiner in this proceeding, and the matter having been heard on briefs and oral argument; and the Commission having rendered its decision granting the appeal of counsel in support of the complaint and denying the appeal of respondent and directing modification of the initial decision in conformity with the Commission's opinion:

It is ordered, That the following paragraphs be, and they hereby are, substituted for paragraphs 20 to 22, inclusive, of the findings as to the facts contained in the initial decision:

"20. Through such statements, respondent has represented, among other things, that the policies to which they refer provide indemnity up to a maximum sum of $300 for any operation serious enough to cost such an amount.

"Respondent's policies do not so provide. Under the terms of the policies, payments on account of surgical operations are in accordance with a schedule of fixed fees for different types of operations. Of the numerous operations listed, varying with the different policies from forty-seven to ninety, only a very small number (ranging from two to six on the different schedules) call for payments of as much as $150 or $300 (depending on the amount of premium paid). By way of contrast, the operations for which payments of $25.00 or less are provided, regardless of the actual cost to the policyholder, range from twenty-one in the case of one of the schedules to forty-three in the case of another. Furthermore, according to the terms of the policies, no payments will be made for tonsillectomy, adenoidectomy, appendectomy, herniotomy, hemorrhoidectomy, or for operations for any injury or disease of the female generative organs unless the policy shall have been in force for not less than six months from date of

issue. None of these limitations or conditions is disclosed in the advertising.

"21. Most of the representations set out in paragraph 19 were distributed in all states; others only in some states.

"22. Respondent's representations referred to in paragraphs 19 and 20 have the tendency and capacity to mislead and deceive, and, in the absence of an accompanying schedule clearly disclosing the payments for which the policies provide, are false and deceptive."

It is further ordered, That the following paragraphs be, and they hereby are, substituted for the conclusions of law included in said initial decision:

"1. The Federal Trade Commission has jurisdiction over all of the respondent's acts and practices alleged in the complaint to be unlawful.

"2. The public interest in the proceeding is clear and substantial.

"3. The use by respondent of the statements and representations, found herein to be false and deceptive, with respect to the terms and conditions of its policies of insurance, and its failure to reveal the limitations of the coverage of said policies, have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and to induce the purchase of said policies of insurance because of such erroneous and mistaken belief.

"4. The aforesaid acts or practices of respondent as above set forth are all to the prejudice and injury of the public and constitute unfair and deceptive acts or practices within the intent and meaning of the Federal Trade Commission Act."

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

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

"1. That any such policy may be continued in effect by the insured upon the payment of stipulated premiums, indefinitely or for any stated time, unless full disclosure of any other provision or condition of termination contained in the policy is made conspicuously, prominently, and in sufficiently close conjunction with the representation as will fully relieve it of all capacity to deceive.

"2. That no medical examination is required, unless the respondent actually insures the policyholder without regard to his physical condi-

tion before or after issuance of the policy; or otherwise representing that the condition of the insured's health at the time of issuance of the policy will not be considered by the respondent in determining its liability thereunder, or that the respondent will not, as a claims practice, require proof of good health of the insured at the time of issuance of the policy.

"3. That any policy provides for payment in full or in any specified amount or for payment up to any specified amount for any medical, surgical or hospital service, unless the policy provides that the actual cost to the insured for that service will be paid in all cases up to the amount represented, or unless full disclosure of the schedule of payments for which the policy provides is made conspicuously, prominently, and in sufficiently close conjunction with said representation as will fully relieve it of all capacity to deceive.

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

"*It is further ordered*, That respondent, National Casualty Company, 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 therewith."

It is further ordered, That the initial decision of the hearing examiner, as modified herein, is hereby adopted as the decision of the Commission.

Commissioners Gwynne and Mason dissenting.

IN THE MATTER OF

LEANN FINE 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 6503. Complaint, Feb. 10, 1956—Decision, May 24, 1956

Consent order requiring furriers in East St. Louis, Ill., to cease violating the Fur Products Labeling Act by failing to disclose in newspaper ads, on attached labels, and on invoices information required by the Act; and in such advertising, naming animals other than those specified in the Fur Products Name Guide, and misrepresenting the amount of savings possible to purchasers.

Before *Mr. Robert L. Piper*, hearing examiner.
Mr. R. D. Young, Jr. for the Commission.
Brady, Donovan & Hatch, of East St. Louis, Ill., for respondents.

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 LeAnn Fine Furs, Inc., a corporation, and David Sandow and Sylvia Sandow, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The corporate respondent LeAnn Fine Furs, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Illinois.

Individual respondent David Sandow is President and Treasurer, and individual respondent Sylvia Sandow is Secretary and Vice-President of the corporate respondent. These individual respondents formulate, direct and control the acts, practices and policies of the corporate respondent. The office and principal place of business of all said respondents is located at 334 Collinsville Avenue, East St. Louis, Illinois.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have introduced, sold, advertised, offered for sale, transported and distributed fur products in

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

PAR. 3. Certain of said fur products were falsely and deceptively advertised, in violation of the Fur Products Labeling Act, in that respondents caused the dissemination in commerce, as "commerce" is defined in the Fur Products Labeling Act, of certain advertisements concerning said products by means of newspapers and by various other means, which advertisements were not in accordance with the provisions of Section 5 (a) of the Fur Products Labeling Act, and which advertisements were intended to and did aid, promote and assist, directly and indirectly, in the sale and offering for sale of said fur products.

PAR. 4. Among and including the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in various issues of the East St. Louis Journal, a publication having wide circulation in the State of Illinois and in the adjacent areas of other States of the United States.

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

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

(*b*) Failed to disclose that fur products contained or were composed of secondhand or used fur, when such was the fact, in violation of Section 5 (a) (2) of the Fur Products Labeling Act.

(*c*) Failed to disclose that fur products contained or were composed of bleached, dyed or otherwise artificially colored fur, when such was the fact, in violation of Section 5 (a) (3) of the Fur Products Labeling Act.

(*d*) Contained the name or names of an animal or animals other than the name or names specified in the Fur Products Name Guide, in violation of Section 5 (a) (5) of the Fur Products Labeling Act.

(*e*) Failed to disclose the name of the country of origin of imported furs contained in such fur products in violation of Section 5 (a) (6) of the Fur Products Labeling Act.

(*f*) Misrepresented, by means of comparative prices and percentage savings claims not based on current market values, the amount

of savings to be effectuated by purchasers of said fur products, in violation of Rule 44 (b) of the aforesaid Rules and Regulations.

PAR. 5. Certain of said fur products are misbranded in violation of Section 4 (1) of the Fur Products Labeling Act, in that the name or names of the animal or animals producing the fur contained in such fur products were falsely and deceptively identified on the stamps, tags or labels attached to said fur products.

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

PAR. 7. Certain of said fur products are misbranded in that respondents, on labels attached thereto, set forth the name of an animal other than the name of the animal that produced the fur, in violation of Section 4 (3) of the Fur Products Labeling Act.

PAR. 8. 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*) Respondents failed to set forth the names of the pieces of which the fur products were composed in violation of Rule 20 of said Rules and Regulations.

(*b*) Respondents failed to disclose that the fur contained in fur products was secondhand or used fur, when such was the fact, in violation of Rules 21 and 23 of said Rules and Regulations.

(*c*) Respondents failed to maintain full and adequate records disclosing the facts upon which comparative prices were purportedly based in violation of Rule 44 (e) of said Rules and Regulations.

PAR. 9. Certain of said fur products were falsely and deceptively invoiced, in that they were not invoiced as required under the provisions of Section 5 (b) (1) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 10. The aforesaid acts and practices of respondents were in violation of the Fur Products Labeling Act and of the Rules and Regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on February 10, 1956, charging them with having violated the Fur Products Labeling Act, the rules and regu-

lations issued thereunder, and the Federal Trade Commission Act. After being served with said complaint, respondents appeared by counsel and entered into an agreement, dated March 21, 1956, containing a consent order to cease and desist disposing of all the issues in this proceeding without hearing. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with Section 3.25 of the Rules of Practice of the Commission.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified, or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the same are hereby accepted and ordered filed upon becoming part of the Commission's decision pursuant to Sections 3.21 and 3.25 of the Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondent LeAnn Fine Furs, Inc., is a corporation 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 334 Collinsville Avenue, in the City of East St. Louis, State of Illinois. Individual respondents have their office and principal place of business at the same place as corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Fur Products Labeling Act and the Federal Trade Commission Act, and this proceeding is in the interest of the Public.

ORDER[1]

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

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

1. Fails to disclose:

(*a*) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations;

(*b*) That the fur products contain or are composed of secondhand or used fur when such is a fact;

(*c*) That the fur products contain or are composed of bleached, dyed, or otherwise artificially colored fur when such is a fact;

(*d*) The name of the country of origin of imported furs contained in the fur products.

2. Makes use of comparative prices or percentage saving claims unless such compared prices or claims are based upon the current market value of the fur product or upon a bona fide compared price at a designated time.

3. Contains the name or names of an animal or animals other than those producing the fur contained in the fur product.

B. Misbranding fur products by:

[1] Order published as modified by Commission order of July 27, 1956.

1. Falsely or deceptively labeling or otherwise identifying any such product as to the name or names of the animal or animals that produced the fur from which such product was manufactured;

2. Failing to affix labels to fur products showing:

(*a*) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations;

(*b*) That the fur product contains or is composed of used fur when such is a fact;

(*c*) That the fur product contains or is composed of bleached, dyed, or artificially colored fur when such is a fact;

(*d*) That the fur product is composed in whole or in substantial part of paws, tails, bellies or waste fur when such is a fact;

(*e*) The name, or other identification issued and registered by the Commission, of one or more persons who manufactured such fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce;

(*f*) That name of the country of origin of any imported furs used in the fur product.

C. Making comparative pricing claims or representations unless there is maintained full and adequate records disclosing the facts upon which such claims or representations are based.

D. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices showing:

(*a*) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations;

(*b*) That the fur product contains or is composed of used fur when such is a fact;

(*c*) That the fur product contains or is composed of bleached, dyed, or artificially colored fur when such is a fact;

(*d*) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur when such is a fact;

(*e*) The name and address of the person issuing such invoices;

(*f*) The name of the country of origin of any imported furs contained in the fur product.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 24th day of May, 1956, become the decision of the Commission; and, accordingly:

It is 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 the order to cease and desist.

IN THE MATTER OF

FALLS YARN MILLS, INC., ET AL.

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

Docket 6511. Complaint, Feb. 17, 1956—Decision, May 24, 1956

Consent order requiring manufacturers in Woonsocket, R. I., to cease violating the Wool Products Labeling Act by labeling and invoicing as "65% 70–80 Lambs' Wool—30% mink 5% nylon" cones of yarn which contained substantially less than 30% mink fur fibers.

Before *Mr. J. Earl Cox*, hearing examiner.
Mr. Frederick McManus for the Commission.
Edwards & Angell, of Providence, R. I., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Falls Yarn Mills, Inc., a corporation, and John Cavedon, Sr., individually and as an officer of said corporation, and John Cavedon, Jr., individually, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under said Wool 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 Falls Yarn Mills, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its offices and principal place of business located at 68 South Main Street, Woonsocket, Rhode Island.

PAR. 2. The individual respondent John Cavedon, Sr. is president and treasurer of the corporate respondent and the individual respondent John Cavedon, Jr. is the production manager of corporate respondent. These individuals cooperate in formulating, directing and controlling the acts, policies and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

PAR. 3. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since January 1, 1954, respondents have manufactured for introduction into commerce, sold,

transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in said Act, wool products, as "wool products" is defined therein, consisting of cones of yarn.

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

Among such misbranded wool products were cones of yarn stamped and labeled as "65% 70–80 Lambs-Wool—30% mink 5% nylon"; whereas, in truth and in fact, said yarn contained substantially less than 30% mink fibers.

PAR. 5. Said wool products consisting of cones of yarn were misbranded in that they were not stamped, tagged or labeled as required under the provisions of Section 4 (a) (2) of the Wool Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 6. Respondents, in the course and conduct of their business, were and are in competition, in commerce, with other corporations and with firms and individuals in the sale of wool products, including yarns.

PAR. 7. The acts and practices as set forth in Paragraphs Four and Five constituted misbranding of wool products and were in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

PAR. 8. In the course and conduct of their business as aforesaid, respondents have made various statements in sales invoices and other shipping memoranda in connection with their cones of yarn shipped in commerce. Among and typical, but not all inclusive of such statements, is the following: "65%. 70/80 Lamb's Wool, 30% Mink, 5% Nylon."

PAR. 9. Through the use of such statement to describe their wool products, respondents represented that said wool products contained 30% mink fur fibers.

PAR. 10. Said statement was false, misleading and deceptive. In truth and in fact, said product contained substantially less than 30% mink fur fibers.

PAR. 11. The use by respondents of the statement set forth in Paragraph Eight had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and

mistaken belief that such statement was true and to induce the purchasers of said product to misbrand the fabrics manufactured with said yarn as to their fiber content.

PAR. 12. The acts and practices of the respondents set forth in Paragraph Eight were and are to the prejudice and injury of the public and constituted unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that respondents, subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since January 1, 1954, have manufactured, sold, transported and distributed in commerce, as "commerce" is defined in said Act, wool products, as "wool products" is defined therein, consisting of cones of yarn, certain of which products were misbranded in violation of the Federal Trade Commission Act and Sections 4 (a) (1) and 4 (a) (2) of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder.

After the issuance of the complaint, to which no answer was filed, respondents, their counsel, and counsel supporting the complaint, on April 2, 1956, entered into an Agreement Containing Consent Order To Cease and Desist, which was approved by the Director and Assistant Director, Bureau of Litigation of the Commission, and thereafter transmitted to the Hearing Examiner for consideration.

The agreement identifies respondent Falls Yarn Mills, Inc. as a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its offices and principal place of business located at 68 South Main Street, Woonsocket, Rhode Island, and states that respondent John Cavedon, Jr. is president and respondent John Cavedon, Sr. vice president and treasurer of the corporate respondent and that these individuals cooperate in formulating, directing and controlling the acts, policies and practices of the corporate respondent. The agreement thus reflects a change in official status of the individual respondents since the issuance of the complaint herein, at which time John Cavedon, Sr. was president and treasurer, and John Cavedon, Jr. production manager of the corporate respondent.

The agreement provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint and that the record herein may be taken as if findings of jurisdictional facts had been made in accordance with such allegations; that the record on which the initial decision and the decision of the Commission shall

be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified, or set aside in the manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondents waive any further procedural steps before the Hearing Examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon fully covers all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Federal Trade Commission Act and Sections 4 (a) (1) and 4 (a) (2) of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder. Accordingly, the Hearing Examiner finds this proceeding to be in the public interest and accepts the Agreement Containing Consent Order To Cease And Desist as part of the record upon which this decision is based. Therefore,

It is ordered, That respondent, Falls Yarn Mills, Inc., a corporation, and its officers; respondent John Cavedon, Jr., individually and as an officer of said corporation, and respondent John Cavedon, Sr., individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of yarns or any other wool products, as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool" or "reused wool," as those terms are defined in said Act, do forthwith cease and desist from misbranding such products by

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

2. Failing to securely affix to or place on each such product a stamp, tag, label or other means of identification showing in a clear and conspicuous manner:

(*a*) the percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding five percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentages by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers;

(*b*) the maximum percentages of the total weight of such wool product of any non-fibrous loading, filling, or adulterating matter;

(*c*) the name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939;

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by Paragraphs (a) and (b) of Section 3 of the Wool Products Labeling Act of 1939, and

Provided further, That nothing contained in this order shall be construed as limiting any applicable provisions of said Act or the Rules and Regulations promulgated thereunder.

It is further ordered, That Falls Yarn Mills, Inc., a corporation, and its officers, and John Cavedon, Jr., individually and as an officer of said corporation, and John Cavedon, Sr., individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of yarn or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Misrepresenting the constituent fibers of which their products are composed or the percentages or amounts thereof, in sales invoices, shipping memoranda or in any other manner.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 24th day of May 1956, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Falls Yarn Mills, Inc., a corporation, and John Cavedon, Sr., individually and as an officer of said corporation, and John Cavedon, Jr., individually and as an officer of

said corporation, 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

PREMIER PILLOW CORPORATION ET AL.

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

Docket 6136. Complaint, Oct. 28, 1953—Decision, May 25, 1956

Interlocutory order reversing the hearing examiner's ruling that he is "without authority to rule on respondents' motion" to dismiss at the close of the prosecution's case-in-chief, and remanding the matter to him for decision.

Before *Mr. J. Earl Cox*, hearing examiner.
Mr. Ames W. Williams and *Mr. Charles S. Cox* for the Commission.
Mr. Edward L. Smith, of Washington, D. C., for respondents.

ORDER REMANDING CASE TO HEARING EXAMINER

This matter having come on to be heard by the Commission upon the hearing examiner's ruling referring respondents' motion to dismiss to the Commission for disposition; and

The Commission having determined, for the reasons appearing in the accompanying opinion of the Commission, that the hearing examiner erroneously concluded that he is without authority to rule upon respondents' motion to dismiss, and that the case should be remanded to the hearing examiner:

It is ordered, That this case be, and it hereby is, remanded to the hearing examiner with instructions to proceed in accordance with the Commission's opinion.

OPINION OF THE COMMISSION

MASON, Commissioner:

This matter is before the Commission upon the hearing examiner's ruling referring to us respondents' motion "to dismiss the complaint [1] herein for the reason that, under the testimony and evidence, the proceeding lacks 'the public interest necessary to support the Commission's jurisdiction'."

The examiner indicates the issue raised by respondents' motion in this proceeding is based on a procedural record similar to that presented in the Florida Citrus case,[2] and accordingly ruled:

[1] Complaint issued Oct. 28, 1953, charging violation of the Federal Trade Commission Act.
[2] In the Matter of Florida Citrus Mutual, Docket 6074, May 10, 1954.

"Under this decision of the Commission, the hearing examiner is without authority to rule on respondents' motion, and it must, therefore, be referred to the Commission for consideration."

However, the record shows that the motion in the instant case challenging the existence of public interest was filed after the close of the prosecution's case-in-chief.

This is the significant and distinguishing factor—the point of departure as it were—from the Florida Citrus matter wherein the proceedings had advanced only so far as the preliminary hearing stage. The Florida Citrus respondents sought dismissal of their suit on lack of public interest prior to the prosecution's case-in-chief.

To prevent future misconception and eliminate areas of doubt, we say it is not our intention to foreclose the hearing examiner's consideration of the question of "public interest" after full presentation of the government's case.

Prior—he cannot do it. After—he can.

To say that he has this former power would be to recognize in the hearing examiner the right to sit in judgment on discretionary administrative decisions of the Commission.

In the matter now before us government counsel has completed its case-in-chief and the question of whether an order to cease and desist would be in the "public interest" becomes justiciable in nature and rests within those judicial powers we have delegated to hearing examiners. In the instant proceedings the prosecution has presented its full case and rested. With the facts upon which the government has predicated its charge thus disclosed, the hearing examiner may apply the criteria upon which to base his adjudicatory conclusion. The hearing examiner here in no way assumes the administrative function of the Commission.

This case is remanded to the hearing examiner to rule on the respondents' motion.

Chairman HOWREY, with whom Commissioner SECREST joins, concurring:

We agree that the hearing examiner should have entertained and ruled upon the motion to dismiss at the close of the case-in-chief.

We disagree with the majority opinion to the extent that it makes the added observation that an examiner is not empowered to entertain and rule upon a motion to dismiss for lack of public interest at any prior stage of the case.

For the reasons set forth in the dissenting opinion in the *Florida Citrus Mutual* case,[3] we feel the majority view on this point is con-

[3] Docket No. 6074, Decided May 14, 1954.

trary to the provisions of the Administrative Procedure Act, decisional law, and the Commission's own Rules of Practice.

Public interest is a jurisdictional prerequisite to proceedings under the Federal Trade Commission Act. To suggest that such an issue can never be adjudicated on the basis of a preliminary motion, properly filed and supported, is to favor—literally—the imposition upon parties of the onerous burden to litigate the merits even in a case where a jurisdiction defect may be self evident.

In the dissenting opinion in the *Florida Citrus Mutual* case, *supra*, it was stated:

"Counsel supporting the complaint also question the wisdom of ruling on the 'public interest' issue prior to a hearing on the merits. They suggest that public interest cannot be determined until all the facts are in the record. There is much to be said for the argument and certainly restraint should be exercised in ruling on such motions before counsel in support of the complaint have closed their case-in-chief. As I have indicated, public interest lacks specificity and cannot be directly measured; it is usually determined from all the facts and circumstances of the particular case. However, this is not to say that such motions should never be granted. In exceptional instances, like the *Klesner* case, for example, the hearing examiner should by all means consider and decide the matter on a preliminary motion."

Section 7 (b) of the Administrative Procedure Act provides, among other things, that hearing examiners shall have the authority to make decisions or recommended decisions and to take "any other action authorized by agency rule * * *." [4] Rule X of the Commission's Rules of Practice provides in part that "During the time a proceeding is pending before a trial examiner all motions * * * shall be addressed to and ruled upon by him * * *." This includes motions to dismiss at any stage of the proceedings.

In the leading case of *F.T.C.* v. *Klesner*, 280 U.S. 19 (1929), the Supreme Court stated that a complaint should be dismissed "at any time during the course of the proceeding" if it is shown that the matter is not in the public interest. In *Moretrench Corp.* v. *F.T.C.*, 127 F. 2d 792 (C.A. 2, 1942), Judge Learned Hand observed that the *Klesner* case "did indeed decide that the public interest in the controversy was a justiciable issue * * *."

In our view, there is no validity in the position that an examiner can rule on a motion to dismiss after the close of the case-in-chief but that he cannot rule on a motion prior to the reception of evidence on the merits, no matter how strongly supported.

[4] 5 U. S. C. 1006 (b).

It is true that the decision of the Commission to issue a complaint is a discretionary, administrative function. It is equally clear—at the same time—that Commission proceedings become judicial in character immediately upon issuance and service of complaint. In considering the jurisdictional issue of public interest after complaint—whether or not hearings have been held with respect to the allegations of the complaint—the hearing examiner is performing a judicial function. Obviously if he should rule for or against a motion to dismiss without compelling supporting evidence his decision should and would be reversed. This would also be true in the unlikely event that an examiner, without evidence, substituted his judgment for that of the Commission in issuing the complaint. However, the question raised is whether or not the hearing examiner has authority to rule on the motion, not whether he misuses—or might misuse—that authority.

Authority is always subject to error and abuse. But the contingency of error should not impair the efficient administration of justice.

Interlocutory order remanding case to hearing examiner for further proceedings to harmonize with Burton-Dixie case.[5]

ORDER REMANDING PROCEEDING TO HEARING EXAMINER

Counsel supporting the complaint having filed an appeal from the hearing examiner's initial decision dismissing the complaint herein at the close of presentation of the case in support of the complaint; and the matter having been heard on briefs and oral argument, and the Commission having rendered its decision vacating and setting aside said initial decision:

It is ordered, That this case be, and it hereby is, remanded to the hearing examiner for further appropriate proceedings.

ON APPEAL FROM INITIAL DECISION

By Secrest, Commissioner:

This is one of a group of ten cases, all tried and considered together, involving the use on labels of allegedly false and deceptive representations with respect to the filling material contained in feather and down pillows. This case differs from the others, however, in that it is an appeal from the hearing examiner's initial decision granting the respondents' motion to dismiss the complaint made at the close of the case in chief, whereas the appeals in the other cases were from initial decisions filed after full hearings. The sole question for decision is whether or not the hearing examiner was correct in his conclusion that there is no public interest in the proceeding.

[5] 51 F. T. C. 1330.

The representations alleged in the complaint to have been false and deceptive relate solely to pillows filled with crushed feathers. Similar representations were involved in the matter of Burton-Dixie Corporation, et al., Docket No. 6134, in which case the hearing examiner also held that there was no public interest in attacking the representations, and in that case the Commission has written an opinion holding that in so doing the examiner was in error. In view of the similarity of the cases, the opinion in the Burton-Dixie case is equally applicable here, and for the reasons there stated, the appeal of counsel supporting the complaint in this case is granted and the initial decision of the hearing examiner is vacated and set aside. In consequence of this action, it will be necessary for the case to be remanded to the hearing examiner for further proceedings.

Order requiring a manufacturer in Brooklyn, N. Y., to cease labeling pillows as "All New Material Consisting of" variously "Crushed Goose Feathers," "Crushed Duck Feathers," "Crushed Duck Quill," or "Crushed Goose Quill"; when analysis of the content of the pillows showed that they were not accurately labeled within the 15% tolerance specified in the feather industry trade practice rules.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that respondents have violated the provisions of the Federal Trade Commission Act by misrepresenting the contents of feather pillows which they manufacture and distribute in commerce.

After the filing of an answer, hearings were held, at which testimony and other evidence was presented in support of the allegations of the complaint, duly recorded and filed in the office of the Commission. Thereupon respondents, without waiving any other rights in the proceeding, filed a motion to dismiss the complaint "for the reason that, under the testimony and evidence, the proceeding lacks the public interest necessary to support Commission's jurisdiction." This motion was granted by the Hearing Examiner in an Initial Decision which, upon appeal, was vacated and set aside. The case was remanded to the Hearing Examiner for further appropriate proceedings, and thereafter a hearing was held at which respondents waived the presentation of evidence in their behalf and the right to file proposed findings. Counsel supporting the complaint later submitted proposed findings and conclusions, and the proceeding is presented for Initial Decision upon the entire record.

THE FACTS

1. Respondent Premier Pillow Corporation is a New York corporation, with its principal office located at 121 North 11th Street,

Brooklyn, New York. Respondents Louis Silverman, Samuel Shipper and Isador Shipper are President, Treasurer and Secretary, respectively, of said corporate respondent, and direct its policies, acts, practices and business affairs.

2. Respondents are now, and for more than one year prior to the filing of the complaint herein were engaged in the manufacture and sale to dealers for resale to the general public of feather and down products, specifically pillows, which they have caused and now cause to be transported from their place of manufacture to purchasers thereof located in various other states of the United States. Respondents maintain and at all times mentioned herein have maintained a substantial course of trade in said feather and down products in commerce between and among the various states of the United States.

3. In the course and conduct of their aforesaid business respondents are now, and have been, in substantial competition in commerce with other corporations and with firms, individuals and partnerships engaged in the sale and distribution of feather and down products, including pillows, and have caused labels to be affixed to certain of their pillows, purporting to state the kinds or types of filling material contained therein. Similar identification of the kinds or types of filling material contained in said pillows has also been made in invoices.

4. There are four types of labeling involved in this proceeding, all of which are alleged to be false, misleading and deceptive.

A. Some types of their pillows were labeled by respondents as containing

ALL NEW MATERIAL CONSISTING OF CRUSHED GOOSE FEATHERS

Three of such pillows were introduced as evidence in this proceeding. Their contents had been analyzed, substantially in accordance with the provisions of the Trade Practice Rules for the Feather and Down Products Industry, promulgated by the Commission on April 26, 1951, by an expert who since 1916 has been employed by the Department of Health of the State of Maryland and since 1924 has been Chief, Division of Bedding and Upholstery of that department.

The average of the analyses of the contents of these three pillows is as follows:

	Percent
Waterfowl feathers	25.1
Waterfowl fiber	10.6
Chicken feathers	34.6
Chicken fiber	14.0
Pith and scale	15.7

Interpreting the term "waterfowl" in the analysis to mean "goose," the analysis still shows that the pillows were not accurately labeled within the 15% tolerance specified in the feather industry trade practice rules.

B. Others of respondents' pillows were labeled as containing

ALL NEW MATERIAL CONSISTING OF CRUSHED DUCK FEATHERS

The contents of three of these pillows were similarly analyzed, and the average of the analyses shows the following:

	Percent
Duck feathers	28.3
Duck fiber	9.9
Chicken feathers	39.3
Chicken fiber	13.7
Pith and scale	8.8

These pillows, likewise, were not accurately labeled within the permissible tolerance.

C. Still others of respondents' pillows were labeled as containing

ALL NEW MATERIAL CONSISTING OF CRUSHED DUCK QUILL

The content of one pillow of this type was analyzed, and shown to be as follows:

	Percent
Duck feathers	33.2
Duck fiber	37.5
Chicken feathers	7.8
Chicken fibers	8.8
Pith and scale	12.7

D. A fourth type of pillow was labeled

ALL NEW MATERIAL CONSISTING OF CRUSHED GOOSE QUILL

An analysis of the content of a single pillow of this type shows the following:

	Percent
Goose feathers	37.7
Goose fiber	38.4
Chicken feathers	4.8
Chicken fibers	4.9
Quills	6.0
Pith and scale	8.2

The trade practice rules were not strictly followed in analyzing the contents of the last two types of pillows, in that only one pillow of each type was used; yet sufficient data are shown to justify a finding that these types of pillows were also inaccurately labeled, although such a finding is not essential to the conclusions reached in this proceeding.

5. Upon all the facts of record, the conclusion reached is that respondents have made representations as to the contents of their pillows which are false, misleading and deceptive.

In its decision in the matter of *Burton-Dixie Corporation, et al.*, Docket No. 6134, the Commission said:

We conclude that the evidence herein is reliable, probative, and substantial as to consumer preference for waterfowl feathers; that that preference can be assumed to carry over to crushed feathers; that from the standpoint of utility there are distinct advantages and differences as between different types or kinds of crushed feathers and that while there may be no significant difference in price as between crushed waterfowl feathers and crushed landfowl feathers there is a significant difference in utility and the pillow buyer is entitled to get what the label represents the contents to be. Insofar as purchasers of pillows are concerned, we see no justification for recognizing any different standards or requirements to be observed with respect to purchasers at the lower end of the economic ladder than those observed with respect to purchasers at the upper end.

In the *Burton-Dixie* case, under circumstances similar to those presented in this proceeding, the Commission found the issuance of a cease-and-desist order to be in the public interest.

Upon the complete record, the following conclusions are reached in this proceeding—

CONCLUSIONS

1. This proceeding is in the public interest;

2. The use by respondents of the aforesaid false, misleading and deceptive representations on the labels affixed to their pillows has had and now has the capacity and tendency to mislead and deceive dealers and the purchasing public as to the composition of the filling materials of said pillows and to induce the purchase of substantial quantities of said pillows because of such mistaken and erroneous belief; and

3. The aforesaid acts and practices of respondents, as herein found, are all to the prejudice and injury of the public, and constitute unfair acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act; wherefore,

ORDER

It is ordered, That the respondents, Premier Pillow Corporation, a corporation, and Louis Silverman, Samuel Shipper, and Isador Shipper, individually, and as officers of said corporation, and their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of feather and down products, including pillows, do forthwith cease and desist from misrepresenting in any

manner, or by any means, directly or by implication, the identity of the kind or type of filling material contained in any such products, or of the kinds or types, and proportions of each, when the filling material is a mixture of more than one kind or type.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 25th day of May, 1956, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Premier Pillow Corporation, a corporation, and Louis Silverman, Samuel Shipper, and Isador Shipper, individually, 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.

Commissioner Kern not participating.

IN THE MATTER OF

MAWSON DEMANY FORBES ET AL.

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

Docket 6513. Complaint, Feb. 17, 1956—Decision, May 26, 1956

Consent order requiring furriers in Philadelphia to cease violating the Fur Products Labeling Act through abbreviating the required information on invoices which also failed to disclose that certain products were composed in substantial part of sides and flanks; and, in advertising in newspapers, failing to disclose the names of animals producing the fur and misrepresenting prices and values.

Before *Mr. James A. Purcell*, hearing examiner.
Mr. John T. Walker for the Commission.
Mr. Isadore S. Wachs, of Philadelphia, Pa., for respondents.

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 Mawson DeMany Forbes, a corporation, David DeMany, individually and as President and Treasurer of said corporation, and Morris B. Marks, individually and as Vice President and Secretary of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Mawson DeMany Forbes is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business at 1113 Chestnut Street, Philadelphia, Pennsylvania.

Respondent David DeMany is President and Treasurer of said corporation, and respondent Morris B. Marks is Vice President and Secretary of said corporation. These individuals, acting in cooperation with each other, formulate, direct and control the acts, policies and practices of said corporate respondent. Their addresses are the same as that of said corporate respondent.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been, and are now, engaged in the introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products, and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

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

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

(*a*) Required information was set forth in abbreviated form, in violation of Rule 4 of the aforesaid Rules and Regulations;

(*b*) Respondents failed to disclose as part of the required information that such fur products were composed in whole or in substantial part of sides and flanks, when such was the fact, in violation of Rule 20 of the aforesaid Rules and Regulations.

PAR. 5. Certain of said fur products were falsely and deceptively advertised, in violation of the Fur Products Labeling Act, in that respondents caused the dissemination in commerce, as "commerce" is defined in said Acts, of certain advertisements, by means of newspapers, which advertisements were not in accordance with provisions of Section 5 (a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and which advertisements were intended to and did aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents appearing under the name of Sattler's, Inc., a Buffalo furrier, which appeared in issues of the Buffalo Evening News, a newspaper published in Buffalo, New York, and having wide circulation in said State and in various other States of the United States. Under an agreement with Sattler's, Inc., the respondents shipped certain fur products to said Sattler's, Inc., and agreed to pay to Sattler's, Inc., 17 percent of the net sales of all of said fur products sold. Respondent Mawson DeMany Forbes assumed all of the cost of shipping and advertising said fur products and its

officials supervised the preparation of and approved the said advertisements.

By means of the aforesaid advertisements, and through others of the same import and meaning not specifically referred to herein, respondents falsely and deceptively:

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

(*b*) Misrepresented, by means of comparative prices not based on current market values, the amount of savings to be effectuated by purchasers of said fur products, in violation of Rule 44 (b) of the aforesaid Rules and Regulations.

(*c*) Misrepresented the value of fur products, when such claims and representations were not true in fact, in violation of Rule 44 (d) of the aforesaid Rules and Regulations.

Respondents, in making the pricing claims and representations referred to in subparagraphs (*b*) and (*c*) hereof, failed to maintain full and adequate records disclosing the facts upon which such claims and representations were purportedly based, in violation of Rule 44 (e) of said Rules and Regulations.

PAR. 6. The aforesaid acts and practices of respondents, as herein alleged, were in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued February 17, 1956, charges the respondents Mawson DeMany Forbes, a corporation, David DeMany, individually and as President and Treasurer of said corporation, and Morris B. Marks, individually and as Vice President and Secretary of said corporation, all hereinafter referred to as respondents, with having violated the provisions of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, as well also the provisions of the Federal Trade Commission Act.

Subsequent to proper service of the complaint upon all respondents the parties hereto entered into an agreement for consent order to cease and desist, dated March 30, 1956, said agreement disposing of all the issues in this proceeding without hearing. Said agreement has been submitted to this Hearing Examiner, heretofore duly designated to act as such, for his consideration in accordance with Section 3.25 of the Rules of Practice of the Commission.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified, or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the same are hereby accepted and ordered filed upon becoming part of the Commission's decision pursuant to Sections 3.21 and 3.25 of the Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondent Mawson DeMany Forbes is a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania; respondent David DeMany is President and Treasurer of said corporation and respondent Morris B. Marks is Vice President and Secretary of said corporation. The two named individual respondents, acting in concert, formulate, direct and control the acts, policies and practices of the corporate respondent. The office and principal place of business of all of said respondents is at No. 1113 Chestnut Street, Philadelphia, Pennsylvania.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against the respondents under and by virtue of the provisions of the Fur Products Labeling Act and of the Rules and Regulations promulgated thereunder, as well also

under the provisions of the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

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

A. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices to purchasers of fur products showing:

(*a*) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(*b*) That the fur product contains or is composed of used fur when such is a fact;

(*c*) That the fur product contains or is composed of bleached, dyed, or artificially colored fur when such is a fact;

(*d*) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur when such is a fact;

(*e*) The name and address of the person issuing such invoices;

(*f*) The name of the country of origin of any imported furs contained in the fur product.

2. Setting forth the required information in abbreviated form.

3. Failing to disclose as part of the required information that fur products were composed in whole or in substantial part of sides and flanks, when such was the fact.

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

1. Fails to disclose the name or names of the animal or animals producing the fur or furs contained in the fur products as set forth

in the Fur Products Name Guide and as prescribed under the rules and regulations.

2. Represents directly or by implication:

(*a*) That the regular or usual price of any fur product is any amount which is in excess of the price at which the respondent has usually and customarily sold such products in the recent regular course of its business;

(*b*) The value of fur products, when such claims and representations are not true in fact.

3. Makes use of comparative prices or percentage savings claims unless such compared prices or claims are based upon the current market value of the fur product or upon a bona fide compared price at a designated time.

4. Makes price claims and representations of the type referred to in sub-paragraphs (*a*) and (*b*) and paragraph 3 above, unless there is maintained by respondents full and adequate records disclosing the facts upon which such claims or representations are based.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 26th day of May, 1956, become the decision of the Commission; and, accordingly:

It is 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 the order to cease and desist.

IN THE MATTER OF

WORLD INSURANCE COMPANY

Docket 6455. Order and Opinion, May 28, 1956

Interlocutory order reversing hearing examiner's ruling limiting scope of proceeding to certain states, and denying, as not complying with the Rules of Practice, respondent's request for consideration of alleged error in ruling denying motion to dismiss.

Before *Mr. Frank Hier*, hearing examiner.

Mr. William A. Somers for the Commission.

Mr. J. W. Marer, of Omaha, Nebr., for respondent.

ORDER GRANTING APPEAL FROM HEARING EXAMINER'S RULING LIMITING SCOPE OF PROCEEDING

Counsel in support of the complaint having filed an interlocutory appeal from a ruling of the hearing examiner limiting the scope of the proceeding in some respects to respondent's advertising representations disseminated in the States of Missouri, Mississippi, Rhode Island, Montana, and in the District of Columbia, and respondent in its answer having requested for the first time consideration of alleged error in the hearing examiner's ruling denying a motion to dismiss; and

The Commission having concluded, for the reasons set forth in its opinion in the matter of The American Hospital and Life Insurance Company, Docket No. 6237, issued April 24, 1956, that the examiner was in error in the ruling appealed from by counsel supporting the complaint; and

It appearing to the Commission that it can consider alleged error in an interlocutory ruling of a hearing examiner only when it is made the basis of an interlocutory appeal in accordance with § 3.20 of the Rules of Practice and that respondent's request for consideration of alleged error in the further ruling of the hearing examiner does not comply with the aforementioned section of the Rules of Practice:

It is ordered, That the appeal of counsel in support of the complaint be, and it hereby is, granted; and

It is further ordered, That insofar as the hearing examiner's ruling of February 29, 1956, purports to limit the scope of this proceeding in some respects to the advertising representations disseminated in Missouri, Mississippi, Rhode Island, Montana and in the District of Columbia, said ruling is hereby reversed; and

It is further ordered, That respondent's request for consideration of alleged error in the hearing examiner's ruling denying the motion to dismiss be, and it hereby is, denied.

Chairman Gwynne and Commissioner Mason dissenting in part and concurring in part.

JOINT OPINION OF CHAIRMAN GWYNNE AND COMMISSIONER MASON, DISSENTING IN PART AND CONCURRING IN PART

We concur in the order herein to return this proceeding to the hearing examiner, but, in accord with our partial dissent to the interlocutory order of May 11, 1956 in *Federal Life and Casualty Company*, Docket No. 6312, would do so for the limited purpose of determining whether there are here particular advertising practices—for instance radio or TV—effectively beyond the reach of state regulation and subject to the exercise of our jurisdiction under Section 5 of the Federal Trade Commission Act.

IN THE MATTER OF

TRION, INC.

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

Docket 6507. Complaint, Feb. 14, 1956—Decision, May 29, 1956

Consent order requiring a manufacturer in McKees Rocks, Pa., to cease representing falsely in advertisements in newspapers, periodicals, circulars, etc., that use of its "Trion Electronic Air Cleaner" device would afford protection from colds and other respiratory infections.

Before *Mr. Robert L. Piper*, hearing examiner.
Mr. Floyd O. Collins for the Commission.

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

PARAGRAPH 1. Trion, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania with its home office and principal place of business located at 1000 Island Avenue, McKees Rocks, Pennsylvania.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the manufacture, sale, and distribution of an air cleaning device variously designated as "Trion Electronic Air Cleaner," "Trion Electric Air Cleaner," and "Trion Electric Air Filter." Said product is represented to be of value in the prevention of disease and is a device as "device" is defined in the Federal Trade Commission Act.

PAR. 3. Respondent causes said product when sold to be transported from its place of business in the State of Pennsylvania to purchasers thereof located in various other states of the United States and maintains and at all times mentioned herein has maintained a constant course of trade in said product in commerce among and between the various states of the United States. Its volume of business in said product is and has been substantial.

PAR. 4. In the course and conduct of its business respondent has disseminated and caused the dissemination of certain advertisements

concerning its said device by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of its said device, including but not limited to advertisements inserted in newspapers and periodicals and by means of circulars and other advertising literature; and respondent has disseminated and caused the dissemination of advertisements by various means, including but not limited to the means aforesaid, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of its said device in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical, but not all inclusive, of the statements contained in the advertisements, disseminated as aforesaid, are the following:

Fewer colds and other diseases.
Over 90% of air-borne bacteria and virus is removed.
Lower doctor and drug bills.
A healthful atmosphere reduces sickness.
* * * bacteria and virus are eliminated.
* * * germ-free * * * air.
* * * banishing * * * germs from the air in homes, offices, plants, theaters, hospitals.

PAR. 6. Through the use of the advertisements containing the aforesaid statements, and others of the same import, but not specifically set out herein, respondent represented, directly and by implication, that the use of its device will afford protection from colds and other respiratory infections.

PAR. 7. The said advertisements are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, colds and other respiratory infections are contracted, in practically all instances, by germs, bacteria, and viruses spread through close personal contact between persons and from droplets sprayed from the mouth during coughing, sneezing, and talking. The likelihood that such infectious materials would pass through respondent's device is so remote that, from any practical standpoint, said device would be of no value in preventing colds or other respiratory infections.

PAR. 8. The use by respondent of the foregoing false, misleading, and deceptive statements contained in said advertisements has had and now has the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and to induce a

substantial portion of the purchasing public to purchase respondent's said product because of said erroneous and mistaken belief.

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

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on February 14, 1956, charging it with having violated the Federal Trade Commission Act. After being served with said complaint, respondent entered into an agreement, dated March 29, 1956, containing a consent order to cease and desist, disposing of all the issues in this proceeding without hearing. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with Section 3.25 of the Rules of Practice of the Commission.

Respondent, pursuant to the aforesaid agreement, has admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondent waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that said agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the same are hereby accepted and ordered filed upon

becoming part of the Commission's decision pursuant to Sections 3.21 and 3.25 of the Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondent is a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 1000 Island Avenue, in the City of McKees Rocks, State of Pennsylvania.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is therefore ordered, That the respondent Trion, Inc., a corporation, its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the sale, offering for sale or distribution of a device designated as Trion Electronic Air Cleaner, or any other device of substantially similar character, whether sold under the same name or any other name, do forthwith cease and desist from, directly or indirectly:

1. Disseminating or causing to be disseminated by means of the United States mails, or by any other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents directly or by implication that the use of respondent's device will afford protection from or will effectively prevent the spread of colds or similar respiratory infections;

2. Disseminating or causing to be disseminated, any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's device, which advertisement fails to comply with the requirements set forth in Paragraph 1 hereof.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 29th day of May, 1956, become the decision of the Commission; and, accordingly:

It is 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 the order to cease and desist.

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IN THE MATTER OF

BUCKSPAN'S ET AL.

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

Docket 6514. Complaint, Feb. 17, 1956—Decision, May 30, 1956

Consent order requiring furriers in Dallas, Tex., to cease violating the Fur Products Labeling Act by labeling and invoicing which failed to disclose that certain fur products were composed of flanks, and failed to set forth information as required; and by advertising in newspapers which failed to disclose the names of animals producing the fur, the country of origin, the fact that fur contained in the products was artificially colored, consisted of paws, tails, bellies or waste fur, or of flanks; which abbreviated required information; and which misrepresented prices and values.

Before *Mr. J. Earl Cox*, hearing examiner.
Mr. William R. Kearney for the Commission.
Passman & Jones, of Dallas, Tex., for respondents.

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 Buckspan's, a corporation, and H. M. Buckspan, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Buckspan's, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas. Respondent H. M. Buckspan, an individual, is president of respondent, Buckspan's, and formulates and controls the policies and practices of said corporate respondent. The said corporate respondent and said individual respondent have their office and principal place of business located at 1619 Main Street, Dallas, Texas.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received

in commerce, as "commerce," "fur," and "fur products" are defined in the Fur Products Labeling Act.

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

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

(*a*) Failure to disclose that certain fur products were composed in whole or in substantial part of flanks in violation of Rule 20 of the aforesaid Rules and Regulations.

(*b*) Required information was mingled with nonrequired information on labels, in violation of Rule 29 (a) of the aforesaid Rules and Regulations.

(*c*) Required information was set forth in handwriting on labels, in violation of Rule 29 (b) of the aforesaid Rules and Regulations.

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

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

(*a*) Required information was set forth on invoices in abbreviated form in violation of Rule 4 of the aforesaid Rules and Regulations.

(*b*) Respondents failed to disclose that certain fur products were composed in whole or in substantial part of flanks in violation of Rule 20 of the aforesaid Rules and Regulations.

PAR. 7. Certain of said fur products were falsely and deceptively advertised, in violation of the Fur Products Labeling Act, in that respondents caused the dissemination in commerce, as "commerce" is defined in said Act, of certain advertisements, concerning said fur products, by means of newspapers and by various other means, which advertisements were not in accordance with the provisions of Section 5 (a) of the Fur Products Labeling Act, and of the Rules and Regulations promulgated under said Act, and which advertisements were intended to aid and did aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

PAR. 8. Among and including the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in issues of the "Dallas Morning News," a newspaper published in Dallas, Texas, and having wide circulation in said State and in various other States of the United States.

By means of the aforesaid advertisements and through others of the same import and meaning, not specifically referred to herein, respondents falsely and deceptively:

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

(*b*) Failed to disclose that fur contained in fur products was bleached, dyed or otherwise artificially colored fur, when such was the fact, in violation of Section 5 (a) (3) of the Fur Products Labeling Act.

(*c*) Failed to disclose that fur products were composed in whole or in substantial part of paws, tails, bellies or waste fur when such was the fact and in violation of Section 5 (a) (4) of the Fur Products Labeling Act.

(*d*) Failed to disclose the name of the country of origin of any imported furs contained in fur products, in violation of Section 5 (a) (6) of the Fur Products Labeling Act.

(*e*) Set forth required information in advertisements in abbreviated form in violation of Rule 4 of the aforesaid Rules and Regulations.

(*f*) Failed to disclose that fur products were composed in whole or in substantial part of flanks when such was the fact in violation of Rule 20 of the aforesaid Rules and Regulations:

(*g*) Misrepresented prices of fur products as having been reduced from regular or usual prices, where the so-called regular or usual prices were in fact fictitious, in that they were not the prices at which said merchandise was usually sold by respondents, in the recent regular course of their business, in violation of Rule 44 (a) of the aforesaid Rules and Regulations.

(*h*) Misrepresented, by means of comparative prices not based on current market values, the amount of savings to be effectuated by purchasers of said fur products, in violation of Rule 44 (b) of the aforesaid Rules and Regulations.

Respondents, in making the pricing claims and representations referred to in subparagraphs (*g*) and (*h*) hereof, failed to maintain full and adequate records disclosing the facts upon which such claims and representations were purportedly based, in violation of Rule 44 (e) of said Rules and Regulations.

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

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that respondents, subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, have advertised, offered for sale, sold, transported and distributed "fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as 'commerce,' 'fur' and 'fur products' are defined in the Fur Products Labeling Act," some of which were misbranded in violation of the Federal Trade Commission Act, and of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder. Respondents filed an answer thereto which, in general, denied the allegations of the complaint, but thereafter, on April 2, 1956, they and their counsel entered into an agreement with counsel supporting the complaint, in which they consented to the issuance of an order to cease and desist. This agreement was approved by the Director and Assistant Director, Bureau of Litigation of the Commission, and thereafter transmitted to the Hearing Examiner for consideration.

The agreement identifies respondent Buckspan's as a corporation existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1619 Main Street, Dallas, Texas, and sets forth that individual respondent H. M. Buckspan is president of said corporate respondent and has the same address.

The agreement provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; that respondents' answer to the complaint shall be considered as having been withdrawn, and that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified, or set aside in the manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as

alleged in the complaint; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondents waive further procedural steps before the Hearing Examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon fully covers all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Federal Trade Commission Act and of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder. Accordingly, the Hearing Examiner finds this proceeding to be in the public interest and accepts the Agreement Containing Consent Order To Cease And Desist as part of the record upon which this decision is based. Therefore,

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

A. Misbranding fur products by:

1. Failing to affix labels to fur products showing:

(*a*) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations:

(*b*) That the fur product contains or is composed of used fur when such is a fact;

(*c*) That the fur product contains or is composed of bleached, dyed, or artificially colored fur when such is a fact;

(*d*) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur when such is a fact;

(*e*) The name, or other identification issued and registered by the Commission, of one or more persons who manufactured such fur product for introduction into commerce, introduced it into com-

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

(*f*) The name of the country of origin of any imported furs used in the fur product;

2. Setting forth on labels attached to fur products:

(*a*) Nonrequired information mingled with required information;

(*b*) Required information in handwriting;

3. Failing to show on labels attached to fur products that the fur products are composed in whole or substantial parts of flanks when such is the fact;

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices to purchasers of fur products showing:

(*a*) The name or names of the animal or animals producing the fur or furs contained in the fur products, as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations;

(*b*) That the fur product contains or is composed of used fur, when such is a fact;

(*c*) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is a fact;

(*d*) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is a fact;

(*e*) The name and address of the person issuing such invoice;

(*f*) The name of the country of origin of any imported fur contained in a fur product;

2. Setting forth required information in abbreviated form;

3. Failing to set forth on invoices pertaining to fur products that the fur products are composed in whole or in substantial part of flanks, when such is the fact;

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 fur products, and which:

1. Fails to disclose:

(*a*) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide, and as prescribed under the Rules and Regulations;

(*b*) That the fur products contain or are composed of bleached, dyed, or otherwise artificially colored fur when such is a fact;

(*c*) That the fur products are composed in whole or in substantial part of paws, tails, bellies, or waste fur when such is the fact;

(*d*) The country of origin of imported furs as required by the Fur Products Labeling Act or in the manner and form permitted by

Rule 38 (b) of the Rules and Regulations promulgated thereunder;

(*e*) Setting forth required information in abbreviated form;

(*f*) That fur products are composed in whole or substantial part of flanks, when such is the fact;

2. Represents, directly or by implication, that the regular or usual price of any fur product is any amount which is in excess of the price at which the respondents have usually and customarily sold such products in the recent regular course of their business;

3. Makes use of comparative prices or percentage savings claims unless such compared prices or claims are based upon current market value of the fur product or upon a bona fide compared price at a designated time;

4. Makes pricing claims or representations of the type referred to in Paragraphs C 2 and C 3 above, unless there is maintained by respondents an adequate record disclosing the facts upon which such claims or representations are based.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 30th day of May 1956, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Buckspan's, a corporation, and H. M. Buckspan, individually and as an officer of said corporation, 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

FUR & WOOL MILLS, INC., ET AL.

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

Docket 6505. Complaint, Feb. 13, 1956—Decision, May 31, 1956

Consent order requiring three corporations occupying the same premises at Danbury, Conn., and closely related by stock ownership, common officers, and business relationships, to cease violating the Federal Trade Commission Act through invoicing fur fibers to mills and other purchasers as "Natural Guanaco," "Guanaco Fur Blend," "Mink Fur Blend," and "Beaver Fur Blend," when the predominant fiber in the product so described was not "guanaco," "mink," or "beaver," respectively.

Before *Mr. J. Earl Cox*, hearing examiner.
Mr. Frederick McManus for the Commission.
Mr. Jacob Landau, of New York City, for respondents.

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 Fur & Wool Mills, Inc., a corporation, Platt Wool Corporation, a corporation, Richard Becker and William Mond, individually and as officers of said corporations, S. Rosenfelder & Son, Inc., a corporation, and William Mond, 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 Fur & Wool Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business on Chestnut Street in the City of Danbury, State of Connecticut. Individual respondents Richard Becker and William Mond are now and were, at all times hereinafter mentioned, officers of this corporate respondent. These individuals formulate, direct and control the policies, acts and practices of said corporate respondent and have their office and principal place of business at the same place as the corporate respondent.

PAR. 2. Respondent Platt Wool Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business on Chestnut Street in the City of Danbury, State of Connecticut.

Individual respondents Richard Becker and William Mond are now and were, at all times hereinafter mentioned, officers of this corporate respondent. These individuals formulate, direct and control the acts and practices of said corporate respondent and have their office and principal place of business at the same place as the corporate respondent.

PAR. 3. Respondent S. Rosenfelder & Son, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business on Chestnut Street in the City of Danbury, State of Connecticut. Individual respondent William Mond is now and was, at all times hereinafter mentioned, an officer of this corporate respondent. This individual formulates, directs and controls the policies, acts and practices of this corporate respondent and has his office and principal place of business at the same place as the corporate respondent.

PAR. 4. The corporate respondents, separately and together, purchase fur scrap and pelts which are sent to the plant of Federal Fur Company, Inc., a corporation, also at Danbury, Connecticut, where the fur fibers are removed. Individual respondent William Mond is president of Federal Fur Company, Inc. Blends of fur fibers are made up by said company, after which they may be and are sold by one or all of the corporate respondents, regardless of which may have supplied the fur scrap and pelts. The separate respondents occupy the same premises in Danbury and are so closely related by stock ownership, common officers and business relationship that the acts and practices of one are the acts and practices of all.

The purchasers of said fur fibers consist largely of mills which use the same, together with other fibers, in the manufacture of yarns or fabrics.

PAR. 5. Respondents now cause, and for several years last past have caused, their fur fibers, when sold, to be transported from their place of business in the State of Connecticut to purchasers thereof located in various other States. Respondents maintain, and at all times mentioned herein have maintained, a constant and substantial trade in their fur fibers in commerce between and among various States of the United States.

PAR. 6. In the course and conduct of their business as aforesaid, respondents have made various statements concerning their products in invoices to purchasers. Among and typical, but not all inclusive of such statements, are the following: "Natural Guanaco," "Guanaco Fur Blend," "Mink Fur Blend" and "Beaver Fur Blend."

PAR. 7. Through the use of the description or designation "Natural Guanaco," respondents represented that the fur fiber so identified

consisted of 100% guanaco; and through the use of the descriptions or designations "Guanaco Fur Blend," "Mink Fur Blend" and "Beaver Fur Blend," that the predominate fur fiber in the products so identified was guanaco, mink and beaver, respectively.

PAR. 8. The aforesaid statements or designations were false, misleading and deceptive. In truth and in fact, the fur fiber described and designated as "Natural Guanaco" consisted of a blend of fur fibers composed, in large part, of fur fibers other than guanaco and the predominate fiber in the fur fibers described and designated as "Guanaco Fur Blend," "Mink Fur Blend" and "Beaver Fur Blend" was not guanaco, mink and beaver, respectively.

PAR. 9. The use by respondents of the statements set forth in Paragraph Six had and now has the capacity and tendency to mislead and deceive substantial numbers of the aforementioned purchasers into the erroneous and mistaken belief that such statements were and are true and to induce such purchasers to misbrand the yarns and fabrics made by them in which said fur fibers were and may be used.

PAR. 10. The aforesaid acts and practices were and are all to the prejudice and injury of the public and constituted and now constitute unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with violation of the provisions of the Federal Trade Commission Act in the sale in commerce of fur fibers largely for use, together with other fibers, in the manufacture of yarns or fabrics, by misrepresenting such fur fibers in invoices to purchasers thereof, thereby deceiving and inducing such purchasers to misbrand their yarns and fabrics, in the manufacture of which respondents' fur fibers are used.

After the issuance of the complaint, to which no answer was filed, respondents, their counsel, and counsel supporting the complaint entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director and the Assistant Director, Bureau of Litigation of the Commission, and thereafter transmitted to the Hearing Examiner for consideration.

The agreement states that respondent Fur & Wool Mills, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, and that respondents Platt Wool Corporation and S. Rosenfelder & Son, Inc. are corporations organized, existing and doing business under and by virtue of the laws of the State of New York; that individual respondents Richard Becker and William Mond are officers of corporate respond-

ents Fur & Wool Mills, Inc. and Platt Wool Corporation, and cooperate in formulating, directing and controlling the acts, practices and policies thereof; that individual respondent William Mond is also an officer of corporate respondent S. Rosenfelder & Son, Inc., and formulates, directs and controls the policies, acts and practices thereof; and that all respondents herein have their office and principal place of business on Chestnut Street, Danbury, Connecticut.

The agreement provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified or set aside in the manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondents waive any further procedural steps before the Hearing Examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon fully disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Federal Trade Commission Act. Accordingly, the Hearing Examiner finds this proceeding to be in the public interest and accepts the Agreement Containing Consent Order To Cease And Desist as part of the record upon which this decision is based. Therefore,

It is ordered, That respondent Fur & Wool Mills, Inc., a corporation, and its officers; respondent Platt Wool Corporation, a corporation, and its officers; respondent S. Rosenfelder & Son, Inc., a corporation, and its officers; and respondents Richard Becker and William Mond, individually and as officers of Fur & Wool Mills, Inc., and Platt Wool Corporation; and William Mond, individually and as an officer of S. Rosenfelder & Son, Inc., and respondents' representatives, agents and employees, directly or through any corporate

or other device, in connection with the offering for sale, sale or distribution of fur fiber products, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Misrepresenting the constituent fibers of which their products are composed, or the percentages or amounts thereof, in sales invoices or in any other manner.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 31st day of May, 1956, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Fur & Wool Mills, Inc., a corporation, Platt Wool Corporation, a corporation, Richard Becker and William Mond, individually and as officers of said corporations, S. Rosenfelder & Son, Inc., a corporation, and William Mond, individually and as an officer of said corporation, 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.