IN THE MATTER OF

KEYSTONE WIRE CLOTH COMPANY, ET AL.

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

Docket 7297. Complaint, Nov. 6, 1958—Decision, Apr. 9, 1959

Consent order requiring a manufacturer of wire cloth with principal place of business in Hanover, Pa., to cease violating Sec. 2(c) of the Clayton Act by paying commissions on sales to the broker who was president and treasurer of the corporate buyer and, with those related to him, owned more than 99% of its common stock; and requiring said buyer and said broker president to cease accepting any brokerage or allowance in lieu thereof in connection with such purchases.

COMPLAINT

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

PARAGRAPH 1. Respondent Keystone Wire Cloth Company, hereinafter sometimes referred to as the seller respondent, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at Hanover, Pa. Said respondent is now, and for some time last past has been, engaged in the business of manufacturing, selling and distributing wire cloth, including insect wire screening, with annual gross sales amounting to approximately $3,500,000.

PAR. 2. Respondent Sherwatt Equipment & Manufacturing Co., Inc., hereinafter sometimes referred to as the buyer respondent, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 47 Murray Street, New York, 7, N.Y.

Respondent Arthur Watts is president and treasurer of said corporation and directs, formulates and controls its policies, acts and practices. It is now, and for sometime last past has been, engaged in the business of both manufacturing wire cloth and in

buying and reselling wire cloth manufactured by others. Its annual gross sales amount to approximately $500,000.

PAR. 3. Respondent Arthur Watts, hereinafter sometimes referred to as the broker respondent, is an individual, and is a member of the board of directors and president and treasurer of buyer respondent, owning individually more than 50% of all classes of its stock outstanding and in conjunction with those related to him more than 99% of the common stock and 90% of the preferred stock outstanding. He occupies the same business premises as does the buyer respondent, and acts for and in its behalf in its business dealings. He also acts as broker, agent, or representative for the seller respondent herein in the sale of its wire cloth, his commissions or compensation on sales ranging from 2% to 4% thereof. His business address is 47 Murray Street, New York 7, N.Y.

PAR. 4. In the course and conduct of its business the seller respondent makes substantial sales of its products through the broker respondent to the buyer respondent. On such sales and purchases the broker respondent has been and is now receiving or accepting something of value as a commission, brokerage, or other compensation from the seller respondent, which receipt or acceptance has the same effect as if the buyer respondent had received or accepted such compensation, or an allowance or discount in lieu thereof, and in turn distributed it to the broker respondent.

PAR. 5. Said respondents, directly or indirectly, cause such products, when sold and purchased, to be transported from the state of origin to destinations in another state. There has been at all times mentioned herein a continuous course of trade in commerce, as "commerce" is defined in the Clayton Act, in such products between said respondents.

PAR. 6. The acts and practices of respondents as alleged herein are in violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Brockman Horne for the Commission.

Lamb & Long, by *Mr. George P. Lamb*, of Washington, D.C., for Keystone Wire Cloth Company.

Pofcher, Schlussel & Katcher, by *Mr. Munroe F. Pofcher*, of New York, N.Y., for Sherwatt Equipment & Manufacturing Company, Inc., and Arthur Watts.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of subsection (c) of Section 2 of the Clayton Act (U.S.C., Title 15, Sec. 13), as amended by the Robinson-Patman Act, the Federal Trade Commission on November 6, 1958, issued and subsequently served its complaint in this proceeding against the above-named respondents.

On February 20, 1959, there was submitted to the undersigned hearing examiner an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, 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. By such agreement, respondents waive any further procedural steps before the hearing examiner and the Commission; waive the making of findings of fact and conclusions of law; and waive all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

Such agreement further provides that it disposes of all of this proceeding as to all parties; that the record on which this initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the latter shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; 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 following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents, and, when so entered, it 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.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued.

1. Respondent Keystone Wire Cloth Company 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 Hanover, Pa.

Respondent Sherwatt Equipment & Manufacturing Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 47 Murray Street, New York, N.Y.

Respondent Arthur Watts is an individual and is president and treasurer of said Sherwatt Equipment and Manufacturing Company, Inc. He directs, formulates and controls its policies, acts and practices. His business address is 47 Murray Street, New York, N.Y.

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

ORDER

It is ordered, That respondent Keystone Wire Cloth Company, a corporation, and its officers, directors, representatives, agents or employees, directly or indirectly, or through any corporate or other device, in connection with the sale of wire cloth in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Paying, granting, or allowing, directly or indirectly, to any buyer, or to anyone acting for or in behalf of, or who is subject to the direct or indirect control of, such buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any sale of its wire cloth to such buyer.

It is further ordered, That the respondent Sherwatt Equipment & Manufacturing Company, Inc., a corporation, and its officers, and Arthur Watts, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or indirectly, or through any corporate or other device, in connection with the purchase or sale of wire cloth in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller anything of value as a commission, brokerage or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of wire cloth by or for the account of respondent Sherwatt Equipment & Manufacturing Company, Inc., or upon any other purchase or sale where either respondents

Sherwatt Equipment & Manufacturing Company, Inc., or Arthur Watts, or both, are the agents, representatives, or other intermediaries acting for or in behalf of, or subject to the direct or indirect control of, the buyer.

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 9th day of April 1959, 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

EILER'S FURS

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

Docket 7321. Complaint, Dec. 2, 1958—Decision, Apr. 9, 1959

Consent order requiring a furrier in Huron, S. Dak., to cease violating the Fur Products Labeling Act by failing to comply with labeling and invoicing requirements, and by advertising in newspapers which failed to disclose that certain fur products contained artificially colored fur and to disclose the country of origin of imported furs, and which claimed percentage savings and reductions from regular prices without keeping adequate records as a basis therefor.

Mr. Floyd Collins for the Commission.
Respondents, *pro se.*

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On December 2, 1958, the Federal Trade Commission issued a complaint charging Ethel Eilers and William Eilers, individually and as copartners trading as Eilers' Furs, (erroneously referred to in the caption of the complaint as Ethel Eiler and William Eiler, individually and as copartners trading as Eiler's Furs) hereinafter referred to as respondents, with falsely and deceptively misbranding, invoicing and advertising certain of their fur products in violation of the Federal Trade Commission Act and the Fur Products Labeling Act.

After issuance and service of the complaint, the respondents and counsel supporting the complaint entered into an agreement for a consent order. The agreement has been approved by the director and the assistant director of the Bureau of Litigation. The agreement disposes of the matters complained about.

The pertinent provisions of said agreement are as follows: Respondents admit all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission; the record herein shall consist solely of the complaint and the agreement; respondents waive the requirement that the decision must contain a statement of find-

ings of fact and conclusions of law; respondents waive further procedural steps before the hearing examiner and the Commission, and the order may be altered, modified, or set aside in the manner provided by statute for other orders; respondents waive any right to challenge or contest the validity of the order entered in accordance with the agreement and the signing of 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.

The undersigned hearing examiner having considered the agreement and proposed order and being of the opinion that the acceptance thereof will be in the public interest, hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. Respondents Ethel Eilers and William Eilers, are individuals and copartners, trading and doing business as Eilers' Furs. Respondents' place of business is located in Huron, S. Dak.

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

ORDER

It is ordered, That Ethel Eilers and William Eilers, individually and as copartners, trading as Eilers' Furs, or under any other name, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of fur products, or in connection with the sale, manufacture for 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:

1. Misbranding fur products by:

A. Failing to affix labels to fur products showing:

(1) 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;

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

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

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

(5) 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;

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

(7) The item number or mark assigned to a fur product.

B. Setting forth on labels affixed to fur products:

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

(2) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, mingled with nonrequired information;

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

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

2. Falsely or deceptively invoicing fur products by:

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

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

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

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

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

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

B. Failing to set forth the term "Dyed Mouton processed Lamb" in the manner required.

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

A. Fails to disclose:

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

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

4. Making price claims and representations respecting percentage savings claims or claims that prices are reduced from regular or usual prices unless there are 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 9th day of April 1959, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents Ethel Eilers and William Eilers, individually and as copartners trading as Eilers' Furs (incorrectly identified in the complaint as Ethel Eiler and William Eiler, individually and as copartners trading as Eiler's Furs) 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

BAAR & BEARDS, INC.

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

Docket 6831. Complaint, July 8, 1957—Decision, Apr. 9, 1959

Order dismissing, for failure to establish a prima facie case and lack of public interest, complaint charging New York City importers with violating the Wool Products Labeling Act by failing to label scarfs and stoles as required.

Mr. S. F. House for the Commission.

Mr. Harry J. Halperin, of *Halperin, Natanson, Shivitz, Scholer and Steingut,* of New York, N.Y., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

On motion of respondent to dismiss the complaint because the evidence fails to establish a *prima facie* case against the respondent and for want of public interest, the motion is sustained and therefore this initial decision is issued dismissing the complaint.

This proceeding is one brought pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939. The complaint was filed July 8, 1957, and after service thereof on respondent, answer was filed in due course. Hearings on the Commission's case-in-chief were subsequently held in New York, N.Y., November 12, 1957; in Washington, D.C., May 19, 1958; in St. Louis, Mo., September 2, 1958; and in Kansas City, Mo., September 3, 1958. Thereafter on September 8, 1958, counsel supporting the complaint rested the Commission's case-in-chief subject only to his renewal by motion of certain evidence which was previously offered on the record and rejected by the examiner. This motion, also filed on September 8, was opposed by respondent, and said motion was denied by an order dated September 30, 1958, which also granted a request of respondent to file its proposed motion to dismiss. Such motion to dismiss, together with a supporting brief, was filed October 21, 1958. On October 29, 1958, an answer brief was filed by counsel supporting the complaint. After due consideration of the whole record, the motion to dismiss has been sustained for reasons stated in this decision

The sole contested issue in this case is whether respondent misbranded certain of its wool products, women's stoles and shrugs, by failing to stamp, tag, or label them as required by §4(a)(2) of the Wool Products Labeling Act of 1939 and the Commission's Rules and Regulations promulgated thereunder. Such alleged violations by respondent are set forth in paragraph 3 of the complaint as follows:

> Certain of said wool products were misbranded in that they were not stamped, tagged or labeled as required under the provisions of Section 4(a)(2) of said Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder.
>
> Among and as examples of said misbranded wool products are shrugs which were not stamped, tagged or labeled so as to show the required name or registered identification number as required by said Act and the Rules and Regulations promulgated thereunder, and scarfs and stoles which were not stamped, tagged or labeled so as to show any of the information as required.

Although paragraph 5 of the complaint is only conclusionary in character, since it is also denied, it, too, is set forth. It reads as follows:

> The acts and practices as set forth in Paragraph Three 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 within the intent and meaning of the Federal Trade Commission Act.

In paragraphs (3) and (5), respectively, of the answer, respondent denies each and every allegation in said paragraphs 3 and 5 of the complaint. Under Section 7(c) of the Administrative Procedure Act the burden of proof lies upon counsel supporting the complaint as the "proponent of a rule or order" to establish this controverted issue by "reliable, probative, and substantial evidence." The Commission's own Rules of Practice for Adjudicative Proceedings adopted and promulgated in conformity to said Act impose the burden of proof upon counsel supporting the complaint, §3.14(a); require an initial decision to "be based upon a consideration of the whole record and supported by reliable, probative and substantial evidence," §3.21(b); and provide for the admissibility of "(r)elevant, material and reliable evidence" and for the rejection of "(i)rrelevant, immaterial, [and] unreliable * * * evidence * * *," §3.14(b). Since the Administrative Procedure Act, §7(c), preserves to every party "the right * * * to conduct such cross-examination as may be required for a full and true disclosure of the facts," much of the evidence proffered in this proceeding was objectionable as hearsay, some

of it being hearsay compounded upon hearsay, or otherwise unfounded, improper, unreliable and insubstantial. Such evidence was therefore rejected by the hearing examiner. Some major items of rejected evidence as well as some which were withdrawn or were not pursued to a point where they became substantial, relevant or probative will now be referred to briefly before the evidence received is discussed since the record is probably more noteworthy for those things it does not contain than for what was received in evidence. The "reasons or basis" for matters rejected are also briefly stated herein although the record more fully discloses the examiner's precise reasons for each rejection, usually after considerable argument and discussion by counsel for the parties.

All allegations of the complaint except those in paragraphs 3 and 5 thereof are expressly admitted by the answer and they are therefore incorporated verbatim in the findings of fact hereinafter made.

While there are 339 pages of record herein and a total of 51 documentary exhibits were identified, the material portions of the record are much less extensive. Much of the transcript is concerned with extensive offers, objections, suggestions and arguments of counsel concerning many disputed matters and long, but necessary, remarks and rulings of the examiner under the conditions presented on procedural and evidentiary matters, many of which were elementary but which seemed new or confusing to counsel supporting the complaint. Several of the identified exhibits were never offered in evidence, and many of those which were received on the premise of primary relevancy, subject to later support and connection by other evidence, were never followed up and have therefore become immaterial. The first two hearings were quite brief and the last two were not long. In summary, only 19 of the 51 exhibits and about 200 pages of the record are evidence which will be considered in passing on the adequacy or inadequacy of the record to establish a *prima facie* case. The record is not orderly and is confusing, hence the major matters eliminated from consideration are now briefly referred to in order that the competent evidence in the record may be better understood.

Some testimonial evidence was presented at each of the four hearings above referred to. It consisted of the testimony of the respondent's secretary, three employees of the Commission,

and four persons connected in some capacity with certain retail stores which were customers of respondent. It should now be stated that there is no attack by respondent upon the general credibility of any of the witnesses. Each of them endeavored to answer all questions put to him or her honestly and frankly and to the best of his or her ability and memory. Much of the testimony, however, is immaterial, and the relevancy, value and weight of much of the testimony is not conceded by respondent. Therefore as to each material matter the evidence has been very carefully considered and weighed by the hearing examiner, both separately and also in connection with all other evidence relating thereto. The substance of each witness' testimony is substantially set forth and discussed later herein.

Counsel supporting the complaint at the first hearing offered certain letters of respondent, Commission's Exhibits 20 to 24, inclusive, which five letters were received in evidence without objection. R. 38–46. These letters were sent in response to letters from the Commission's Division of Wool, Fur and Flammable Fabrics. Such latter letters referred to certain alleged violations of the Wool Act by respondent reported by field investigators to the Division in Washington. They were identified as Commission's Exhibits 25 and 34 to 37, inclusive, it being contended that if admitted, by means of such hearsay latter charges, the said letters written by respondent's employees would be translated and transformed into admissions against respondent's interest. Objections to the offer of Exhibit 25, one of such letters, was sustained. R. 49–52. It was later conceded by counsel supporting the complaint that the hearing examiner in rejecting said exhibit "properly ruled * * * [it to be] * * * self-serving and hearsay." R. 59. He contended, however, that such letters should be received not as proof of the charges but because they, "taken together with the answers [of respondent], constitute an admission against interest." R. 60. He thereupon also offered his Exhibits 34 to 37 in evidence, R. 61–62, which were also rejected. R. 64. In accordance with a reservation made by him at the time the case in chief was rested, counsel supporting the complaint formally by motion reoffered all of such exhibits, and they were again rejected by an order filed October 30, 1958, all of them being self-serving and hearsay. The respondent's letters, Commission's Exhibits 20 to 24, are not admissions against interest and do not support the complaint but rather tend to justify a finding that respondent is cooperative and law abiding.

Certain physical exhibits, Commission's Exhibits 1 and 4 for identification, respectively a tan shrug and a gray and white shrug, were never connected with respondent. No. 4 was never offered in evidence at all but No. 1 was offered and rejected, R. 10–23, and rejected again when reoffered. R. 131–136. A letter, Commission's Exhibit 39 for identification, which was addressed by the Commission to a Salt Lake City, Utah, store, relating to the said shrug, Exhibit 1, was rejected as hearsay. R. 126. Counsel supporting the complaint admitted that testimony of some representative of the Keith O'Brien store in Salt Lake City, Utah, would be a necessary foundation for the admission of Exhibit 1. R. 20.

There was an attempt to present testimony concerning what was said at a conference between the Commission's project attorney Canavan and Harry J. Halperin, the attorney for respondent some time prior to the filing of the complaint. R. 91–95. At that time Canavan had not authorized or requested any specific investigation of respondent but the matters involved in this proceeding "had been under investigation for sometime previous." In compliance with a request from respondent's said attorney, a conference was held in Canavan's office about October 4, 1956, said attorney and Canavan being the only persons present. Before further inquiry could be made, the examiner commented that he would not receive any such evidence because in his opinion to open the door to what took place between a conference between the two attorneys relating to a possible adjustment or settlement of the controversy was contrary to good law and practice; would tend to destroy the professional confidence which should exist on the part of lawyers dealing with the Commission on behalf of their clients; would be contrary to the Commission's own established practice of encouraging consultations which would lead to stipulated settlements; and would reduce the hearing to a controversy as to the relative credibility of opposing attorneys rather than one to be decided on the merits. After such ruling the attempt to draw out further answers from Canavan, an evidently embarrassed and reluctant witness, was abandoned.

The hearing examiner also rejected incompetent and immaterial opinion evidence as to the absence of any motive on the part of Commission's investigators to falsify any findings in their routine report as to alleged violations of the Wool Act. R. 87–88.

Counsel supporting the complaint also offered a memorandum of law in evidence "as an offer of proof of the facts stated therein." R. 122. It had theretofore been extensively discussed by both counsel and by the examiner with reference to the admissibility of Commission's Exhibit 38 for identification, a W–34A form submitted by the investigator Graham as to his alleged findings of nonlabeling deficiencies of respondent's garments sold to Klines, Inc., in St. Louis in August, 1954. R. 97–122. This memorandum of law was rejected as an offer of proof, either in its entirety or by counsel's piecemeal selection as an utterly incompetent and improper method of presenting an offer of proof. R. 122–124.

Commission's Exhibits 2, 3, 5 to 19, inclusive, and 28 to 30, inclusive, are photostatic copies of invoices of merchandise sold to a number of respondent's customers scattered throughout almost the entire country. After various off-record conferences as to some of the exhibits, each of said exhibits were received in evidence by agreement or without objection. R. 35, 57–58 and 132. Only 5 of these 20 invoices, however, have any substantial bearing upon the disputed issues in this case. Those which do have bearing are Commission's Exhibits Nos. 6 (to Pelletier Stores Company, Topeka, Kans.), 8 (to A. J. Bundschu Store, Independence, Mo.), 10 and 11 (to Klines, Inc., St. Louis, Mo.), and 29 (to the Tivoli-Vogue Store, Maryville, Mo.). Further references to these exhibits are hereinafter made. All of the rest of these invoice exhibits relate to transactions between respondent and some of its customers who operate retail stores in various cities in Ohio, Georgia, Texas, California, Utah, and several other Western or Southern States. Since no effort was made to present any further evidence as to those transactions evidencing any of the violations as charged generally in the complaint, such exhibits are all now immaterial. Counsel supporting the complaint definitely conceded that such supporting evidence would be necessary. R. 20, 35–36. But later on he stated he never had intended to obtain the testimony of the Commission's inspectors who purportedly reported finding non-labelled wool garments sold by respondent to the various stores in Ohio and the several other States above referred to. R. 317. The examiner had definitely refused on May 19 to commit himself in advance as to how much testimony or other evidence counsel supporting the complaint would need to submit in order to establish a *prima facie* case

or any kind of a case supporting a cease and desist order, that not being a proper function for the examiner. R. 118–120. And when such counsel finally rested, it was on his own volition after consultation with the Bureau of Litigation. See R. 335 and order filed October 1, 1958. The examiner then stated that if respondent had not established a *prima facie* case by investigator Graham it would be useless to proceed further to take similar evidence. R. 337. The exhibits of the Commission Nos. 2, 3, 5, 7, 9, 12 to 19, inclusive, 28 and 30 are therefore wholly immaterial and are disregarded. The examiner in the light of counsel's subsequent statement—in substance that he had never intended to connect them up—cannot understand why the record should have been encumbered with them in the first place.

Upon objections that they were hearsay, the examiner rejected the several offered reports of the Commission's attorney-investigator Harry E. Graham, although permitting him to use them as past recollection recorded to refresh his memory but confining his testimony to the facts of what he observed and did and eliminating his conclusions. These reports are Commission's exhibits for identification 38, 40, 41 and 44 to 49, inclusive. Since the evidence of Graham is that most vital and pivotal to the Commission's case, it will be more convenient and clarifying to discuss these offered exhibits and their rejection in connection with the extended analysis of his evidence later in this decision.

Near the close of the evidence, counsel supporting the complaint endeavored to identify 14 purportedly relevant reports from other investigators for the Commission. He had the witness Graham identify the signatures of the investigators on each of them, and, after suggesting that it would be a very onerous burden for the Commission to take the testimony of these 5 investigators who made such reports, stated, "I never intended, and don't intend, to call these witnesses, these investigators, on the stand and make them a witness. But just for the record I would like to identify these documents * * * as an indication that there were other violations." R. 317. The examiner thereupon ruled he would refuse to receive any such unfounded documents for any such unfair and improper purpose. No formal offer was therefore made of such 14 documents. R. 313–318.

Passing now to a consideration of the facts actually presented in the record, the hearing examiner has given full, careful and impartial consideration to all of the evidence received of record,

including all stipulations of fact and those facts pleaded in the complaint which are admitted by the answer. Therefore, upon consideration of all the material issues presented on the whole record and from his personal observation of the witnesses while testifying, the hearing examiner finds that the evidence in support of the Commission's case-in-chief has failed to establish even a *prima facie* case against respondent by reliable, probative and substantial evidence and has failed to establish any specific and substantial public interest in this proceeding. The specific findings of fact made by the examiner, together with the reasons or basis therefor are as follows:

The following allegations of paragraphs 1, 2 and 4 of the complaint, being admitted by the answer, are found to be factually true:

Respondent Baar & Beards, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 15 West 37th Street, New York, N.Y.

Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since January 1, 1954, respondents have introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in said Act, wool products as "wool products" are defined therein.

Respondent in the course and conduct of its business was, and is, in competition in commerce with other corporations and with firms and individuals in the sale of wool products including stoles, scarfs, hoods and shrugs.

The evidence received of record in support of the complaint was substantially as follows:

Milton Beards, R. 5–49, secretary-treasurer of the corporate respondent Baar & Beards, Inc., testified on November 12, 1957, in New York City, in substance, that he and Sylvan M. Baar, its president, both owned substantial stock interests in respondent corporation and formulated its policies and managed and controlled its business, which was that of importing and manufacturing ladies' neckwear and accessories; that the business is wholesale, distributing and jobbing in character; and that its gross sales in 1956 were about ten million dollars, of which the substantial amount of about 15 to 20 percent was woolen products. This witness further described shrugs and stoles. A shrug,

he stated, is a garment similar to a sweater, varying in size from short-fitted to half the length of a coat, there being many different styles, while a stole is a long knitted or woven scarf to wear over the shoulders. He also identified certain employees of the firm and described the manner in which the corporation's invoices described some of its products which are in controversy. He further produced certain invoices in response to the subpoena duces tecum served upon him. All of the invoices desired by counsel supporting the complaint were received in evidence, as hereinbefore stated, most of which are now immaterial.

In giving his testimony, Beards was assisted by off-record conferences with two of respondent's employees, Julius Meyerson and William Berlin, who were also present under subpoena, R. 11, 53. Berlin is manager of respondent's domestic goods department while Meyerson deals with its imports and also with some domestic scarfs. This procedure was satisfactory to counsel supporting the complaint, and all three were excused at the completion of Beard's testimony, R. 53. At this hearing the invoices of respondent were stipulated or received in evidence without objection (except Exhibit 3 which was received later). Other documentary evidence and certain physical evidence offered or merely identified were not received as already stated.

At the hearing in Washington, D.C., on May 19, 1958, testimony was taken of *Harvey H. Hannah*, R. 68–88, Chief of the Commission's Division of Wool, Fur & Flammable Fabrics, now designated Division of Textiles and Furs and hereinafter referred to as Division of Textiles and Furs, Bureau of Investigation, which is charged, among other things, with the administration of the Wool Products Labeling Act, and also that of *Charles F. Canavan*, R. 89–96 and 124–131, a project attorney in the same Bureau. *Hannah* testified to the routine field inspection practices of the Commission of stores throughout the United States where wool products "are being marketed and reaching ultimate purchaser-consumer * * * checking to see how the goods are labeled under the law at that time." These investigators operate under standing instructions from Hannah's office. Such an investigation "is purely a policing measure" at either the "retailer, manufacturer, or wholesaler level." Certain inspection report forms are filled in by the investigator at the time of the inspection. The W–34A form is used when the inspector observes a violation which "is considered more than a minor or technical violation." The general report form, he thinks it is W–33, is supplemented

by a W–34 form as well as the said W–34A form, which latter form is used "by inspectors who do general policing work" where more than a technical violation is believed to have occurred. This witness' testimony was curtailed by stipulation of counsel that Commission's Exhibit 38, a W–34A form, was executed by the field investigator or attorney-examiner in the regular or routine course of his duties. R. 81.

The witness *Canavan* testified it was part of his duties to authorize or request investigations of firms when it is believed they have violated the Wool Act; that during the pendency of the investigation of the proceeding at bar he received a request on or about July 20, 1956, from respondent's attorney for a conference and that the witness conferred with said attorney in the witness' office on or about October 4, 1956. Further inquiry into this transaction was obviated by its withdrawal as already stated. Canavan also testified that Commission's Exhibit 38 for identification was a form which was made out in the usual course of business by the investigators in the field. While he also testified to having received the shrug, Exhibit 1, through hearsay correspondence with some store, the letter referring to it was hearsay and not received in evidence. At this Washington hearing some documentary evidence was also received but much was rejected.

At a further hearing held in St. Louis, Mo., on September 2, 1958, the testimony was taken of *Richard I. Prager*, the manager of Kline's Franklin Simon Company, in downtown St. Louis, which prior to its acquisition by Franklin Simon and at the time relevant hereto was known as Kline's, Inc., R. 179–200, 214–216, and that of *Celeste Schwegel*, the company's office manager, R. 201–214, 216–217. One item of documentary evidence was also received but all other such evidence offered was rejected. *Prager* testified that such labels of Baar & Beards as he had seen were sewn to the garments received by Kline's from respondent and that it had never been the store's practice to remove such labels, but to the contrary the overall general policy had been to see that such labels were affixed to the garments, although "(i)nadvertently it is possible that labels have been removed or misplaced from the garments or lost or taken off." The store's personnel such as "buyers, assistant buyers, and heads of departments—were aware of such regulations. I wouldn't want to say that the average salesperson on the floor or receiving room personnel

where goods are ticketed [by Kline's] were aware of those regulations * * *. (O)n goods coming in so ticketed [labelled] it is not their perogative to remove those tickets * * *." To the best of this witness' knowledge this practice was adhered to and the legal requirements as to retaining labels on woolen garments were disseminated by the management to the employees in all of its stores, including the downtown St. Louis store, as instructed by the main office in Chicago. In the St. Louis store on one occasion only there had been some correspondence in an effort to secure correct labels to attach to its merchandise from the manufacturer. A letter relating to the matter from the manufacturer, Kolmer Company, to Baar & Beards was produced from the file of Kline's and received in evidence as respondent's Exhibit 1.

On cross-examination of this witness it developed that during 1954 he was manager of Kline's suburban store at Clayton, Mo., and was not personally familiar with affairs at the downtown store; that the store file had no further complaint correspondence such as respondent's Exhibit 1, and there was none involving respondent; that Kline's affix their own labels to woolen goods in addition to those placed thereon by the manufacturer and any lack of manufacturer's labels would come to management's attention. Advice as to the necessity of seeing that labels were attached to all woolen garments would not for a certainty be passed down to all employees. Kline's own tags were put on by salespeople in spare time or by its alteration department. Instruction to employees as to labelling requirements in any event could not be infallible "because there is too much goods coming into our store for every * * * [lack of label] * * * to be caught." He further testified that the file he had voluntarily produced containing respondent's Exhibit 1 was the only file he and Miss Schwegel after search had been able to find relating to non-labelling matters and to his knowledge none of the store's files had been destroyed.

Celeste Schwegel, the store's office manager, testified as to her duties in general, explaining how the store's notations on receiving memos were made directly and correctly from invoices received from the supplier, and the invoices themselves were then sent to the Chicago main office for payment. She supplied the information on certain receiving memos relating to November 24 and October 11, 1954, shipments from respondent, to Graham, the Commission's investigator, when he inspected Kline's on January 20, 1955. She testified that Kline's own price tickets

were affixed to woolen garments by an employee in the receiving room whose duty it was to see that the manufacturer's labels were on each garment. She did not know where the woolen goods in question received from respondent were at the time of Graham's visit in January, 1955. Neither she nor Prager testified they had identified any goods to Graham as unlabelled garments from respondent.

Further evidence from these two witnesses developed that prior to the acquisition of Kline's, Inc., by Franklin Simon, each of its seven stores, which were all located in midwestern cities, was an autonomous unit, each purchasing through a wholly owned purchasing company; that in 1954 and 1955 the Kline's downtown St. Louis store occupied a 5-story building, also having a service basement and a mezzanine, with store space of 72,000 square feet and from 175 to 200 regular employees, probably peaking to 225, counting part-time employees; that during peak seasons 5 to 6 people worked in the receiving room, and from about 55 to 65 sales clerks normally, the number would go to about 90 in peak seasons; and that of this number from 40 to 45 would sell the types of woolen goods in question in this proceeding, all such being sold on the first floor.

While *Graham* testified to some extent at the St. Louis hearing, most of his evidence was presented in Kansas City and therefore will be discussed after that of the other witnesses who appeared at Kansas City.

The final hearing was held in Kansas City, Mo., on September 3, 1958. There the testimony was heard of *James W. Pimblott*, the merchandise manager for several departments, of the A. J. Bundschu Store of Independence, Mo., R. 219–243, that of *John O. Walker*, president of The Pellitier Stores Company of Topeka, Kans., R. 277–298, and that of *Harry E. Graham*, attorney-examiner of the Federal Trade Commission, whose testimony had been commenced at St. Louis the preceding day. Also at this hearing all documentary evidence offered was rejected.

The witness *Pimblott* testified (R. 219–243) that he had supervised the purchase of woolen scarfs and stoles for the Bundschu store for some five years and described the store's system of checking such merchandise upon its receipt from the distributor, its employees pinning the store's own cardboard ticket or tag to each garment as soon as such garments are removed from their container. They are then checked against the invoice. He

identified an original invoice of stoles and scarfs which was received from Baar & Beards on August 1, 1954, from his initials signed upon it by him but had no independent memory of the transaction. This was stipulated to be a duplicate of Commission's Exhibit 8. Only he and the girl in his department check such incoming merchandise as he said the store is not large enough for a receiving room. Baar & Beards is the only place where he buys woolen stoles, which he does on trips to New York. It has never been the practice of the Bundschu store to remove labels attached to woolen merchandise. He did not recall seeing Graham at the store in August, 1954, however, and he had no knowledge of any woolen scarf or stole from Baar & Beards being in the store in August, 1954, without having proper labels. No one ever showed him such an unlabeled article to identify it. The first time he ever heard of the present issue of nonlabeling of respondent's goods in the Bundschu store was a week before the hearing, about the time he received his subpoena and was interviewed by a Government representative. Only once during his five years of dealing with respondent as buyer for the Bundschu store had he had attention directed to lack of labels on woolen garments and he then invited this to the attention of the respondent's representative in the territory. He was unable to fix the time precisely, saying, "it's been some time ago," and thereafter labeling seemed to be better. He suggested that since the labels were sewn on, "just one might have been loose and been torn off." From this incident as testified to, it does not clearly appear just when such label may have come off, what garment he may have referred to, or whether the label was not on the garment when received, or only after it had been handled by clerks or customers. As to the August 1, 1954, shipment of scarfs and stoles from respondent to the Bundschu store which the witness received, when asked whether he was able to state definitely as to the presence or absence of labels, he could only speculatively answer, "* * * I knew that there must have been some labels on, and it is possible there were some not on."

The witness testified further that the Bundschu store is an old established business in Independence, now a city of some 45,000 or more inhabitants; that the store has about 65 clerks and other employees with a modern basement, a first floor, balcony, and complete ready-to-wear ladies' section on the second floor, with elevator service and also a city delivery service. The woolen scarfs and stoles are sold in two departments on two

tables in two aisles, being handled and sold by four clerks in the course of ordinary trade. Respondent is the sole supplier of woolen scarfs and stoles to the Bundschu store. No other employee of the store who may have handled respondent's said shipment testified.

Walker, testified, R. 277–298, that he is the president and active manager of the Pellitier Stores Company in Topeka, Kans.; he recalled the visit of the investigator Graham to the store in January, 1956; that all incoming merchandise is routed through a central marking room, the head of which is an experienced employee who has been instructed never to remove any labels from woolen goods; that all sales people "are informed when they are hired not to remove anything and presumably are informed after that by their supervisors"; that it is not the store's practice or that of its employees to remove the labels; that from an invoice which is a duplicate of Commission's Exhibit 6, he testified certain stoles were received from respondent during the fourth week of December, 1955, and were passed through and marked in the marking room, after which the goods may have gone either onto the counters for sale or into the stockroom. He further testified that the woolen goods department buyer, one Beeson, prepared the store's price-marking tags for these stoles, after which it was the responsibility of the head of the marking department to place such store tags physically on the proper garments; that afterwards Beeson sees they are properly tagged before being placed in stock; that help in the stockroom are only instructed not to remove labels but they are not responsible for seeing that labels are on the garments; that no employees in the marking room who inspected incoming woolen garments were ever required to check wool garments to see that a label was attached to it; "because we never, to my knowledge, received a wool garment without a label on it." This witness does not personally manage that part of the store where such woolen garments are sold but only has it under him in a general supervisory way. When Graham came in January, 1956, the witness talked with him considerably about fur labeling but he cannot recall having talked with him about four or five woolen scarfs not being labeled. Pellitier's is an old established department store in the heart of the business district of Topeka, a city of 90,000, occupying four floors and a basement in a building 100 by 150 feet in size, with a 75,000 square footage, employing about 225

people; that probably two employees in the marking room would handle such goods when they were received on December 20, 1955; and probably some five clerks would work in the women's neckwear department where the goods received from respondent were on sale. Neither Beeson, the woolen goods buyer, nor any of the marking room employees testified.

The witness *Harry E. Graham* testified at St. Louis, R. 138–177, and at Kansas City, R. 244–276 and 299–334, that he was an "attorney-investigator" for the Federal Trade Commission, employed in the St. Louis branch for the Division of Textiles and Furs, making continuous inspections throughout the branch's territory (parts of 14 States), south into Arkansas and north to North Dakota, and west as far as Denver, Colo. His territory included Missouri and Kansas. His duties required him to make routine investigations to see that woolen goods were properly labeled and instructed retailers on their duties under the Wool Act. He covers all wool, fur and flammable fabrics manufacturing, wholesaling and retailing dealers. He has been performing his duties since 1948 and has covered several thousand retail stores in the course of his duties, covering his route about once in every three years. He uses forms in making his routine inspections and makes such inspections with no particular violator in mind.

His routine procedure, after introducing himself and showing his credentials to the store's management, is to examine the merchandise throughout the store and see that it is correctly labeled. If he finds an article not properly labeled, he fills out a Commission Form W–45–A. In this he incorporates general data on the store's ownership, location, management, etc. He also inserts "the number of items estimated to have been observed and the number estimated to have been deficiently labeled," R. 142, and makes such comments as he deems pertinent in space provided for that purpose. Unlabeled articles are considered "a major violation." Various violations are indicated by appropriate code numbers. If he finds what he believes to be a major violation, he notes the store's stock control information on the report, and from there he is able to go to the invoice of the goods. The invoice information is then copied on a Commission Form W–34–A. Wishing to preclude the possibility that the retailer may have removed the label or tag, he thoroughly examines several garments of this style to see that there are no tags and "(t)hen I question the personnel in that department to make certain that they are instructed to leave the tags on and, to the best of my

knowledge, are leaving the tags on." If he finds tags on other like garments, he copies on his report form 45–A information from the store's stock control tag and then proceeds to the invoice in the due course of his investigation, which is after the inspection is completed in large stores, and then the invoice information is copied on the W–34–A form. He says he does not fill out this form "(u)ntil I am absolutely satisfied that this is a manufacturer's error." R. 145. It is his experience that both management and other store personnel are aware that labels showing wool content of goods must not be removed.

He investigated Kline's, Inc., a general ladies' specialty shop in St. Louis, on January 19 and 20, 1955; A. J. Bundschu Company in Independence, Mo., on August 4, 1954; and Pellitier's of Topeka, Kans., on January 23, 1956, R. 146, as well as the Tivoli Vogue store in Maryville, Mo., on August 25, 1954. In each of the four stores he prepared his reports on the said types of Commission forms W–45 and W–34–A as a part of his regular routine duties.

He further testified that at Kline's, not from memory but from examining his report, that he found "(a)n estimated number of 30 stoles and 15 scarf hoods," R. 156, which were unlabeled, that is lacking a tag showing the fibre content and identification of the manufacturer. He testified that through his routine procedure he obtained certain information such as that the supplier of the goods was the respondent, all of which he copied from the invoices and reported on the W–34–A forms, Commission's Exhibits 38 and 41. This information was taken by him from the invoices, Exhibits 10 and 11, R. 161–173. His report forms on this establishment identified as Commission's Exhibits 40, 38 and 41, respectively, were offered in evidence but rejected, as already referred to herein but subsequently more fully discussed.

He followed the same general procedure at the Bundschu store in independence, R. 177–246. The general report form W–45A made there was identified as Commission's Exhibit 44 and the form W–34–A as Exhibit 45. Both were also offered and rejected. The information on Exhibit 45 was traced back to respondent through the invoice, Commission's Exhibit 8, R. 246–252. The number of woolen goods found unlabeled was again estimated, R. 251, 252.

Again at Pellitier's in Topeka, Kans., on January 23, 1956, the same routine was followed. The general report form W–45A

made there was identified as Commission's Exhibit 46 and the form W–34A as Exhibit 47. Both of these were offered and rejected. The information on Exhibit 47 was traced back to respondent through the invoice, Commission's Exhibit 6, R. 256–259. Again there was an estimate of the number of unlabeled garments, R. 258.

On August 25, 1954, Graham made an investigation of Tivoli Vogue in Maryville, Mo., a town of about 7,000. This was a small one-room shop with only two clerks, the owner, a Mrs. Miller, and one other. The same general routine was followed but the witness recalled this shop because it was small. But it cannot be inferred and found that he actually counted the number of garments he reported unlabeled even there as they were "estimated," R. 269. The general report form W–45A made here was identified as Commission's Exhibit 48 and the form W–34A as Exhibit 49. Both were offered and rejected. The information on Exhibit 49 was traced back to respondent through the invoice Exhibit 29.

Graham was a very competent witness as to the few matters he could remember after his memory was refreshed from his reports. He refused to testify to matters beyond his knowledge, R. 164. He was very frank in saying that due to the very large territory he covered, going into thousands of different establishments and examining almost countless thousands of garments, he could not recall the matters in question except from reviewing his reports, from which he was permitted to refresh his memory. And even then he stated that his personal memory was not refreshed, R. 266–267. The reports themselves were each rejected when offered in evidence for many reasons subsequently set forth herein. He repeatedly referred in each of his reports to "estimated" numbers of garments concluded by him to be deficient from finding one or several lacking labels, R. 142, 156, 173, 251, 252, 258, 269, 275, and 303. He very freely disclosed why he did not examine each piece of merchandise to see whether it was labeled. He testified, for example:

> In my practice and my routine of making these inspections, you put down the total number, estimated, of a particular garment. Then you check the merchandise and you estimate then if any are correctly or incorrectly labeled, how many of those are incorrectly labeled. . . . R. 274–275.
>
> Well there is also a mental operation [in making estimates of unlabeled garments]. Here are 25 or 30 scarfs. All look alike; the same pattern. I

look at three, maybe four, and I assume or make the mental hurdle there that the rest of them are all the same. . . .

I don't observe every individual unit in the store.

The examiner then interposed: "I take it, Mr. Graham, that if you had to inspect each and every garment in the course of your duties you never would get a good start on your job?"

Graham answered: "On top of that, there's a lot of items in the boxes, and I never go into the boxes unless I find something necessary for which I have to go into the boxes." R. 302.

Also questioned by Mr. Halperin * * *.

Then as a matter of fact, Mr. Graham, isn't it true that many conclusions, many conclusions that you came to as a result of your investigations as the result of mental operations of your mind and calculations, are entered upon your reports?

The witness answered, "Estimations, yes." R. 275.

In tracing shipments back to invoices, the witness was also very free to voluntarily discuss his instructions and routine which appears not to be precise but also based on conjecture like the "estimates" above referred to. He testified in such regard that when he went back to the invoice from the store's stock control information to check the source of goods:

. . . I do not need all invoices. In the performance of my duties one invoice to tie the scarfs or stoles into one source is what I am instructed to get. There may on occasion, then, be several styles without labels, in which case I may only get one invoice, which may only cover part of one style. There might have been several shipments or many shipments of various styles at various times. I am only trying to tie in these garments with this supplier. And once I have done it once I feel I have done it. R. 275.

Furthermore, the evidence fails to demonstrate just whom Graham interviewed among the employees to obtain his information. He testified that since he had to be certain that the error of no label on a garment or garments was the manufacturer's error he questioned "the personnel in that department to make certain that they * * * to the best of my knowledge, are leaving the tags on." Since that is the beginning of his checking, if there were any dishonest report made to him, then to proceed to tag the manufacturer with the error by further formal procedures without presenting such persons as witnesses for cross-examination would seem to be idle operations. The examiner may not presume that the store's unnamed personnel's hearsay statements to Graham are gospel truth upon which the respondent may be found guilty of any violation of law. Also Graham cannot

possibily test and compare all unlabeled woolen garments with those of like character, style, and quality which do bear a manufacturer's label. He must of necessity rely in such respects on hearsay information from store personnel. An excellent simple illustration of this occurred at the Tivoli Vogue shop where he had to rely on the owner, Mrs. Miller, in that "very small store," R. 299, 325, to get him the invoice on the item or items alleged to have a deficient label. Counsel then asked, "You accepted the word that those three scarfs * * * [unlabeled] * * * came from Baar & Beards. Isn't that true?" Graham answered, "I did." R. 273. But in other cases of hearsay reports to Graham in other stores the names of such witnesses are not even given. Nor were any such persons called as witnesses. The store operators and managers who did testify herein had given no such information to Graham. Graham finally testified that he could not recall that in any of the four stores he inspected that he saw Baar & Beards' labels on any merchandise whatever but he knew that he had inspected hundreds of stores where respondent's labels were on all of respondent's goods and no violation report was therefore made. R. 332.

These circumstances, among others, show that there are many material links missing in the chain of evidence to which Graham testified which are fatal to the Commission's case. It is implicit in our system of justice that findings of fact cannot be based on surmise, conjecture, or hearsay. This is not said in criticism of Graham, a faithful and competent public servant who followed his instructions in these routine investigations. But the Commission's case in a contested proceeding cannot be premised on such loose routine procedures but must be based upon material, relevant, substantial and reliable evidence. One such witness does not and cannot make a solid record in this type of contested proceeding, and there is no short cut to victory without step by step proof of the charges made.

In order to have established the alleged facts here that the respondent shipped any of its wool products in question in commerce without proper stamps, labels and tags, it was necessary to prove two basic things, first, that the items in question emanated from respondent, and, second, that when they were inspected by the witness Graham they were in the same condition as when they were shipped from respondent's place of business. This principle is elementary in the law of evidence. These facts, of course, must be established by the testimony of those persons

who handled or saw handled such merchandise from the time it was shipped by respondent, or received by the several retail stores in question, right up to the time of Graham's inspection. From the record it is clear that in the substantially large stores of Kline's, Inc., in St. Louis, and Pellitier's in Topeka, Kans., many employees handled the merchandise from the time of its receipt, checking it against invoices, repackaging it and transferring it to stock or to counter or shelf for sale, or both. While in the case of the smaller stores in Independence and Maryville, Mo., only a few store employees may have handled the merchandise, the fact remains of record that Graham had to rely upon others' hearsay statements in making his inspection report the same as he did in the cases of the larger stores. The department manager, Pimblott, testified Graham did not talk to him when he inspected the Bundschu store, and his lady assistant did not testify in the case, and neither did Mrs. Miller of the Maryville store or her clerk testify. Furthermore, the merchandise being for retail sale in all of these stores, much of it, at least, was open to inspection and handling by customers. And Graham seldom looked in boxes containing such merchandise. Precisely how many customers may have handled these displayed garments before Graham saw them is purely speculative. In the case of each of the four stores in question there is utterly no evidence as to what amount of handling there was by clerks, and what took place between the times of first presentment to customers and the times of Graham's respective inspections. That the goods were in the same condition throughout that entire period is not established. The burden of proof of such facts was not on the respondent. It challenges credulity in any event that merchandise for sale such as women's neckwear, the products in question here, would not have been handled by clerks and put on, fitted, and otherwise physically manipulated by any and all female customers in search of such a garment. It must be remembered that the invoices to Kline's were dated October 8 and November 17, 1954, and the inspection by Graham was on January 19 and 20, 1955, after the busy Thanksgiving and Christmas selling seasons of 1954. Likewise, at Pellitier's the goods were received during the fourth week of December in 1955, and Graham inspected the store a month later on January 23, 1956. The goods of respondent were received by Tivoli Vogue August 13, 1954, and the inspection by Graham was August 28, about two weeks

later. Only in the Bundschu store where the goods came in on August 1, 1954, and Graham inspected on August 4 did the timing of the two events occur fairly closely together. But any women's wearing apparel that is popular and in great demand, as the evidence clearly shows respondent's stoles and scarfs were, does not soon escape the customer's eye and touch.

Upon careful review of Graham's evidence the examiner finds it to have been fairly given but lacking in the quality, value and weight required to establish the facts it was offered for. Graham properly tried to hold himself within the bounds of his own knowledge, and taken at its very least, his actual knowledge is very limited and so impregnated and shot through with hearsay, conclusion, estimate and conjecture, that it establishes no facts connecting the respondent with any violations charged against it.

The reports which Graham made to his superiors, of course, are infected with exactly the same inherent defects that his testimony is, since it was based upon such reports. Commission's Exhibit 38 for identification was the first of these reports offered in evidence, R. 78, and it was only after objection thereto was sustained and the examiner ruled he would sustain objections to any other such reports that counsel supporting the complaint finally decided to present other evidence, including that of Graham, the investigator. But after Graham had testified, such counsel then offered all of the reports Graham had identified and testified from to fortify and bolster Graham's evidence. Objections to the reports were sustained. The witness Hannah had repeatedly voluntarily described the work of the Division of Textiles and Furs and that of its attorney-examiners conducting field investigations as "policing work" or "policing measures" R. 69, 70, 72, and 74–76. This was, of course, a correct characterization of the duties of the Division and its field investigators. Hannah testified that the report forms in question have been in use for over ten years and each investigator is given instructions on filling out the required form tied in with the applicable invoice and other applicable information whenever he observes a violation of the Act or the rules and regulations thereunder. An offer in evidence of said Exhibit 38 for identification was formally made, R. 97, and ruling was reserved on respondent's objection on the ground of hearsay. On June 27, 1958, said objection was sustained by a formal order. The order did not detail reasons inasmuch as counsel supporting the complaint had advised he would take the testimony later on of the attorney-examiner,

Graham at St. Louis. Subsequent developments and the persistent reoffer of this exhibit and the offer and reoffer of many similar exhibits, Commission's Exhibits 41, 45, 47 and 49 and other report forms, Exhibits 40, 44, 46 and 48, make necessary a statement of the basic reasons for the rejection of all such offers.

These reports are all, both in fact and by the official classification of Mr. Hannah, "policing" reports. They are reports which are required and made administratively and ex parte as matters which relate "solely to the internal management of * * * [the] agency," as Section 3 of the Administrative Procedure Act refers to such matters. By that provision such matters are not required to be stated and published in the Federal Register for the information of the public. Even if as claimed they were made available to respondent prior to filing the complaint, that fact is immaterial. The documents are based on hearsay. The witness Graham made it clear as already stated, not only that he relied on hearsay in making such reports but also that the reports contained "estimates" of the numbers of reported violations rather than by actual count and that they contained much subjective thinking on his part. He furthermore was unable to refresh his recollection therefrom. While partially conceding that the hearsay objection was valid, counsel supporting the complaint attempted to establish the admissibility of such reports under the "Regular Business Entries" or so-called "shop-book rule," codified in Federal law as 28 U.S.C.A. §1732, an exception to the hearsay rule. Since the routine surveys of the Commission's field investigators were repeatedly and properly characterized by the Chief of the Textiles and Furs Division as "policing work" or "policing measures," their reports are therefore necessarily "police reports." Investigators' reports have been held by the courts repeatedly and consistently as not being entries made in the regular course of business and within that exception to the hearsay rule. See, for example, *Hartzog* v. *U. S.* 217 F. 2d 706, 710; *United States* v. *Ware,* 247 U.S. 698, 700; and *Johnson* v. *Lutz,* 253 N.Y. 124, 127–128. In addition to such authorities, Section 7(c) of the Administrative Procedure Act gives "Every party * * * the right * * * to conduct such cross-examination as may be required for a full and true disclosure of the facts." Section 3.16(b) of the Commission's own Rules of Practice likewise grants the right of cross-examination.

Therefore the hearing examiner properly sustained objections to said Commission's Exhibit 28 for identification and to all of the other exhibits which were "police" reports made by Graham to his superiors.

There is therefore no substantial, probative and reliable evidence whatsoever upon which a finding can be based that any of the wool products in question ever left the respondent's place of business in New York without the proper stamps, tags or labels thereon as required by law. To find that the Commission's case-in-chief has even reached a *prima facie* status, there being no witnesses' testimony linking each questioned garment step by step in being handled back from Graham to respondent, only inferences can supply these missing links. And just as Graham had to rely on hearsay information as to the origin of the unlabeled goods because the cold invoices could not *per se* identify specific garments, likewise it is true that the identification of each garment he found deficient as to label must rest upon evidence, not upon many successive inferences, namely, that before each of the "estimated" items was inspected by Graham none of the clerks or customers handling it had theretofore in any manner loosed or removed a label or tag therefrom; that the receiving clerk or clerks in removing the item from the package it came in had not mishandled it; that the item was not received in good order from the common carrier; and that the carrier had received it without label from the respondent.

That this is piling inference upon inference to arrive at a finding of fact admits of no doubt. The law is well settled in many judicial decisions that findings of fact cannot be made by courts or juries upon such a speculative and conjectural basis. Such a flagrant super-imposition of inference upon inference in the instant proceeding would do violence to the basic premise of rational decision, which under positive statutory mandate must be founded upon "reliable, probative, and substantial evidence." The controlling decision on the rejection of the "inference on inference" method of proof is *U.S.* v. *Ross* (1875), 92 U.S. 281, 283–284. This well settled principle is as fully applicable to administrative law as to jurisprudence in general. The use of "inference on inference" has "no more place in the conduct of hearings by an administrative officer than in a court of law." *Automobile Sales Co.* v. *Bowles,* Adm'r. (D.C., N.D., Ohio, 1944), 58 F. Supp. 469, 473. The Administrative Procedure Act was designed, among other things, to eliminate "the drawing of ex-

pert inferences not based upon evidence." *Pittsburgh S.S. Co.* v. *N.L.R.B.* (C.A. 6, 1950), 180 F. 2d 731, 733, affirmed *N.L.R.B.* v. *Pittsburgh S.S. Co.* (1951), 340 U.S. 498. Even prior to that Act Judge Minton, later Mr. Justice Minton of the Supreme Court, had judicially stigmatized such a method of administrative decision, and most pertinently to the situation here, in *Interlake Iron Corp.* v. *N.L.R.B.* (C.C.A. 7, 1942), 131 F. 2d 129, 133, wherein he held:

> But an inference cannot be piled upon an inference, and then another inference upon that as such inferences are unreasonable and cannot be considered as substantial evidence. Such a method could be extended indefinitely until there would be no more substance to it than the soup Lincoln talked about that was "made by boiling the shadow of a pigeon that had starved to death."

But counsel supporting the complaint now urges that the motion to dismiss the complaint made at the close of the Commission's case-in-chief should be denied on the basis of the Commission's orders in *Vulcanized Rubber & Plastics Co.* (Interlocutory Order, November 29, 1955), Docket No. 6222, and *Timken Roller Bearing Company* (Interlocutory Order, May 27, 1958), Docket No. 6504, because, in substance, the hearing examiner at that stage of the proceeding "views the evidence and inferences reasonably to be drawn therefrom in the light most favorable to the complaint" and such a motion in that posture of the case "should be granted only when it is apparent that there is in the record no substantial evidence in support of the complaint * * *." Neither those decisions nor that of the U.S. District Court for the Southern District of New York in *U.S.* v. *Consolidated Laundries Co.* (March 17, 1958, 26 L.W. 2461) are in point with the evidentiary situation now presented in the instant proceeding. There was a vast amount of substantial evidence to sustain an order in *Vulcanized Rubber* when respondent's motion was interposed and the examiner's initial decision sustaining the complaint finally entered after the respondent's evidence was in was affirmed by the Commission, and respondent's petition for review was later dismissed by the U.S. Court of Appeals for the District of Columbia. In the *Timken* case the Commission found much substantial evidence and the case is now before the examiner upon remand for further hearings. In the *Consolidated Laundries* case, defendant waived the presentation of evidence and a judgment of conviction was entered. Furthermore, there is no question of credibility involved here. All witnesses in

this case have been considered to be honest and fully credible and there is no conflict of evidence on any material matter, yet the record evidence utterly fails to establish even a single, isolated case of respondent's having violated the Wool Act.

Even giving full evaluation to the "estimated" amounts of allegedly unlabeled woolen goods received by the said four concerns in Missouri and Kansas from respondent, the sum total of their value is small. In the two Kline's shipments the "estimated" 30 unlabeled stoles were invoiced at a wholesale price of not more than $3.98, while the "estimated" 15 unlabeled scarf hoods were either at $1.98 or $1.25 each. The total value of these allegedly unlabeled articles could not have exceeded $150. In the Bundschu shipment there were "estimated" to be only five unlabeled scarfs. In the Pellitier shipment there were also "estimated" to be five unlabeled stoles at $5.95, or a total of about $30. There were "estimated" to be six unlabeled stoles at Tivoli Vogue. The total wholesale cost of all the garments in these four stores "estimated" to be unlabeled would not exceed about $250.

Since the annual business of respondent is some 10 million dollars with about 15 to 20 percent thereof being woolen goods, or from one and a half to two million dollars worth each year, and the alleged violations occurred during a period of about a year and a half between August 1, 1954 and January 23, 1956, the amount of allegedly defectively labeled merchandise, in dollars worth, can only amount at the most to an almost infinitesimal fraction of one percent of respondent's annual business. Only a few garments out of a multitude delivered by respondent during this period are claimed to have been unlabeled. Counsel supporting the complaint concedes: "The fact is the existence of merely a few unlabeled articles is of no concern even to the Federal Trade Commission because of the possibility of accidental removal." (Answer to motion to dismiss complaint, p. 10.) It is true that this statement is advanced in support of a specious contention that lack of labels on woolen garments, must be accredited to the respondent because retail "stores cannot be expected to devote their efforts to guarding against a deficiency in scarfs * * *." But the quoted statement of the Commission's disinterest is also fully applicable to the respondent. At best the *de minimis* rule calls for a dismissal of this proceeding.

Respondent's motion to dismiss incorporates as its second basis

that the continuation of this proceeding would not be in the public interest. The necessity for public interest is inherent in every Federal Trade Commission proceeding. From the foregoing analysis of the evidence, it is clearly evident that the proceeding is not maintainable upon its factual merits. But even if all the properly rejected evidence in this case had been received as reliable and probative and this case were to have been decided upon the facts in such a record, together with the reasonable and fair inferences arising therefrom, such a record would not justify a decision and order against respondent in the public interest. Counsel supporting the complaint relies entirely upon the respondent's four transactions on which evidence was adduced, respectively, with the Bundschu Store and with Tivoli-Vogue, both in August 1954, with Kline's, Inc., in November 1954, and with the Pellitier Stores Company in January, 1956. With reference to transactions between respondent and other customers scattered throughout the country as to which invoices were received in evidence, Commission's Exhibits 2, 3, 7, 9 and 12 to 19, inclusive, such counsel, although seeking to identify investigators' reports purportedly relating to such transactions, expressly stated as to such investigators, "I never intended, and don't intend, to call these witnesses, these investigators, on the stand and make them a witness." R. 317. The Commission's case therefore has been presented to the fullest extent possible and it is not to the public interest to further maintain this proceeding on such trivial matters as are submitted here.

From the foregoing evidence the examiner draws the following:

CONCLUSION OF LAW

The allegations of the complaint set forth in paragraphs 3 and 5 thereof charging respondent with acts and practices of misbranding of wool products violative of the Wool Products Labeling Act of 1939 and the Commission's Rules and Regulations promulgated thereunder have not been established by reliable, probative and substantial evidence as required by Section 7(c) of the Administrative Procedure Act or by relevant, material and reliable evidence as required by §3.14(b) of the Commission's Rules of Practice for Adjudicative Proceedings nor established that this proceeding is to the public interest. Therefore the following order is entered:

ORDER

It is ordered, That the motion of respondent to dismiss the complaint on the basis (a) that the Commission's case-in-chief has failed to establish a *prima facie* case and (b) is not to the public interest is hereby sustained and the complaint should be, and the same hereby is, dismissed.

DECISION OF THE COMMISSION

The hearing examiner, on January 19, 1959, having filed his initial decision, wherein he made his findings of fact and conclusions of law and dismissed the complaint in this proceeding; and the Commission, on March 6, 1959, having extended until further order the date on which the initial decision otherwise would have become the decision of the Commission; and

The Commission, while not agreeing with some of the statements and conclusions in the initial decision, having determined that the complaint was properly dismissed:

It is ordered, That insofar as said initial decision dismisses the complaint in this proceeding it is adopted as the decision of the Commssion.

Decision

IN THE MATTER OF

ONEIDA LTD.

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

Docket 7236. Complaint, Aug. 21, 1958—Order, Apr. 9, 1959

Order dismissing, following discontinuance in good faith of illegal practice before Commission investigation, complaint charging a large silverware manufacturer with granting discriminatory advertising allowances to favored customers.

Mr. William H. Smith and *Mr. James R. Fruchterman* for the Commission.

Shearman & Sterling & Wright, by *Mr. Robert L. Clare, Jr.,* of New York, N.Y., for respondent.

INITIAL DECISION DISMISSING COMPLAINT BY FRANK HIER, HEARING EXAMINER

On August 21, 1958, complaint in this proceeding was issued by the Commission charging violation of Section 2(d) of the Robinson-Patman amendment to the Clayton Act, alleging that respondent granted a special advertising allowance to one of its customers, Associated Barr Stores, Inc., of Philadelphia, Pa., a chain of retail jewelry outlets, for a special television promotion program and had paid substantial sums of money thereon during 1954, 1955, and 1956, and that this allowance was not granted on proportional or any other terms to any of respondent's other customers in that area.

Time was extended for answer, and on October 20, 1958, respondent moved to dismiss the complaint on the basis of voluntary discontinuance in good faith prior to any investigation or litigation activities. This motion was supported by an affidavit of the president in which it was admitted that the payments were made as alleged; that the allowance was discontinued by letter to Barr dated November 28, 1956, copy of which was attached; that no investigator called on respondent prior to September 9, 1957; that the special TV promotion program was a financial and commercial failure; that, in fact, the payments thereunder exceeded the sales; that the respondent had discontinued in June 1957 all advertising allowances of any kind or character; that the administration of any advertising program

in its particular operation is not only cumbersome, but difficult; that it has no reason to renew or institute any further cooperative advertising allowance program, and will not do so.

At the hearing on the motion held this date, in response to questions from the undersigned hearing examiner, the following facts developed: That counsel in support of the complaint was unable to state that the files before the Commission at the time it issued the complaint, contained any of the facts relating to abandonment; that an investigator from the Federal Trade Commission did visit Associated Barr Stores, Inc., on October 10, 1956, but apparently on a general inquiry unrelated, at the time, to this respondent; that there is nothing to show that the respondent was apprised of any charge of illegality prior to September 9, 1957, as asserted; that counsel for the respondent admits all of the factual allegations in the complaint, and, having thus confessed, requests absolution or at least a dismissal of the complaint.

If the Commission had before it the facts relating to abandonment, this hearing examiner would feel that he had no discretion in the matter but to deny the motion. However, the contrary appears. He is unaware of any other Commission or other case involving this question of abandonment where the facts for dismissal are as strong as these. In most instances discontinuance has occurred after the filing of the complaint or after investigation has apprised the respective respondent that the legality of its practices is being questioned. However, if abandonment took place ten months before any such knowledge, under all these circumstances, above related, the motion should be and is granted. It is, therefore,

Ordered, That the complaint herein be, and the same hereby is, dismissed for good faith of abandonment with no reason to suspect or expect resumption or reinstitution of the practices charged and that, therefore, there is no public interest in further proceedings.

ORDER DENYING APPEAL AND ADOPTING
INITIAL DECISION DISMISSING COMPLAINT

This matter having been heard upon the appeal of counsel in support of the complaint from the hearing examiner's initial decision dismissing the complaint; and

The Commission having considered the entire record, including the briefs and oral argument of counsel in support of and in

opposition to the appeal, and having concluded that the initial decision is correct and appropriate in all respects to dispose of this proceeding:

It is ordered, That the aforementioned appeal of counsel in support of the complaint be, and it hereby is, denied.

It is further ordered, That the hearing examiner's initial decision dismissing the complaint, filed October 31, 1958, be, and it hereby is, adopted as the decision of the Commission.

IN THE MATTER OF

ST. REGIS PAPER COMPANY, ET AL.

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

Docket 6476. Complaint, Dec. 7, 1955—Decision, Apr. 11, 1959

Order dismissing without prejudice as to the two remaining respondents, complaint charging 21 leading paper bag manufacturers with using the same pricing formula to quote identical delivered prices to customers regardless of their location or freight costs.

On Feb. 12, 1959, the Commission approved a consent order requiring 17 of the manufacturers to discontinue said activities (p. 1162 herein) and in 1956 had dismissed the complaint as to two respondents who had ceased to manufacture the products concerned.

Mr. Andrew C. Goodhope, Mr. Ross D. Young, Jr., and *Mr. John Perechinsky*, supporting complaint.

Lamb & Long, by *Mr. George P. Lamb*, of Washington, D.C., for Fulton Bag and Cotton Mills; and *Kriesel, Lessall & Dowling*, of New York, N.Y., for Equitable Paper Bag Co.

Before *Mr. John Lewis*, hearing examiner.

INITIAL DECISION AS TO REMAINING RESPONDENTS FULTON BAG AND COTTON MILLS AND EQUITABLE PAPER BAG CO.

The Federal Trade Commission issued its complaint against the above-named respondents on December 7, 1955, charging them with the use of unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by entering into a combination or conspiracy to hinder, lessen, restrict and restrain competition in price in the sale and distribution of multi-wall paper shipping sacks. After being served with said complaint, respondents appeared by counsel and filed their separate answers thereto. Thereafter, by orders dated respectively, February 20, 1956, and November 9, 1956, the complaint herein was dismissed as to respondents Raymond Bag Company and Thomas Phillips Company on the ground, substantially, that said respondents had ceased engaging in the manufacture and sale of multi-wall paper shipping sacks. Subsequently the remaining respondents, except Fulton Bag and Cotton Mills, and Equitable Bag Co., entered into separate but identical agreements, dated

December 8, 1958, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all remaining respondents, except Fulton Bag and Cotton Mills, and Equitable Bag Co. The undersigned filed his Initial Decision, based on said agreements, on December 22, 1958, disposing of this proceeding as to all remaining respondents except Fulton Bag and Cotton Mills, and Equitable Paper Bag Co. Said Initial Decision became the decision of the Commission by Decision and Order issued February 12, 1959.

There are now before the undersigned for disposition motions which have been filed to dismiss this proceeding as to the remaining respondents, Fulton Bag and Cotton Mills, and Equitable Paper Bag Co. Counsel for respondent Fulton Bag and Cotton Mills have moved to dismiss the complaint as to it on the ground, substantially, that it has disposed of its multi-wall paper bag operations and that the matters asserted in the complaint against it are now moot. The facts with respect to said respondent's disposition of its multiwall paper bag business are set forth in the affidavit of its acting president, attached to said motion. Counsel supporting the complaint have filed answer to said motion stating that they do not oppose the granting thereof. Counsel supporting the complaint have themselves moved to dismiss the complaint as to the respondent Equitable Paper Bag Co., on the ground, substantially, that it will be the only respondent remaining in the proceeding, and that it would not be in the public interest to expend the time and money which would be necessary in order to proceed against said respondent in view of the fact that the order agreed to by the other respondents will effectively deal with the acts and practices charged in the complaint.

The undersigned is of the opinion, based on the facts set forth in the affidavit attached to the motion of respondent Fulton Bag and Cotton Mills, and the lack of opposition by counsel supporting the complaint, that this proceeding may appropriately be dismissed as to said respondent, without prejudice. The undersigned is further of the opinion that this proceeding may also appropriately be dismissed as to respondent Equitable Paper Bag Co., as the only respondent as to whom this proceeding would otherwise remain undisposed of in view of the approval by the Commission of the aforementioned agreements containing consent order to cease and desist.

This proceeding having now come on for final consideration as to respondents Fulton Bag and Cotton Mills, and Equitable Paper Bag Co., on motions to dismiss as to said respondents, and said motions to dismiss being unopposed, and it not appearing that the public interest requires a continuation of this proceeding as to said respondents,

It is ordered, That the complaint herein be, and the same hereby is, dismissed as to respondents Fulton Bag and Cotton Mills, and Equitable Paper Bag Co., without prejudice to the right of the Commission to issue a new complaint or to take such further action against the said respondents at any time in the future as may be warranted by the then existing circumstances.

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 11th day of April 1959, become the decision of the Commission.

IN THE MATTER OF

RONAY, INC., ET AL.

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

Docket 7337. Complaint, Dec. 16, 1958—Decision, Apr. 11, 1959

Consent order requiring a manufacturer in Long Island City, N.Y., to cease describing falsely as "wicker" on invoices to dealers, handbags actually made of paper fibers.

Mr. Alvin D. Edelson for the Commission.

Paul, Weiss, Rifkind, Wharton & Garrison, of New York, N.Y., by *Mr. H. Russell Winokur,* for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter, issued December 16, 1958, charged respondents with violation of the Federal Trade Commission Act in connection with the sale and distribution of ladies' handbags. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and 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.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for appropriate disposition of the proceeding, the

agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Ronay, Inc., is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business located at 37–18 Northern Boulevard, Long Island City, New York, N.Y. Individual respondents Mitchell Bienen, Richard Bienen, and Pearl Bienen are officers of the corporate respondent. Their address is the same as the corporate respondent.

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

ORDER

It is ordered, That respondents Ronay, Inc., a corporation, and its officers, and Mitchell Bienen, Richard Bienen, and Pearl Bienen, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device in connection with the manufacture, offering for sale, sale or distribution of ladies' handbags or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting on invoices, or in any other manner, the material or materials of which their ladies' handbags, or any other merchandise, are composed or constructed.

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 11th day of April 1959, 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.

Decision

IN THE MATTER OF

ROBERT A. LYONS ET AL. TRADING AS "TAB" AND TECHNICAL APPARATUS BUILDERS

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

Docket 7125. Complaint, Apr. 18, 1958—Decision, Apr. 16, 1959

Consent order requiring a concern in New York City selling radio and television tubes—many of them military and manufacturers' surplus, used, pull-out, and factory reject—to the public by mail order and also to industrial establishments and manufacturers, to cease representing falsely in advertising brochures, magazine advertising, etc., that all their tubes were new, unused, and of first quality and were unconditionally guaranteed, and to disclose conspicuously—in advertising, packaging, and shipping memoranda—when their tubes were used, reject, or surplus.

Mr. Kent P. Kratz for the Commission.
Wiesenthal & Wiesenthal, of New York, N.Y., for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued April 18, 1958, charges respondents Robert A. Lyons and Morton C. Blumberg, copartners trading as "TAB" and Technical Apparatus Builders, located at 111 Liberty Street, New York, N.Y., with violation of the Federal Trade Commission Act in the sale and distribution of radio and television tubes.

After the issuance of the complaint respondents entered into an agreement containing consent order to cease and desist with counsel in support of the complaint disposing of all the issues as to all parties in this proceeding, which agreement was duly approved by the director and assistant director of the Bureau of Litigation.

It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the respondents admitted all the jurisdictional facts alleged in the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

By said agreement, the parties expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

Respondents further agreed that the order to cease and desist, issued in accordance with said agreement, shall have the same force and effect as if made after a full hearing.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and, in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That respondents Robert A. Lyons and Morton C. Blumberg, individually or trading as "TAB" or as Technical Apparatus Builders, or trading under any other name, and their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of television or radio tubes in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that any used tubes are new.

2. Representing, directly or indirectly, that used, pull-out

(sometimes referred to as "removed from equipment"), factory rejects, military surplus or manufacturers' surplus are first quality tubes, provided, however, that nothing herein will prohibit respondents from representing the true or actual quality thereof.

3. Selling, offering for sale or distributing used, pull-out (sometimes referred to as tubes "removed from equipment"), factory rejects, military surplus or manufacturers' surplus radio or television tubes without clearly and conspicuously disclosing on the tube, the individual carton in which such tube is packaged and in advertising and shipping memoranda that they are used, pull-out or removed from equipment, factory rejects, military surplus or manufacturers' surplus tubes, as the case may.

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

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 16th day of April 1959, become the decision of the Commission; and, accordingly:

It is ordered, That 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

RUSSEKS FIFTH AVENUE, INC.

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

Docket 7262. Complaint, Sept. 19, 1958—Decision, Apr. 16, 1959

Consent order requiring a New York City department store to cease violating the Fur Products Labeling Act by advertising in newspapers which failed to disclose the names of animals producing certain furs or the country of origin or the fact that some fur products contained artificially colored fur, and which represented prices as reduced from "original retail" prices that were in fact fictitious; and by failing to designate the time at which said "original retail" prices were in effect, and to keep adequate records as a basis for said pricing claims.

Mr. John T. Walker supporting the complaint.

Mr. Herbert S. Keller of Weisman, Allan, Spett & Sheinberg, of New York, N.Y., for respondent.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on September 19, 1958, charging it with having violated the Fur Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act by falsely and deceptively advertising certain of their fur products and failing to maintain full and adequate records disclosing the facts upon which they base their pricing claims and representations referred to in paragraph 4 of the complaint.

After being served with the complaint respondent entered into an agreement, dated February 5, 1959, containing a consent order to cease and desist, disposing of all the issues in this proceeding without hearing, which agreement has been duly approved by the assistant director and the director of the Bureau of Litigation. 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 waives 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 agreement is hereby accepted and ordered filed upon this decision and said agreement 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 Russeks Fifth Avenue, 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 at Fifth Avenue and 36th Street, New York, N.Y.

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 Fur Products Labeling Act and the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That Russeks Fifth Avenue, Inc., a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in

connection with the introduction into commerce, or the sale, advertising, or offering for sale, in commerce, or the transportation or distribution in commerce of 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:

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

A. Fails to disclose:

(1) 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;

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

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

B. 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 respondent has usually and customarily sold such product in the recent regular course of business.

C. Bases comparative prices on former or original prices that are not the prevailing prices at the time of the advertisement without stating the dates or times of the compared prices.

2. Making price claims and representations of the types referred to in paragraphs B and C above unless respondent maintains 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 16th day of April 1959, 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.

IN THE MATTER OF

RICHARD-DONALD FURRIERS, INC., ET AL.

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

Docket 7291. Complaint, Nov. 5, 1958—Decision, Apr. 16, 1959

Consent order requiring a furrier in Wilmington, Del., to cease violating the Fur Products Labeling Act by failing to comply with invoicing requirements; by advertising in newspapers which failed to disclose the names of animals producing certain furs or the country of origin, or to disclose that some furs were made of artificially colored or cheap or waste fur, failed to use the term "Dyed Mouton-processed Lamb" where applicable, and represented prices as reduced from regular prices which were in fact fictitious or as representing false percentage savings, by failing to keep adequate records as a basis for said pricing claims, and by representing a "2-year guarantee" without specifying how it would be honored.

Mr. Kent P. Kratz for the Commission.

Mr. Thomas Herlihy, Jr., of Wilmington, Del., for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter, issued on November 5, 1958, charged the respondents named therein, Richard-Donald Furriers, Inc., a corporation, and Richard S. Cohn, individually and as an officer of said corporation, with violating the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be

used in construing the terms of the order; and 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.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Richard-Donald Furriers, Inc., is a corporation, existing and doing business under the laws of the State of Delaware with its office and principal place of business located at 730 Market Street, Wilmington, Del. Individual respondent Richard S. Cohn is president of the corporate respondent and controls, formulates and directs the acts, practices and policies of said respondent. His office and principal place of business is the same as that of the corporate respondent.

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

ORDER

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

1. Falsely or deceptively invoicing fur products by:

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

(1) 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;

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

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

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

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

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

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

A. Fails to disclose:

(1) 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;

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

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

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

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

C. Fails to set forth the term "Dyed Mouton-processed Lamb" in the manner required.

D. 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 respondents have usually and customarily sold such products in the recent regular course of business.

E. Represents, directly or by implication that the customary or usual retail price charged by respondents for any fur product in the recent regular course of their business is reduced in direct proportion to the amount of savings stated in percentage savings claims, when contrary to the fact.

F. Represents, directly or by implication, that respondents' fur products are guaranteed for two years or for any other period of

time, or that they are otherwise guaranteed, unless the nature and extent of the guaranty, and the manner in which the respondents will perform thereunder, are clearly and conspicuously disclosed.

3. Making price claims and representations of the types referred to in paragraph D and E above, unless there are 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 16th day of April 1959, 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

COUNTRY TWEEDS, INC., ET AL.

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

Docket 7314. Complaint, Nov. 25, 1958—Decision, Apr. 16, 1959

Consent order requiring a manufacturer in New York City to cease violating the Wool Products Labeling Act by labeling as "80% Alpaca and Mohair, 20% Nylon" and "80% Alpaca and Wool and Mohair, 20% Nylon," coats which contained a negligible amount of alpaca and substantially more than 20% nylon, and by failing in other respects to comply with the labeling requirements; and by making similar false claims for their "Kashmoor" ladies' coats in advertising in newspapers, magazines, etc., and promotional material furnished to retailers.

Mr. Thomas A. Ziebarth for the Commission.

Barshay & Frankel, of New York, N.Y., by *Mr. Nathan Frankel*, for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with misbranding certain wool products in violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and 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.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Country Tweeds, Inc., is a corporation existing and doing business under the laws of the State of New York, with its offices and principal place of business located at 250 West 39th Street, New York, N.Y. Individual respondent Marcus Weisman is secretary-treasurer of the corporate respondent and has the same address as said corporate respondent.

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

ORDER

It is ordered, That respondents Country Tweeds, Inc., a corporation, and its officers, and Marcus Weisman, 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 the 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 woolen coats or other "wool products" as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding said products by:

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

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

(a) The percentages 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 the percentage by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers.

(b) The maximum percentage of the total weight of such wool product of any nonfibrous loading or adulterating matter.

(c) The name or 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 or shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

3. Failing to set forth on the required stamp, label, or other means of identification the percentages of the total fiber weight of such wool product, exclusive of ornamentation not exceeding five percentum of said total fiber weight, of the specialty fibers, Alpaca and Mohair, where an election is made to use the names of those fibers in lieu of the word "wool."

It is further ordered, That Country Tweeds, Inc., a corporation, and its officers, and Marcus Weisman, 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 coats or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting, directly or indirectly, the constituent fibers of which their products are composed or the percentages, character, or amounts thereof in advertisements or in any other manner.

2. Making any representation in advertising or in any other manner that a product contains Alpaca or any other wool or textile fiber when such is not the fact, or using the name of any wool or textile fiber contained in a product where the percentage by weight is insubstantial, unless a disclosure is made, in immediate conjunction with the named fiber, of the actual percentage, by weight, of such fiber.

3. Placing into the hands of others means and instrumentalities whereby they may make, directly or by implication, representations of the type referred to in paragraphs 1 and 2 above.

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

16th day of April 1959, become the decision of the Commission; and, accordingly:

It is ordered, That 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

RADLEY 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 7325. Complaint, Dec. 9, 1958—Decision, Apr. 16, 1959

Consent order requiring a manufacturing furrier in New York City to cease violating the Fur Products Labeling Act by such practices as advertising in letters to a Los Angeles, Calif., customer which represented prices of fur products as reduced from regular prices which were in fact fictitious.

Mr. Alvin D. Edelson supporting the complaint.

Mr. Joseph H. Schindler, of New York, N.Y., for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 9, 1958, charging them with having violated the Fur Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act by falsely and deceptively advertising certain of their fur products as alleged in the complaint.

After being served with the complaint respondents entered into an agreement, dated February 10, 1959, containing a consent order to cease and desist, disposing of all the issues in this proceeding, without hearing, which agreement has been duly approved by the assistant director and the director of the Bureau of Litigation. 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 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 made duly 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 agreement is hereby accepted and ordered filed upon this decision and said agreement 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 Radley Furs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 333 Seventh Avenue, New York, N.Y. Individual respondents Larry Gallo and Herman Rifkin are officers of said corporation and control, direct and formulate the acts, practices and policies of the said corporate respondent. The address and principal place of business of the individual respondents is the same as that of the 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

It is ordered, That Radley Furs, Inc., a corporation, and its officers, and Larry Gallo and Herman Rifkin, 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 or manufacture for introduction into commerce, or the sale, advertising, offering for

sale, transportation or distribution, of fur products, in commerce, or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

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 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 respondents have usually and customarily sold such products in the recent regular course of business.

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 16th day of April 1959, 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

HICKS PHARMACAL COMPANY, ET AL.

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

Docket 7347. Complaint, Jan. 6, 1959—Decision, Apr. 16, 1959

Consent order requiring a distributor in Newark N.J., and its advertising agent, to cease representing falsely in newspaper, radio, and other advertising of the drug preparation "Arthrycin" for treatment of arthritis and rheumatism, that the analgesic effect of the product built up day after day, that it was a special remedy providing greater relief than other analgesics and was the only tested pain-relieving complex on the market, and that the plan of taking it for five days in reduced amounts daily was new and unique, the following of which would permanently end the pains of arthritis, rheumatism, and other similar conditions.

Mr. Charles W. O'Connell for the Commission.
No appearance for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with misrepresenting a medicinal preparation advertised and sold by them, in violation of the Federal Trade Commission Act. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and 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.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Hicks Pharmacal Company is a corporation organized, existing and doing business under the laws of the State of New Jersey, with its principal office and place of business located at 136 Tichenor Street, Newark, N.J. Respondents Carl H. White, Jr., John Garvey and Henry K. Berman are officers of said corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, and their address is the same as that of the corporate respondent.

Respondent Kenneth Rader Company, Inc., is a corporation organized, existing and doing business under the laws of the State of New York with its principal office and place of business located at 18 West 56th Street, New York, N.Y.

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

ORDER

It is ordered, That the respondents, Hicks Pharmacal Company, a corporation, and its officers, and Carl H. White, Jr., John Garvey and Henry K. Berman, individually and as officers of said corporation, and Kenneth Rader Company, Inc., a corporation, and its officers, 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 the preparation Arthrycin or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same or any other name, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated by means of the United States Mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents directly or by implication:

(a) That the analgesic effect of Arthrycin builds up day after day.

(b) That said preparation is a special remedy or that it provides a greater degree of relief from pain than is provided by other analgesic preparations.

(c) That said preparation is the only tested pain relieving complex on the market.

(d) That the plan of administering the preparation, that is, by taking the preparation over a period of five days in reduced amounts, is a new or unique method of administering analgesics.

(e) That said preparation, however taken, will relieve the pains of arthritis, rheumatism, sciatica, neuritis or lumbago, unless limited to the temporary relief of the minor pains thereof.

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 said preparation, which advertisement contains any of the representations prohibited 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 16th day of April 1959, become the decision of the Commission; and, accordingly:

It is ordered, That 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

HANS & GREIFF, INC., ET AL.

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

Docket 7361. Complaint, Jan. 15, 1959—Decision, Apr. 16, 1959

Consent order requiring manufacturing furriers in New York City to cease violating the Fur Products Labeling Act by failing to comply with invoicing requirements and by advertising in letters to customers in which they represented certain designated amounts to be wholesale market values and prices without maintaining adequate records disclosing the facts upon which such representations were based.

S. F. House, Esq. for the Commission.
Respondents, *pro se*.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on January 15, 1959, charging them with having violated the Fur Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act, by falsely invoicing and misrepresenting their fur products. Respondents appeared and entered into an agreement, dated February 20, 1958, containing a consent order to cease and desist, disposing of all the issues in this proceeding without further hearings, which agreement has been duly approved by the Director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with §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 made duly 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 agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part of the Commission's decision pursuant to §§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 Hans & Greiff, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 130 West 30th Street, New York, N.Y.

Individual respondents Irving Hans and Harry Greiff are president and secretary-treasurer, respectively, of said corporate respondent and formulate, control and direct the acts, practices and policies of the corporate respondent. Their address is the same as that of the 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

It is ordered, That Hans & Greiff, Inc., a corporation, and its officers, and Irving Hans and Harry Greiff, 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, or manufacture for 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, manufacture for 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:

1. Falsely or deceptively invoicing fur products by:

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

(1) 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;

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

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

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

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

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

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

2. Making claims and representations in advertisements and letters or by other means respecting prices and values of fur products unless there are maintained by respondents full and adequate records showing the facts upon which such claims and 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 16th day of April 1959, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

DRUG RESEARCH CORPORATION ET AL.

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

Docket 7179. Complaint, June 30, 1958—Decision, Apr. 17, 1959

Consent order requiring New York City distributors of a reducing preparation designated "Reg'men-Tablets" and their advertising agency, to cease representing falsely in newspaper, magazine, and other advertising and by radio and television broadcasts that the preparation was safe for use by all obese persons, that through use of the tablets they could lose weight without dieting and lose a specific number of pounds in a given period, and that significant weight loss caused by the removal of body fluids would be more than temporary.

Mr. Berryman Davis supporting the complaint.

Mr. James T. Welch of *Davies, Richberg, Tydings, Landa & Duff*, of Washington, D.C., for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint on June 30, 1958, charging the above-named respondents with violation of the Federal Trade Commission Act as alleged in said complaint. After service of the complaint and answer thereto all of the respondents except the respondent Harriet Andreadis entered into an agreement with counsel supporting the complaint containing an order to cease and desist from certain practices complained of, which agreement purports to dispose of all issues in this proceeding as to all parties. This agreement has been duly approved by the assistant director and director of the Bureau of Litigation and is now before the undersigned hearing examiner for consideration.

The agreement provides in part that in order to correct errors in the caption and the body of the complaint in regard to the names of respondents that the complaint be amended by substituting as respondents John T. Andreadis, also known as John T. Andre, Timoleon T. Andreadis, also known as Timoleon T. Andre, and Kastor Hilton Chesley Clifford & Atherton, Inc., in place of John Andre also known as John Andreadis, Timoleon T. Andre, also known as Timoleon T. Andreadis and Kastor, Farrell, Chesley & Clifford, Inc., respectively; and by substituting

Harriet Andreadis for Harriet Andre, also known as Harriet Andreadis.

This portion of the agreement is considered as a joint motion to make such amendments to the complaint and is granted.

The agreement also further provides for the dismissal of the amended complaint as to respondent Harriet Andreadis. Agreement for such dismissal is based on an affidavit of respondent John T. Andreadis attached to and made a part of the agreement. The hearing examiner finds that this affidavit is sufficient ground in this particular proceeding for dismissing as to the respondent Harriet Andreadis.

Respondents, Drug Research Corporation, a corporation, and its officers and John T. Andreadis, also known as John T. Andre; Timoleon T. Andreadis, also known as Timoleon T. Andre, individually and as officers of said corporation, and respondent Kastor Hilton Chesley Clifford & Atherton, Inc., and its officers, in the aforesaid agreement have admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly 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 agreement is hereby accepted and ordered filed upon this decision and said agree-

ment 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 Drug Research Corporation is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 369 Lexington Avenue, in the city of New York, State of New York.

2. Respondents John T. Andreadis, also known as John T. Andre, and Timoleon T. Andreadis, also known as Timoleon T. Andre, are individuals and officers of this corporate respondent. They dominate, control and direct the policies, acts and practices of this corporate respondent. The address of the individual respondents is the same as that of this corporate respondent.

3. Respondent Kastor Hilton Chesley Clifford & Atherton, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 400 Madison Avenue, in the city of New York, State of New York. This corporate respondent is the advertising agency of Drug Research Corporation.

4. 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 under the Federal Trade Commission Act. This proceeding is in the public interest.

ORDER

It is ordered, That respondents Drug Research Corporation, and its officers, John T. Andreadis, also known as John T. Andre, and Timoleon T. Andreadis, also known as Timoleon T. Andre, individually and as officers of said corporation, and respondent Kastor Hilton Chesley Clifford & Atherton, Inc., and its officers, 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 Regimen-Tablets, or any preparation of substantially similar composition or possessing substantially similar properties, 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 any advertisement by means of the United States mails or by any means in

commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or indirectly:

(a) That said preparation is safe to use by all obese persons;

(b) That obese persons can lose weight by the use of said preparation without dieting and while consuming the same kinds and amounts of food as they ordinarily consume;

(c) That any predetermined weight reduction can be achieved by most persons by the taking or use of said preparation for a prescribed period of time; and

(d) That said preparation, by the removal of excess body fluids, causes significant weight loss of more than temporary duration.

2. Disseminating or causing the dissemination of any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That the amended complaint be, and the same hereby is, dismissed as to respondent Harriet Andreadis.

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 April 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Drug Research Corporation, a corporation, and its officers and John T. Andreadis, also known as John T. Andre; Timoleon T. Andreadis, also known as Timoleon T. Andre, individually and as officers of said corporation, and respondent Kastor Hilton Chesley Clifford & Atherton, Inc., and its officers,[1] 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.

[1] Complaint amended to show correct names of respondents.

IN THE MATTER OF

AMERICAN EQUITABLE CORPORATION ET AL.

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

Docket 7326. Complaint, Dec. 9, 1958—Decision, Apr. 22, 1959

Consent order requiring a Chicago real estate firm to cease representing falsely in advertising and by statements of solicitors to obtain listings of property for sale and to collect fees for such listing and advertising, that the asking price was too low and should be raised; that the fee would be returned if the property was not sold within a short designated time; that they investigated the abiltiy of prospective buyers to pay and had such buyers who were interested in specific properties; that they were specialists in selling real estate, financed purchases, assumed all financial risk, and advertised properties in major newspapers.

John W. Brookfield, Jr., Esq. for the Commission.

Halfpenny and Hahn, by *James F. Flanagan*, Esq., of Chicago, Ill., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 9, 1958, charging them with having violated the provisions of the Federal Trade Commission Act by the use of false representations for the purpose of obtaining listings of property for sale and fees for the listing and advertising of property for sale; and that they are the owners or principal occupants of the Pure Oil Building. Respondents appeared by counsel and entered into an agreement, dated March 2, 1959, containing a consent order to cease and desist, disposing of all the issues in this proceeding without further hearings, which agreement has been duly approved by the director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with §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 made duly 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 agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part of the Commission's decision pursuant to §§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 American Equitable Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 35 East Wacker Drive, in the City of Chicago, Ill.

Respondents Carl J. Campagna and Charles Dabney are individuals and officers of said corporate respondent and have their office and place of business at the same address as that of the 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 Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondents American Equitable Corporation, a corporation, and its officers, and Carl J. Campagna and Charles Dabney, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale or sale of advertising in any advertising media, or of other services and facilities in connection with the offering for sale, selling, buying or exchanging of business or any other kind of property, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. Respondents have available prospective buyers who are interested in the purchase of specific property;

2. Respondents investigate the financial ability to purchase the property of persons whose names appear in their files as prospective buyers of the property;

3. Respondents will finance the purchase of the listed property;

4. The property is underpriced by the owner or that the asking price should be increased or that respondents can or will sell the property at the increased price;

5. Respondents have published over 100,000 advertisements or any other number in excess of those actually published, or that respondents will advertise the listed property in any other manner than that actually published;

6. Respondents have in their files or otherwise available the names of numbers of prospective buyers of property whose financial responsibility and integrity have been investigated by them;

7. Respondents assume all the financial risk or obligation and the owner of the property cannot lose through listing his property with respondents;

8. The listing or advance fee paid to respondents will be refunded if the property is not sold;

9. Respondents will bring prospective purchasers of the listed property to examine the property;

10. Property listed with respondents will be sold within a short period of time or that respondents have sold the property of others, who listed it with them, within a few weeks or other short period of time;

11. Respondents study or select the property which they seek to have listed and do not accept property in general to be listed,

or that they do not accept contracts for listing or selling property unless they can sell the property;

12. Respondents are specialists in the sale of property or that their methods are proven, trustworthy or dependable;

13. Respondents are the owners of or principal occupants of a large office building, or are a large, nationally known or responsible firm or company.

It is further ordered, That the complaint be and the same hereby is dismissed as to respondent Margaret Campagna, individually and as an officer of respondent American Equitable Corporation, without prejudice to the right of the Commission to take such action in the future as may be warranted by the then existing conditions.

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 22d day of April 1959, become the decision of the Commission; and, accordingly:

It is ordered, That the above-named respondents with the exception of Margaret Campagna 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

I. G. CHEMICAL CORP., ET AL.

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

Docket 7277. Complaint, Oct. 14, 1958—Decision, Apr. 23, 1959

Consent order requiring New York City distributors to cease representing falsely in advertising that their "Green Plasma" chemical dye for lawns—which sunlight would bleach and rain wash out—had been tested and approved by the United States Government and used on the United States Capitol and White House lawns to restore and maintain a green color; that only occasional sprinklings with the preparation would keep a lawn green all year; that it was a new scientific discovery, in scarce supply, a plant food and fertilizer; and that prospective purchasers would receive a free trial of the product.

Mr. Garland S. Ferguson supporting the complaint.

Mr. Milton A. Bass of *Bass and Friend,* of New York, N.Y., for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint on October 14, 1958, charging the above-named respondents with violation of the Federal Trade Commission Act by making deceptive and misleading statements with respect to their product, "Green Plasma," a chemical preparation for lawns.

After being served with the complaint respondents entered into an agreement, dated February 17, 1959, containing a consent order to cease and desist, disposing of all the issues in this proceeding, which agreement has been duly approved by the director and assistant director of the Bureau of Litigation. 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 made duly 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 conclu-

sions 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 agreement is hereby accepted and ordered filed upon this decision and said agreement 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 I. G. Chemical Corp., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 9 East 45th Street, New York, N.Y.

2. Individual respondents David Ratke, Herman Liebenson, and Monroe Caine are officers of said corporate respondent. They formulate, direct and control the practices of the corporate respondent. Their address is the same as that of the corporate respondent.

3. 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 under the Federal Trade Commission Act. This proceeding is in the public interest.

ORDER

It is ordered, That respondents I. G. Chemical Corp., a corporation, and its officers, and David Ratke, Herman Liebenson, and Monroe Caine, individually and as officers of said corporation, and respondents' agents, representatives and employees, di-

rectly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their product Green Plasma, or any other products of substantially the same composition in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication:

1. That said product has been tested or approved by the United States Government.

2. That said product has been used on the lawns of the United States Capitol or the White House to restore or maintain a green color.

3. That any number of applications of said product less than that generally required, will keep lawns green for 365 days of the year or for any other period of time.

4. That respondents' product is a new scientific discovery.

5. That respondents' product is available to purchasers in limited amounts, or is limited in certain areas, or that the supply of ingredients which comprise respondents' product is scarce.

6. That respondents' product brings back or restores the original color to faded or brown grass, or that it is a plant food or an effective fertilizer.

7. That prospective purchasers receive a free trial of respondents' said product.

8. That said product gives or imparts a green color to faded or brown lawns unless it is clearly and conspicuously revealed that said product is a dye and that the color will bleach out by sunlight and will be washed out by rain and that, in order that the lawn will have a green appearance, frequent applications of the product are necessary.

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 23d day of April 1959, 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

FLEISHER FUR COMPANY

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

Docket 7192. Complaint, July 17, 1958—Decision, Apr. 25, 1959

Consent order requiring a New York City furrier to cease violating the Fur Products Labeling Act by failing to comply with labeling requirements; by setting forth on invoices and in advertising, prices which were fictitious; by failing to maintain adequate records as a basis for such pricing claims; and by furnishing a false guaranty that certain of their fur products were not misbranded, falsely invoiced, and fasely advertised.

Mr. Charles W. O'Connell for the Commission.
Mr. Jack C. Wilner, of New York, N.Y., for respondent.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated July 17, 1958, the respondent is charged with violating the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations made pursuant thereto.

On February 24, 1959, the respondent and his attorney entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondent admits the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondent of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondent that he has violated the law as alleged in the complaint.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement

is hereby accepted and it is ordered that the agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent Leon Fleisher is an individual trading and doing business as Fleisher Fur Company with his office and place of business located at 333 Seventh Avenue, New York, N.Y.

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

ORDER

It is ordered, That Leon Fleisher, an individual trading as Fleisher Fur Company, or under any other name or names, and his representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or the manufacture for introduction, into commerce, or the sale, advertising, offering for sale, transportation or distribution, in commerce, of fur products, or in connection with the manufacture for sale, 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 setting forth on labels attached to fur products information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder which is mingled with nonrequired information.

B. Falsely or deceptively invoicing fur products by representing, 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 respondent has usually and customarily sold such product in the recent regular course of his business.

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, which 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 respondent has usually and customarily sold such product in the recent regular course of his business.

D. Making claims or representations in advertisements that prices are reduced from regular or usual prices, unless respondent maintains full and adequate records disclosing the facts upon which such claims or representations are based.

E. Furnishing false guaranties that certain furs or fur products are not misbranded, falsely invoiced or falsely advertised, when there is reason to believe that such furs or fur products may be introduced, sold, transported or distributed in commerce.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the initial decision filed by the hearing examiner wherein he accepted an agreement containing a consent order to cease and desist executed by the respondent and his counsel and by counsel supporting the complaint, service of which initial decision was completed on March 25, 1959; and

Counsel for the respondent, by letter received March 26, 1959, having stated that the respondent's entry into that agreement was contingent on inclusion of a statement that the agreement was being entered into for settlement purposes only and did not constitute an admission by the respondent of law violation, and the respondent having requested that the initial decision be amended to incorporate the agreement's reservation in that respect inasmuch as no reference thereto appears in the initial decision; and

It appearing that prior decisions of the Commission based on agreements containing consent orders to cease and desist usually have included brief summaries of certain of their salient provisions, and the Commission having determined in the circumstances here that the initial decision's omission in that regard should be supplied, including due mention of the paragraph to which the respondent's motion relates:

It is ordered, That the initial decision be, and it hereby is, amended by inserting between the second and third paragraphs thereof the following paragraph:

Under the foregoing agreement, the respondent admits the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same

force and effect as if entered after a full hearing and the document includes a waiver by the respondent of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondent that he has violated the law as alleged in the complaint.

It is further ordered, That the initial decision as so modified shall, on the 25th day of April, 1959, become the decision of the Commission.

It is further ordered, That the respondent Leon Fleisher, an individual trading as Fleisher Fur Company, 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

FORT JEWELRY COMPANY, INC., ET AL.

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

Docket 7343. Complaint, Dec. 30, 1958—Decision, Apr. 25, 1959

Consent order requiring a Providence, R.I., distributor of costume and men's jewelry to jobbers and distributors, to cease preticketing merchandise with tags bearing purported usual retail prices which were in fact fictitious and greatly exaggerated.

Mr. Ames W. Williams for the Commission.

Hinckley, Allen, Salisbury & Parsons, of Providence, R.I., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated December 30, 1958, the respondents are charged with violating the provisions of the Federal Trade Commission Act.

On March 4, 1959, the respondents and their attorneys entered into an agreement with counsel in support of the complaint for a consent order.

Under the agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing, and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

Attached to and made a part of said agreement is an affidavit attesting to the fact that Lena Forte, while an officer of the corporate respondent, does not participate in the formulation, direction or execution of corporation policy respecting the acts and practices set forth in the complaint.

The hearing examiner being of the opinion that the agreement

and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. The respondent Fort Jewelry Company, Inc., is a corporation organized, existing and doing business under the laws of the State of Rhode Island, with its office and principal place of business located at 536 Atwells Avenue, Providence, R.I. The individual respondent Samuel Forte is an officer of the corporate respondent and formulates, directs and controls the acts and practices of the same. His address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That the respondents Fort Jewelry Company, Inc., a corporation, and its officers, and Samuel Forte, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of jewelry or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly:

1. Representing, by preticketing, or in any other manner, that a certain amount is the customary or usual retail price of merchandise when said amount is in excess of the price at which said merchandise is customarily and usually sold at retail in the trade area or areas where such merchandise is offered for sale, sold or distributed.

2. Furnishing any means or instrumentality to others by and through which they may mislead the public as to the usual and customary prices of respondents' products.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondent Lena Forte.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the initial decision of the hearing examiner wherein he accepted an agreement containing a consent order to cease and desist executed by the respondents and their attorney and counsel in support of the complaint, service of which initial decision was completed on March 25, 1959; and

It appearing that the initial decision may be deficient in that it fails to incorporate the substance of certain pertinent provisions of the agreement of the parties:

It is ordered, That said initial decision be, and it hereby is, amended by inserting between the second and third paragraphs thereof the following paragraph:

Under the agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing, and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

It is further ordered, That the initial decision as so modified shall, on the 25th day of April 1959, become the decision of the Commission.

It is further ordered, That the respondents, Fort Jewelry Company, Inc., a corporation, and Samuel Forte, 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 contained in said initial decision.

IN THE MATTER OF

SOUTHERN NATIONAL INSURANCE COMPANY

Docket 6251. Order, Apr. 30, 1959

Order vacating and setting aside, on the basis of the Supreme Court's ruling in *Federal Trade Commission* v. *National Casualty Company*, 357 U.S. 560, decision of the Commission of Apr. 14, 1955, 51 F.T.C. 894, requiring a Little Rock, Ark., insurance company to cease false advertising of its health and accident policies.

Before *Mr. J. Earl Cox*, hearing examiner.

Mr. William A. Somers and *Mr. Robert R. Sills* for the Commission.

Catlett & Henderson, of Little Rock, Ark., for respondent.

ORDER GRANTING PETITION TO VACATE COMMISSION'S DECISION

This matter having come on to be heard upon respondent's petition requesting that the decision of the Commission entered on April 14, 1955, be vacated, which petition is unopposed by counsel supporting the complaint; and

The Commission having reconsidered the matter in the light of the United States Supreme Court's ruling in *Federal Trade Commission* v. *National Casualty Company*, 357 U.S. 560, decided June 30, 1958, subsequent to said decision of the Commission, and having concluded that this proceeding should be reopened and the complaint dismissed upon the authority of said ruling of the Supreme Court:

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

It is further ordered, That the decision of the Commission entered on April 14, 1955, be, and it hereby is, vacated and set aside.

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

IN THE MATTER OF

ARDLEY FUR CORPORATION ET AL.

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

Docket 7368. Complaint, Jan. 23, 1959—Decision, May 1, 1959

Consent order requiring a New York City furrier to cease violating the Fur Products Labeling Act by failing to comply with the labeling and invoicing requirements; by advertising in letters to customers and otherwise which contained fictitious prices and represented exaggerated amounts as regular selling prices; and by failing to maintain adequate records on which such pricing claims were based.

Mr. John T. Walker supporting the complaint.
No appearance for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on January 23, 1959, charging them with having violated the Fur Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act by misbranding, falsely advertising and invoicing certain of their fur products and failing to maintain full and adequate records.

On February 28, 1959 respondents entered into an agreement with counsel in support of the complaint for a consent order.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

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 agreement is hereby accepted and ordered filed upon this decision and said agreement 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 Ardley Fur Corporation is a corporation organized, existing and doing business under and by virtue of the

laws of the State of New York, with its office and principal place of business located at 307 Seventh Avenue, New York, N.Y.

2. Individual respondents Norman Rawick and Arthur Blass are president and secretary, respectively, of said corporate respondent, and have the same address as that of the said corporate respondent.

3. 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

It is ordered, That Ardley Fur Corporation, a corporation, and its officers, and Norman Rawick and Arthur Blass, 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, and manufacture for introduction into commerce, or the sale, advertising, offering for sale, transportation or distribution in commerce, of fur products, or in connection with the sale, manufacture for 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) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in the required sequence.

(b) The item number or mark assigned to a fur product.

2. Setting forth on labels affixed to fur products:

(a) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder mingled with nonrequired information.

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

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 the fact;

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

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

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

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

(g) The item number or mark assigned to a fur product.

C. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public accouncement, 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. Represents, directly or by implication, that the regular or usual prices of such products are any amount in excess of the prices at which respondents have usually and customarily sold such products in the recent regular course of business.

D. Making claims and representations respecting prices and values of fur products unless there are maintained by respondents full and adequate records showing the facts upon which such claims and 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 1st day of May 1959, 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

ZIPWELL FASHIONS, INC., ET AL.

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

Docket 7381. Complaint, Jan. 30, 1959—Decision, May 1, 1959

Consent order requiring a New York City manufacturer to cease violating the Wool Products Labeling Act by labeling as "100% wool" ladies' and misses' topcoats which contained a substantial quantity of fibers other than wool, and by failing in other respects to comply with the labeling requirements of the Act; and to cease violating the Fur Products Labeling Act by labeling products deceptively with respect to the names of animals producing certain furs, by labeling certain lamb products as "Polar Mouton," and by failing in other respects to comply with labeling and invoicing requirements.

Mr. Floyd O. Collins supporting the complaint.

Mr. Jack Hirsch of *Finke, Jacobs & Hirsch,* of New York, N.Y., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

This proceeding was initiated January 30, 1959 by the issuance of a Federal Trade Commission complaint which charges the above-named respondents with violation of the Federal Trade Commission Act, the Wool Products Labeling Act and the Fur Products Labeling Act and the Rules and Regulations promulgated under the Wool Products Labeling Act and the Fur Products Labeling Act as alleged in the complaint.

After service of the complaint respondents entered into an agreement, dated February 25, 1959, containing a consent order to cease and desist, disposing of all the issues in this proceeding, without hearing, which agreement has been duly approved by the director and assistant director of the Bureau of Litigation. 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 the Commission.

The pertinent provisions of said agreement are as follows: Respondents admit all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing

and the said agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission; the record herein shall consist solely of the complaint and the agreement; respondents waive the requirement that the decision must contain a statement of findings of fact and conclusions of law; respondents waive further procedural steps before the hearing examiner and the Commission, and the order may be altered, modified, or set aside in the manner provided by statute for other orders; respondents waive any right to challenge or contest the validity of the order entered in accordance with the agreement and the signing of 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.

The undersigned hearing examiner having considered the agreement and proposed order and being of the opinion that the acceptance thereof will be in the public interest, hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. Respondent Zipwell Fashions, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 247 West 37th Street, New York, N.Y.

2. Respondent Jack Sosne is an individual and officer of respondent corporation and formulates, directs and controls the acts and practices of the respondent corporation. Respondent's address is 247 West 37th Street, New York, N.Y.

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

ORDER

It is ordered, That respondents Zipwell Fashions, Inc., a corporation, and its officers, and Jack Sosne, individually and as an officer of said corporation, and respondents' agents, representatives 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 garments or other "wool products" as such products are defined and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers 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 product exclusive of ornamentation not exceeding five percentum of said total weight of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers;

(b) The maximum percentage 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.

3. Failing to stamp, tag or label samples, swatches or specimens of wool products, which are used to promote or effect sales of such wool products in commerce with the information required under paragraph 2 hereof, as provided by Rule 22 of the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939.

4. Failing to separately set forth on the required stamp, tag, label or other means of identification the character and amount of the constituent fibers contained in the interlining of such wool products as provided in Rule 24 of the Rules and Regulations promulgated under the said Wool Products Labeling Act of 1939.

It is further ordered, That respondents Zipwell Fashions, Inc., a corporation, and its officers, and Jack Sosne, 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 sale, advertising, offering for sale, transportation, or distribution in commerce of

any fur product, or in connection with the manufacture, sale advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

(a) 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 products were manufactured.

(b) Failing to affix labels to fur products showing:

(1) 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;

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

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

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

(5) 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.

(c) Misrepresenting the zoological origin of the animal that produced the fur contained in a fur product.

2. Falsely or deceptively invoicing fur products by:

(a) Failing to furnish invoices to purchasers of fur products showing:

(1) 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;

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

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

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

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

(6) The name of the country of origin of any imported fur contained in a 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 1st day of May 1959, 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.

Decision

IN THE MATTER OF

OPTI-RAY, INC., ET AL.

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

Docket 7235. Complaint, Aug. 21, 1958—Decision, May 6, 1959

Consent order requiring a Brooklyn, N.Y., assembler of sunglasses to cease representing falsely in sales brochures, counter display cards, and other promotional material supplied to jobbers and dealers, and on attached tickets and labels, that lenses in their sunglasses had a diopter curve of 6 and were imported from Europe; to cease attaching to certain of their sunglasses, labels or tickets bearing fictitious and excessive prices represented thus as usual retail prices; and to disclose clearly and conspicuously by markings or labels on the product that certain sunglasses were manufactured in Japan.

Mr. Morton Nesmith and *Mr. John J. Mathias* supporting the complaint.

Respondents, *pro se*.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on August 21, 1958, charging them with having violated the Federal Trade Commission Act by making deceptive and misleading statements with respect to the sunglasses which they distribute and sell.

After being served with the complaint respondents entered into an agreement, dated December 19, 1958, containing a consent order to cease and desist, disposing of all the issues in this proceeding without hearing, which agreement has been duly approved by the assistant director and the acting director of the Bureau of Litigation. 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 made duly 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 con-

clusions 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 agreement is hereby accepted and ordered filed upon this decision and said agreement 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 Opti-Ray, Inc., is a corporation organized, existing and doing business under the laws of the State of New York, with its office and principal place of business located at 970 Kent Avenue, Brooklyn 5, N.Y.

2. Respondents Leo Goldgram and Irving Goldgram are officers of the corporate respondent. These individuals dominate, control and direct the acts, practices and policies of the corporate respondent. The address of these individual respondents is the same as that of the corporate respondent.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents herein. The complaint states a cause of action under the Federal Trade Commission Act. This proceeding is in the public interest.

ORDER

It is ordered, That respondents Opti-Ray, Inc., a corporation, and its officers, and Leo Goldgram and Irving Goldgram, individually and as officers of said corporate respondent, and said respondents' agents, representatives and employees, directly or

through any corporate or other device, in connection with the offering for sale, sale or distribution of sunglasses and 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:

(a) That their sunglass lenses have a given diopter curve unless such is the fact.

(b) That merchandise made in whole or in part of components of domestic or Japanese origin is imported from Europe.

(c) That a certain amount is the regular and usual retail price of merchandise when such amount is in excess of the price at which such merchandise is usually and regularly sold at retail.

2. Placing in the hands of jobbers, retailers, dealers, or others, a means and instrumentality by and through which they may deceive and mislead the purchasing public concerning merchandise in the respects set out in paragraph 1 above.

3. Offering for sale or selling any product the whole or any substantial part of which was made in Japan or any other foreign country without clearly disclosing the country of origin of said product or part thereof.

ORDER DENYING MOTION TO STAY DECISION

The hearing examiner, on February 26, 1959, having filed an initial decision in this proceeding accepting an agreement containing a consent order to cease and desist theretofore executed by the respondents and counsel in support of the complaint, service of which initial decision was completed on March 16, 1959; and

The corporate respondent, Opti-Ray, Inc., on April 8, 1959, having filed a motion requesting a stay of the date on which said initial decision otherwise would become the decision of the Commission, contending in effect that the practices prohibited by the order were discontinued as a result of the Commission's investigation and, further, that the same or similar practices are currently engaged in by a number of the respondents' competitors against whom there are at present no outstanding orders to cease and desist; and

The Commission having considered the matter and being of the opinion that neither the fact that the respondents may have discontinued the practices on the eve of the Commission's corrective action nor the circumstance that there may be others in

the industry engaged in the same or similar practices provides justification for the requested stay:

It is ordered, That the respondent's motion be, and it hereby is, denied.

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

It is further ordered, That the respondents, Opti-Ray, Inc., a corporation, and Leo Goldgram and Irving Goldgram, individually and as officers 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 contained in said initial decision.