

Decision

IN THE MATTER OF
ADVERTISERS ASSOCIATES OF AMERICA, INC., ET AL.

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

Docket 7304. Complaint, Nov. 18, 1958—Decision, May 6, 1959

Consent order requiring three affiliated New York concerns to cease selling advertising promotional plans, including contests described as "A Millionaire's Weekend Trip to Las Vegas," "Juvenile Delinquency Essay Contest," and "Safety On the Highways Essay Contest," to radio and television stations and local merchants by means of a variety of misrepresentations as in the order below set forth.

Mr. Morton Nesmith for the Commission.

Mr. Norman D. Levy, of New York, N.Y., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on November 18, 1958, charging respondents with violation of the Federal Trade Commission Act by the use of false, misleading and deceptive statements and practices in connection with their business of offering for sale and selling advertising promotional plans to radio and television stations and to merchants in areas surrounding such stations, and entering into contracts with stations and merchants with respect to such plans, which included contests of various types and the awarding of prizes furnished by respondents to the winners.

Thereafter, on January 14, 1959, respondents, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the director and an assistant director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies respondents Advertisers Associates of America, Inc., and Teleradio Advertisers, Inc., as New York corporations; respondent United Publicity, Inc., as a New Jersey corporation; and respondent Arthur Hammel as an officer of said corporations, trading and doing business as Teleradio Advertisers; all respondents having their principal office and place of business located in the Empire State Building at 350 Fifth Avenue, New York, N.Y.

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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.

Respondents waive any further procedure before the hearing examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, 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; that the complaint herein may be used in construing the terms of said order; and that the agreement 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.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order to Cease and Desist; finds that the Commission has jurisdiction over the respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That respondents, Advertisers Associates of America, Inc., a corporation, and its officers; Teleradio Advertisers, Inc., a corporation, and its officers; United Publicity, Inc., a corporation, and its officers; and Arthur Hammell, individually and as an officer of said corporations and trading as Teleradio Advertisers, or trading under any other name or names; and said respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale or selling of advertising promotional plans and materials in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Withholding any sums of money due radio or television

broadcasting stations pursuant to contracts hereafter executed or hereafter endorsing checks made payable to said stations without authority;

2. Hereafter representing directly or by implication:

(a) That their sales representatives or agents are representatives or agents of radio or television broadcasting stations, unless such station has authorized such representation;

(b) That only one business of a kind in a specific area will be permitted to advertise a promotional project unless such is the fact;

(c) That all of the leading businessmen in a community are subscribing to or supporting a promotional project;

(d) That subscribing merchants will be allowed to exhibit their merchandise on television or that such merchandise will be picked up at the merchant's place of business prior to the telecast;

(e) That they will run an advertisement in a local newspaper concerning their promotional project;

(f) That they will provide a free trip to Las Vegas for a weekend as a prize to each contest winner as declared by the radio or television broadcasting station, or give in lieu thereof \$250 to said contest winner, or misrepresenting in any manner the nature of the prize to be awarded in any contest;

(g) That the backdrop advertising used in television broadcasts will conform to the sample shown merchants at the time of subscription;

(h) That they will furnish subscribing merchants with a desirable or attractive display bearing the call letters of the radio station; or misrepresenting the nature of the display to be furnished;

(i) That they will change the commercial copy monthly.

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 6th day of May 1959, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents named in the caption hereof 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
BLAUNER'S, ET AL.

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

Docket 6955. Complaint, Nov. 25, 1957—Decision, May 8, 1959

Consent order requiring a department store in Philadelphia, Pa., to cease violating the Fur Products Labeling Act by failing to comply with the labeling and invoicing requirements; and by advertising in newspapers which falsely identified the animals producing certain furs and failed to disclose that certain products contained artificially colored or cheap fur, compared "original" prices with "now" prices without designating the time of the former, and used comparative prices and percentage savings claims and represented prices as reduced without maintaining adequate records as a basis for such claims.

Mr. John T. Walker for the Commission.

Mr. Jerome E. Furman, of Philadelphia, Pa., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated November 25, 1957, the respondents are 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 18, 1959, the respondents and their attorney entered into an agreement with counsel in support of the complaint for a consent order.

Under the 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 it 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 §3.25(b) of the Rules of the Commission.

The agreement contains a recommendation that the complaint be dismissed as to respondent George Gorsen, individually and

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as an employee of said corporation, which recommendation is based upon an affidavit attached to and made a part of the agreement wherein it is set forth that said respondent is no longer an employee of Blauner's, a corporation.

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 Blauner's is a corporation organized, existing, and doing business under the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at 9th and Market Streets, Philadelphia, Pa.

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 respondent Blauner's, 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 offering for sale, sale, advertising, 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;

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(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 used in the 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 §4(2) of the Fur Products Labeling Act and the Rules and Regulations thereunder in abbreviated form;

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

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 the fact;

(3) That the fur product contains or is composed of bleached, dyed, or 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 invoices;

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

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

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

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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.

B. Contains the name or names of any animal or animals other than the name or names of the animal or animals that produced the fur from which the fur product was manufactured.

C. Makes use of comparative prices by setting forth an earlier bona fide price of the fur product, unless the designated time of such earlier price is given.

4. Making price claims or representations in advertisements respecting comparative prices, percentage savings claims, and reduced prices of furs or fur products unless respondent maintains adequate records disclosing the facts upon which such claims or representations are based.

It is further ordered, That the complaint be, and hereby is, dismissed as to George Gorsen, individually and as an employee of said corporation.

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 respondent Blauner's and its attorney and counsel in support of the complaint, service of which initial decision was completed on April 7, 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 respondent admits the jurisdictional

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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 it has violated the law as alleged in the complaint.

It is further ordered, That the initial decision as so modified shall, on the 8th day of May, 1959, become the decision of the Commission.

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

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IN THE MATTER OF
SAM TURANSKY, ET AL.
TRADING AS TURANSKY & DOVER

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

Docket 7354. Complaint, Jan. 12, 1959—Decision, May 8, 1959

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by failing to comply with labeling and invoicing requirements, and by advertising in letters to customers which represented the wholesale market values or prices of fur products to be certain designated amounts while failing to maintain adequate records as a basis for such claims.

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

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued January 12, 1959, charges respondents Sam Turansky and Isidore Dover, erroneously named in the complaint as Isadore Dover, individually and as copartners trading as Turansky & Dover, located at 312 Seventh Avenue, New York, N.Y., with violation of the provisions of the Federal Trade Commission Act, and the Fur Products Labeling Act and the Rules and Regulations made pursuant thereto.

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.

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 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

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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 Sam Turansky and Isidore Dover, individually and as copartners trading as Turansky & Dover, or trading 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, 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:

1. Failing to affix labels to fur products showing:

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

(b) That the fur product contains or is composed of used fur, when such is 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, or other identification issued and registered by the Commission, of one or more persons who manufactured such fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale, in commerce, or transported or distributed it in commerce;

(f) 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.

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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. Making price claims and representations in advertisements respecting prices or values of fur products unless respondents maintain 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 8th day of May 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
TEITELBAUM FURS, LTD. OF AMERICA, ET AL.

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

Docket 7222. Complaint, Aug. 5, 1958—Decision, May 9, 1959

Consent order requiring furriers in Beverly Hills, Calif., to cease violating the Fur Products Labeling Act by falsely identifying animals producing certain furs, by using the term "blended" improperly, by failing to label and invoice as "secondhand fur" where required, and by failing in other respects to comply with labeling and invoicing requirements; and by advertising in newspapers which failed to disclose the names of animals producing certain furs or that some products contained used, artificially colored, or secondhand fur.

Mr. William A. Somers; Mr. John J. McNally and Mr. Eugene Kaplan for the Commission.

Horace L. Kalik, Esq., for Leland and Plattner, of Los Angeles, Calif., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on August 5, 1958, issued its complaint herein, charging the above-named respondents with having violated the provisions of both the Federal Trade Commission Act and the Fur Products Labeling Act, together with the Rules and Regulations promulgated thereunder, and the respondents were duly served with process.

On March 18, 1959, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order to Cease and Desist," which had been entered into by and between respondents and the attorneys for both parties, under date of March 10, 1959, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent Teitelbaum Furs, Ltd., of America is a cor-

poration organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 414 North Rodeo Drive, Beverly Hills, Calif. Respondent Irving B. Telson is an individual and is president of said corporate respondent, and has his office and principal place of business at the same address as said corporate respondent.

2. 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.

3. This agreement disposes of all of this proceeding as to all parties.

4. Respondents waive:

(a) Any further procedural steps before the hearing examiner and the Commission;

(b) The making of findings of fact or conclusions of law; and

(c) 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.

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

6. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

7. This 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.

8. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order to Cease and Desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, however, unless and until it becomes part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order to Cease and Desist" that

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the Commission has jurisdiction of the subject matter of this proceeding and of each of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated by the Commission under the latter Act, against each of the respondents both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

ORDER

It is ordered, That Teitelbaum Furs, Ltd. of America, a corporation, and its officers, and Irving B. Telson, 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, offering for sale, transportation or distribution of fur products in commerce, or in connection with the sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Falsely or deceptively labeling or otherwise falsely or deceptively identifying fur products with respect to the name or names of the animal or animals that produced the fur from which said fur products had been manufactured;

2. Failing to affix labels to such fur products showing:

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

(b) That the fur product contains or is composed of used fur;

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

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

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

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

3. Setting forth on labels attached to fur products:

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

(b) The term "blended" as part of the information required under §5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe the pointing, bleaching, dyeing or tip-dyeing of furs;

(c) Information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder mingled with non-required information;

(d) Information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in handwriting;

4. Failing to set forth on labels the term "second hand" in describing fur products where required by Rule 23;

5. 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 §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder with respect to the fur comprising each section;

B. Falsely or deceptively invoicing fur products by:

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

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

(b) That the fur product contains or is composed of used fur;

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

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

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

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(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;

2. Using on invoices the name or names of any animal or animals other than the name or names provided for in paragraph B(1) (a) above;

3. Setting forth on invoices pertaining to fur products:

(a) Information required under §5(b) (1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form;

(b) The term "blended" as part of the information required under §5(b) (1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe the pointing, bleaching, dyeing or tip-dyeing of furs;

4. Failing to set forth on invoices the term "second hand fur" where required by Rule 23;

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

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

1. Fails to disclose:

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

(b) That the fur products contain or are composed of used fur;

(c) That the fur products contain or are composed of bleached, dyed, or otherwise artificially colored fur;

2. Fails to set forth the term "second hand fur" where required by Rule 23 of the Rules and Regulations.

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

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9th day of May 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
TONEMASTER MANUFACTURING COMPANY ET AL.

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

Docket 7301. Complaint, Nov. 14, 1958—Decision, May 9, 1959

Consent order requiring manufacturers in Peoria, Ill., to cease advertising falsely that four named models of their hearing aids were cordless, requiring nothing in the ear, and were invisible; and that they were inventors of the hearing aid contained in the temple of eyeglasses.

Before *Mr. John B. Poindexter*, hearing examiner.

Mr. Kent P. Kratz and *Mr. William A. Somers* for the Commission.

Knoblock & Ott, of Peoria, Ill., for respondents Tonemaster Manufacturing Company, Paul B. H. Smith, and Margaret H. Smith.

INITIAL DECISION AS TO RESPONDENTS

TONEMASTER MANUFACTURING COMPANY, A CORPORATION,
PAUL B. H. SMITH, AND MARGARET H. SMITH, INDIVIDUALLY
AND AS OFFICERS OF SAID CORPORATION

On November 14, 1958, the Federal Trade Commission issued a complaint charging that Tonemaster Manufacturing Company, a corporation, and Paul B. H. Smith, Harold A. Lyons, Margaret H. Smith and John L. Lyons, individually and as officers of said corporation, hereinafter referred to as respondents, had violated the Federal Trade Commission Act by misrepresenting in advertisements that certain of their hearing aids are cordless, invisible, or require nothing in the ear.

After issuance and service of the complaint, the respondent Tonemaster Manufacturing Company, a corporation, Paul B. H. Smith and Margaret H. Smith, individually and as officers of said corporation, and counsel supporting the complaint, entered into an agreement for a consent order. The order disposes of the matters complained about with respect to Tonemaster Manufacturing Company, a corporation, Paul B. H. Smith and Margaret H. Smith, individually and as officers of said corporation. The proceeding with respect to the remaining respondents, Harold A. Lyons and John L. Lyons, will be disposed of by separate initial decision.

Under the agreement, respondents admit the jurisdictional facts

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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 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 respondents that they have violated the law as alleged in the complaint.

The hearing examiner finds that the provisions of the agreement comply with all mandatory requirements of §3.25(b) of the Rules of Practice for Adjudicative Proceedings, and is of the opinion that such order constitutes a proper disposition of this proceeding insofar as it relates to the respondents Tonemaster Manufacturing Company, a corporation, and Paul B. H. Smith and Margaret H. Smith. Accordingly, the hearing examiner accepts such agreement and makes the following jurisdictional findings and issues the following order:

JURISDICTIONAL FINDINGS

1. The respondent Tonemaster Manufacturing Company is a corporation existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 128 South Monroe Street, Peoria, Ill.

2. The individual respondents Paul B. H. Smith and Margaret H. Smith are president and treasurer, respectively, of said corporate respondent. These individual respondents formulate, direct and control the acts, policies and practices of the corporate respondent.

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 Tonemaster Manufacturing Company, a corporation, and its officers, and Paul B. H. Smith and Margaret H. Smith, individually and as officers of said corporation, and respondents' agents, representatives, and employees directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of their hearing aid devices designated as Midget Cordless Earette—Model MCE-3, Midget Eyeglass—Model MEG-7, Midget Cordless Barrette—

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Model MCB-5, and Templette—Model T-8, or any other device of substantially the same construction or operation, whether sold under the same or any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating, or causing the dissemination of, 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, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said devices, or any of them, which advertisement represents, directly or by implication:

(a) That said devices are cordless or do not require the use of a cord unless in close connection therewith and with equal prominence it is stated that a plastic tube runs from the device to the ear;

(b) That said devices do not require a button or other accessory to be inserted in the ear;

(c) That their hearing aids, or any of them are invisible;

(d) That respondents, or any of them originated or invented the hearing aid designated as Midget Cordless Earette—Model MCE-3; or originated or invented any other hearing aid offered for sale by them, unless such is the fact.

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 of respondents' devices in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in paragraph 1 of this order.

DECISION OF THE COMMISSION AS TO
TONEMASTER MANUFACTURING COMPANY, PAUL B. H. SMITH
AND MARGARET H. SMITH 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 on behalf of the corporate respondent, Tonemaster Manufacturing Company, and by respondents Paul B. H. Smith and Margaret H. Smith, individually and as officers of said corporation, as well as by respondents' counsel and by counsel in support of the complaint,

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service of which initial decision was completed on April 8, 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, 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 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 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 9th day of May 1959, become the decision of the Commission.

It is further ordered, That respondents Tonemaster Manufacturing Company, a corporation, and Paul B. H. Smith, and Margaret H. Smith, 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 contained in said initial decision.

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IN THE MATTER OF
AIRTEX PRODUCTS, INC.

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

Docket 6816. Complaint, June 11, 1957—Decision, May 12, 1959

Consent order requiring a Fairfield, Ill., manufacturer of automotive replacement parts, including fuel and water pumps, to cease violating Sec. 2(a) of the Clayton Act by such practices as allowing group wholesalers off-scale discounts or rebates totaling 18% of current list prices on all of their purchases while giving independent wholesale customers a maximum discount of 8% on the first \$1,500 of purchases in each year; and Placing *in camera* pertinent cost study material attached to the agreement.

COMPLAINT

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

PARAGRAPH 1. Airtex Products, Inc., respondent herein, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 407 West Main Street, Fairfield, Ill.

PAR. 2. Respondent is engaged in the business of manufacturing and selling automotive replacement parts, including fuel and water pumps, and rebuilding and selling used automotive fuel pumps. Respondent's total sales in 1955 exceeded \$7,500,000.

Respondent manufactures and rebuilds said automotive replacement parts in its factory in Fairfield, Ill., and sells and ships such parts to more than one thousand automotive replacement parts wholesalers located throughout the United States and in the District of Columbia. Respondent in the sale of said parts has at all times relevant herein been and now is engaged in commerce, as "commerce" is defined in the amended Clayton Act.

PAR. 3. Among respondent's more than one thousand wholesaler customers are many who have banded together into or-

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ganizations commonly referred to as jobber groups, buying groups or simply, groups. Such customers are hereinafter referred to as group wholesalers and those not affiliated with a group are referred to as independent wholesalers.

Such group wholesalers and independent wholesalers are frequently located in the same trade area and compete each with the other in the resale of said automotive replacement parts.

PAR. 4. In the course and conduct of its business in commerce the proposed respondent has been and is now, in each of several trading areas, discriminating in price in the sale of its products of like grade and quality by selling them to some independent wholesalers at higher prices than it sells them to other independent wholesalers and group wholesalers who are competitively engaged each with the other in the resale of said products.

Respondent has effected said discriminations between independent wholesalers by allowing such purchasers non-retroactive discounts or rebates from its jobber list prices based upon total annual purchases, as shown by the following schedule:

	<i>Percent</i>
\$0 to \$1,500.....	8
\$1,500 and up.....	18

Through the operation of the described sales program those independent wholesalers whose total annual purchases from respondent are below \$1,500 are charged higher and less favorable net prices than are other competing independent wholesalers whose purchases from respondent exceed \$1,500.

Respondent has effected said discriminations between group wholesalers and all independent wholesalers by allowing group wholesalers off-scale discounts or rebates totaling 18% of current list prices on all of their purchases. The granting of the described 18% off-scale rebate or discount to group wholesalers on their full purchase volume discriminates against all of respondent's independent wholesaler customers who, in accordance with the above schedule, receive a maximum discount of 8% on the first \$1,500 of purchases in each year.

PAR. 5. The effect of respondent's discriminations in price, as above alleged, may be substantially to lessen, injure, destroy or prevent competition between and among respondent's independent and group distributors in the resale of products purchased from respondent.

PAR. 6. The acts and practices of respondent as above alleged

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

Mr. William W. Rogal for the Commission.

Arvey, Hodes and Mantynband, of Chicago, Ill., by *Mr. Henry J. Shames*, for respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondent with price discriminations in the sale of automotive replacement parts, in violation of Section 2(a) of the Clayton Act, as amended. An agreement has now been entered into by respondent and counsel supporting the complaint which provides, among other things, that respondent admits 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, respondent 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 respondent that it has violated the law as alleged in the complaint.

The complaint charges two general classes of price discriminations: (1) discriminations between group wholesalers and independent wholesalers, and (2) discriminations among independent wholesalers. Regarding the latter charge, the agreement contains the following:

Counsel in support of the complaint has concluded that the price differential between independent wholesalers which is alleged to be unlawful in the first three subparagraphs of paragraph 4 of the complaint makes only due allowance for differences in the cost of selling and delivering to such customers. This conclusion by counsel in support of the complaint is based upon cost studies conducted by respondent and submitted for consideration after the issuance of the complaint. Therefore, this agreement is not based in any

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manner on this allegation of the complaint and it should not be used in interpreting the provisions of the order to cease and desist contained in this agreement. This above statement, however, should not be interpreted as excluding from the order price discriminations between independent wholesaler customers.

The cost study material pertinent to this matter is attached to this agreement as appendices A through J. It is requested that this material be placed *in camera*.

The hearing examiner having considered the agreement, including the cost study material attached thereto, and the 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 Airtex Products, Inc., is a corporation existing and doing business under the laws of the State of Illinois, with its office and principal place of business located at 407 West Main Street, Fairfield, Ill.

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

ORDER

It is ordered, That respondent Airtex Products, Inc., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in or in connection with the sale, for replacement purposes, of automotive replacement parts in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Discriminating, directly or indirectly, in the price of such automotive replacement parts of like grade and quality by selling to any one purchaser at net prices higher than the net prices charged to any other purchaser who, in fact, competes with the purchaser paying the higher price in the resale and distribution of respondent's products.

DECISION OF THE COMMISSION AND ORDER PLACING MATERIAL
IN CAMERA AND 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 12th day of May 1959, become the decision of the Commission; and accordingly:

It is ordered, That the cost study material pertinent to this

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matter attached to the agreement and identified as appendices A through J be, and it hereby is, placed *in camera*.

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

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IN THE MATTER OF
THE FIRESTONE TIRE & RUBBER COMPANYORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(a) OF THE CLAYTON ACT

Docket 7141. Complaint, May 7, 1958—Decision, May 12, 1959

Order requiring a manufacturer with nationwide distribution of its own tires and tubes and other related and non-related items, to cease granting to a favored few—actually less than 50 of its 12,000 to 14,000 direct franchise dealers, whom it classified as “warehouse dealers” and paid a commission for warehousing services based on the net prices of all tires and tubes warehoused and distributed—commissions on merchandise resold for their own account as well as preferential discounts, freight payments, and consignment shipments made without charge, in competition with other direct franchise dealers who were not accorded such benefits.

Mr. James S. Kelaher and Mr. Thomas P. Luscher supporting the complaint.

Gravelle, Whitlock & Markey, of Washington, D.C., for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

Commission complaint was issued May 7, 1958, charging respondent with the violation of Section 2(a) of the Clayton Act as amended. After service of the complaint and the filing of answer thereto, counsel on February 20, 1959, agreed upon a stipulation in lieu of evidence. This stipulation includes certain exhibits that are referred to as Exhibits A, B, C and D.

The stipulation and the exhibits were by order of the hearing examiner, dated March 3, 1959, made a part of the record in this proceeding. Respondent's counsel, by motion dated February 26, 1959, requested that said Exhibits C and D be placed in a confidential file and not be made available for inspection by the public. The reason given for the request was that the information contained in said exhibits is of a confidential nature and considered a trade secret. Counsel supporting the complaint did not oppose this motion. Accordingly the order of March 3, 1959, directed that Exhibits C and D to the stipulation be kept confidential, safe from disclosure to persons other than the hearing examiner, members of the Commission and its staff.

On February 25, 1959 counsel supporting the complaint filed

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their proposed findings as to the facts, conclusions and order for the consideration of the hearing examiner. By letter to the hearing examiner, dated March 2, 1959, counsel for respondent acknowledges receipt of said proposed findings, etc., filed by counsel supporting the complaint. The same letter states that counsel for respondent does not intend to file any proposed findings of fact, conclusions of law or order.

This matter is now ready for an initial decision. The hearing examiner has given consideration to everything in the record. The provisions of the stipulation cover all the material allegations of the complaint. The proposed findings filed follow the stipulation and exhibits closely and the proposed conclusion is one that follows as a matter of course. For these reasons they have all been adopted with a few minor changes.

FINDINGS AS TO THE FACTS

1. Respondent, The Firestone Tire & Rubber Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 1200 Firestone Parkway, Akron, Ohio.

2. Respondent is now and for all prior years pertinent hereto has been engaged in the manufacture, sale, and distribution of tires and tubes and items related thereto in addition to items not related thereto, as well as the purchase, resale and distribution of many such other items. Its sales of such products for the fiscal year ended October 31, 1957, were \$1,158,884,304; annual sales for many years prior to 1957, and since, have also been very substantial.

3. In connection with the products it manufactures, sells and distributes nationwide, as well as the products it purchases, resells and distributes nationwide, respondent is and for all years pertinent hereto has been engaged in "commerce" as that word is defined in the Clayton Act (as amended by the Robinson-Patman Act).

4. In past years and presently respondent has engaged in nationwide tire and tube distribution through approximately 12,000 to 14,000 independent direct franchise dealers, 40,000 to 50,000 independent indirect or associate dealers, 600 to 770 company-owned stores, and 50 to 100 district office and company-operated warehouses.

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5. In past years and presently, respondent has entered into warehouse contracts with some of its direct franchise dealers, pursuant to which it has classified such dealers as "warehouse dealers." The number of Firestone warehouse agreements in past years and presently has never exceeded 50; some competitors have more, some have less. Under these contracts, respondent agrees to ship stocks of tires and tubes without charge to the warehouseman, who in turn agrees to warehouse and distribute the said tires and tubes for the benefit of respondent in serving other direct franchise dealers. For these services respondent agrees to pay a commission based on the net prices of all tires and tubes so warehoused and distributed.

6. Warehouse dealers continue to function also as direct franchise dealers. As such, they receive from respondent, stock in their warehouses, withdraw therefrom and then resell tires and tubes at the wholesale and/or retail level for their own account, and in competition with other direct franchise dealers. The warehouse agreement expressly provides that no commission is to be allowed on tires and tubes so withdrawn.

7. In past years respondent has classified and treated and does presently classify and treat its warehouse dealers as warehousemen with respect to tires and tubes withdrawn by them from warehouse stocks for resale on their own account, in some or all of the ways hereinafter described in paragraphs 8 to 12, inclusive. Such classification and treatment results in the conferring of certain benefits, described hereinafter, upon warehouse dealers, as to tires and tubes on which they are not acting as warehousemen, but as direct franchise dealers, which benefits are not accorded competing direct franchise dealers.

8. Respondent has granted and does grant to certain of its warehouse dealers, but not to others or to other direct franchise dealers, a commission on all tires and tubes purchased by them, including those purchased for resale or internal redistribution, in the amount of 5 percent of the net prices thereof. The payment of this commission as to tires and tubes internally redistributed by the said warehouse dealers is not only contrary to the provisions of the warehouse agreement, but also constitutes an indirect reduction in the prices of such tires and tubes, in the amount of 5 percent. The dollar amount paid thereon is substantial, and in some cases the volume of tires and tubes internally redistributed, as aforesaid, exceeds the volume warehoused to other dealers.

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9. Respondent ships stocks of tires and tubes to all warehouse dealers, without charge to the warehouse dealer. Such stocks include tires and tubes which are redistributed internally, as aforesaid, and are not paid for until after withdrawal from warehouse stock, and to that extent are in the nature of consigned stocks.

Other direct franchise dealers, numbering several hundred or more, many of whom are located in the trading areas of the said warehouse dealers require and receive the benefit of consigned stocks. Stocks of tires and tubes consigned to them by respondent are subject to a service charge of 5 percent per annum, based on the value of consigned inventory at hand at the end of each month.

10. Respondent has granted, and does presently grant, to its customers, including warehouse dealers, a 2 percent or 3 percent discount on the purchase of tires and tubes designated "truck or carload discount," which, in the case of dealers not classified as warehouse dealers, is based upon the size of individual quantity shipments ordered by them, and in accordance with other stated terms and conditions. Warehouse dealers, on the other hand, are granted this discount on the basis of their monthly dollar volume of purchases of tires and tubes, including purchases for resale for their own account, regardless of the size of individual quantity shipments received by them.

11. Respondent has granted, and does presently grant, to its customers, including warehouse dealers, a system of discounts ranging from 3 percent to 20-7½ percent on the purchase of certain tube types. These discounts, in the case of dealers not classified as warehouse dealers, are granted on the basis of the size of individual quantity shipments ordered by them, and in accordance with other stated terms and conditions. Warehouse dealers, on the other hand, are granted these discounts on the basis of their monthly volume of purchases of such tube types, including purchases for resale by them for their own account, regardless of the size of individual quantity shipments received by them.

12. Respondent has, and does presently prepay or allow to its customers who are not classified as warehouse dealers freight costs on single order shipments of tires and tubes from its factories or warehouses to one destination, which are in excess of 200 pounds. No freight costs are allowed such customers on re-shipments by them to their branches or customers.

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Warehouse dealers are allowed freight costs on all shipments received by them from respondent's factories or warehouses, regardless of the size thereof, or whether such shipments are made to more than one destination. Respondent bears freight costs on all shipments direct to warehouse dealers at their warehouse locations and to their branch outlets. As to certain warehouse dealers but not as to others, respondent also prepays or allows freight costs on reshipments from their warehouse locations to their branches for resale on their own account.

13. Respondent's classification or treatment of certain direct franchise dealers as warehouse dealers with respect to tires and tubes internally redistributed for resale by them for their own account, including the benefits described in paragraphs numbered 8 through 12, has the effect of reducing the prices charged such warehouse dealers on tires and tubes so resold, and constitutes a discrimination in price and goods of like grade and quality within the meaning of Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act.

14. Respondent is now and for all prior years pertinent hereto has been in substantial competition with other corporations, partnerships, individuals and firms engaged in the sale and distribution of tires and tubes and other related and nonrelated products of the same types and quality as those manufactured, sold and distributed, as well as those purchased, resold and distributed by respondent. Such substantial competition does exist and has existed for all prior years pertinent thereto as to warehouse dealers.

Respondent's direct franchise dealers are competitively engaged with each other and with respondent's warehouse dealers, within the various trading areas in which said direct franchise and warehouse dealers are engaged in business, in the resale of respondent's products at the wholesale level to automobile dealers, service stations, garages, and others. Some of the said direct franchise dealers are competitively engaged with each other and with the said warehouse dealers at the retail level.

15. The effect of such discriminations in price as set forth herein may be substantially to lessen competition in the lines of commerce in which respondent's customers are respectively engaged; or may be to injure, destroy or prevent competition with purchasers who receive the benefits of such discrimination.

16. Respondent also paid, but only to one warehouse dealer, a

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warehouse commission or allowance on its purchases of products designated in the complaint as Home and Auto Supplies, in the amount of 5 percent of its net purchases thereof. The payment of this commission or allowance was terminated more than one year prior to issuance of the complaint, and there is reason to believe that it will not be resumed. Furthermore, according to the stipulation, there is presently available no evidence of substantial adverse competitive effects, or the probability thereof, attributable to the payment of such commission or allowance.

CONCLUSION OF LAW

Respondent has violated the provisions of Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act, as to the sale of tires and tubes to warehouse dealers.

ORDER

It is ordered, That respondent The Firestone Tire & Rubber Company, a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in or in connection with the sale of tires and tubes and related items in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from:

Discriminating, directly or indirectly, in the price of such products of like grade and quality by selling to any purchaser at a net price higher than the net price charged any other purchaser who, in fact, competes with the purchaser paying the higher price in the resale or distribution of the respondent's products.

For the purpose of determining "net price" as used in this order, there shall be taken into account rebates, allowances, commission, discounts, terms and conditions of sale, and other forms of direct or indirect price reductions, by which net prices are affected.

It is further ordered, That the allegation of the complaint with regard to the payment of a 5 percent warehouse commission or allowance to warehouse dealers on their purchases of Home and Auto Supplies be, and the same hereby is, dismissed.

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

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12th 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.

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IN THE MATTER OF
NEW ORLEANS SHRIMP COMPANY, INC.

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

Docket 7274. Complaint, Oct. 8, 1958—Decision, May 12, 1959

Consent order requiring a New Orleans processor of fresh and frozen shrimp and shrimp products, which handled some 60% of its sales without brokers, to cease violating Sec. 2(c) of the Clayton Act by such practices as granting allowances in the approximate amount of normal brokerage on direct sales to customers, and by selling its shrimp to certain customers at reduced prices reflecting the brokerage normally paid its brokers.

COMPLAINT

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

PARAGRAPH 1. Respondent New Orleans Shrimp Company, hereinafter sometimes referred to as Shrimp Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana with its principal offices and place of business located at 3800 Tchoupitoulas Street, New Orleans, La.

PAR. 2. Respondent Shrimp Company is now engaging, and since 1956 has been engaged, in the business of processing and selling fresh and frozen shrimp, breaded shrimp and other shrimp products, hereinafter referred to as shrimp. Respondent, in selling certain of its shrimp, is represented by brokers in various states of the United States. Such brokers are normally paid for their services by respondent at the rate of approximately 2% of the selling price of such shrimp or at approximately $\frac{1}{2}\phi$ to 1ϕ per pound on shrimp sales.

Of respondent's sales, which amount to more than \$1,000,000 annually, approximately 60% are made direct to certain of its customers without utilizing the services of the aforesaid brokers.

PAR. 3. Respondent Shrimp Company is now engaging, and since 1956 has been engaged in the sale of shrimp, in commerce,

as "commerce" is defined in the Clayton Act, as amended. Respondent, during the period stated, has sold shrimp to buyers located in various States of the United States.

PAR. 4. Respondent, in the course and conduct of selling and distributing its shrimp, has paid, granted or allowed, and is now paying, granting or allowing, something of value as a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection with the sale and distribution of its shrimp to certain customers purchasing for their own accounts, or to agents or intermediaries who are, in fact, acting for or in behalf of, or who are subject to the direct or indirect control of said customers. Among and including, but not necessarily limited to the methods or means employed by respondent in so doing are the following:

(a) Selling its shrimp to customers, without utilizing the services of its brokers, and granting an allowance, discount or rebate in the approximate amount of the brokerage normally paid its brokers;

(b) Selling its shrimp to certain customers at reduced prices, which reflect all or a part of the brokerage normally paid its brokers.

PAR. 5. The acts and practices of the respondent as alleged and described herein, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C., Title 15, Sec. 13).

Mr. Daniel A. Austin, Jr., for the Commission.

McCloskey & Dennery, of New Orleans, La., by *Mr. Joseph McCloskey*, for respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondent with violation of Section 2(c) of the Clayton Act, as amended by the Robinson-Patman Act. An agreement has now been entered into by respondent and counsel supporting the complaint which provides, among other things, that respondent admits 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

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be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondent 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 respondent that it has 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, New Orleans Shrimp Company, Inc. (erroneously referred to in the complaint as New Orleans Shrimp Company), is a corporation existing and doing business under and by virtue of the laws of the State of Louisiana, with its office and principal place of business located at 3800 Tchoupitoulas Street, in the city of New Orleans, State of Louisiana.

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

ORDER

It is ordered, That respondent, New Orleans Shrimp Company, Inc., a corporation, and respondent's officers, representatives, agents or employees, in connection with the sale of its fresh shrimp, frozen shrimp, breaded shrimp or other shrimp products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Paying, granting, or allowing, directly or through any corporate or other device, to any buyer, or to an agent or intermediary who is, in fact, 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 to such buyer for his own account.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Prac-

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tice, the initial decision of the hearing examiner shall, on the 12th day of May 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
ALLEN V. TORNEK COMPANY

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

Docket 6344. Complaint, May 5, 1955—Decision, May 13, 1959

Order requiring a New York City distributor of "Tornay" watches to cease preticketing the watches with tags bearing fictitious prices greatly in excess of usual retail prices; representing falsely in advertisements and on the face of the watches that said watches contained "21 JEWELS" each of which served a mechanical purpose as a frictional bearing; and that the "Resevoil" device in the watches provided "twice as much oil to the vital parts."

A charge that said device significantly increased the amount of oil to vital parts of the watch and assured longer life expectancy was dismissed.

FINDINGS AS TO THE FACTS, CONCLUSIONS AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 5, 1955, issued and subsequently served upon the respondent Allen V. Tornek, an individual trading as Allen V. Tornek Company, its complaint, charging said respondent with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act.

An answer was filed by the respondent on July 1, 1955, and thereafter hearings were held in due course. The hearing examiner filed his initial decision on September 24, 1958, in which he held that certain of the charges of the complaint were sustained by the record and that others were not sustained. He included in his decision an order prohibiting the practices which he found to be unlawful and dismissing the allegations of the complaint which he found had not been sustained.

Within the time permitted by the Commission's Rules of Practice, counsel in support of the complaint and the respondent filed cross-appeals from the said initial decision, and the Commission, after considering the appeals, the briefs and oral argument in support of and in opposition thereto, including briefs filed by Hamilton Watch Company and Elgin National Watch Company, Bulova Watch Company, Inc., and American Watch Association, Inc., as *amici curiae*, and the entire record herein, rendered its

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decision denying respondent's appeal and granting in part and denying in part the appeal of counsel in support of the complaint, and directing that an order issue accordingly, so as in effect to set aside and vacate the aforesaid initial decision.

Thereafter, this matter came on for final consideration by the Commission, and the Commission, being now fully advised in the premises, makes the following findings as to the facts, conclusions drawn therefrom, and order, which, together with the aforesaid decision on the appeal, shall be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

1. Respondent Allen V. Tornek is an individual trading as Allen V. Tornek Company and is now, and for some time past has been, engaged in the sale of watches under the brand name of Tornay. His place of business is located at 75 West 45th Street, New York, N.Y.

2. Respondent in the course and conduct of such business now causes, and for some time past has caused, his Tornay watches, when sold by him, to be transported from his place of business to purchasers located in other States of the United States, and there is now, and for some time past has been, a constant current in commerce in such watches between and among the various States of the United States.

In the course and conduct of such business, respondent is now, and for some time past has been, in substantial competition with other persons and with corporations, firms and partnerships engaged in the sale of watches to jobbers and retailers in the United States.

3. Respondent has supplied to retail customers price tags for his watches ranging from \$19.75 to \$125.

The record establishes, through the testimony of a witness called in support of the complaint, James O. Simpkins, who operates a chain of retail jewelry stores and purchased approximately \$100,000 worth of respondent's watches from 1951 through 1955, that such prices were not the usual and regular prices at which said watches were sold but were greatly in excess thereof, and were used as a device to lead customers into believing that the retail price had been substantially reduced.

Accordingly, it is concluded and found that respondent, by furnishing such price tags for his watches in the course and conduct of his business in commerce, represented and placed in

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the hands of purchasers of his watches a means and instrumentality by and through which they may represent that such amounts are the usual and regular retail prices of said watches, when in truth and in fact such representations and instrumentalities were false, misleading, and deceptive.

4. Respondent is the owner of a patented device, called "Resevoil," consisting of a small metal plate in which are embedded four jewellike stones. Respondent purchases regular 17-jewel watch movements imported from Switzerland and attaches to them the Resevoil device. After encasing said movements, respondent sells his watches to jobbers and retailers. Respondent imprints on the face of such watches the legend "Tornay 21 Jewels" and has furnished to dealers advertising material representing such Tornay watches as 21-jewel watches. It is not disputed that respondent represents his watches to be 21-jewel watches and it is so found. The issue, however, is whether respondent in this connection has represented, as alleged by the complaint, that Tornay watches contain "21 jewels each of which serves a mechanical purpose as a frictional bearing, that is each jewel provides a mechanical contact at a point of wear." The important question is as to the meaning of the term "jewel" as understood in the watch industry and trade.

Both parties called a number of expert witnesses and the record is replete with testimony and exhibits describing in detail both the functioning of traditional 17-jewel and 21-jewel watches as well as respondent's device. Basically, a watch is made up of a series of wheels which transmit the power, stored in the mainspring by winding, from one to each other until the final stage of moving the hands on the dial of the watch. The power stored by the mainspring is transmitted consecutively to a group of four wheels, referred to as the train. These are the center wheel, the third wheel, the fourth wheel and the escape wheel. Also in the mechanism is an element of timing called the balance wheel. These various wheels are mounted on axles which have smaller pivots at each end, which pivots are held in place by hole jewels mounted in metal bridges or plates in order to hold the entire mechanism together. These jewels are, of course, acting as bearings since the pivot is held in place by and revolves in the hole jewel each time the wheel turns.

These jewels are tiny convex cylinders of synthetic sapphire or ruby with a hole in the center through which the pivot pro-

trudes. In order to maintain constancy of friction, it is essential that the hole jewels be lubricated with oil. Jewels are used instead of some other material because of their extreme hardness, their ability to take a high polish, and their relative imperviousness to wear and changes in temperature. Each hole jewel is embedded in a metal plate or bridge of the watch prior to assembly so that it will remain stationary at all times. Four of the hole jewels are mounted in a metal plate called the train bridge. They constitute the four bottom bearings of the axles of the four wheels which make up the train. In the traditional 17-jewel watch, these four hole jewels are in effect open at the point where the pivot comes through, and are only covered as a result of the enclosure of the movement in the case of the watch.

In every watch, the moving of the wheels results in what is known as side shake and end thrust. Side shake is caused by the movement of the wheels and axles, and is retained by the sides of the hole jewel through which the pivot extends. End thrust results from tipping the watch up or down so that the staff and pivot move correspondingly slightly up or down and thus bear against the hole jewel. In the usual or ordinary hole jewel construction, end thrust is retained by the bottom of the hole jewel coming in contact with the square shoulder of the axle, which is greater in diameter than its pivot point and the hole jewel. However, at one place in a 17-jewel watch, as well as several places in a 21-jewel watch, a different type of staff and pivot is used with the wheels in order to use a cap jewel or cap stone together with the hole jewel. In this type of construction, the hole jewel, instead of being left open and covered only by the case, is capped by another jewel of the same size without a hole, embedded in another plate attached to the movement above the plate containing the hole jewel. In a 17-jewel watch, only the balance wheel contains cap stones as well as hole jewels, but in a 21-jewel watch the four hole jewels at the bottom of the train are also capped by cap stones.

When cap jewels are used, a different construction of the staff, pivot and hole jewel is used, so that the end thrust is taken by the end of the pivot touching the cap stone rather than the shoulders of the staff bearing against the hole jewels. In this type of construction the pivot point and staff are conical and the hole jewel is concave where the pivot enters the jewel, so that the shoulder of the staff never touches the hole jewel, but

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instead the conical pivot passes through the hole and its tip touches the cap jewel when end thrust occurs. Respondent's device, which has been patented by the U.S. Patent Office, consists of a small metal plate containing four stones of identical construction and material as the cap jewels found in regular 17-jewel and 21-jewel watches. Respondent's device has been so designed that it fits exactly over the train bridge of the 17-jewel watch, and is attached thereto by using the same screwholes which hold the train bridge in place. The four stones in the device are so positioned as to be mounted directly under the hole jewels in the train bridge, in the same manner as the cap jewels in a regular 21-jewel watch. However, the stones in the Resevoil device do not touch anything because there is a minute space or gap between the concave side of the hole jewel and the bottom of the stone. On the other hand, as previously described, in a regular 21-jewel watch or the balance staff of a 17-jewel watch, the cap jewel takes the end thrust of the pinion and hence is in contact with the point of the pivot when this occurs.

The regular 17- and 21-jewel watch has three additional jewels not like those described above which are members of the escaper. Two of these are called pallet jewels and the third is called the roller jewel. The pallet jewels are shaped like bricks. In the watch movement, they alternatively strike the curved teeth of the escape wheel. The roller jewel is a semicylinder. Its function is to swing the pallet back and forth every time the balance wheel swings back and forth. Each of these three jewels contact moving parts, although intermittently, at points of wear.

Rene Marie Fiechter, a witness for the respondent and co-owner of the Resevoil patent, testified that jewels are used as a roller and in the pallet fork as pallets: "Because the surface finish of those jewels can be engineered and obtain to real high glossy surfaces and their hardness is such that they don't wear. Therefore, they present themselves to the teeth in which they are engaging in the lever kind or the end of the pallet, always in the same physical position due to absence of wear. Therefore, the physical position and relationship of one to the other remaining the same, the transmission of force from the escape wheel to the balance wheel will remain the same. Any change in that relationship due to wear on those jewels would immediately affect the amount of force transmitted to the balance wheel; therefore, cause it to oscillate more or less, but differently,

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therefore changing the isochronism of the whole oscillating system."

It follows, therefore, that every jewel in regular 17- and 21-jewel watches comes in contact with a moving part at a point of wear. The hole jewels which are journal bearings and the cap jewels which are thrust bearings clearly serve in this capacity. The pallet jewels and roller jewels likewise contact moving parts at points of wear as above explained. The experts who testified on the subject, although they may have used different terminology, all appeared to agree that every jewel in the traditional 17-jewel and 21-jewel watch is a friction bearing jewel in the sense that they contact a moving part at a point of wear. They likewise agreed in essence that the Resevoil stones are not friction bearing jewels because the properly installed Resevoil stone does not touch a moving part.

Some of the experts in explaining the need for jewels in watches testified in effect that cap jewels are necessary not only to reduce wear or friction but also to retain oil. One such expert was Jacques Ditesheim, sales manager for the Movado Watch called by counsel in support of the complaint. On cross-examination he testified:

Q. In other words, your cap jewels [in regular 21 jewel watches], the only real useful function that they have is the retention of oil?

A. Positively no. They are absolutely needed for friction.

Q. Friction?

A. Yes, as well as eliminating the end shake of the part on which they are fastened.

Another witness who testified that a cap jewel serves an end thrust function and as a lubricating factor was Victor Huff, a watch importer, called by the respondent. But Huff on cross-examination testified as follows:

Q. So in every instance where you have a jewel, except the Resevoil jewel . . .

A. (Interposing) Yes.

Q. You have a contact of a moving part of the watch upon a hard surface?

A. Exactly.

Q. Is that correct?

A. Yes.

The clear weight of the evidence in this record is that the industry looks upon a jewel as a small, hard, highly processed gem placed in a watch movement to contact a moving part at a

point of wear. Various experts called by both counsel in support of the complaint and the respondent in effect so testified.

The following are some examples:

Carl Pepla, a watchmaker, testified that every jewel in a watch is a friction bearing jewel, even the pallet and roller jewels, although he said they are not bearings, technically speaking.

Harry Kalquist, vice president of the Moser Jewel Company, a witness for the respondent, testified that all the jewels in a 21-jewel watch are bearings, including the pallet and roller jewels. His reason for calling the roller stone a bearing, for instance, was that it is a hard surface in a place where it is necessary.

John Van Horn, director of research for the Hamilton Watch Company, testified that a jewel in a watch serves as a bearing using the term in the dynamic sense. In respect to watches, he said, the term "jewel" without exception refers to the acceptance of a moving load.

In addition, the record contains certain other evidence relative to the meaning of the word jewel in the watch trade.

For instance, Respondent's Exhibit 1, a booklet copyrighted by the Swiss Federation of Watch Manufacturers, contains the following:

These synthetic watch jewels are worth only pennies apiece. Yet their value is incalculable in terms of what they do in a fine watch. For just as oil cuts down friction and keeps wheels turning—So the jewels in a watch are used to protect the moving parts against wear and friction. In a fine watch, the jewels are really synthetic bearings, located at the most vital and critical points of action—to assure greater accuracy.

It is found and concluded that, as used in the watch industry and trade, a jewel must serve a mechanical function as a frictional bearing before it is entitled to be represented as a "jewel" and that the jewel-like stones in the Resevoil device do not serve such a function. The representation by respondent of his Tornay watches as 21-jewel watches, therefore, is false and deceptive.

5. Advertisements disseminated by the respondent and furnished by the respondent to retailers and distributors to advertise Tornay watches equipped with the Resevoil device contain the statement that the device "provides twice as much oil to the vital parts, assuring longer life expectancy * * *."

Respondent has thereby represented that the device provides twice as much oil to the vital parts of the watch. Counsel for respondent has stipulated that the Resevoil device does not pro-

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vide twice as much oil to the vital parts of the watch, and accordingly it is concluded and found that this representation is false, misleading and deceptive.

Respondent has also represented by the aforesaid advertising statement, as alleged by the complaint, that his device significantly enhances the amount of oil provided to the vital parts of a watch and assures longer life expectancy. As to the issue raised by this allegation, the evidence in the record is in substantial conflict. Under the circumstances, there is no sound basis for deciding the question. It is therefore concluded that counsel in support of the complaint has failed to establish by reliable, probative and substantial evidence that respondent falsely represented that his device provides a significant increase in the amount of oil to vital parts of the watch and assures its longer life expectancy.

6. The acts and practices of respondent hereinabove found have had and now have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to such representations and thereby induce the purchase of substantial quantities of respondent's product. As a result, substantial trade in commerce has been and is being unfairly diverted to respondent from his competitors and substantial injury has been and is being done to competition in commerce.

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce and engaged in the above-found acts and practices in the course and conduct of his business in commerce, as "commerce" is defined in the Act.

2. The acts and practices of respondent hereinabove found are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Act.

3. As a result of the above-found acts and practices of respondent, substantial injury has been done to competition in commerce.

4. This proceeding is in the public interest and an order to cease and desist the above-found unlawful practices should issue against respondent.

5. Respondent has not violated the Act, as alleged in the complaint, by representing that his device significantly increases the amount of oil to vital parts and assures longer life expectancy thereof.

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ORDER

It is ordered, That Respondent Allen V. Tornek, individually and trading as Allen V. Tornek Company, or under any other name, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of watches in commerce, as "commerce" is defined in the Act, do forthwith cease and desist from:

1. Representing in any manner that certain amounts are the usual and regular retail prices of respondent's merchandise when such amounts are in excess of the prices at which such merchandise is usually and regularly sold at retail;

2. Making any false statement or representation or engaging in any deceptive practice or plan which would provide retailers of respondent's merchandise with a means of misrepresenting their usual and regular retail prices;

3. Representing, directly or by implication, that the Resevoil device in his watches, or any other device of the same or similar construction or operation, provides twice as much oil to the vital parts of the watch; and

4. Representing, directly or by implication that his watches, sold under the name "Tornay" or any other name or names, contain a designated number of jewels such as "21 Jewels," unless said watches actually contain the stated number of jewels, each and every one of which serves a mechanical purpose as a frictional bearing.

It is further ordered, That the allegation of the complaint, that respondent falsely represented that his device significantly increased the amount of oil to vital parts of the watch and assured longer life expectancy thereof, be, and it hereby is, dismissed.

It is further ordered, That respondent's motions to strike certain testimony from the record and to dismiss paragraphs five through ten, inclusive, of the complaint, and a general motion to dismiss the entire complaint, all filed July 15, 1958, be, and they hereby are, denied.

It is further ordered, That respondent 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

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form in which he has complied with the order to cease and desist.

Commissioner Tait not participating.

OPINION OF THE COMMISSION

By GWYNNE, Chairman:

The complaint, under Section 5 of the Federal Trade Commission Act, charges respondent with the false advertising of watches. Both counsel supporting the complaint and respondent appeal from portions of the initial decision and order, and have presented their views in written briefs and in oral argument. Briefs as amici curiae were also filed by Hamilton Watch Company and Elgin National Watch Company; Bulova Watch Company, Inc.; and American Watch Association, Inc.

Respondent sells watches under the brand name of Tornay. His volume of business is substantial. He is engaged in commerce within the meaning of the Federal Trade Commission Act, and is in substantial competition with others similarly engaged.

The issues involve the sale of watches represented as Resevoil 21-jewel watches. Respondent imports 17-jewel watch movements from Switzerland. He attaches to such movements a patented device, consisting of a metal plate containing four gems, which he calls "jewels." The movements are then put in cases and sold to jobbers and retailers. Imprinted on the face of the watches are the words "Tornay 21 Jewel." Respondent in the past has also furnished his dealers with material to be used in advertising his watches, which advertising contained the following or similar statements:

RESEVOIL 21 JEWELS
including
4 Oil Reserve

The Revolutionary RESEVOIL Patented TORNAY Watch Feature that insures DOUBLE-LIFE for your watch.

TORNAY
21
JEWELS

Including 4 Oil Reserve.

This lovely watch * * * features a new patented invention that provides twice as much oil to the vital parts, assuring longer life expectancy * * * .

It's no ordinary jeweled watch—we have added 4 oiled reserved jewels to a precision 17-jewel watch mechanism to give you 21 fully functional jewels.

21 JEWEL WATCHES
Including 4 oil reserve

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Respondent's Appeal

Respondent challenges the findings of the hearing examiner in regard to, first, claimed fictitious pricing, and, second, the claim that the Resevoil device provides twice as much oil to the vital parts of the watch, thus assuring a longer life expectancy.

The facts as to fictitious pricing are not in substantial dispute. Respondent stipulated that he supplied to retail customers, price tags for his watches, varying from \$19.75 to \$125. It appears from the evidence that such prices were not the usual and regular prices at which the watches were sold, but were often greatly in excess of such prices.

Respondent also stipulated that the Resevoil device does not provide twice as much oil to the vital parts of the watch. The hearing examiner found:

This representation is false, misleading, and deceptive. Respondent contended that his advertising and pricing had been discontinued more than a year prior to the issuance of the complaint. However, there are no "unusual" circumstances here which would warrant refusal to issue a cease and desist order, a decision purely within the discretion of the Commission.

We agree with the findings and conclusion of the hearing examiner as to the respondent's appeal and such appeal is accordingly denied.

Appeal of Counsel Supporting the Complaint

This appeal challenges the findings and order of the hearing examiner in dismissing the complaint as to the following allegations:

1. That the respondent falsely represented that certain watches sold by him are 21-jewel watches; and
2. That respondent falsely represented that the Resevoil device provides a significant amount of oil to the vital parts of the watch.

It is not disputed that respondent represents his watches to be 21-jewel watches. The important question is as to the meaning of the term "jewel" as understood in the watch industry and trade.

It is the view of counsel supporting the complaint that a "jewel" must serve a mechanical purpose as a frictional bearing, that is, each jewel must provide a mechanical contact at a point of wear.

In the initial decision, the hearing examiner said:

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While this definition of a jewel was assumed in the complaint, the record does not substantiate it. None of the witnesses called in support of the complaint during the case-in-chief testified that a watch jewel must serve a mechanical purpose as a frictional bearing in order to be classified as a "jewel," but instead testified that the four jewels in respondent's device served no useful purpose and were in effect useless when attached to the watch.

Considerable evidence was introduced on the general subject of watch construction.

For example, Carl Pepla, a watchmaker, testified in substance that the four "jewels" in the Resevoil device do not serve as frictional bearings and serve no functional purpose; that in the traditional 17-jewel watch, there are 17 jewels, every one being a friction bearing jewel.

Jean-Pierre Savary, connected with the Watchmakers of Switzerland Information Center, New York, testified:

In connection with oil, first of all, the main part of the friction in a watch—I mean, to avoid friction in a watch, is done by jewels, first, because they have a hard polished surface and they are placed in the main bearing points. An addition of oil, like in any bearings, I would think, would make these bearings to run better, but I have no other opinion than that.

Bernhard Gottfurcht, watchmaker, testified that in the traditional 17-jewel watch, there are no jewels that are not friction bearing.

The testimony of Jacques Dittesheim, sales manager of Movado Watch Company, was to the same effect with the addition that the cap jewels serve a double function. "They serve a function for friction as well as a reservoir for oil."

C. Harry Kalquist, vice president and treasurer of The Moser Jewel Company, testified that in the normal 21-jewel watch, all 21 jewels are bearings; a bearing is a hard substance that a pivot rides in or on; the function of a bearing is to reduce wear and to lubricate; the common purpose of a jewel bearing is to stabilize the friction at the point of its use.

Victor Huff, a watch importer, agreed that in every instance where you have a jewel, except the Resevoil jewel, you have a contact of a moving part of the watch on a hard surface.

John A. Van Horn, director of research for the Hamilton Watch Company, testified: "A jewel serves as a bearing and I am using that word in its dynamic sense. The dictionary definition of bearing, of course, covers several meanings of the word, including static cases, which is the one which describes the function of bridge pilings which serve there as a bearing accepting a

static load. In respect to watches, the term without exception—that is, the term “jewel”—refers to the acceptance of a moving load.”

Each of these witnesses was testifying as an expert as to the functions of a jewel in a watch, as it has been developed in the watch industry. The purport of their testimony is that a jewel is a small, hard, highly processed gem, placed at a strategic point in a watch movement to contact a moving part. Its purpose is to reduce the problems incident to friction. Its value depends on its location at a point where it will contact a moving part.

Some jewels contact the moving part, not constantly (as a hole jewel does) but intermittently, as the movement requires. Consequently, some witnesses expressed the view that certain jewels, such as pallet jewels, are not jewels in the strict sense. The weight of the evidence, however, is contrary to this view. In any event, it is not material in this case because it is undisputed that the so-called Resevoil jewels, at no time contact a moving part.

The testimony of the witnesses as to the functioning of jewels and as to the meaning and use of the word “jewel,” both in the industry and by the Government, is confirmed by other evidence in the record.

Respondent's Exhibit 1 is a booklet prepared by The Watchmakers of Switzerland, entitled, “What Difference Does the Number of Jewels Make.” The booklet contains the following:

These synthetic watch jewels are worth only pennies apiece. Yet their value is incalculable in terms of what they do in a fine watch. For just as oil cuts down friction and keeps wheels turning—So the jewels in a watch are used to protect the moving parts against wear and friction. In a fine watch, the jewels are really synthetic bearings, located at the most vital and critical points of action—to assure greater accuracy.

Respondent's Exhibit 2, being a paragraph of a publication of the Swiss Watch Federation of Switzerland, is as follows:

Raw jewels alone cost little; it's their incredibly precise finish and their perfect positioning in the watch that give them value, and that makes your watch run so dependably. And, while a certain number of jewels are necessary at vital points, you should know that an increase beyond this number does not always mean an increase in watch quality.

19 U.S.C., Section 1001, paragraph 367, relates to the imposition of custom duties on watch movements, time keeping instruments, etc. The rates fixed vary to some extent with the number of jewels.

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Paragraph 367 (b) provides:

All the foregoing shall have cut, engraved, or die sunk, conspicuously and indelibly on one or more of the top plates or bridges, the name of the country of manufacture * * * the number of jewels, if any, serving a mechanical purpose as frictional bearings.

Bulova Watch Co. v. United States, 21 Court of Customs and Patent Appeals 156 (1933), involved the construction of a portion of the Tariff Act of 1930, paragraph 367, which provided that in determining the applicable duty, the term "jewel" includes "substitutes" for jewels. The claimed substitute was a metal bushing affixed to the watch movement, in place of the usual stone jewel, and which could be removed and replaced when wear made that necessary. The Court in reversing the trial court, quoted four findings, No. 3 of which was as follows:

(3) That the functions of each [meaning a jewel and a metal bushing] are precisely the same in that each is removable, each has provision for lubrication and for taking up the "end shake" and that each operates to make the watch movement more readily adjustable.

The Court then said:

We are inclined to agree with the foregoing four findings—construing the third finding as not stating all the functions of a jewel but only those which are similar to the function of a bushing, but we are of the opinion that one additional fact should be considered, a fact not contradicted in the testimony and of which we may take judicial notice by reason of its being a matter of common knowledge, and that is that the only reason that a jewel is ever used in a watch movement in preference to a pivot bearing of metal is because of the hardness of the jewel and the smaller amount of friction encountered in its use.

After quoting several dictionary definitions, the Court concluded:

The only quality that causes a jewel to be selected (in preference to ordinary metal bushings) is its hardness as compared with the metal of the plate, and its consequently reduced friction, and a device that does not possess this quality cannot be held to be a substitute for a jewel, even though in its use, it may perform some of the functions of a jewel.

Some of the witnesses called attention to the fact that a jewel in a traditional 17-jewel movement may perform a secondary function having to do with lubrication. There was also testimony that the Resevoil device performed this function even better than the ordinary jewel. However, to qualify for the term "jewel," as understood by the industry, it is not enough that it serve some useful function. It must perform the function with which the word "jewel" has long been associated.

We conclude that:

(1) As used in the watch industry and trade, a jewel must serve a mechanical function as a frictional bearing before it is entitled to be represented as a "jewel."

(2) The so-called jewels in the Resevoil device do not serve such a function.

(3) The representation by respondent of his Tornay watches as 21 jewel watches is false and deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

The appeal of counsel supporting the complaint as to this issue is granted. Order will be entered accordingly.

Counsel supporting the complaint next challenges the hearing examiner's finding that the respondent did not violate the Federal Trade Commission Act by representing that the Resevoil device significantly increases the amount of oil to vital parts and assures longer life expectancy thereof.

Considerable evidence, pro and con, was introduced on the subject.

The hearing examiner found:

It is concluded and found that counsel in support of the complaint has failed to establish by preponderance of the reliable, substantial and probative evidence that respondent falsely represented that his device provides a significant increase in the amount of oil to vital parts of the watch and assures longer life expectancy of said watches.

We agree with this finding and the appeal of counsel supporting the complaint as to this issue is denied.

It is directed that an order issue accordingly.

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

Decision

IN THE MATTER OF
MALVIN & SHAFRAN, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS*Docket 7307. Complaint, Nov. 18, 1958—Decision, May 13, 1959*

Consent order requiring a Los Angeles furrier to cease violating the Fur Products Labeling Act by failing to comply with invoicing requirements, by advertising in letters to a customer which represented prices of fur products as reduced from purported regular prices which were in fact fictitious, and by failing to maintain adequate records as a basis for such pricing claims.

Mr. Eugene Kaplan for the Commission.

Benjamin Held, Esq., of Los Angeles, Calif., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on November 18, 1958, issued its complaint herein, charging the above-named respondents with having violated the provisions of both the Federal Trade Commission Act and the Fur Products Labeling Act, together with the Rules and Regulations promulgated thereunder, and the respondents were duly served with process.

On March 18, 1959, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order to Cease and Desist," which had been entered into by and between respondents and the attorneys for both parties, under date of February 26, 1959, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent Malvin & Shafran, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 706 South Hill Street, Los Angeles 14, Calif.

Individual respondents Myron H. Malvin and Abraham Shafran are officers of the said corporate respondent and control, direct and formulate the acts, practices and policies of the said corporate respondent. The office and principal place of business of the individual respondents is the same as that of the corporate respondent.

2. 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.

3. This agreement disposes of all of this proceeding as to all parties.

4. Respondents waive:

a. Any further procedural steps before the hearing examiner and the Commission;

b. The making of findings of fact or conclusions of law; and

c. 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.

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

6. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

7. This 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.

8. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order to Cease and Desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, however, unless and until it becomes part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order to Cease and Desist" that the Commission has jurisdiction of the subject matter of this

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proceeding and of each of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated by the Commission under the latter Act, against each of the respondents both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

ORDER

It is ordered, That Malvin & Shafran, Inc., a corporation, and its officers, and Myron H. Malvin and Abraham Shafran, 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 manufacturing 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:

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 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 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;

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

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

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. 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.

3. Making price claims and representations of the type referred to in paragraph 2A 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 13th day of May 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.

Decision

IN THE MATTER OF
ADAM, MELDRUM & ANDERSON COMPANY, INC.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS*Docket 7340. Complaint, Dec. 29, 1958—Decision, May 13, 1959*

Consent order requiring a Buffalo, N.Y., furrier to cease violating the Fur Products Labeling Act by failing to set forth in invoices the terms "Persian Lamb," "Dyed Mouton-processed Lamb," and "dyed Broadtail-processed Lamb," and failing in other respects to comply with labeling and invoicing requirements; and by newspaper advertising which failed to disclose the names of animals producing certain furs or the country of origin, the fact that some fur products contained artificially colored or cheap or waste fur; which named other animals than those producing the fur in some products; and which represented prices as reduced from regular prices which were in fact fictitious, or as reduced by certain percentages when such was not true.

Mr. Alvin D. Edelson for the Commission.

Mr. John F. Connelly, of Buffalo, N.Y., for respondent.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated December 29, 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 12, 1958, the respondent and his attorney entered into an agreement with counsel in support of the complaint for a consent order.

Under the agreement, 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 respondent of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

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.

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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 Adam, Meldrum & Anderson Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 404 Main Street, Buffalo, 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 respondent Adam, Meldrum & Anderson Company, 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, 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 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:

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;

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

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 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;

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

B. Falsely or deceptively or otherwise identifying fur products as to the name or names of the animal or animals that produced the fur from which such products were manufactured.

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C. 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.

D. Failing to set forth the term "Persian Lamb" in the manner required by law.

E. Failing to set forth the term "Dyed Mouton-processed Lamb" in the manner required by law.

F. Failing to set forth the term "Dyed Broadtail-processed Lamb" in the manner required by law.

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) 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 the name or names of any animal or animals other than the name or names specified in Section 5(a) (1) of the Fur Products Labeling Act.

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

D. Fails to set forth the term "Dyed Broadtail-processed Lamb" in the manner required by law.

E. Fails to disclose that fur products are composed in whole or in substantial part of flanks, when such is the fact.

F. 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 products in the recent regular course of business.

G. Represents, directly or by implication, through percentage savings claims that the regular or usual retail prices charged

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by respondent for fur products in the recent regular course of business were reduced in direct proportion to the amount of savings stated, when contrary to fact.

ORDER REOPENING PROCEEDING AND AMENDING
DECISION OF THE COMMISSION

It appearing that the Commission by order issued April 23, 1959, adopted as its own decision the hearing examiner's initial decision in this proceeding and directed the respondent, within sixty (60) days after service upon it of said order, to file a report of compliance with the order contained in said initial decision; and

It further appearing that the initial decision was deficient in that it failed to incorporate the substance of certain pertinent provisions of the consent order agreement on the basis of which it was issued; and

The Commission being of the opinion that such deficiency should be corrected:

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

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

Under the agreement, 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 respondent of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

It is further ordered, That the respondent Adam, Meldrum & Anderson Company, Inc., 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
WILLARD W. ROGERS ET AL.
TRADING AS BUSINESS BUYERS SERVICE

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

Docket 7342. Complaint, Dec. 29, 1958—Decision, May 13, 1959

Consent order requiring a partnership in Sioux Falls, S. Dak., to cease obtaining real estate listings and charging inflated fees through such misrepresentations as those in the order below set forth.

Mr. Thomas A. Ziebarth supporting the complaint.

Mr. C. L. Anderson of *Anderson & Weisensee*, of Sioux Falls, S. Dak., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On December 29, 1958, the Federal Trade Commission issued a complaint charging Willard W. Rogers and Dean L. Wilde, individually and as copartners trading as Business Buyers Service, hereinafter referred to as respondents, with false, misleading and deceptive statements in the course and conduct of their business of soliciting the listing for sale and advertising of real estate and other property.

After issuance and service of the complaint, the respondents, their counsel, and counsel supporting the complaint entered into an agreement for a consent order. The order disposes of the matters complained about.

The hearing examiner finds that the provisions of the agreement comply with all mandatory requirements of Section 3.25 (b) of the Rules of Practice for Adjudicative Proceedings.

The 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. The respondents Willard W. Rogers and Dean L. Wilde are individuals and copartners trading as Business Buyers Service, with their office and principal place of business located at 302 Syndicate Building, Sioux Falls, S. Dak.

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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 Willard W. Rogers and Dean L. Wilde, individually and as copartners trading as Business Buyers Service, or under any other name, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, or sale of advertising in newspapers or in any other advertising media, or of other services or facilities in connection with the offering or listing 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:

1. That the respondents, to induce persons to enter into contracts, have purchasers interested in buying a specific property;

2. That any specific property will be sold through the efforts of respondents;

3. That the property sought to be listed is underpriced, or that the asking price should be increased, unless the fee charged by respondents is based upon the original asking price;

4. That any specific property will be sold at such increased prices through the efforts of respondents;

5. That respondents will advertise listed property by any means or to any extent that is not in accord with the facts;

6. That respondents check the financial and credit ratings or otherwise "screen" prospective buyers before submitting them to the prospective seller, provided, however, that this shall not be construed to prohibit respondents from representing to the public that they have available for the services of their clients a well-established national credit reporting company from which the clients can receive a credit report upon application to the respondents, when such is the fact.

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 13th day of May 1959, become the decision of the Commission; and, accordingly:

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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.

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IN THE MATTER OF
COMET PRESS BOOKS CORP., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 7180. Complaint, July 11, 1958—Decision, May 19, 1959

Consent order requiring a New York City book publisher to cease representing falsely in advertising that it operated a cooperative publishing plan in which it shared financial risks with the author, and making a variety of false claims in such connection including misrepresenting the nature, size, and operation of the business; the effectiveness and extent of sales, promotion and publicity given an author-customer, the royalties paid him, etc.

Mr. Charles S. Cox supporting the complaint.

Mr. Murray Levine of *Levine & Berman*, of New York, N.Y., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on July 11, 1958, charging them with having violated the Federal Trade Commission Act by making false, misleading and deceptive statements concerning the nature, size, operation and duration of their business.

After issuance and service of the complaint, the respondents, their counsel, and counsel supporting the complaint entered into an agreement for a consent order. The order disposes of the matters complained about.

Under the agreement, 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 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 respondents that they have violated the law as alleged in the complaint.

The hearing examiner finds that the provisions of the agreement comply with all mandatory requirements of Section 3.25 (b) of the Rules of Practice for Adjudicative Proceedings.

The hearing examiner having considered the agreement and

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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 Comet Press Books Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Individual respondent Samuel F. Chernoble is treasurer, individual respondent Sam Goldman is vice president and individual respondent, Sylvia R. Kaplan is secretary of said corporate respondent. Individual respondent Milton U. Sheldon is "editor" and "executive vice president" of said corporate respondent. These individual respondents formulate, direct and control the acts, practices and policies of the said corporate respondent. All of said respondents have offices and a principal place of business at 200 Varick 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 respondent Comet Press Books Corp., a corporation, and its officers, and respondents, Samuel F. Chernoble, Sam Goldman and Sylvia R. Kaplan, individually and as officers of said corporate respondent, and respondent Milton U. Sheldon, individually, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the solicitation of contracts for the printing, promotion, sale and distribution of books in commerce, as "commerce" is defined in the Federal Trade Commission Act and in connection with the printing, promotion, sale and distribution of books in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly, that:

1. They operate a cooperative publishing plan in which they share with the author in the expense of editing, printing, binding, promotion and sale of the book, or that they are partners with the author;

2. They print or bind all the copies of the book called for in the first edition as listed in the contract with the author, unless and until such is the fact;

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3. Their organization has numerous employees or departments, or an art department;

4. They have been in business for 35 years or any other period of time in excess of the actual length of time that the corporate respondent has been in business;

5. They accept and have accepted for publication only those manuscripts with merit or sales appeal possibilities; or that they "chance" their own money in publishing authors' manuscripts;

6. Their promotion and sales campaign is effective or aggressive, or results in a complete sale of the first edition of the book published and promoted through them, except in rare instances;

7. An author publishing through them will receive back the sum of money invested by the author in having his or her book published through them, except in rare instances;

8. They have sold subsidiary rights of author's books published through them to motion picture studios, radio and television channels or for republication in foreign countries, unless such is the fact;

9. They own the plant or plants in which the books they contract to publish are printed and bound;

10. Reports made by "readers" of submitted manuscripts are "editorial reports" or that the reading by an official of the corporate respondent and his concurrence with the reader's report indicates that the manuscript has literary merit or should be published;

11. The favorable report by a reader on a submitted manuscript indicates that such manuscript has unusual merit; or that a submitted manuscript has merit to any degree, when such is not the fact;

12. Their evaluation of a submitted manuscript is a sincere or constructive one, or is an impartial expert opinion on which the author can rely;

13. The submission of a manuscript to them by an author is the best way of finding "tomorrow's authors of best sellers" or other language of similar import, or that any author publishing through them has ever had a "best seller;"

14. The publication and promotional efforts made by them for their authors have resulted in placing any author publishing through them on the way to literary prominence or financial success, provided, however, that in the event that such efforts

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should so result in the future, nothing herein shall be construed as preventing respondents from so representing;

15. Their advertisements of an author's book in national and local media are hard hitting or result in satisfactory sales to their authors;

16. Their sales promotion results in their authors' books being sold to book stores and libraries generally or that they are stocked for sale by book stores;

17. Their promotion, publicity and advertising start at the time of the acceptance of an author's book for publication, or that the same last until the author's book is stocked by the book store or book seller, unless and until such is the fact;

18. They have separate promotion, publicity and advertising departments;

19. Books published by them are award winning, fast selling titles, or are in demand by wholesalers, jobbers and retail stores;

20. Various organizations or branches of the armed services, or any one else, have ordered books published by them in greater quantities than is the fact;

21. They have contacts in the specialized school field that result in the sale of significant quantities of their authors' books for classroom or other use;

22. Any significant number of books published by them have been sold through the appearance of authors on radio and television or through autograph parties or that sufficient numbers of books have been sold by such means to be profitable over and above the efforts and expenses involved therein;

23. They circularize an announcement as to the publication of a book except as to the names submitted by the author, or to any extent in excess of the actual fact;

24. Their subsidiary rights program has resulted in an increase of their authors' income beyond the regular percentage return from the sale of the authors' books, unless such is the fact;

25. Reviews of books published by them appear in publications in the United States or foreign countries, in excess of those actually so appearing, or that their utilization of syndicates and individual book reviewers will guarantee a review of the author's book;

26. Books published by them have won any significant number of awards or citations for exceptional design and press work, or for any other reason that is not in accordance with the facts;

27. They have a worldwide distribution of any of their au-

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thors' books or any distribution, that is not in accordance with the facts, or that they have representatives in 25 or any other number of foreign countries;

28. They sell the books published by them to outlets in large cities or the remote parts of the nation in any appreciable number;

29. Any payment made to any author based on sales of the author's book is a royalty unless and until the author has recouped the sum of money paid under the contract therefor;

30. They pay an author 40%, or any other percentage or sum, as royalty on every book sold until the author has recouped the sum of money paid under the contract therefor, or that the sum paid the author by them is in excess of that paid an author publishing under the standard or straight royalty publisher's contract;

31. Advertisements for their authors' books appear in most of the worthwhile and important national media; or appear in any other media, unless such is the fact;

32. They have arranged for publication in England of "Great Symphonies," "Immigrants All-American All," "My Pupils and I," "Eastern Easter in the Holy Land," "Unconventional Prayers," or "Life of St. Josephat," or that they have arranged for such publication of any other titled book, unless such is the fact;

33. Their promises and claims are neither exaggerated nor elaborate.

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 on behalf of the corporate respondent Comet Press Books Corp., and by respondents Samuel F. Chernoble, Sam Goldman and Sylvia R. Kaplan, individually and as officers of said corporation, by respondent Milton U. Sheldon, individually, by respondents' counsel, and by counsel in support of the complaint, service of which initial decision was completed on April 16, 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,

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amended by inserting between the second and third paragraphs thereof the following paragraph:

Under the agreement, 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 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 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 19th day of May 1959, become the decision of the Commission.

It is further ordered, That the 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 contained in said initial decision.

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IN THE MATTER OF
DANIEL LIEBERMAN, ET AL.
TRADING AS BERDAN FURS

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

Docket 7295. Complaint, Nov. 6, 1958—Decision, May 19, 1959

Consent order requiring furriers in Philadelphia, Pa., to cease violating the Fur Products Labeling Act by failing to comply with the invoicing requirements; by advertising in catalogs, cards, signs, and by other means which represented prices falsely to be "wholesale" or reduced from purported regular prices which were in fact fictitious or manufacturer's suggested retail prices, which represented themselves falsely as wholesalers or manufacturers of fur products, and which named other animals than those producing the fur in certain products; and by failing to maintain adequate records as a basis for said pricing claims.

Mr. Alvin D. Edelson for the Commission.

Trammell, Rand & Nathan, by *Mr. Hans A. Nathan*, of Washington, D.C., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated November 6, 1958, the respondents are 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 March 12, 1959, the respondents and their attorney entered into an agreement with counsel in support of the complaint for a consent order.

Under the agreement, 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 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 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.

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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. Respondents Daniel Lieberman and Bernard Koff are individuals and copartners trading as Berdan Furs, and formerly officers of Berdan Furs, Inc., a bankrupt corporation. The office and principal place of business of both respondents is 1015 Chestnut Street, Philadelphia, Pa.

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 Daniel Lieberman and Bernard Koff, individually and as copartners trading as Berdan Furs, or under any other name, and formerly officers of Berdan Furs, Inc., a bankrupt 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 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;

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(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;

(7) The item number or mark assigned to 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. 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. Represents directly or by implication that prices of fur products are "Wholesale prices," when such is not the fact.

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

C. Represents directly or by implication that a designated retail price is the manufacturer's suggested retail price, when such is not the fact, or otherwise using a fictitious price in connection with the advertising or offering for sale of a fur product.

D. Represents directly or by implication that respondents are wholesalers of fur products, when such is not the fact.

E. Represents directly or by implication that respondents are manufacturers of fur products, when such is not the fact.

F. Sets forth the name or names of any animal or animals other than the name or names specified in Section 5(a) (1) of the Fur Products Labeling Act.

3. Making price claims and representations referred to in subparagraphs A, B and C of paragraph 2 hereof unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based as required by Rule 44 (e) of the Rules and Regulations.

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 respondents Daniel Lieberman and Bernard Koff, individually and as copartners trading as Berdan Furs, and formerly officers of Berdan Furs, Inc., by counsel for respondents and by counsel in support of the complaint, service of which initial decision was completed on April 16, 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, 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 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 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 19th day of May 1959, become the decision of the Commission.

It is further ordered, That the 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 contained in said initial decision.

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IN THE MATTER OF
SAV-A-STOP, INC., ET AL.

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

Docket 7317. Complaint, Nov. 26, 1958—Decision, May 19, 1959

Consent order requiring three associated corporations in Jacksonville, Fla., engaged in business as a "rack merchandiser" or wholesaler of drug proprietaries and toiletries such as health and beauty aids—installing display racks and selling primarily to independent and chain grocery stores in the States of Florida, Georgia, Alabama, South Carolina, and Tennessee—to cease discriminating in price by paying on all purchases of certain favored customers who were not required to carry their "Jay" household items, the 3% discount allowed on that line, and by requiring non-favored customers to carry the "Jay" items in order to receive the additional discount on their drug proprietaries.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondents named in the caption hereof, and hereinafter more particularly designated and described, have violated and are now violating the provisions of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., Title 15, Sec. 13), and Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Sec. 45) and it appearing to the Commission that a proceeding by it in respect thereof, would be in the public interest, the Commission hereby issues its complaint, stating its charges as follows:

Count I

Charging violation of subsection (a) of Section 2 of the Clayton Act, as amended, the Commission alleges:

PARAGRAPH 1. The above named corporate respondents are corporations organized, existing and doing business under and by virtue of the laws of the State of Florida with their offices and principal place of business located at 2202 Main Street, Jacksonville, Fla.

Respondents James V. Freeman, Benjamin E. Griffin, William Adams, Alexander H. Edwards, and Harold Smith are president, vice president, secretary, treasurer and comptroller respectively

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of said corporations. The individual respondents formulate, direct and control the policies, acts and practices of the corporate respondents herein named. Their address is the same as that of the corporate respondents.

PAR. 2. Respondent, Sav-A-Stop, Inc., is principally engaged in business as a "rack merchandiser" or wholesaler of drug proprietaries and toiletries, such as health and beauty aids.

Respondent, Jay Distributing Company, Inc., came under the control of Sav-A-Stop, Inc., in October 1956 and is a wholesaler of household appliances, kitchenware, stationery, and pet food and supplies.

Respondent, Sav-A-Stop of Tampa, Inc., is owned by Sav-A-Stop, Inc., and is a corporation organized in 1953 to handle sales of the parent corporation in central Florida and on the Gulf Coast. Ninety percent of its merchandise requirements are supplied by the parent corporation.

In addition, respondent, Sav-A-Stop, Inc., controls several other corporations, not herein named. Total sales for all corporations concerned average approximately four (4) million dollars annually, with respondent, Sav-A-Stop, Inc., accounting for the principal share of this amount. Respondents install display racks and sell primarily to independent and chain grocery stores in the States of Florida, Georgia, Alabama, South Carolina and Tennessee. Respondent in the sale of said merchandise has at all times relevant herein been and now is engaged in commerce among the several states of the United States.

PAR. 3. In the course and conduct of its business, the respondents have been and are now in substantial competition in the sale of said merchandise with other sellers of such products. In many areas respondents sell their products to two or more grocery stores who are in substantial competition each with the other in the resale of such merchandise.

PAR. 4. In the course and conduct of its business in commerce, the respondents have been and are now, in each of several trading areas, discriminating in price in the sale of its products of like grade and quality by selling them to some grocery stores at higher and less favorable prices than it sells them to other grocery stores who are competitively engaged each with the other in the resale of said products. One or more of the purchases involved in such discriminations were in commerce, and such commodities were sold for use, consumption, or resale within the United States or the District of Columbia.

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Respondents have effected said discriminations between and among their grocery store customers in the manner and by the methods hereinafter described.

In the course and conduct of its business in commerce, respondents initially were wholesalers of drug proprietaries and toiletries only. Upon gaining control of respondent, Jay Distributing Company, Inc., and in order to induce their customers to carry for resale the household items distributed by "Jay," respondent Sav-A-Stop, Inc. inaugurated a plan whereby they would provide an additional 3% discount on drug proprietaries and toiletries, if said customers also agreed to carry for resale the household items distributed by "Jay."

In many instances, respondents provided and are providing said additional discount to certain of their favored customers without requiring them to carry for resale the household items distributed by "Jay." At the same time, respondents are requiring their nonfavored customers to carry these items in order to receive the additional discount on respondent's drug proprietaries.

PAR. 5. The effect of respondents' discrimination in price, as above alleged, may be substantially to lessen, injure, destroy or prevent competition between respondents and competing sellers of similar merchandise and between and among respondents' resale customers.

PAR. 6. The acts and practices of respondents as above alleged constitute a violation of the provisions of subsection (a) of Section 2 of the Clayton Act (U.S.C., Title 15, Sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936.

Count II

Charging violation of Section 5 of the Federal Trade Commission Act, the Commission alleges:

PAR. 7. Paragraphs 1 through 4 of Count I are hereby incorporated by reference and made a part of the charge as fully and with the same effect as though here again set forth verbatim.

PAR. 8. In the course and conduct of its business, respondents, as an inducement to customers and prospective customers to discontinue handling household lines offered by respondents' competitors, and thereafter to handle for resale respondents' products, have engaged and are now engaging in the following practice:

Utilizing and placing into effect a sales program as described in paragraph 4 above, which grants an additional discount to

customers of respondents' on one line of merchandise if they agree to carry for resale another and totally unrelated line of merchandise.

PAR. 9. The aforesaid method, act and practice as alleged in paragraph 8, have had and now have the following capacity, tendency, purpose and effect:

(a) To induce customers of competitors of respondents' to discontinue purchasing, stocking and selling said competitors line of household, and other merchandise, and instead to purchase, this same merchandise from respondents;

(b) Unreasonably to injure, hinder, hamper and restrain competing wholesalers of said household lines.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, have the tendency and capacity to unfairly divert, and have unfairly diverted, trade to respondents from their competitors, and, in consequence thereof, injury has been done, and is now being done, by respondents to competition in commerce among and between the various States, and said acts and practices are all to the prejudice and injury of the public, and of respondents' competitors, and customers of respondents' competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, within the meaning of the Federal Trade Commission Act.

Mr. Eugene Kaplan for the Commission.

Mr. W. H. Adams, III, of *Adams & Tjoflat*, Jacksonville, Fla., for respondents.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

On November 26, 1958, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violating the provisions of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, and Section 5 of the Federal Trade Commission Act.

On February 18, 1959, the respondents and their counsel entered into an agreement with counsel supporting the complaint for a consent order pursuant to Section 3.25(a) of the Rules of Practice of the Commission. The hearing examiner finds that the content of the agreement meets all the requirements of Section 3.25(b) of said rules.

Under the agreement, respondents admit the jurisdictional

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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 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 respondents that they have violated the law as alleged in the complaint.

The agreement contains a recommendation that the complaint be dismissed as to respondent Harold Smith, which recommendation is based upon an affidavit attached to and made a part of the agreement wherein it is set forth that said respondent has had no part in the organization, management or policies of the respondent corporations since July 26, 1958.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding as to all parties, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Section 3.21 of the Rules of Practice; and in consonance with the terms of said agreement, the hearing examiner makes the following jurisdictional findings and order:

1. The above-named corporate respondents are corporations organized, existing and doing business under and by virtue of the laws of the State of Florida with their offices and principal place of business located at 2202 Main Street, Jacksonville, Fla.

Respondents Benjamin E. Griffin, Alexander H. Edwards, William Adams and James V. Freeman are president, vice president, secretary and director, respectively, of said corporations. The individual respondents formulate, direct and control the policies, acts and practices of the corporate respondents herein named. Their address is the same as that of the corporate respondents.

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 Clayton Act, as amended by the Robinson-Patman Act, and the Federal Trade Commission Act and this proceeding is in the interest of the public.

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ORDER

It is ordered, That respondents Sav-A-Stop, Inc., Jay Distributing Company, Inc., a Sav-A-Stop of Tampa, Inc., corporations, and their officers, and James V. Freeman, Benjamin E. Griffin, William Adams, and Alexander H. Edwards, individually and as officers and directors of said corporations, their agents, representatives and employees, directly or through any corporate or other device, in or in connection with the sale of drug proprietaries and toiletries, household appliances, or other products in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Discriminating, directly or indirectly, in the price of said products of like grade and quality where the respondents are competing with any other sellers of said products, or where favored customers are competing with other customers of the respondents.

It is further ordered, That respondents Sav-A-Stop, Inc., Jay Distributing Company, Inc., and Sav-A-Stop of Tampa, Inc., corporations, and their officers, and James V. Freeman, Benjamin E. Griffin, William Adams, and Alexander H. Edwards, individually and as officers and directors of said corporations, their agents, representatives and employees, directly or through any corporate or other device, in or in connection with the course and conduct of their business of selling drug proprietaries and toiletries, household appliances, or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Granting or offering to grant to any customer any discount on housewares or health and beauty aids in consideration for the purchase of both of these lines of wares from respondents, or in any way tying the sale of housewares and the sales of health and beauty aids one to the other.

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

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 on behalf of corporate respondents Sav-A-Stop, Inc., Jay Distributing Company, Inc., and Sav-A-Stop of Tampa, Inc., and by respondents Ben-

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jamin E. Griffin, Alexander H. Edwards, William Adams, and James V. Freeman, individually and as officers and directors of said corporations, by respondents' counsel and by counsel in support of the complaint, service of which initial decision was completed on April 16, 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, 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 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 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 19th day of May 1959, become the decision of the Commission.

It is further ordered, That the 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 contained in said initial decision.

IN THE MATTER OF
RICHARD GURNEY ET AL.
TRADING AS PIONEER BUSINESS SERVICE

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

Docket 7341. Complaint, Dec. 29, 1958—Decision, May 19, 1959

Consent order requiring a Council Bluffs, Iowa, real estate firm to cease making deceptive claims, in advertising and by their agents, to induce owners to list properties for sale with them and to increase their asking prices, thus assuring larger advance fees, by such representations as in the order below set forth.

Mr. John W. Brookfield, Jr. and Mr. Berryman Davis for the Commission.

Mr. Don H. Jackson and Mr. Robert C. Heithof, of Council Bluffs, Ia., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated December 29, 1958, the respondents are charged with violating the provisions of the Federal Trade Commission Act.

On March 5, 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 §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 disposi-

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tion 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. Respondents Richard Gurney and Merle E. Wood are individuals and copartners trading as Pioneer Business Service, with their office and principal place of business located at 30½ Pearl Street, in the city of Council Bluffs, State of Iowa.

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 Richard Gurney and Merle E. Wood, individually and as copartners trading as Pioneer Business Service, or under any other trade name or names, 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 ready buyers for properties sought to be listed;

2. The property listed with or advertised by respondents will be sold within a short period of time or at all;

3. 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;

4. Respondents will finance or assist in the financing of the purchase of the listed property;

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

6. Respondents will advertise the property of a prospective seller by any means that is not in accordance with the facts;

7. Respondents' services will culminate in the sale of the listed property.

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 counsel in support of the complaint, service of which initial decision was completed on April 16, 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 19th day of May 1959, become the decision of the Commission.

It is further ordered, That the respondents, Richard Gurney and Merle E. Wood, 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.

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IN THE MATTER OF
CARAVEL PRODUCTS, LTD., ET AL.

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

Docket 7356. Complaint, Jan. 12, 1959—Decision, May 19, 1959

Consent order requiring a New York City distributor of perfumes to cease representing falsely in advertising and on the labeling and packaging of their products that fictitious and excessive amounts were the usual retail prices; advertising that certain of their products were currently and regularly advertised in nationally distributed magazines, when any such advertisements appeared about 1951; and representing through use of French words and the French tricolor on labels and packaging that some of their products were compounded in France, when the major portion of the ingredients was of domestic origin.

Mr. Harry E. Middleton, Jr. for the Commission.

Mr. David Paris, of New York, N.Y., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated January 12, 1959, the respondents are charged with violating the provisions of the Federal Trade Commission Act.

On March 12, 1959, the respondents and their attorney entered into an agreement with counsel in support of the complaint for a consent order.

Under the agreement, 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 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 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.

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

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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 Caravel Products, Ltd., 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 1133 Broadway, New York, N.Y.

The individual respondent Herman Sobel is an officer of the corporate respondent and has his office and principal place of business at the same address 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 Caravel Products, Ltd., a corporation, and its officers, and Herman Sobel, also known as Arthur H. Sobel, M. H. Sobel, Arthur Sobel and Henry Sobel, individually and as an officer of said corporation and trading as Fairbanks Company, or under any other name, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of perfumes or other products, do forthwith cease and desist from:

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, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said products, which advertisement:

(a) Represents, directly or by implication, that the usual or customary retail price of any product is in excess of the price at which such product is regularly or customarily sold at retail in the normal course of business.

(b) Represents, directly or by implication, that any product is being currently advertised in *Vogue*, *Mademoiselle* or *Seventeen* magazines; or in any other magazine or publication, when such is not the fact, or that any product has been advertised in any magazine or publication in the past unless the date of such advertisement is clearly set forth.

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 of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited by paragraph 1 hereof.

It is further ordered, That respondents, Caravel Products, Ltd., a corporation, and its officers, and Herman Sobel, also known as Arthur H. Sobel, M. H. Sobel, Arthur Sobel and Henry Sobel, individually and as an officer of said corporation and trading as Fairbanks Company, or under any other name, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of perfumes or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that the usual or customary retail prices of any product is in excess of the price at which such product is regularly or customarily sold at retail in the normal course of business.

2. Using the words "concentre fabrique avec essence de France" or a replica of the tricolor of France, or any other word, term, symbol or depiction indicative of foreign origin as descriptive of, or in connection with, products manufactured or compounded in the United States, unless it is clearly and conspicuously disclosed in immediate connection therewith that such products are manufactured or compounded in the United States.

3. Otherwise representing that products which are manufactured or compounded in the United States are manufactured or compounded in France, or in any other foreign country, provided, however, that in cases where certain of the ingredients of any product are imported into the United States such fact may be stated if accompanied by a clear and conspicuous statement that such ingredients were blended with domestic ingredients and that the resulting product was bottled and packaged in the United States.

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 on behalf of the

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corporate respondent, Caravel Products, Ltd., and by respondent Herman Sobel, individually and as an officer of said corporation, and trading as Fairbanks Company, by respondents' counsel, and by counsel in support of the complaint, service of which initial decision was completed on April 16, 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, 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 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 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 19th day of May 1959, become the decision of the Commission.

It is further ordered, That the 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 contained in said initial decision.

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IN THE MATTER OF
M & M SPECIALTIES, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 7377. Complaint, Jan. 26, 1959—Decision, May 19, 1959

Consent order requiring a New York City distributor to cease advertising falsely in newspapers, periodicals, and otherwise that attaching its "Color V"—a sheet of transparent plastic sprayed with orange paint blending into green at one border and blue at the opposite border—to a black and white television set would produce "reallife" color and eliminate glare, and that "Color V" was an electronic device.

Mr. Brockman Horne for the Commission.

Mr. Herbert J. A. Runsdorf, of New York, N.Y., for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with violation of the Federal Trade Commission Act through the making of certain representations in connection with a device advertised and sold by them, the device being intended for use on television sets. 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

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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 M & M Specialties, Inc., is a corporation existing and doing business under the laws of the State of New York, with its office and principal place of business located at 43 East 19th Street, New York 3, N.Y. Respondents Max Schoman and Martin Greenwold are individuals and are president and secretary-treasurer, respectively, of said corporation. They formulate, direct and control said corporation's policies, acts and practices. Their business 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 respondents M & M Specialties, Inc., a corporation, and its officers, and Max Schoman and Martin Greenwold, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a plastic sheet to be fastened over the viewing screen of a television set, designated as "Color V," or any other product of substantially similar construction or possessing substantially the same characteristics, whether sold under the same or any other name, 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 by the use of such product

(a) In connection with the operation of a black-and-white television set, said television set will thereby produce the same visual effect as a color television set or misrepresenting in any manner the color provided by said product when used in connection with a television set;

(b) Glare will be eliminated from television screens;

2. That such product is an electronic device.

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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 19th 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
LESTER B. PATTERSON ET AL.
TRADING AS SKIL-WEAVE CO., ET AL.¹

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

*Docket 7318. Complaint, Nov. 26, 1958—Decision, May 20, 1959*¹

Consent order requiring Chicago sellers of a correspondence course in reweaving to cease advertising falsely the ease of learning reweaving through their course, and overstating potential earnings and business opportunities for persons completing it; and
Complaint was dismissed on Nov. 7, 1959, as to respondent advertising agency and an official thereof.

Before *Mr. Walter R. Johnson* hearing examiner.

Mr. Edward F. Downs and *Mr. John J. Mathias* for the Commission.

Nash & Donnelly, by *Mr. John A. Nash*, of Chicago, Ill., for respondents Lester B. Patterson and Edythe F. Patterson, copartners trading and doing business as Skil-Weave Co.

INITIAL DECISION AS TO CERTAIN RESPONDENTS

In the complaint dated November 26, 1958, the respondents Lester B. Patterson and Edythe F. Patterson, copartners trading and doing business as Skil-Weave Co. are charged with violating the provisions of the Federal Trade Commission Act.

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

Under the agreement, 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 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 respondents that they have violated the law as alleged in the complaint.

The respondents Grant, Schwenck & Baker, Inc., a corporation,

¹ Published as modified July 7, 1959.

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and Paul Grant, individually and as an officer of said corporation, are not parties to the aforementioned agreement and are subject to further proceedings.

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 said respondents, 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. Respondents Lester B. Patterson and Edythe F. Patterson are copartners trading and doing business as Skil-Weave Co., with their principal office and place of business located at 335 West Madison Street, Chicago, Ill.

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 Lester B. Patterson and Edythe F. Patterson, copartners trading and doing business as Skil-Weave Co., or under any other name, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of courses of instruction 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 invisible French reweaving can be learned easily or quickly through the study of respondents' correspondence course of instruction;

2. That it is easy to learn reweaving, or that one can become an expert reweaver by taking respondents' course of instruction, unless restricted to the patch or overlay method of reweaving;

3. That the potential earnings for persons completing respondents' course of instruction are greater than they are in fact;

4. That the certificate issued to individuals who have completed respondents' course or the use of the trade mark "Skil-Weave" qualify an individual as a skilled reweaver;

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5. That persons completing respondents' course can successfully operate a reweaving business or can expect to receive substantial orders from homes, cleaners or department stores.

DECISION OF THE COMMISSION AS TO LESTER B. PATTERSON,
AND EDYTHE F. PATTERSON, COPARTNERS
TRADING AND DOING BUSINESS AS SKIL-WEAVE CO.,
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 respondents Lester B. Patterson and Edythe F. Patterson, copartners, trading and doing business as Skil-Weave Co., as well as by respondents' counsel and by counsel supporting the complaint, service of which initial decision was completed on April 17, 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, 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 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 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 20th day of May 1959, become the decision of the Commission.

It is further ordered, That the respondents Lester B. Patterson and Edythe F. Patterson, copartners, trading and doing business as Skil-Weave Co., 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.

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Before *Mr. Walter R. Johnson*, hearing examiner.

Mr. John J. Mathias and *Mr. Edward F. Downs* for the Commission.

Mr. Charles F. Short, Jr., of *Brundage & Short*, of Chicago, Ill., for respondents *Grant, Schwenck & Baker, Inc.*, a corporation, and *Paul Grant*, individually and as an officer of said corporation.

INITIAL DECISION AS TO RESPONDENTS

GRANT, SCHWENCK & BAKER, INC., AND PAUL GRANT

In the complaint dated November 26, 1958, the respondents *Lester B. Patterson* and *Edythe F. Patterson*, copartners trading and doing business as *Skil-Weave Co.*, and *Grant, Schwenck & Baker, Inc.*, a corporation, and *Paul Grant*, individually and as an officer of said corporation, are charged with violating the provisions of the Federal Trade Commission Act.

Hearings were held in Chicago, Ill., on March 2 and 3, 1959, at which time testimony and evidence was offered on behalf of the Commission. The attorneys in support of the complaint did not close the case-in-chief and no testimony or other evidence was received on behalf of the respondents.

On March 4, 1959, the respondents *Lester B. Patterson* and *Edythe F. Patterson* and their attorney entered into an agreement with counsel in support of the complaint for a consent order which was accepted by the hearing examiner in an initial decision and which, with modifications, on May 20, 1959, became the decision of the Commission. The said order was further modified by the Commission on July 7, 1959.

The respondents *Grant, Schwenck & Baker, Inc.*, and *Paul Grant* were not parties to the aforementioned agreement. On July 29, 1959, counsel supporting the complaint filed a motion to dismiss as to respondents *Grant, Schwenck & Baker, Inc.*, and *Paul Grant*, reading:

"COMES NOW counsel supporting the complaint and moves that the complaint be dismissed as to respondents *Grant, Schwenck & Baker, Inc.*, and *Paul Grant*, for the following reasons:

"The Commission, in its decision dated May 20, 1959, as modified by a Commission order dated July 7, 1959, has prohibited respondents *Lester B. Patterson* and *Edythe F. Patterson*, copartners trading and doing business as *Skil-Weave Co.*, from engaging in the practices set forth in the complaint.

"Two days of hearings were held in this matter for the reception of evidence in support of the charges of the complaint as to Grant, Schwenck & Baker, Inc., and Paul Grant. The record, insofar as it concerns said respondents' participation in the practices alleged in the complaint, is complete.

"The record does not contain sufficient evidence to substantiate the charges against respondents Grant, Schwenck & Baker, Inc., and Paul Grant.

"Additional investigation conducted subsequent to the issuance of the complaint and the aforesaid hearings has disclosed that there is not sufficient evidence available to make a record which would support a cease and desist order against the above-named advertising agency and its officer.

"In view of the above, counsel supporting the complaint feels that the complaint should be dismissed as to respondents Grant, Schwenck & Baker, Inc., and Paul Grant."

The hearing examiner considering said motion and being fully advised in the premises finds there is not sufficient evidence in the record to substantiate the charges against the respondents Grant, Schwenck & Baker, Inc., and Paul Grant.

It is ordered, That the complaint herein be, and the same hereby is, dismissed as to the respondents Grant, Schwenck & Baker, Inc., a corporation, and Paul Grant, individually and as an officer of said corporation.

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 7th day of November 1959, become the decision of the Commission.

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IN THE MATTER OF
CONSUMER DRUG CORPORATION, ET AL.

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

Docket 7362. Complaint, Jan. 15, 1959—Decision, May 20, 1959

Order dismissing, following dissolution of respondent corporation, complaint charging drug distributors in Portland, Oreg., with advertising falsely that their "Oragen" tablets enabled obese persons to lose a pound of weight a day.

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

Mr. Berryman Davis for the Commission.

Mr. Arthur D. Herrick, of New York, N.Y., for respondents.

INITIAL DECISION DISMISSING THE COMPLAINT

This proceeding is before the hearing examiner upon motion of counsel for respondents to dismiss the complaint; amended motion to dismiss; answer to motion and amended motion filed by counsel supporting the complaint; reply memorandum filed by counsel for respondents; and answer to reply memorandum filed by counsel supporting the complaint.

It appears that prior to the issuance of the complaint in this proceeding, the assets of the corporation respondent, Consumer Drug Corporation, were sold to Consumer Laboratories, Inc., a corporation, and on February 16, 1959, Certificate of Dissolution of said corporate respondent was issued by the Corporation Commissioner of the State of Oregon.

In addition to the corporate respondent, Harold S. Heldfond, Robert C. Heldfond, and Henry Cohen were named respondents, both individually and as officers of said corporate respondent. Of these three individual respondents only respondent Harold S. Heldfond is connected with the new corporation. While he owns no stock in the new corporation, he is president and director of said corporation.

In his answer to said motion to dismiss, counsel supporting the complaint stated that he had no objection to dismissal of the complaint as to the corporate respondent and as to the individual respondents in their capacities as officers of the corporate respondent, but did object to the dismissal of the complaint against

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the three individual respondents in their individual capacities. The record, however, indicates that only the respondent Harold S. Heldfond has any connection with the new corporation and that the remaining individual respondents have no interest in said matter at the present time.

The hearing examiner has considered said motion to dismiss and the other documents filed by the parties in connection therewith, and the record herein, and is of the opinion that it would not be in the public interest to litigate this proceeding as to the individual respondent Harold S. Heldfond for the purpose of determining his liability as an officer of the corporate respondent, Consumer Drug Corporation, for acts and practices performed prior to the dissolution of said corporation.

It is therefore ordered, That the complaint in this proceeding be dismissed without prejudice as to the respondent Consumer Drug Corporation, a corporation, Harold S. Heldfond, Robert C. Heldfond, and Henry Cohen, individually and as officers of said corporation.

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 20th day of May 1959, become the decision of the Commission.

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IN THE MATTER OF
NORTH BERWICK COMPANY ET AL.

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

Docket 7374. Complaint, Jan. 23, 1959—Decision, May 20, 1959

Consent order requiring a manufacturer in North Berwick, Me., to cease violating the Wool Products Labeling Act by labeling as "90% Wool 10% Other Fibers," interlining materials which contained substantially greater quantities of nonwool fibers than thus indicated, and by failing in other respects to comply with labeling requirements of the Act.

Mr. John T. Walker for the Commission.

Irving Isaacson, Esq., for *Brann & Isaacson*, of Lewiston, Me., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on January 23, 1959, issued its complaint herein, charging the above-named respondents with having violated the provisions of both the Federal Trade Commission Act and the Wool Products Labeling Act, together with the Rules and Regulations promulgated thereunder, and the respondents were duly served with process.

On March 16, 1959, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order to Cease and Desist," which had been entered into by and between respondents and the attorneys for both parties, under date of March 9, 1959, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent North Berwick Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maine, with its office and principal place of business located at North Berwick, Maine.

Individual respondents Robert Rosenthal and Herbert Miller are president and secretary-treasurer, respectively, of the corporate respondent.

2. 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.

3. This agreement disposes of all of this proceeding as to all parties.

4. Respondents waive:

(a) Any further procedural steps before the hearing examiner and the Commission;

(b) The making of findings of fact or conclusions of law; and

(c) 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.

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

6. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

7. This 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.

8. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified, or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order to Cease and Desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, however, unless and until it becomes a part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order to Cease and Desist" that the Commission has jurisdiction of the subject matter of this proceeding and of each of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act and the Wool Products Labeling Act and the

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Rules and Regulations promulgated by the Commission under the latter Act, against each of the respondents both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

ORDER

It is ordered, That respondents North Berwick Company, a corporation, and its officers, and Robert Rosenthal and Herbert Miller, individually, and as officers of said corporation, and respondents' representatives, agents or employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of interlining materials 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 such products by:

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

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

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

- (b) The maximum percentages of the total weight of such wool product of any nonfibrous 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

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for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

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 20th day of May 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.