IN THE MATTER OF

UNION PHARMACEUTICAL CO., INC.

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

Docket 7254. Complaint, Sept. 12, 1958—Decision, June 9, 1959

Order dismissing, following dissolution of respondent corporation, complaint charging false advertising of a laxative preparation designated "Saraka."

Mr. Harold A. Kennedy for the Commission.

Mr. Carson G. Frailey, of Washington, D.C., and *Mr. Richard J. Bennett,* of Bloomfield, N.J. for respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter was issued September 12, 1958. On October 20, 1958, respondent filed a motion seeking dismissal of the complaint on the ground that respondent had discontinued entirely the manufacture and distribution of the preparation involved in the proceeding, as well as all other products, such discontinuance having taken place prior to the issuance of the complaint.

On December 22, 1958, a hearing was held for the limited purpose of receiving evidence in connection with the motion to dismiss. At the hearing a considerable volume of testimony and other evidence was received, and subsequent to the hearing counsel for respondent forwarded to the hearing examiner a certified copy of the certificate of dissolution of the respondent. This document has been incorporated in the record as a part of the evidence on the motion to dismiss.

Counsel supporting the complaint has now filed a further answer to the motion to dismiss in which he states that in view of all of the circumstances disclosed by the record, including the dissolution of the respondent, he does not oppose the granting of the motion provided the dismissal be without prejudice.

In the circumstances it is evident that no useful purpose would be served by continuing with the proceeding; that no public interest is now present.

ORDER

It is therefore ordered, That the complaint be, and it hereby is, dismissed, without prejudice to the right of the Commission to

take any further action in the matter in the future which may be warranted by the then existing circumstances.

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 9th day of June 1959 become the decision of the Commission.

IN THE MATTER OF

A. E. TROUTMAN COMPANY ET AL.

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

Docket 7403. Complaint, Feb. 6, 1959—Decision, June 9, 1959

Consent order requiring furriers in Greensburg, Pa., to cease violating the Fur Products Labeling Act by failing to comply with the labeling, invoicing, and advertising requirements; and, in advertisements in local newspapers, failing to disclose the names of animals producing certain furs or that certain furs were artificially colored, and representing prices as reduced without maintaining adequate records as a basis therefor.

Mr. Garland S. Ferguson for the Commission.

Sullivan and Cromwell, of New York, N.Y., for respondent A. E. Troutman Company.

Respondents B. Poverman, Inc., and B. Poverman, for themselves.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on February 6, 1959, charging them with having violated the Federal Trade Commission Act, and the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

On April 13, 1959, respondent A. E. Troutman Company and its counsel entered into an agreement with counsel in support of the complaint for a consent order; and on April 14, 1959, respondents B. Poverman, Inc. and B. Poverman entered into a similar agreement.

Under the agreements, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist orders 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 documents include waivers by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreements further recite that they are for settlement purposes only and do 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 two agreements meets all of the requirements of §3.25(b) of the Rules of the Commission.

The hearing examiner is of the opinion that the two agreements and the proposed orders provide an appropriate basis for disposition of this proceeding as to all of the parties. Accordingly, the agreements are hereby accepted, the following jurisdictional findings made, and the following order issued.

1. Respondent A. E. Troutman is a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 200 South Main Street, Greensburg, Pa. Respondent B. Poverman, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 370 Seventh Avenue, New York, N.Y. Respondent B. Poverman is an officer of B. Poverman, Inc. He formulates, directs and controls the policies and practices of said corporation, and his address is the same as that of the corporate respondent, B. Poverman, Inc.

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. Therefore,

It is ordered, That respondents A. E. Troutman Company, a corporation, and its officers; B. Poverman, Inc., a corporation, and its officers; B. Poverman, individually and as 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 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;

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

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

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

C. Affixing to fur products labels that do not comply with the minimum size requirements of one and three-quarter inches by two and three-quarter inches;

D. Failing to set forth the information required under §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;

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;

B. Fails to set forth the information required under §5(a) of the Fur Products Labeling Act, and the Rules and Regulations promulgated thereunder in type of equal size and conspicuousness and in close proximity with each other;

4. Making price claims and representations respecting prices and values of fur products unless respondents maintain 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

The Commission having considered the initial decision of the hearing examiner wherein he accepted two agreements containing identical consent orders to cease and desist executed by the respondents and counsel in support of the complaint, service of which initial decision was completed on May 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 agreements 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 agreements, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist orders 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 documents include waivers by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreements further recite that they are for settlement purposes only and do 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 9th day of June 1959, become the decision of the Commission.

It is further ordered, That the respondents, A. E. Troutman Company and B. Poverman, Inc., corporations, and B. Poverman, individually and as an officer of B. Poverman, Inc., 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

HUTCHINSON CHEMICAL CORPORATION ET AL.

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

Docket 7140. Complaint, May 7, 1958—Decision, June 11, 1959

Order requiring Chicago distributors of an automobile polish designated "Hutchinson's Waterproof Wax," to cease fictitiously pricing its product in television advertising.

A charge of representing falsely that the product imparted a finish that was both heat- and cold-resistant, was dismissed for lack of sustaining evidence.

Mr. William A. Somers for the Commission.

Nash & Donnelly, by *Mr. John A. Nash* and *Mr. Arthur H. Schwab*, of Chicago, Ill., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The respondents are charged with having violated the Federal Trade Commission Act in two respects. The charges and essential pertinent facts as developed and shown by the record are as follows:

1. Respondent Hutchinson Chemical Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois. Respondent Herman S. Hutchinson is an individual and president of said corporate respondent. Together with his wife, who is also an officer of the corporation, he owns 88% of the corporate stock, and formulates, directs and controls the corporate policies, acts and practices. The office and principal place of business of the respondents is located at 918 West Armitage Avenue, Chicago 14, Ill.

2. Respondents are now and for several years past have been engaged in the sale and distribution of an automobile polish described as "Hutchinson's Waterproof Wax," which, when sold, is shipped from their place of business in the State of Illinois to purchasers located in various other States of the United States. Thus respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said automobile polish in commerce, as "commerce" is defined in the Federal Trade Commission Act.

3. Respondents at all times mentioned herein have been and now are in substantial competition in commerce with individuals, firms and corporations engaged in the sale and distribution of automobile polishes.

4. In the course and conduct of their business, and for the purpose of inducing the sale of their product, respondents have engaged in advertising, which has been disseminated by television over more than fifteen stations throughout the United States, including stations in Chicago, Ill., Cincinnati, Ohio, and Milwaukee, Wis., which have power sufficient to carry their programs into areas in surrounding States. Respondents' programs consist of a picture of a flaming automobile, followed by a sales pitch relating to the quality of respondents' polish and the reduced price at which it may be purchased.

5. The "flaming-automobile" demonstration is performed in the following manner: Respondents' polish is applied as directed to the surface of a used car, or to a portion thereof. Then gasoline is squirted on the polished surface; this may be done as many as ten or fifteen times in rapid succession. The gasoline is then ignited, and cold water is poured on the flaming surface. After the flame has been quenched, the picture shows the polished surface to be unaffected by the flame or water—as shiny as before the demonstration. The audio part of the broadcast emphasizes the protection that the polish lends to the surface of the car, and then states that if the viewer will order "right now," he will receive a glare shield worth $1.50 for his automobile, and a $3.95 can of respondents' "Waterproof Wax," both for "only $2.00." The demonstration must be completed within 11½ or 12 seconds, in order to meet the television time limit, since the entire broadcast is less than three minutes long.

6. The complaint avers that through the aforesaid statements and pictorial representations, respondents represent and have represented, directly or by implication:

(1) That the burning car demonstration, in which a flammable liquid is poured on the finish of an automobile, to which Hutchinson's Waterproof Wax had been applied, ignited and cold water then thrown on the flame, proves or demonstrates that their product imparts a finish that is both heat and cold resistant;

(2) That respondents' regular retail price of a can of their product is $3.95.

The complaint charges that these representations are false, misleading and deceptive; that in truth and in fact:

(1) "The burning car pictorial representation does not prove or demonstrate that Hutchinson's Waterproof Wax imparts a finish to automobiles that is either heat or cold resistant;" and

(2) "The regular retail price of said product is substantially less than $3.95 a can."

7. The first issue, as stated in the complaint, is whether or not the burning-car demonstration proves that respondents' polish imparts a heat-and-cold-resistant finish to automobiles. Respondents maintain that the complaint does not state a cause of action in this respect, in that it does not charge an offense which comes within the purview of the Federal Trade Commission's jurisdiction. They further maintain that the evidence adduced does not support the charge made in the complaint, and that no order can be issued in respect thereto. These contentions were raised orally at the hearings, during and at the close of the case-in-chief in support of the complaint, and are again presented in respondents' written motion to dismiss the complaint herein. Counsel supporting the complaint has filed an answer opposing respondents' motion.

8. The Federal Trade Commission Act, under which this complaint is drawn, empowers the Commission, not to adjudicate upon advertisements to determine what they do or do not prove, but rather to determine the truth or falsity of the representations contained therein. Accordingly, should the issue as stated in the complaint be fully adjudicated, and the conclusion reached that respondents' burning-car demonstration does not, in fact, prove respondents' polish to be heat-and-cold resistant, such conclusion would still not constitute a valid cause for issuance of a cease-and-desist order under the Federal Trade Commission Act, which nowhere states that the dissemination of an advertisement which fails to prove something is a violation of that Act. If the issue of false and deceptive advertising of a product is to be adjudicated, that issue must first be raised by appropriate allegations in the complaint, and the truth or falsity of the advertisement in question must then be determined by substantial, probative and reliable evidence. No such allegation appears in the complaint herein, nor does the record contain any evidence relating thereto. The truth or falsity of respondents' claims as to the heat-and-cold-resistant quality of their polish is not here in question. Whether respondents' advertising fails to prove that their polish possesses such qualities is not a valid cause of action under the Federal Trade Commission Act. Furthermore, the substantial,

reliable, probative evidence of record does not establish that respondents have made the representation averred in the complaint, that the burning-car demonstration proves or demonstrates that respondents' product imparts a finish that is both heat and cold resistant. Therefore respondents' motion to dismiss should be granted insofar as it relates to the first charge of the complaint.

9. The second charge, that, contrary to respondents' representations, the regular retail price of respondents' product is substantially less than $3.95 a can, was fully litigated and has been convincingly established. Respondents have represented that the regular, usual price of their product is $3.95 per can. Advertisements of record covering the period since 1953 show that respondents' product has repeatedly been offered for sale at $2.00 per can—sometimes as low as $1.50. The individual respondent, president of the corporate respondent, testified that his recommendation to dealers has been that they sell the polish at $2.00 per can—"we want them to sell it for $2.00."

CONCLUSIONS

1. The respondents' price representations have been and are false, misleading and deceptive, and have had and now have the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true, and into the purchase of a substantial quantity of the respondents' product because of such erroneous and mistaken belief. As a result thereof, trade has been unfairly diverted to respondents from their competitors and injury has thereby been done to competition in commerce.

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

3. The complaint herein should, in all other respects, be dismissed.

4. This proceeding is in the public interest. Accordingly,

It is ordered, That respondents Hutchinson Chemical Corporation, a corporation, and its officers, and Herman S. Hutchinson, 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 sale and distribution of automobile polish or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, by any means, that the regular or usual price of such product is any amount which is in excess of the price at which the respondents have usually and customarily sold such product in the recent and regular course of their business.

It is further ordered, That the complaint herein, with respect to all other allegations, be, and the same hereby is, dismissed.

OPINION OF THE COMMISSION

By ANDERSON, Commissioner:

The complaint in this matter charges respondents with violation of Section 5 of the Federal Trade Commission Act. Counsel supporting the complaint has appealed from the hearing examiner's ruling dismissing one of the allegations of the complaint and from the findings and conclusions on which this ruling was based.

The part of the complaint dismissed by the hearing examiner alleges, in substance, that certain television advertising used by respondents in connection with the sale of their product, "Hutchinson's Waterproof Wax," is deceptive in that it falsely represents that a demonstration in which a flammable liquid is ignited on the finish of a car and extinguished with water proves or demonstrates that their product imparts a finish that is both heat and cold resistant.

The hearing examiner has taken the position that the Federal Trade Commission Act does not empower the Commission to adjudicate upon advertisements to determine what they do or do not prove, but rather to determine the truth or falsity of the representations contained therein. He ruled in effect that since the dissemination of an advertisement which fails to prove something is not a violation of the Federal Trade Commission Act and since the complaint did not challenge respondents' claims as to the heat and cold resistant quality of their product, a valid cause of action had not been stated. The hearing examiner also made the finding that respondents had not represented that the burning car demonstration proves or demonstrates that their product imparts a finish that is both heat and cold resistant.

We do not agree with the hearing examiner's conclusion that the complaint does not state a cause of action under Section 5 of the Act. As pointed out by the hearing examiner, respondents are not charged with misrepresenting the heat and cold resistant quality of their product. They are charged, however, with using deceptive advertising which may lead the public to believe that it has witnessed a demonstration which proves that the product has this quality. The fact that this particular practice has not previously been held to be an unfair trade practice under Section 5 is wholly immaterial. The ultimate question to be determined is whether the representation, used by respondents is false and, if so, whether the natural and probable effect thereof would be to mislead prospective purchasers. The legislative history of the Act discloses that the language of Section 5 was deliberately couched in generalities so that the Commission and the courts may decide in each instance whether a particular practice is unfair.

The complaint alleges that respondents' advertising is deceptive because it leads the public to believe that a demonstration shown therein proves something when, in fact, it does not. The practice involved is somewhat analogous to the use of false representations that a product has been endorsed, approved, or tested by a certain association, laboratory or other organization. Such false statements have been held by the Commission in numerous cases to be illegal. In those cases, as in this, the quality of the product is not directly in issue. Also, in cases of the type referred to, purchasers may be induced to buy a product because they have been led to believe that it has been endorsed, approved or tested by some recognized organization. In this matter, purchasers may be induced to buy respondents' product because they have been led to believe that it has undergone a valid test or demonstration.

The use of such advertising therefore, if proven to be untrue, as alleged, would be an unfair trade practice within the meaning of Section 5 since it would have the tendency and capacity to mislead purchasers into believing that they are buying a product which has been demonstrated or proven to have a certain quality or characteristic. The law is well settled that the public is entitled to buy what it thinks it is buying, in this case, a product which has been subjected to a test which demonstrates that it imparts a finish which is both heat and cold resistant.

We believe the hearing examiner also erred in finding that the evidence does not establish that respondents have made the representation averred in the complaint. The television advertising used by respondents pictures an exterior section of an automobile on which a flammable liquid has been sprayed and set afire. Within approximately twelve seconds, water is poured on the car and the fire is extinguished. The picture then shows that the polished surface of the car has not been affected by the flames or the water. The audio part of the demonstration is as follows:

> . . . The only reason we burn the car is to show you that you positively cannot get down thru that siliconized finish. But here is the real test . . . One extreme to another . . . Hot to Cold—and no matter what you've used before on your car or how hard you've worked we'll give you more protection in a few minutes time than you could get with hours of hard work.

We think this advertising speaks for itself and that there can be no doubt that respondents have represented not only that the demonstration proves that their product imparts a heat and cold resistant finish but that it proves that the finish will withstand the deleterious effects of fire and extreme changes in temperature.

While we do not agree with the findings and conclusions on which the hearing examiner based the dismissal of the allegation, we are of the opinion that the allegation should be dismissed on other grounds. As stated above, the complaint alleges that respondents have falsely represented that the burning car demonstration proves or demonstrates that the finish imparted by their product is both heat and cold resistant. Although we believe that respondents have made the representation alleged in the complaint, we think that the record fails to establish that the demonstration in question does not prove or demonstrate that the product is resistant to both heat and cold.

The only evidence of record concerning the validity of the demonstration is the testimony of an expert called by counsel supporting the complaint. This witness testified that when gasoline is poured onto the body of a car or other surface and ignited, combustion will occur some distance from the surface and will cause only a slight rise in the temperature of the surface if the flames are extinguished within four or five seconds. He estimated that the temperature of the surface would not change more than fifty degrees within that period of time. He stated on cross-examination that if the burning process should last for seventeen seconds, the heat transferred to the surface would be consider-

ably more than fifty degrees but that he did not believe that the gasoline would burn for that length of time. It appears, however, that in the actual performance of the demonstration, more gasoline is sprayed onto the car after combustion has begun and the fire may burn for as long as thirty seconds. Because of time restrictions, the demonstration in the television advertising lasts from eleven and one-half to twelve seconds. Counsel supporting the complaint did not develop the expert's testimony to determine what effect the additional gasoline would have on the transfer of heat to the surface or how much heat would be transferred to the surface beyond the brief period of time mentioned by this witness.

As stated above, the expert's opinion as to the amount of heat transferred to a surface on which a flammable liquid has been ignited and extinguished is specifically limited to a period of approximately five seconds. Thus, we cannot determine from the evidence of record how much heat is transferred to the surface when the burning process continues for a longer period of time. We do not believe, therefore, that the evidence would support a finding that the demonstration fails to prove or demonstrate that respondents' product imparts a finish that is resistant to heat and cold, as alleged in the complaint. Since we are bound by wording of the complaint, we must hold that the allegation has not been sustained by the evidence.

To the extent indicated herein the appeal of counsel supporting the complaint is granted and is otherwise denied. The initial decision, in those respects in which it is contrary to the views expressed herein, is modified to conform with such views. An appropriate order will be entered.

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

FINAL ORDER

This matter having been heard by the Commission upon the appeal of counsel supporting the complaint from the hearing examiner's initial decision; and

The Commission, for the reasons stated in the accompanying opinion, having granted in part and denied in part the aforementioned appeal, and having modified the initial decision to the extent it is contrary to the views expressed in the said opinion:

It is ordered, That the initial decision of the hearing examiner,

as so modified, be, and it hereby is, adopted as the decision of the Commission.

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

Commissioner Kintner not participating.

Decision

IN THE MATTER OF

FRIEDA BAKER DOING BUSINESS AS BONHEUR COMPANY ET AL.

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

Docket 7363. Complaint, Jan. 20, 1959—Decision, June 11, 1959

Order requiring Chicago distributors of domestically manufactured colognes and perfumes to cease representing falsely in advertising on labels and packaging of their products that fictitious prices were the usual retail prices, and, by use of French words and terms, that the products were compounded in France.

Mr. Harry E. Middleton, Jr., supporting the complaint.
No appearance for respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission on January 20, 1959, issued and thereafter served its complaint in this proceeding charging the respondents hereinabove named with having engaged in unfair methods of competition, in violation of the Federal Trade Commission Act, by misrepresenting domestic perfumes sold and distributed by them to have been imported from France and by misrepresenting the usual and customary retail price thereof. Although duly served with said complaint respondents failed to file answer thereto within thirty (30) days, as required by Section 3.7 of the Commission's Rules of Practive for Adjudicative Proceedings and by the notice served with said complaint. Thereafter, counsel supporting the complaint moved that the place of hearing be changed from New York, N.Y., to Washington, D.C. Although duly served with said motion, respondents filed no opposition thereto. In view of the default of respondents in answering and the apparent lack of probability of any appearance by them at the hearing scheduled in the notice portion of the complaint, the undersigned issued his order dated March 17, 1959, changing the place of hearing to Washington, D.C., and fixing the date of hearing for March 25, 1959, a copy of which order was duly served upon respondents.

Thereafter, a hearing was held on March 25, 1959, in Washington, D.C. before the undersigned hearing examiner, theretofore duly designated to hear this proceeding. Upon the failure