IN THE MATTER OF

SUNWAY VITAMIN COMPANY, ET AL.

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

Docket 6872. Complaint, Aug. 21, 1957—Decision, Aug. 14, 1958

Consent order requiring Chicago sellers to cease representing falsely in pamphlets, circulars, and other advertising matter that use of their "Sunway Super Vitamin Tablets With Iron" would be effective in providing pep, zip, vitality, and more red blood, and in relieving nervousness and restlessness.

Mr. Michael J. Vitale and *Mr. Thomas A. Sterner* supporting the complaint.

Mr. John S. Hall and *Mr. James McKeag*, of Chicago, Ill., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On August 21, 1957, the Federal Trade Commission issued a complaint alleging that the Sunway Vitamin Company, a corporation, Ethel P. Heyman and Daniel J. Haskell, individually and as officers of said corporation, hereinafter called respondents, had violated the provisions of the Federal Trade Commission Act by making false, misleading and deceptive statements and representations in advertisements of their product "Sunway Super Vitamin Tablets with Iron" which they distributed.

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 agreement has been approved by the director and assistant director of the Bureau of Litigation.

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

cedural steps before the hearing examiner and the Commission, and the order may be altered, modified, or set aside in the manner provided by statute for other orders; respondents waive any right to challenge or contest the validity of the order entered in accordance with the agreement and the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

JURISDICTIONAL FINDINGS

1. Respondent Sunway Vitamin Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 314 W. Institute Place, Chicago, Ill.

2. Respondents Ethel P. Heyman and Daniel J. Haskell are individuals and officers of said corporation. Their address is the same as 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 the respondents Sunway Vitamin Company, a corporation, and its officers, and Ethel P. Heyman and Daniel J. Haskell, individually and as officers of said corporation, their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of Sunway Super Vitamin Tablets With Iron, or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

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

(a) That the use of said product is of value in providing pep, zip or vitality or in relieving nervousness or restlessness, unless expressly limited, in a clear and conspicuous manner, to those cases where the lack of pep, zip or vitality or nervousness or restlessness are due solely to a deficiency of vitamins;

(b) That the use of said product will be of value in providing benefits for or relief from any condition or disorder, unless expressly limited, in a clear and conspicuous manner, to those cases where such conditions or disorders are due solely to a deficiency of vitamins;

(c) That the use of said product will provide red blood, or that it will have any significant beneficial effect on the blood.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 14th day of August 1958, 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

CONSOLIDATED RETAIL STORES, INC.

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

Docket 6947. Complaint, Nov. 19, 1957—Decision, Aug. 14, 1958

Order dismissing—for the reason that the charges of wrongdoing involved a period during which respondent company was under the jurisdiction of the District Court and was controlled by the executive officers appointed by the Court—complaint charging violation of labeling, invoicing, and advertising requirements of the Fur Products Labeling Act.

Before: *Mr. John Lewis,* hearing examiner.
Mr. John T. Walker supporting the complaint.
Respondent, *pro se.*

INITIAL DECISION AND ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

This proceeding is before the hearing examiner, for final consideration, upon motion of respondent to dismiss the complaint. The complaint, which was issued November 19, 1957, charges respondent with having violated the Fur Products Labeling Act and the Rules and Regulations issued thereunder, and the Federal Trade Commission Act, through the misbranding of certain fur products and the false and deceptive invoicing and advertising thereof. After being served with said complaint, respondent filed a motion seeking the dismissal thereof on the ground that the acts and practices charged therein occurred while respondent was a debtor-in-possession in a proceeding in the United States District Court, under Chapter XI of the Bankruptcy Act, and that it has since been reorganized under new management and control. Counsel supporting the complaint filed answer to said motion requesting a hearing to determine the facts alleged in respondent's motion, and to afford him an opportunity to cross-examine appropriate officials of respondent with regard to such facts.

Thereafter, pursuant to order of the undersigned, a hearing was held on April 29, 1958, in Washington, D.C. At said hearing respondent appeared by its secretary, a member of the Bar of the State of New York, and testimony and other evidence were offered through said official and another official of respondent. Counsel supporting the complaint was afforded full opportunity

to cross-examine said witnesses and to call witnesses on his own behalf with respect to the issues raised by respondent's motion. Following the close of said hearing, and pursuant to leave granted by the undersigned, memoranda in support of and in opposition to the motion to dismiss were filed by the parties.

The undersigned has carefully considered the testimony and other evidence offered at the hearing and the memoranda filed by the parties, and makes the following findings with respect to the facts involved in respondent's motion to dismiss:

1. On September 28, 1956, respondent filed a petition in the United States District Court for the Southern District of New York, proposing an arrangement with its creditors under Chapter XI of the Bankruptcy Act. As a result of the filing of said petition, the company came under the jurisdiction and supervision of the District Court. It was not permitted to pay any of its debts incurred prior to September 28, 1956, and the employment of officers and executives was subject to approval of the Referee in Bankruptcy for the United States District Court.

2. The company's chief executive officer having resigned prior to the filing of the petition in the District Court, a new chief executive officer, David M. Freudenthal, was appointed on October 10, 1956, by order of the court. Freudenthal acted as the executive operating head of respondent from the date of his appointment until October 2, 1957, when respondent was discharged from the supervision and jurisdiction of the court.

3. Meanwhile, on July 25, 1957, one, A. M. Sonnabend of Boston, Mass., entered into an agreement with the company providing for the advancing of substantial funds by him which would permit the company to enter into appropriate financial arrangements with its creditors, and providing, further, for a reorganization and recapitalization of the company under which Sonnabend and his associates would assume the controlling interest therein. Said agreement and the plan for reorganization and recapitalization of the company were approved at a special meeting of stockholders held September 10, 1957. On October 2, 1957, an order confirming arrangement was entered by the Referee in Bankruptcy discharging respondent from the control and supervision of the court.

4. Following the signing of the order, the entire board of directors of the company and the chief executive officer appointed by the court resigned. A. M. Sonnabend became chairman of the board and treasurer of the company and various associates of

his became president and vice president, and members of the company's new board of directors. The controlling interest in the company passed to A. M. Sonnabend and his associates, none of whom were stockholders or had any connection with respondent prior to the filing of the petition for an arrangement in the District Court. None of the former officers and directors who held stock in the company prior to September 28, 1956, were retained by the company in any executive capacity. The former treasurer and secretary, neither of whom owned any stock in the company, remained in its employ, but neither had, nor now has, any part in the formulation of policy with respect to the sale or labeling of fur coats.

5. Following the assumption of control by the new officers and directors on October 2, 1957, the company instituted new procedures and controls in an effort to insure compliance with the law in the sale of fur products. A number of the store managers were changed and some of the stores were closed. A new promotion director was employed and advertisements prepared in connection with the sale of furs were required to be submitted to the fur buyer for his approval. Basic changes in the company's merchandising policy have been instituted pursuant to which respondent's stores will handle and sell merchandise at price lines above those previously handled.

CONTENTIONS AND CONCLUSIONS

Respondent contends that the complaint herein should be dismissed for the reason (a) that a new and different entity came into being on October 2, 1957, with the signing of the Order of Confirmation, which company had not engaged in the acts and practices charged in the complaint, and (b) even assuming the reorganized company cannot be considered to constitute a new entity, that the examiner and the Commission, in the exercise of their discretion, should order the complaint dismissed in view of the complete change of management and control and the steps taken to insure compliance with the law. Counsel supporting the complaint contends that the reorganization did not change the respondent into a new legal entity and that the complaint should not be dismissed since there is no assurance that the acts and practices charged will not be continued despite the establishment of new controls.

While it is true, as contended by counsel supporting the complaint, that respondent is still the same legal entity, it is also

clear that it has undergone so substantial a change in management, control and operations that little remains of the old corporation other than the legal shell. The question therefore arises whether the public interest requires a continuation of this proceeding against a respondent so substantially metamorphosed. Just as the Commission has not hesitated to disregard the fiction of the corporate entity in order to pursue those actually responsible for perpetrating a wrong against the public, so, conversely, there may be circumstances where the Commission may not feel it is in the public interest to take advantage of the technical continuation of a legal entity in which the guiding forces responsible for the violation of law have been completely displaced. See *The LeBlanc Corp.*, 50 FTC 1028; cf. *Seaboard Equipment Co.*, Doc. No. 6632, April 16, 1957.

While no actual evidence of the violations charged was adduced at the hearing, counsel supporting the complaint conceded that the bulk of the evidence which he would offer involved the period between September 1956 and October 1957, when the respondent was under the control of the court-appointed chief executive officer. He further conceded that none of the evidence which would be offered involved the period after October 2, 1957, when the new officers and directors took control of the corporate respondent under the reorganization.

In view of the fact that the charges of wrongdoing involve primarily a period during which the company was under the jurisdiction of the District Court and was controlled by the executive officer appointed by the court, and considering the complete change of management and control following the company's discharge from the supervision of the District Court and the changes in policy which have been undertaken since that date, and also the lack of any proposed evidence indicating a continuation of the alleged wrongful practices by the reorganized company, it is the opinion and finding of the undersigned that the public interest does not require a continuation of this proceeding. The situation here present can hardly be distinguished from *The LeBlanc Corp.*, *supra*, in which the Commission reached a similar conclusion. Accordingly,

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to take such further action as future facts may warrant.

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 14th day of August 1958, become the decision of the Commission.

IN THE MATTER OF

MORRIS LOBER & ASSOCIATES, INC., ET AL.

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

Docket 7003. Complaint, Dec. 19, 1957—Decision, Aug. 14, 1958

Order requiring two associated corporations in New York City to cease misrepresenting prices of the power lawn mowers they sold to dealers and others for resale to the public, by suggested list prices far in excess of the actual selling prices, disseminated in newspaper advertisements and reprints of customers' advertising, on distributors' price sheets furnished their retail customers, and on shipping cartons.

Mr. Eugene Kaplan for the Commission.
Segan & Culhane, of New York, N.Y., for respondents.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

On December 19, 1957, complaint herein was issued by the Commission charging respondents with violation of the Federal Trade Commission Act in the use of fictitious prices in the sale of its lawn mowers by furnishing retailers and resellers the means and instrumentalities whereby the retailers may mislead and deceive members of the purchasing public as to the regular and usual prices of their lawn mowers. Answer was filed and thereafter four hearings were held at which testimony and other evidence was received in support of the allegations of the complaint. Respondents presented no evidence by way of defense relying instead on a number of motions to strike or dismiss, all of which, save one, were denied. The record consists of 297 pages of transcript and 41 exhibits. At the close of the hearings counsel for the Commission submitted proposed findings of fact, although counsel for respondents did not. Upon the entire record, as so constituted, and from his observation of the witnesses, the undersigned makes the following findings of fact.

FINDINGS OF FACT

1. Respondents Morris Lober & Associates, Inc., and Handy Andy Products, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Delaware, with their principal office and place of business for-

merely at 730 Fifth Avenue, New York 19, N.Y., and currently at 7 Central Park West, New York, N.Y.

Respondents Morris Lober, Leona Lober and Marcia Wilner (subsequently married and presently Marcia Wilner Pava) are president and treasurer, vice president, and secretary, respectively, of both corporations. The individual respondent Morris Lober formulates, directs and solely controls the policies, acts and practices of the corporate respondents. His address is the same as that of the corporate respondents.

Leona Lober and Marcia Wilner Pava are vice president and secretary in name only and do not formulate, direct or control the policies, acts and practices of the corporate respondents.

2. Respondents are now, and have been for several years last past, engaged in the sale and distribution of power lawn mowers to various dealers and others for resale to the public.

In the regular and usual course and conduct of their business, respondents cause, and for the past several years have caused, their products, when sold, to be transported from places in the States of Ohio and Indiana, among others, to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act, among and between the various states of the United States and the District of Columbia. Respondents' volume of business in said power lawn mowers in said commerce is, and has been, substantial.

3. Respondents at all times mentioned herein have been in competition with other corporations, firms and individuals engaged in the sale of power mowers in commerce between and among the various States of the United States and the District of Columbia.

4. In the course and conduct of their business as outlined and for the purpose of inducing the purchase and promoting the sale of their power lawn mowers in commerce, respondents have placed in the hands of their purchasing retailer customers, who resell these power lawn mowers to the public, a means and instrumentality whereby such retailers or resellers may mislead and deceive members of the purchasing public as to the usual and regular retail prices of their lawn mowers.

5. These instrumentalities consist of newspaper advertise-

ments placed by the respondents in various newspapers for circulation and dissemination in the trade, all of which carry the manufacturer's list prices or suggested list prices. Typical of these is an advertisement placed by respondents in Retailing Daily, Thursday, October 18, 1956, as follows:

Big New '57 Models with 4-Cycle Clinton Engines. Recoil Starters.
19" Mower, 1¾ H.P. Suggested list $109.95 can retail with full markup for only $59.95.
21" Mower, 2½ H.P. Suggested list $139.95 can retail with full markup for only $69.95
23" Mower, 2¾ H.P. Suggested list $154.95 can retail with full markup for only $79.95.

6. Second among these instrumentalities disseminated by the respondents are glossy prints picturing respondents' power mower, each of which contains suggested list prices for the respective mowers far in excess of the actual selling price of these mowers.

7. Third among these instrumentalities disseminated by respondents are reprints of retail store advertisements placed in local newspapers by customers of respondents containing a suggested list price together with the actual selling price in each advertisement. These advertisements or copies thereof, and tear sheets, are apparently collected by respondents for dissemination to new customers indicating what respondents' other customers are doing in the sale of respondents' power lawn mowers.

8. Fourth among these instrumentalities are cartons in which respondents' power lawn mowers are shipped, imprinted with the model number or the cutting width, and respondents' corporate names together with the suggested list price, which again is far above that at which the mowers are in fact sold or to be sold.

9. The fifth means used by respondents to disseminate their fictitious prices was by way of distributor's price sheets and other literature each of which conveys the suggested list prices to potential resellers.

10. The testimony of several purchasers from respondents, who were officials of department stores, indicates that the individual respondent Morris Lober on sales visits discussed suggested list prices as well as actual resale prices indicating clearly knowledge of the use to which his suggested list prices were being put and for which they were designed to be used by him.

11. The testimony of the buyers who appeared as witnesses is unanimous, with the exception of one or two instances, that

respondents' power lawn mowers were never sold at or anywhere near these suggested list prices. These exceptions were new sample models which were sold at the full suggested price off the floor by happenstance.

12. In most instances, purchasers for resale of respondents' mowers used respondents' suggested list prices to compare with the price at which they actually resold the mowers. It matters not that several others shaved the suggested list price to a figure different and lower than that of respondents' suggested list price. The resultant figure was, nevertheless, far higher than the sale price advertised.

13. The testimony is also unanimous that the use of these fictitious suggested list prices disseminated by respondents was a potent sales aid in moving these power lawn mowers into the hands of the consumer. It is also clear from the record that the normal markup for power lawn mowers runs from 25 to 40 percent above purchase cost depending upon seasonal demand and that respondents were well aware of this. In any event respondents' suggested list price was far in excess not only of the actual consumer sales price, but also of this normal markup in the trade. Thus, a mower bought from respondents for $47 and resold for $77 at the start of the season, and at $68 as a close-out price at the end of the season, nevertheless, carried repondents' suggested list price of $154.95. This was typical of these price relationships throughout several years in a number of stores and localities.

14. Respondents' suggested list prices are fictitious and exaggerated constituting a powerful inducement and enticement to to the consumer public to buy at what they think therefrom is a great bargain, and the consumer public is as a result repeatedly deceived and mislead thereby.

15. Use by the respondents of the aforementioned false, misleading and deceptive representations and statements has had, and now has, 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 number of respondents' power mowers because of said erroneous and mistaken belief that they are acquiring such mowers at great bargains.

CONCLUSIONS

1. It is immaterial whether or not respondents' suggested list

prices represented, in comparison with other competitive lawn mowers, the value or true value of respondents' lawn mowers. (*Ma-Ro Hosiery Co., Inc.*, Docket No. 6436.)

2. It is likewise immaterial that respondents' purchasers were free to use or not use respondents' suggested list prices. (*Orloff Company, Inc.*, Docket No. 6184.)

3. This proceeding is in the public interest.

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

ORDER

It is ordered, That respondents Morris Lober & Associates, Inc., Handy Andy Products, Inc., corporations, and Morris Lober, individually and as an officer of said corporations, and respondents' agents, representatives, employees, successors and assigns, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of power mowers, or other merchandise 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 regular and usual retail prices of their power mowers, or other merchandise, when such amounts are in excess of the prices at which such products are regularly and usually sold at retail.

2. Putting any plan into operation whereby retailers or others may misrepresent the regular and usual retail prices of merchandise.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to Leona Lober and Marcia Wilner Pava individually and as officers of the corporate respondents.

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 14th day of August 1958, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents Morris Lober & Associates, Inc., and Handy Andy Products, Inc., corporations, and Morris Lober, individually and as officer of said corporations, 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

GERSHCOW FUR COMPANY ET AL.

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

Docket 7047. Complaint, Jan. 21, 1958—Decision, Aug. 14, 1958

Consent order requiring a furrier in St. Paul, Minn., to cease violating the Fur Products Labeling Act by failing to comply with the labeling and invoicing requirements; by advertising in newspapers which failed to disclose the names of animals producing certain furs, the country of origin of imported furs, or that some products contained artificially colored or cheap fur, and which named animals other than those producing certain furs; and by failing to maintain adequate records as a basis for pricing claims in advertising.

Mr. William A. Somers for the Commission.

Milton Gray, Esq., for *Gray & Gray*, of St. Paul, Minn., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on January 21, 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 June 17, 1958, 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 June 9, 1958, 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 Gershcow Fur Company is a corporation, existing and doing business under and by virtue of the laws of the

State of Minnesota. Respondent Joseph Gershcow is an individual and officer of the corporate respondent. Said corporate and individual respondent have their office and principal place of business located at 26 East Sixth Street, St. Paul, Minn.

2. Pursuant to the provisions of the Fur Products Labeling Act and the Federal Trade Commission Act, the Federal Trade Commission, on January 21, 1958, issued its complaint in this proceeding against the respondents and a true copy was thereafter duly served on the respondents.

3. The 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.

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

5. The 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 the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

6. 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.

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

8. 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.

9. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to the 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