IN THE MATTER OF

JAMES E. TRUE ET AL. TRADING AS TIMED ENERGY

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

Docket 7123. Complaint, Apr. 16, 1958—Decision, Sept. 9, 1958

Consent order requiring distributors in New York City of a vitamin and mineral preparation designated "Vita-Timed Capsules" to cease representing falsely in advertisements in newspapers, circulars, etc., that vitamins purchased in drugstores frequently were stale and therefore had lost potency; that use of their capsules would contribute to perfect health and safeguard against a variety of serious degenerative diseases; that some vitamin products were coated with insoluble substances and would pass through the system without releasing the contents; that the "Timed-Release" feature of "Vita-Timed Capsules" made them more effective nutritionally than competitive products; and that there was no Federal law preventing sellers from making unjustified claims for excessive dosages of vitamins and minerals or insuring the effectiveness or potency of any preparation.

Mr. Ames W. Williams for the Commission.

Bass & Friend, by *Mr. Solomon H. Friend,* of New York, N.Y., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with violating the provisions of the Federal Trade Commission Act by disseminating false advertisements of their vitamin and mineral preparation, designed as "Vita-Timed Capsules."

After the issuance of the complaint, respondents, their counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the director and an assistant director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement identifies Respondents James E. True, Charles H. Ruby, Patricia M. Gallehr and Leon Weiss as copartners trading as Timed Energy, with their office and principal place of business located at 419 Fourth Avenue, New York, N.Y.

The agreement provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint,

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

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

The order agreed upon fully disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Federal Trade Commission Act. Accordingly, the hearing examiner finds this proceeding to be in the public interest, and accepts the agreement containing consent order to cease and desist as part of the record upon which this decision is based. Therefore,

It is ordered, That the respondents James E. True, Charles H. Ruby, Patricia M. Gallehr, and Leon Weiss, copartners, trading under the name of Timed Energy, or any other name or names, their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the preparation, Vita-Timed Capsules, or any other preparation of similar composition or possessing substantially similar properties, do forthwith cease and desist from:

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

(a) That gelatine coated vitamin products or vitamin products in sealed capsules lose their potency because of shelf age;

(b) That the use of Vita-Timed Capsules will contribute to health unless expressly and clearly limited to those cases in which ill health is due to a deficiency of one or more of the vitamins and minerals supplied by said preparation;

(c) That the use of Vita-Timed Capsules will provide a safeguard against degenerative diseases such as arthritis, diabetes, gastro-intestinal disorders, high blood pressure, pernicious anemia or heart trouble;

(d) That coated vitamin and mineral products pass through the body without releasing their contents;

(e) That vitamin products release their contents so rapidly that sufficient vitamins are not absorbed by the body to provide the quantity needed at the time;

(f) That a vitamin product which releases its contents gradually provides any greater nutrition than other types of vitamin products;

(g) That there is no Federal law which prevents sellers of vitamin products from making unjustified claims for excessive doses of vitamins or minerals;

(h) That there is no Federal law which insures the dietary effectiveness of vitamins and minerals in a product;

2. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of respondents' preparation, in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in paragraph 1 hereof or which fails to observe the limitation set out in paragraph 1 (b) 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 9th day of September 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents James E. True, Charles H. Ruby, Patricia M. Gallehr, and Leon Weiss, copartners trading under the name of Timed Energy, shall, within sixth (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

STANLEY ELECTRONICS CORPORATION ET AL.

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

Docket 7078. Complaint, Mar. 3, 1958—Decision, Sept. 11, 1958

Consent order requiring sellers in Paterson, N.J., of radio and television tubes principally to consumers, including repairmen, to cease referring falsely to their products in advertising brochures and advertisements in magazines, etc., as "Brand new pre-tested tubes" when many of such tubes were used, pull-out, manufacturers' surplus, military surplus, and factory reject; and to cease selling such inferior products without disclosing their true nature on the tube, box, carton, invoices, or in advertising.

Mr. Kent P. Kratz for the Commission.

Brenman and Susser, by *Mr. Herbert Susser*, of Paterson, N.J., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with falsely and deceptively representing that the television and radio tubes which they sell and distribute in commerce are new, unused and of first quality, and with failure to disclose the true nature of their tubes, in violation of the provisions of the Federal Trade Commission Act.

After the issuance of the complaint, respondents, their counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the Director and an Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement identifies Respondent Stanley Electronics Corporation as a New Jersey corporation, with its office and principal place of business located at 840 Main Street, Paterson, N.J., and individual respondents Stanley Brown and Philip L. Bornstein as president and secretary, respectively, of the respondent corporation, whose affairs, activities and policies of business they control, their address being the same as that of said corporate respondent.

The agreement provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations;

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

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

The order agreed upon fully disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Federal Trade Commission Act. Accordingly, the Hearing Examiner finds this proceeding to be in the public interest, and accepts the agreement containing consent order to cease and desist as part of the record upon which this decision is based. Therefore,

It is ordered, That respondents Stanley Electronics Corporation, a corporation, and its officers, and Stanley Brown and Philip L. Bornstein, individually and as officers of Stanley Electronics Corporation, respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of television or radio tubes in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication that used, pull-out, factory rejects, military surplus, or manufacturers' surplus tubes are new or of first quality;

2. Selling, offering for sale, or distributing used, pull-out, factory rejects, military surplus or manufacturers' surplus radio or television tubes without clearly disclosing on the tube or the individual carton in which each tube is packaged when sold this way and in advertising, invoices, and shipping memoranda that

they are used, pull-out, factory rejects, military surplus or manufacturers' surplus tubes, as the case may be;

3. Selling, offering for sale, or distributing any radio or television tube which is not new or first quality without clearly and conspicuously disclosing that fact on the tube, or the individual carton in which each tube is packaged when sold this way, and in advertising, invoices and shipping memoranda.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 11th day of September 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Stanley Electronics Corporation, a corporation, and Stanley Brown and Philip L. Bornstein, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

MAGUIRE INDUSTRIES, INC.

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 7090. Complaint, Mar. 20, 1958—Decision, Sept. 11, 1958

Consent order requiring a manufacturer of electronic components, including coils and transformers, in Mt. Carmel, Ill., selling principally to jobbers or distributors of television and radio repair parts for resale to dealers, industrial accounts, and radio and television repair shops, to cease discriminating in price by giving a 10 percent rebate to customers whose purchases from it were equal to their total purchases from all sources in the previous twelve months, 7½ percent rebate if they equaled 75% of the total, and 5 percent if they equaled 50% of the total purchases; and to cease offering illegal inducements to customers to handle its said products exclusively by (a) utilizing aforesaid sales program, (b) granting a 10 percent rebate to customers who agreed to purchase solely from it, and (c) buying up their stocks of competitive products and selling them to competitors' distributors at less than cost or much less than the prices charged by competitors.

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), 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. Maguire Industries, 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 7th and Belmont Streets, Mt. Carmel, Ill.

PAR. 2. Respondent is principally engaged in the business of manufacturing, selling and distributing electronic components in-

cluding coils and transformers. Respondent's business in electronic components is conducted by and under the name of its wholly owned division, Thordarson-Meissner Manufacturing Division. Respondent's total sales in 1957 exceeded $2,400,000.

A principal market for respondent's products consists of jobbers or distributors of television and radio repair parts. Said jobbers or distributors (hereinafter referred to as distributors) resell electronic components purchased from respondent or from respondent's competitors to dealers, industrial accounts and radio-television repair shops.

Respondent manufactures and produces electronic components in its factory in Mt. Carmel, Ill., and sells and ships said components to its distributor customers located in every major trading area of every state of the United States. Respondent in the sale of said components has at all times relevant herein been and now is engaged in commerce among the several States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, the respondent has been and is now in substantial competition in the sale of electronic components with other sellers of such products. In many trading areas throughout the United States respondent sells its products to two or more electronic components distributors, who are in substantial competition each with the other in the resale of such products.

PAR. 4. In the course and conduct of its business in commerce, the 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 distributors at higher and less favorable prices than it sells them to other distributors who are competitively engaged each with the other in the resale of said products.

Respondent has effected said discriminations between and among its distributor customers in the manner and by the methods hereinafter described.

Respondent secures from each of its customers and from prospective customers, statements of total purchases of transformers and coils from all suppliers during the previous 12 months. Respondent then offers to extend and pay, and does in fact extend and pay, annual rebates to said customers on their purchases from respondent in the ensuing 12 months on the following basis:

10% rebate if purchases from respondent are equal to total purchases from all sources in the previous 12 months;

7½% rebate if purchases from respondent are equal to 75% of total purchases from all sources in the previous 12 months;

5% rebate if purchasers from respondent are equal to 50% of total purchases from all sources in the previous 12 months.

Through the operation of respondent's sales program as above described, those customers who do not purchase from respondent an amount equal to 50% of their previous year's total requirements of transformers and coils are charged higher and less favorable net prices than other competing customers who buy from respondent an amount sufficient to qualify for one of the rebates set out above. Those customers who purchase from respondent an amount equal to 50% of their previous year's total requirements but less than 75% are charged higher and less favorable prices than other competing customers who purchase from respondent an amount equal to 75% or 100% of their previous year's requirements. Those customers who purchase from respondent an amount equal to 75% of their previous year's total requirements but less than 100% are charged higher and less favorable prices than other competing customers who purchased from respondent an amount equal to 100% of their previous year's requirements.

PAR. 5. The effect of respondent's discriminations in price, as above alleged, may be substantially to lessen, injure, destroy or prevent competition between respondent and competing sellers of similar electronic components and between and among respondent's distributor customers.

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

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 this 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, respondent, as an inducement to customers and prospective customers who handle and stock the coils and transformers of respondent's competitors to discontinue handling and stocking such competitive products and thereafter to handle and stock respondent's products,

has engaged and is now engaging in the following methods and practices:

(a) Utilizing and placing into effect a sales program as described in paragraph 4 above, which grants progressively lower prices through annual rebates to customers who purchase progressively higher percentages of their total requirements of such products from respondent.

(b) Granting or paying a 10% rebate to those customers who agree to purchase their full requirements of coils and transformers from respondent and thereafter not to deal in the products of competitors of respondent.

(c) Offering or agreeing to take over and buy up and by taking over and buying up the stocks of competitive products in the hands of customers and prospective customers.

(d) Selling or offering to sell the products of competitors purchased from customers or prospective customers as alleged in the preceding paragraph, to the distributor customers of competitors at prices below the cost of such products to respondent or at prices substantially lower than the prices charged by respondent's competitors for such products.

PAR. 9. The aforesaid methods, acts, and practices, as alleged in paragraph 8, have had and now have the following capacity, tendency, purpose and effect:

(a) To induce distributor customers of competitors of respondent to discontinue purchasing, stocking and selling said competitors' coils and transformers and instead to purchase, stock and sell respondent's coils and transformers exclusively;

(b) To enable distributors who purchase coils and transformers from respondent which were originally manufactured and sold by competitors of respondent to sell such products at prices below those at which competitors' customers are able to sell the same products;

(c) Unreasonably to injure, hinder, hamper and restrain competing manufacturers and to demoralize their markets, in that by selling, or offering to sell at low prices and below cost, products originally manufactured by competitors, the respondent has severely damaged the reputation of such competitive products and created a condition whereby distributors who have been buying from competitors at regular prices, are forced either to discontinue such purchases, or, by continuing to purchase from competitors of respondent, to risk the necessity of meeting the low

resale price offered by other distributors who purchased identical products from respondent.

PAR. 10. The aforesaid methods, acts and practices of respondent, as herein alleged, have the tendency and capacity to unfairly divert, and have unfairly diverted, trade to respondent from its competitors, and, in consequence thereof, injury has been done, and is now being done, by respondent to competition in commerce among and between the various states of the United States and the District of Columbia, and said methods, acts and practices are all to the prejudice and injury of the public, and of respondent's competitors, and customers of respondent's 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. William W. Rogal supporting the complaint.

Mr. James W. Cassedy, of Washington, D.C., for respondent.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on March 20, 1958, charging it with having violated Section 2(a) of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, by discriminating in price between competing customers and by offering customers and prospective customers certain illegal inducements to discontinue handling competitive products and to handle respondent's products. After being served with said complaint, respondent appeared by counsel and filed its answer thereto. Thereafter the parties entered into an agreement, dated July 10, 1958, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by respondent, by counsel for said respondent, and by counsel supporting the complaint, and approved by the director and assistant director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondent, pursuant to the aforesaid agreement, has admitted all the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such al-

legations. Said agreement further provides that respondent waives any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, and that said agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the compaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent Maguire Industries, 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 Seventh and Belmont Street, Mt. Carmel, Ill.

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

ORDER

It is ordered, That respondent Maguire Industries, Inc., a corporation, its officers, representatives, agents and employees, directly or by any corporate or other device, in or in connection with the sale, for replacement purposes of electronic components including transformers and coils, 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 products and supplies 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.

It is further ordered, That respondent Maguire Industries, Inc., a corporation, and its officers, representatives, agents, and employees, directly or by any corporate or other device in, or in connection with, the course and conduct of its business of selling electronic components, including transformers and coils, for replacement purposes, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(a) Granting or offering to grant a lower price, by means of a greater annual rebate or otherwise, to any customer for purchasing a greater percentage of its total requirements of any said product from respondent.

(b) Granting or offering to grant a lower price to any customer for agreeing to purchase all of its requirements of any said product from respondent.

(c) Purchasing from any customer or prospective customer said customer's stocks of competing electronic components including transformers and coils.

(d) Selling or offering to sell competitive electronic components, including transformers and coils, at prices lower than the prices charged by respondent's competitors for the same products or at prices below the cost of such products to the respondent.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 11th day of September 1958, 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

MOORE PRODUCTS CORP. ET AL.

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

Docket 7126. Complaint, Apr. 18, 1958—Decision, Sept. 11, 1958

Consent order requiring distributors in New York City to cease selling without disclosure of Japanese origin, expansion watchbands of base metals which they imported, colored gold by electrolytic process, and sold to jobbers and wholesalers under the trade name "Mor-Flex"; and to cease representing falsely that such products were "Gold Plated" and "Guaranteed."

Mr. Garland S. Ferguson for the Commission.
No appearance for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued April 18, 1958, charges the respondents Moore Products Corp., a corporation, located at 35 West 31st Street, New York, N.Y., and Joseph M. Moore and Ann Moore, individually and as officers of said corporation, located at the same address as the corporate respondent, with violation of the provisions of the Federal Trade Commission Act in the sale and distribution of expansion watchbands under the trade name "Mor-Flex."

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

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

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

By said agreement, the parties expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and

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

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

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

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

ORDER

It is ordered, That respondents Moore Products Corp., a corportion, and its officers, and Joseph M. Moore and Ann Moore, 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 and distribution of expansion watchbands or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale or selling any product made in Japan, or any other foreign country, without clearly disclosing the country of origin of said product.

2. Representing in any manner, directly or by implication, that a product, or any part thereof, is gold plated, unless the whole, or the part thereof, is mechanically plated with a substantial thickness of gold.

3. Representing, directly or by implication, that any product sold by respondents is guaranteed, unless the nature and extent

of such guarantee and the manner in which the guarantor will perform are clearly disclosed.

4. Representing, directly or by implication, that any product sold by respondents is guaranteed when a service charge is imposed, unless the amount thereof is clearly disclosed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 11th day of September 1958, 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

BROMFIELD APPAREL, INC., ET AL.

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

Docket 7143. Complaint, May 7, 1958—Decision, Sept. 11, 1958

Consent order requiring manufacturers in Boston, Mass., to cease violating the Wool Products Labeling Act by tagging as "100% Wool" ladies' car coats which contained substantial percentages of fibers other than wool, by failing to set forth separately on labels the fiber content of interlinings, failing to label wool products with their legal name or registration number, and failing in other respects to comply with the requirements of the Act.

Mr. Thomas A. Ziebarth for the Commission.
Respondents for themselves.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on May 7, 1958, charging respondents with violating the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, by misbranding their wool products, in some instances, by labeling or tagging as 100% wool, garments which contained substantial percentages of fibers other than wool; in other instances, by failing to attach labels as required; in others, by failing to show on the label the fiber content of interlinings used in their garments; and in still other instances, by failing to show on the label the legal name or registration number of the respondent corporation.

On July 11, 1958, respondents 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 respondent Bromfield Apparel, Inc., as a Massachusetts corporation with its office and principal place of business located at 75 Kneeland Street, Boston, Mass., and individual respondents Sam Broomfeld, Bernard H. Stone and Moses Bromfield as president, vice president and treasurer, respectively, of said corporate respondent, and having the same address as the corporate respondent.

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 or conclusions of law; and all the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. 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, 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 Bromfield Apparel, Inc., a corporation, and its officers, and Sam Broomfeld, Bernard H. Stone and Moses Bromfield, 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 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 coats or other wool products as such products are defined in, and subject to, said Wool Products Labeling Act, do forthwith cease and desist from:

A. Misbranding such products by:

(1) Falsely or deceptively stamping, tagging, labeling or other-

wise identifying such products as to the character or amount of the constituent fibers contained therein;

(2) Failing to securely affix to or place on each such product a stamp, tag, 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 percentage by weight of such fiber is five percentum or more and, (5) the aggregate of all other fibers;

b. The maximum percentage of the total weight of such wool product of any non-fibrous loading, filling or adulterating matter;

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

B. Failing to separately set forth on the required stamp, tag, label or other means of identification the character and amount of the constituent fibers contained in the interlining of such wool product;

C. Using trade names, trademarks or other names in lieu of or in substitution for the legal name or registered identification number required in paragraph A (2) (c), above.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 11th day of September 1958, become the decision of the Commission; and, accordingly,

It is ordered, That respondents Bromfield Apparel, Inc., a corporation, and Sam Broomfeld, Bernard H. Stone, and Moses Bromfield, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

GLASER & YOFFE, INC., ET AL.

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

Docket 7149. Complaint, May 14, 1958—Decision, Sept. 11, 1958

Consent order requiring manufacturers in Natick, Mass., to disclose the fiber content and manufacturer's identification number on labels attached to woolen waste products; to cease furnishing false guaranties that such wool products were not misbranded; and to cease misrepresenting the fiber content on invoices or shipping memoranda.

Mr. Kent P. Kratz supporting the complaint.
Mr. Eugene O'Dunne, Jr., of Washington, D.C., for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on May 14, 1958, charging them with having violated the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated under said Wool Products Labeling Act as set forth in said complaint. After being served with the complaint respondents entered into an agreement, dated July 11, 1958, containing a consent order to cease and desist, disposing of all the issues in this proceeding as to all respondents without hearing, which agreement has been duly approved by the assistant director and the director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with Section 3.25 of the Rules of Practice of the Commission.

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

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

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

1. Respondent Glaser & Yoffe, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Massachusetts with its office and principal place of business located at N. Main Street, Natick, Mass.

2. Individual respondents Eli Yoffe, Samuel Glaser, and Milton Linden are president, treasurer, and assistant treasurer-clerk, respectively, of respondent corporation. They are active in the management of said corporation and are responsible for its acts, practices and policies. The address of the individual respondents is the same as that of the corporate respondent.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act and under the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder. This proceeding is in the public interest.

ORDER

It is ordered, That respondent Glaser & Yoffe, Inc., a corporation, and its officers, and Eli Yoffe, Samuel Glaser, and Milton Linden, individually and as officers of said corporation, and re-

spondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of wool waste 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:

A. Misbranding such products by:

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

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

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

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

B. Furnishing false guaranties that wool waste or other wool products (as "wool products" are defined in the Wool Products Labeling Act) are not misbranded under the provisions of the Wool Products Labeling Act, when there is reason to believe that the wool products so guaranteed may be introduced, sold, transported or distributed in commerce.

It is further ordered, That respondents Glaser & Yoffe, Inc., a corporation, and its officers, and Eli Yoffe, Samuel Glaser and Milton Linden, 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 or distribution of wool waste or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did, on the 11th day of September 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

CABLE RAINCOAT COMPANY ET AL.

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

Docket 7163. Complaint, May 28, 1958—Decision, Sept. 11, 1958

Consent order requiring manufacturers in Boston, Mass., to cease violating the Wool Products Labeling Act by tagging as "100% Reprocessed Wool LINING" misses' car coats, linings of which contained a substantial percentage of fibers other than wool; and by failing in other respects to comply with the requirements of the Act.

Mr. Alvin D. Edelson supporting the complaint.
Respondents, *pro se.*

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on May 28, 1958, charging them with having violated the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act, through the misbranding of certain wool products and falsely identifying the constituent fibers thereof on price lists. After being served with said complaint, respondents appeared and entered into an agreement containing consent order to cease and desist, dated July 11, 1958, purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by all respondents and by counsel supporting the complaint, and approved by the director and assistant director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint, and have agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance

with said agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the aforesaid 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.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order.

1. Respondent, the Cable Raincoat Company, is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its principal place of business located at 68-72 Northampton, Boston, Mass.

The individual respondents Robert Cable and Irving Perlmutter are officers of the corporate respondent. The individual respondent Austin L. Cable is a clerk of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Wool Products Labeling Act of 1939 and the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That the respondent, Cable Raincoat Company, a corporation, and its officers, and Robert P. Cable and Irving Perlmutter, individually and as officers of said corporation, and Austin L. Cable, individually, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction, into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in

the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939 of "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 contained 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 percentage by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers;

(b) The maximum percentage of the total weight of such wool products, 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 for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

It is further ordered, That respondent Cable Raincoat Company, a corporation, and its officers, and Robert P. Cable and Irving Perlmutter, individually and as officers of said corporation, and Austin L. Cable, individually, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the sale of rainwear, or any other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from setting out on price lists, or any other medium, false information as to the fiber content of their said rainwear or other merchandise.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

Decision

IN THE MATTER OF

EDWARD H. BAKER

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

Docket 7174. Complaint, June 13, 1958—Decision, Sept. 11, 1958

Consent order requiring manufacturers in Springfield, Vt., to disclose the fiber content and manufacturer's identification number on labels attached to woolen waste products, and to cease misrepresenting the fiber content on invoices or shipping memoranda.

Mr. Alvin D. Edelson for the Commission.
No appearance for respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondent with misbranding certain wool products in violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act. An agreement has now been entered into by 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 he 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 Edward H. Baker is an individual trading and doing business as Edward H. Baker with his office and principal place of business located at 99-A Summer Street, Springfield, Vt.

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 the respondent, Edward H. Baker, trading as Edward H. Baker or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, of wool products, 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 constitutent fibers contained 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 percentage by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers;

(b) The maximum percentage of the total weight of such wool products, of any non-fibrous loading, filling, or adulterating matter;

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution or delivery

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

It is further ordered, That respondent, Edward H. Baker, trading as Edward H. Baker, or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the sale of wool products, or any other textile fabrics in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting on invoices, or through other means, the character of the constituent fibers of said wool products, or other textile products.

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 did, on the 11th day of September 1958, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

R. C. HARVEY COMPANY ET AL.

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

Docket 7227. Complaint, Aug. 7, 1958—Decision, Sept. 11, 1958

Consent order requiring manufacturers in Waltham, Mass., to disclose the fiber content and manufacturer's identification number on labels attached to woolen waste products, and to cease misrepresenting the fiber content on invoices or shipping memoranda.

Mr. Charles W. O'Connell for the Commission.

No appearance for the respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with misbranding certain wool products in violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

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

1. Respondent R. C. Harvey Company is a corporation organized and existing under the laws of the Commonwealth of Massachusetts. Respondents Ralph C. Harvey and Lawrence K. Zelkind are president and treasurer, respectively, of said corporate respondent. The office and place of business of all respondents is located at 144 Moody Street, Waltham, Mass.

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 R. C. Harvey Company, a corporation, and its officers, and Ralph C. Harvey and Lawrence K. Zelkind, 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 offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, of woolen wastes or other "wool products" as such products are defined in, and subject to, the Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by:

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

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

(a) The percentage of the total fiber weight of such wool products 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 percentage by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers;

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

(c) The name or registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering

for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

It is further ordered, That respondents R. C. Harvey Company, a corporation, and its officers, and Ralph C. Harvey and Lawrence K. Zelkind, 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, or distribution of woolen wastes or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or amount of the constituent fibers contained in such products, on invoices or shipping memoranda applicable thereto, or in any other manner.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did, on the 11th day of September 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents R. C. Harvey Company, a corporation, and Ralph C. Harvey and Lawrence K. Zelkind, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

S. FREEDMAN & SON, INC., ET AL.

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

Docket 7228. Complaint, Aug. 7, 1958—Decision Sept. 11, 1958

Consent order requiring manufacturers in Worcester, Mass., to disclose the fiber content and manufacturer's identification number on labels attached to woolen waste products, and to cease misrepresenting the fiber content on invoices or shipping memoranda.

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

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with misbranding certain wool products in violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an

adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent S. Freedman & Son, Inc., is a corporation organized and existing under the laws of the Commonwealth of Massachusetts. Respondents Milton Freedman, Samuel Freedman and Saul Freedman are president, treasurer and vice president, respectively, of said corporate respondent. The office and principal place of business of said respondents is located at 100 Beacon Street, Worcester, Mass.

Individual respondents Milton Freedman, Samuel Freedman and Saul Freedman are co-partners doing business under the firm name of Worcester Yarn Company, with their principal place of business located at 100 Beacon Street, Worcester, Mass.

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

ORDER

It is ordered, That the respondents S. Freedman & Son, Inc., a corporation, its officers, and Milton Freedman, Samuel Freedman and Saul Freedman, as officers of said corporation, individually and as co-partners doing business under the firm name and style of Worcester Yarn Company, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of woolen wastes 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 contained or 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 per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3)

reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five per centum 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 for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

It is further ordered, That respondents S. Freedman & Son, Inc., a corporation, and its officers, Milton Freedman, Samuel Freedman and Saul Freedman, as officers of said corporation, individually and as co-partners doing business under the firm name and style of Worcester Yarn Company, and respondents' representatives, agents or employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of woolen wastes, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the constituent fibers contained in such products, on invoices or other shipping memoranda applicable thereto, or in any other manner.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did, on the 11th day of September 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents S. Freedman & Son, Inc., a corporation, Milton Freedman, Samuel Freedman, and Saul Freedman, as officers of said corporation, individually and as co-partners, doing business under the firm name of Worcester Yarn Company, 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

KRINTZMAN DUSTING MILLS CO., INC., ET AL.

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

Docket 7229. Complaint, Aug. 7, 1958—Decision, Sept. 11, 1958

Consent order requiring manufacturers in North Oxford, Mass., to disclose the fiber content and manufacturer's identification number on labels attached to woolen waste products, and to cease misrepresenting the fiber content on invoices or shipping memoranda.

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

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with misbranding certain wool products in violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

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

1. Respondent Krintzman Dusting Mills Co., Inc., is a corporation organized and existing under the laws of the Commonwealth of Massachusetts. Respondents Samuel Krintzman, Edward Krintzman, and Abraham Krintzman are president, treasurer and clerk, respectively, of said corporate respondent. The office and place of business of all respondents is located in North Oxford, Mass.

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 Krintzman Dusting Mills Co., Inc., a corporation, and its officers, and Samuel Krintzman, Edward Krintzman, and Abraham Krintzman, 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 offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, of woolen wastes or other "wool products" as such products are defined in, and subject to, the Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by:

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

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

(b) The maximum percentage of the total weight of such wool products of any non-fibrous loading, filling or adulterating matter;

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution or delivery

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

It is further ordered, That respondents Krintzman Dusting Mills Co., Inc., a corporation, and its officers, and Samuel Krintzman, Edward Krintzman and Abraham Krintzman, 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, or distribution of woolen wastes or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or amount of the constituent fibers contained in such products, on invoices and shipping memoranda applicable thereto, or in any other manner.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did on the 11th day of September 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Krintzman Dusting Mills Co., Inc., a corporation, and Samuel Krintzman, Edward Krintzman, and Abraham Krintzman, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

THE B. P. COOLEY COMPANY ET AL.

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

Docket 7230. Complaint, Aug. 7, 1958—Decision, Sept. 11, 1958

Consent order requiring manufacturers in Stafford Springs, Conn., to disclose the fiber content and manufacturer's identification number on labels attached to woolen waste products, and to cease misrepresenting the fiber content on invoices or shipping memoranda.

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

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with misbranding certain wool products in violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

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

1. Respondent The B. P. Cooley Company is a corporation organized, existing and doing business under the laws of the State of Connecticut. Respondents W. Craig Leuthner and Frank Leuthner are president-secretary and treasurer, respectively, of said corporate respondent. The office and place of business of all the respondents is in Stafford Springs, Conn.

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

ORDER

It is ordered, That the respondents The B. P. Cooley Company, a corporation, and its officers, and W. Craig Leuthner and Frank Leuthner, 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 offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, of woolen wastes or other wool products as "wool products" are defined in, and subject to, the Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by:

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

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

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

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

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons

engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

It is further ordered, That the respondents The B. P. Cooley Company, a corporation, and its officers, and W. Craig Leuthner and Frank Leuthner, 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, or distribution of woolen wastes or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or amount of the constituent fibers contained in such products, on invoices or shipping memoranda applicable thereto, or in any other manner.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did on the 11th day of September 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents The B. P. Cooley Company, a corporation, and W. Craig Leuthner and Frank Leuthner, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

A. CAPLAN DUSTING MILL, INC., ET AL.

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

Docket 7231. Complaint, Aug. 7, 1958—Decision, Sept. 11, 1958

Consent order requiring manufacturers in Newport, N.H., to disclose the fiber content and manufacturer's identification number on labels attached to woolen waste products, and to cease misrepresenting the fiber content on invoices or shipping memoranda.

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

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with misbranding certain wool products in violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

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

1. Respondent A. Caplan Dusting Mill, Inc., is a corporation organized and existing under the laws of the State of New Hampshire. Respondents Abe Caplan and Erwin Caplan (erroneously referred to in the complaint as Irving Caplan) are president-treasurer and secretary, respectively, of the corporate respondent. The office and place of business of all respondents is located at 169 Sunapee Street, Newport, N.H.

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 A. Caplan Dusting Mill, Inc., a corporation, and its officers, and Abe Caplan and Erwin Caplan, 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 offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, of woolen wastes or other "wool products" as such products are defined in, and subject to, the Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by:

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

(a) The percentage of the total fiber weight of such wool products 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 percentage by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers;

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

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution or delivery

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

It is further ordered, That respondents A. Caplan Dusting Mill, Inc., a corporation, and its officers, and Abe Caplan and Erwin Caplan, 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, or distribution of woolen wastes or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or the amount of the constituent fibers contained in such products, on invoices or shipping memoranda applicable thereto, or in any other manner.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did, on the 11th day of September 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents A. Caplan Dusting Mill, Inc., a corporation, and Abe Caplan, and Erwin Caplan (erroneously referred to in the complaint as Irvin Caplan), individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

JOHN T. LODGE & COMPANY, INC., ET AL.

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

Docket 7232. Complaint, Aug. 7, 1958—Decision, Sept. 11, 1958

Consent order requiring manufacturers in Watertown, Mass., to disclose the fiber content and manufacturer's identification number on labels attached to woolen waste products, and to cease misrepresenting the fiber content on invoices or shipping memoranda.

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

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with misbranding certain wool products in violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

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

1. Respondent John T. Lodge & Company, Inc., is a corporation organized and existing under the laws of the Commonwealth of Massachusetts. Respondent James J. Dugan is president and treasurer of said corporate respondent. The office and place of business of all respondents is located at 478 Pleasant Street, Watertown, Mass.

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 John T. Lodge & Company, Inc., a corporation, and its officers, and James J. Dugan, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, of woolen wastes or other "wool products" as such products are defined in, and subject to, the Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by:

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

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

(a) The percentage of the total fiber weight of such wool products 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 percentage by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers;

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

(c) The name or registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the of-

fering for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

It is further ordered, That respondents John T. Lodge & Company, Inc., a corporation, and its officers, and James J. Dugan, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of woolen wastes or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or amount of the constituent fibers contained in such products, on invoices or shipping memoranda applicable thereto, or any other manner.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did on the 11th day of September 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents John T. Lodge & Company, Inc., a corporation, and James J. Dugan, individually and as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

J. EISENBERG, INC., ET AL.

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

Docket 7233. Complaint, Aug. 7, 1958—Decision, Sept. 11, 1958

Consent order requiring manufacturers in New York City to disclose on labels attached to woolen products the fiber content, and to cease misrepresenting the fiber content on labels, invoices, or shipping memoreanda.

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

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with misbranding certain wool products in violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

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

1. Respondent J. Eisenberg, Inc., is a corporation organized and existing under the laws of the State of New York. Respondents Jacob Eisenberg and Gussie Eisenberg are president and treasurer and vice president and secretary, respectively, of the corporate respondent. The office and place of business of all respondents is located at 173–175 Hudson Street, New York 13, 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 respondents J. Eisenberg, Inc., a corporation, and its officers, and Jacob Eisenberg and Gussie Eisenberg, 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 offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, of woolen wastes or other wool products as "wool products" are defined in, and subject to, the Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by:

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

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

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

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

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

It is further ordered, That J. Eisenberg, Inc., a corporation, and its officers, and Jacob Eisenberg and Gussie Eisenberg, 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, or distribution of woolen wastes or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or amount of the constituent fibers contained in such products, on invoices or shipping memoranda applicable thereto, or in any other manner.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did on the 11th day of September 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents J. Eisenberg, Inc., a corporation, and Jacob Eisenberg, and Gussie Eisenberg, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

M. SALTER & SONS CO. ET AL.

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

Docket 7234. Complaint, Aug. 7, 1958—Decision, Sept. 11, 1958

Consent order requiring manufacturers in Saugus, Mass., to disclose on labels attached to woolen products the fiber content, and to cease misrepresenting the fiber content on labels, invoices, or shipping memoranda.

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

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with misbranding certain wool products in violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

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

1. Respondent M. Salter & Sons Co. is a corporation organized and existing under the laws of the Commonwealth of Massachusetts. Respondent Paul Salter is president and treasurer of said corporate respondent. The office and principal place of business of all respondents is located at Central and Elm Streets, Saugus, Mass.

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 M. Salter & Sons Co., a corporation, and its officers, and Paul Salter, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or the 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 woolen wastes or other "wool products" as such products are defined in, and subject to, the Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by:

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

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

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

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

(c) The name or registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering

for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

It is further ordered, That M. Salter & Sons Co., a corporation, and its officers, and Paul Salter, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of woolen wastes or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Misrepresenting the character or amount of the constituent fibers contained in such products, on invoices or shipping memoranda applicable thereto, or in any other manner.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did, on the 11th day of September 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents M. Salter & Sons Co., a corporation, and Paul Salter, individually and as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

LIGGETT & MYERS TOBACCO COMPANY

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

Docket 6077. Complaint, Jan. 15, 1953—Decision, Sept. 17, 1958

Order requiring a manufacturer of tobacco products to cease representing falsely in advertisements in newspapers and periodicals and by radio and television that its Chesterfield cigarettes or the smoke therefrom would have no adverse effect on the nose, throat or accessory organs, were milder or less irritating than other brands, and would soothe and relax the nerves.

Mr. Frederick McManus for the Commission.

Simpson, Thacher & Bartlett, of New York, N.Y., by *Mr. Whitney North Seymour* and *Mr. Armand F. Macmanus,* for respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

1. The complaint in this case charges the respondent with the making of certain misrepresentations in advertising its "Chesterfield" cigarettes. A substantial volume of evidence has been received both in support of and in opposition to the complaint. Upon the conclusion of the case in chief in support of the complaint, respondent moved for dismissal of all of the charges in the complaint except one, respondent's position being that a prima facie case in support of those charges had not been established. On July 8, 1954, the hearing examiner issued an initial decision granting the motion and dismission the charges in question. Upon appeal to the Commission by counsel supporting the complaint such decision was, on March 28, 1955, reversed by the Commission, except as to one issue, and vacated, the case being remanded to the hearing examiner for further proceedings. Since that time reception of respondent's evidence has been concluded, and proposed findings and conclusions have been submitted by both parties. The case is now before the hearing examiner for final consideration. To the extent that the findings and conclusions proposed by the parties appear herein, such proposals have been adopted; otherwise, they have been rejected.

2. Respondent Liggett & Myers Tobacco Company is a corporation organized and doing business under the laws of the State of New Jersey. It maintains an executive office at 630

Fifth Avenue, New York, N.Y., and has other offices and places of business at various other locations in the United States. The company is engaged in the manufacture and sale of tobacco products, including Chesterfield cigarettes. In the sale of its products respondent is engaged in interstate commerce, such products being sold and shipped by it from its various places of business to purchasers located in other states throughout the United States. Respondent is in competition in interstate commerce with numerous other sellers of tobacco products.

3. Respondent advertises its Chesterfield cigarettes throughout the United States, the advertisements being disseminated by means of newspapers and magazines and radio and television broadcasts. The complaint (paragraph 6) charges that in certain of its advertising respondent has represented, contrary to fact, (1) "that the smoke from Chesterfield cigarettes will have no adverse effect upon the nose and throat and accessory organs, including the eustachian tubes, sinuses, larynx and trachea"; (2) "that the smoke from Chesterfield cigarettes is milder and cooler and consequently less irritating to the user than all other cigarettes"; (3) "that the smoke from Chesterfield cigarettes will soothe and relax the nerves of smokers, irrespective of the physical condition or the smoking habits of smokers"; and (4) "that the smoke from Chesterfield cigarettes does not leave an unpleasant after-taste in the mouth."

The "No Adverse Effect" Issue

4. The advertisement which forms the basis for the first of these charges (that respondent has represented that Chesterfield cigarettes have no adverse effect upon the nose, throat and accessory organs) reads as follows (omitting certain material not involved in the present issue) :

N O S E , T H R O A T ,
AND ACCESSORY ORGANS NOT ADVERSELY
AFFECTED BY SMOKING CHESTERFIELDS
FIRST SUCH REPORT EVER PUBLISHED
ABOUT ANY CIGARETTE

A responsible consulting organization has reported the results of a continuing study by a competent medical specialist and his staff on the effects of smoking Chesterfield cigarettes.

A group of people from various walks of life was organized to smoke only Chesterfields. For six months this group of men and women smoked their normal amount of Chesterfields—10 to 40 a day. 45% of the group have smoked Chesterfields continually from one to 30 years for an average of 10 years each.

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effect upon the nose, throat, and accessory organs such as the eustachian tubes, sinuses, larynx, and trachea of many smokers in that it will cause the nose, throat, and such accessory organs to become irritated."

Testifying in support of this statement were five witnesses: an expert in the field of physiology and pharmacology, two practicing otolaryngologists, a physician who specializes in allergies, and an anesthesiologist. All agreed that cigarette smoke is an irritant and that it affects the mucous membrane of the nose, throat, and accessory organs, its effect being to cause irritation in such organs. In the case of four of the witnesses, their testimony was based not only upon general knowledge but upon wide clinical experience.

7. Respondent's principal defense on this issue revolves around the work of the consulting organization mentioned above. In December 1951, at the instance of respondent, Arthur D. Little, Inc., of Cambridge, Mass., an engineering, research and consulting organization, undertook an experiment for the purpose of determining the effect of Chesterfield cigarettes upon the nose, throat, and accessory organs. Arthur D. Little, Inc., is a large and well-known organization with a staff of some 850 persons, half of whom are professional scientists. More than 150 of the scientists have Doctor or Master degrees. For the test a panel or group of thirty of its own employees were chosen—twenty men and ten women, this being the approximate sex ratio of smokers in the United States. The panel appears to have represented a fair cross-section of the company's personnel, including secretaries, writers, administrative personnel, engineers, a librarian, a machine tool operator and maintenance personnel. All were cigarette smokers who smoked from ten to forty cigarettes per day, which was regarded as the range of the average smoker. Some 40 to 45 percent of the group were already users of Chesterfields.

8. As a part of the experiment, Arthur D. Little, Inc., engaged the services of an otolaryngologist of Cambridge—Dr. Walter J. E. Carroll. In January 1952, at the beginning of the test period, each member of the group was examined by Dr. Carroll, particularly as to the condition of the nose, throat, and accessory organs. Thereafter, each member was examined by him every two months until three examinations had been made in addition to the initial examination. During this period of approximately six months, the members of the group were supplied with Chester-

field cigarettes without charge by Arthur D. Little, Inc., and it was understood that they were to smoke Chesterfields exclusively. At the end of the six months' period, Dr. Carroll addressed to Arthur D. Little, Inc., a letter reading as follows:

> I have examined for the fourth time since January 1952, the ears, nose, and throat of a group of subjects selected by Dr. M. G. Gray of your staff, who were participating in a program in which they smoked cigarettes provided by you. The interval between each examination was approximately two months; the most recent examination in August, 1952, was made after six months' of smoking the cigarettes provided. Bacterial culture of the nasopharynx was done at the time of each each examination and X-ray examinations of the chest and sinuses were made at the time of the first examination and at three and five months thereafter.
>
> In these persons, no significant structural or functional changes in the organs and tissues which were examined were observed which could be directly attributed to smoking the cigarettes provided during the six months' period of the program which had elapsed. Those seen, notably acute upper respiratory infections, were consistent with the season of the year when examinations were made, and have no relation to the nature of the cigarettes smoked.
>
> The X-ray examinations did not show any pathological changes which could be ascribed to participation in the panel.
>
> It is my opinion that the ears, nose, throat and accessory organs of all participating subjects examined by me were not adversely affected in the six months' period by smoking the cigarettes provided. (Respondent Exhibit 9)

Upon receipt of this information from Arthur D. Little, Inc., respondent proceeded to prepare and publish the "no adverse effect" advertisement quoted above, after first submitting the advertising copy to Arthur D. Little, Inc., to make sure that there was nothing in the copy which in the opinion of that organization was inconsistent with the results of the experiment.

9. While there is no reason to question the good faith of respondent or the Arthur D. Little, Inc., organization or Dr. Carroll, it is questionable whether this experiment can properly be accepted as a scientific test in the real sense. This is so primarily because of the absence of any definite information as to the smoking habits of the thirty individuals during the period in question. As noted above, Chesterfield cigarettes were supplied to them free and they were expected to use them exclusive of any other cigarette, but there is no substantial evidence that they did so. Nor is there evidence as to the number of cigarettes per day smoked by the individuals. All that is known is that the individuals were selected because it was understood that the usual number of cigarettes smoked by them ranged from ten to forty

per day. Moreover, the individuals were examined only at intervals of two months and there is an absence of any real information as to their condition between the examinations.

10. Actually, the study did not end with the close of the six months' period; it was extended some eighteen months thereafter, making a total period of approximately two years. Dr. Carroll testified that examinations of the individuals during the period subsequent to the first six months disclosed nothing inconsistent with the conclusions expressed in his letter. Records on all of the members of the panel were maintained by Dr. Carroll, and in the case of four individuals there are references to smoking, all of the references occurring subsequent to the original six months' period. These entries in the records are as follows (each entry refers to a different individual):

An entry on April 8, 1954, reads:

> Patient has been well since last examination, but complains of considerable p.n. discharge and cough. The cough appears to be made worse by the amount of p.n. discharge. Patient is unable to tell whether smoking makes it any worse, but feels that it does have some effect on it. He notices the coughing most at night on going to bed. (Commission Exhibit 6E)

An entry on June 16, 1953, reads:

> Patient states that he has spasms of coughing at times while smoking. It lasts but a few seconds and is not regular in occurrence. (Commission Exhibit 7F)

An entry on January 28, 1954, reads:

> Patient complains of considerable coughing which seems to be aggravated by smoking. (Commission Exhibit 8E)

An entry on August 6, 1953, reads:

> Patient has some cough at times after smoking a great deal. (Commission Exhibit 9E)

With respect to these instances, Dr. Carroll testified in substance that in his opinion they were without significance, that the conditions referred to were transitory and were, in fact, not due to smoking. He did not think the instances were inconsistent with the opinion expressed in his letter.

11. There is also testimony on behalf of respondent from two physicians who are in charge of the health and physical fitness programs of two large industrial organizations—Sperry Gyroscope Company of Great Neck, N.Y., which is a subsidiary of the Sperry Rand Corporation, and Sylvania Electric Products Corporation of New York, each of which has many thousands of

persons in its employ in various plants and offices. The companies maintain extensive health departments comprising numerous physicians, technicians, nurses, etc. All applicants for employment are examined and there are also periodic examinations of all employees. The health facilities of the companies are always available to employees for treatment and consultation, and during the last several years each of the two witnesses has personally examined thousands of individuals and supervised the examination of many others. The testimony of the witnesses in substance is that of the thousands of employees who have come under their observation only a small percentage, probably 3 to 5 percent, had irritation of the ear, nose or throat, and that in the great majority of instances the irritation was due to infection rather than smoking. Rarely have they found cases of irritation which in their opinion could properly be attributed to smoking.

The testimony of another witness, who is also a physician connected with the Sperry Gyroscope Company, is to the same effect.

12. The evidence on the present issue appears clearly to preponderate in favor of the Government. In this connection it is highly significant that, without exception, all of the physicians and scientists testifying in the proceeding, whether for the Government or for respondent, appear to recognize that cigarette smoke is an irritant and is capable of affecting adversely the nose, throat and accessory organs. Apparently none of the witnesses entertains the view that cigarette smoke is harmless—that an individual may smoke with impunity. The witnesses differ as to the extent and gravity of the danger, but all recognize that at least some danger is present.

13. The fault with the advertisement in question lies in its absoluteness—in its representation that the smoking of Chesterfields will have *no* adverse effect on the nose, throat and accessory organs. Clearly this goes too far. Whatever may be the exact extent of the danger, the record establishes beyond question that the smoking of Chesterfields or any other cigarette will have, or certainly is likely to have, some adverse effect on the organs in question. It is therefore concluded that the advertisement is erroneous and misleading; that this charge in the complaint has been sustained.

"Milder" and "Cooler."

14. The complaint (paragraph 6) charges that through the use of such expressions as "Buy Chesterfield - Much Milder,"

"Always Milder," and "Cooler Smoking," respondent represents "that the smoke from Chesterfield cigarettes is milder and cooler and consequently less irritating to the user than all other cigarettes." And in paragraph 7 of the complaint it is charged that these representations are false and misleading because "the smoke from Chesterfield cigarettes is not milder, cooler or less irritating than that of other leading brands of cigarettes." In his decision of July 8, 1954, the hearing examiner held that there was no substantial evidence on the issue as to coolness, and the dismissal of that charge was affirmed by the Commission. That issue may therefore be disregarded, leaving only the issue as to mildness.

15. Respondent objects to the use of the word "all" in the interpretation of its advertising. As noted above, the complaint charges that respondent's advertising constitutes a representation that Chesterfield cigarettes are milder "than *all* other cigarettes" (emphasis supplied). Respondent points out that the word used by it is "milder," not "mildest," and insists that the representation is true if Chesterfield cigarettes are milder than some cigarettes, or, in fact, any one cigarette. A reasonable interpretation of the advertising would seem to lie between the two extremes. The advertising cannot, in the hearing examiner's opinion, reasonably be construed as representing that Chesterfield cigarettes are milder than *all* other cigarettes; it does, however, appear to represent that Chesterfield cigarettes are milder than cigarettes generally, or, than most other cigarettes.

16. If this is the correct interpretation of respondent's claim, it may be questionable whether the complaint actually tenders an issue on the point. For, as seen above, the complaint, in challenging the representation as to mildness, alleges only that Chesterfield cigarettes are not milder than "Other leading brands of cigarettes." In view, however, of the conclusions reached on other aspects of the matter, the examiner finds it unnecessary to decide this question.

17. Next presented is the important question of the sense in which the word "milder" is used in respondent's advertising. It is contended by respondent that as here used the word relates only to sensory feelings or sensations, as taste, smell, etc.; that the word was not intended to relate, and cannot reasonably be construed as relating, to any actual physiological or pathological effect or condition, as inflammation or irritation in the nose,

throat, or accessory organs; that here the word is used simply as denoting a quality product, a well blended, pleasant-tasting cigarette. Counsel supporting the complaint, on the other hand, would link the issue of mildness with the major issue raised by the complaint, that of the irritating and consequently adverse effect of Chesterfield cigarettes upon the nose, throat and accessory organs. Counsel's position is that since the record, as he contends, establishes that there is no significant difference between the irritating effect of Chesterfield cigarettes and other leading brands of cigarettes upon the organs in question, it necessarily follows that Chesterfield cigarettes cannot be milder than such other brands.

18. The word "mild" is defined in Webster's New International Dictionary of the English Language, 2d Edition, Unabridged, 1951, as "2. Moderate in action or sensuous effect; clement, temperate; soft; bland; as mild weather, a mild cigar, a mild drug, mild as milk; also of disease, not acute."

19. For more than 20 years the term "mild" in its various forms (mild, mildness, milder, mildest) has been in wide use by cigarette manufacturers in advertising their respective products. It is highly significant that despite such long usage in the industry generally, and despite the fact that the Commission has instituted a number of proceedings against cigarette manufacturers, the present case appears to be the first in which the use of the word has been challenged. This would indicate that through the years the Commission has regarded the term as harmless or innocuous, as merely a laudatory or "puffing" term denoting high quality or pleasant sensory reaction, not as a term relating to the amount or degree of irritation produced in the nose, throat or accessory organs.

20. It is immaterial that one of the Commission's expert witnesses testified that to him as an expert the word milder meant less irritation to these organs. The word is not a scientific term but an ordinary lay expression in common use, and it is by that standard that its meaning here must be determined. It seems clear that here the word was not used in any scientific or technical sense but merely to indicate a high quality, pleasant-tasting cigarette.

21. Assuming, however, that the term should be interpreted as representing less irritation, the record still falls short of sustaining the complaint. The principal evidence relied on by the Government is a report of certain smoking tests made by Dr.

Clarence D. Wright, a chemist of the Federal Security Agency (Com. Ex. 1A–C). Dr. Wright subjected samples of Chesterfields and four other leading brands of cigarettes (Camel, Lucky Strike, Old Gold, Philip Morris) to tests by means of a mechanical smoking device, the object of the tests being to determine the relative amounts of nicotine and "tarry materials" present in the smoke of the various brands. The smoke drawn in by the machine was channeled through funnels containing sulphuric acid and chloroform, this for the purpose of catching or "trapping" the nicotine content of the smoke in the sulphuric acid and the tarry material content in the chloroform.

22. A number of alleged discrepancies in the tests are pointed out by respondent. Assuming, however, that the test may properly be accepted at full face value, they show nothing more than that the amounts of nicotine and tarry materials present in the smoke from the various cigarettes are substantially the same. The tests fail to settle the question of the relative irritating effects of the cigarettes. This is so because admittedly cigarette smoke contains other irritating substances besides nicotine and tars, and the experiments conducted by Dr. Wright did not purport to trap or measure such other substances.

23. Not only is this clear from the evidence introduced on behalf of the Commission, but there is now in the record testimony to the same effect from two pharmacologists introduced by respondent. Both were qualified not only in the fields of pharmacology and physiology generally, but also as experts in the more restricted field of the nature and effect of tobacco smoke. Among the irritants other than nicotine and tars present in tobacco smoke are volatile bases, such as ammonia; volatile acids, such as formic and acetic acids; and aldehydes. Both of these witnesses testified unequivocally that the Wright report forms no adequate basis for a conclusion that there is no significant difference in the irritating properties of the brands of cigarettes in question.

24. Most cigarettes are composed of various blends of different types of tobacco. Among the types in common use are bright or flue-cured tobacco and Burley tobacco. Bright or flue-cured tobacco is recognized as being less irritating to the nose, throat and accessory organs than Burley tobacco. The record further indicates that the blend of tobaccos used in Chesterfield cigarettes contains appreciably more bright or flue-cured tobacco and less Burley tobacco than do many other cigarettes.

25. One of the Commission's witnesses, Dr. Errett C. Albritton, basing his testimony upon the Wright report, expressed the opinion that there was no significant difference between the irritating effects of the five brands of cigarettes tested. But this testimony, being based upon the Wright report, obviously can have no greater probative value than the report itself. Dr. Albritton, while undoubtedly qualified in his own field, that of general physiology and pharmacology, claimed no special knowledge whatever in the field of tobacco and tobacco chemistry.

26. There is also testimony from practicing physicians (nose and throat specialists) that during the ordinary course of their practice their patients have at times told them which brand of cigarette they (the patients) smoked, and that no significant difference in the degree of irritation was observed by the physicians regardless of the brand named by the patient. It is very questionable whether such testimony, resting upon hearsay and upon more or less casual or routine observation of patients by physicians from day to day, constitutes reliable and substantial evidence upon so precise and difficult a question as the relative irritating effects of different brands of cigarettes.

27. It is concluded that this charge in the complaint has not been sustained. First, because as used in respondent's advertising the word "milder" merely denotes a quality product, pleasant to the senses; and, second, because if the term should be construed as representing that Chesterfield cigarettes are less irritating to the nose, throat and accessory organs than cigarettes generally, the record fails to establish the contrary.

"Soothing and Relaxing"

28. In certain of its advertising, respondent has used the statement "Chesterfield uses only the ingredients proved by scientific tests to produce a soothing and relaxing smoke" (Exhibit C to respondent's answer to complaint). The complaint charges that through the use of this statement respondent represents "that the smoke from Chesterfield cigarettes will soothe and relax the nerves of smokers, *irrespective of the physical condition or the smoking habits of smokers*" (emphasis supplied). The complaint then charges that the statement is false and misleading because the smoke from such cigarettes "will not soothe or relax the nerves in the case of all smokers."

29. It is obvious that here the complaint attributes to respondent words which it has not used. Respondent's statement con-

tains no representation that its cigarettes will produce a soothing and relaxing smoke irrespective of the physical condition or the smoking habits of smokers. It is recognized that advertisers are responsible not only for the words actually used but for the natural and reasonable inferences to be drawn therefrom. But this principle has no application here. Here the advertisement would seem to mean nothing more than that usually or generally or in most cases the smoking of Chesterfields will have a soothing and relaxing effect. If this is the correct interpretation of the advertisement, it seems clear that the complaint fails to tender any issue or state any cause of action, because it alleges only that the cigarettes will not soothe or relax the nerves in the case of *all* smokers.

30. There is no substantial evidence that respondent's statement, reasonably interpreted, is untrue. On the other hand, it is common knowledge that many persons find relaxation, a soothing effect, in smoking. Moreover, the record now contains testimony from an experienced physician that in his opinion the smoking of cigarettes is soothing and relaxing to many persons. (Tr. 984–986.) Clearly this charge in the complaint has not been sustained.

"Unplesant Aftertaste"

31. The complaint challenges as false and misleading respondent's statement that its cigarettes leave no unpleasant aftertase (Exhibit B to respondent's answer to complaint), the complaint alleging that the cigarettes do leave an aftertaste which is unpleasant to many persons. In support of this charge there was offered the testimony of five members of the public, all residents of Washington, D.C., who had at one time or another smoked Chesterfield cigarettes. All testified in substance that the cigarettes sometimes left an unpleasant aftertaste, although here was no agreement as to its nature. One of the witnesses referred to the taste as "distinctly a tobacco taste," another as a "dry pungent taste, like after eating cheese," another as a "foul taste or burning taste," another as a "sweetish taste," another as a "burning taste."

32. This appears to be the only testimony on the point except that of two physicians who in naming some of the subjective symptoms of the effects of smoking, especially excessive smoking, referred to a bad taste as one of them.

33. The matter of taste is so largely one of personal opinion and preference among different individuals that it would seem to be difficult, if not impossible, to adjudicate the question. Evidently, to many persons the taste or aftertaste of cigarettes is not unpleasant, while to others it is. In any event, the tesimony here presented does not constitute substantial evidence warranting a conclusion that this charge in the complaint has been sustained.

"Puffing" and Public Interest

34. In his decision of July 8, 1954, the hearing examiner expressed the view that the words or expressions "milder," "soothing and relaxing," and "no unpleasant aftertaste" were harmless and constituted mere "puffing" and, further, that there was no substantial public interest "in an attempt to settle by litigation such questions as whether a particular cigarette has an unpleasant aftertaste, whether it is * * * milder, or whether it is soothing and relaxing." The examiner further said "the answer to each of these questions would seem necessarily to vary from person to person, depending upon the preference, taste and reaction of the individual smoker." For these reasons the examiner concluded that "insofar as the issues now under consideration are concerned, the proceeding appears to be without substantial public interest."

35. While in its decision of March 28, 1955, the Commission expressed disagreement with these views, the examiner does not understand that the Commission's expressions of opinion were intended as final and conclusive adjudications of the issues in question. The examiner therefore reaffirms the views expressed in his former decision that, insofar as these issues are concerned, the proceeding is without substantial public interest.

CONCLUSIONS

Respondent's representation that the smoking of Chesterfield cigarettes will have no adverse effect upon the nose, throat and accessory organs has the tendency and capacity to mislead and deceive a substantial portion of the public with respect to the properties and effect of such cigarettes, and the tendency and capacity to cause such members of the public to purchase such cigarettes as a result of the erroneous and mistaken belief so engendered. The present proceeding, insofar as this representation is concerned, is therefore in the public interest. Respondent's practice is to the prejudice of the public and of respondent's competitors, and constitutes an unfair and deceptive act

and practice and an unfair method of competition in commerce in violation of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent, Liggett & Myers Tobacco Company, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of Chesterfield cigarettes, or any other cigarettes of substantially similar composition, do forthwith cease and desist from representing, directly or by implication:

(1) That such cigarettes or the smoke therefrom will have no adverse effect upon the nose, throat or accessory organs.

(2) That such cigarettes or the smoke therefrom is milder when used to connote that the smoke therefrom is less irritating than the cigarettes or the smoke of any other brands of cigarettes.

(3) That such cigarettes or the smoke therefrom will soothe or relax the nerves.

It is further ordered, That the complaint be, and it hereby is, dismissed as to all charges not covered by the foregoing order.

OPINION OF THE COMMISSION

By SECREST, Commissioner:

This matter is before the Commission on cross-appeals from the hearing examiner's initial decision of September 20, 1957. Respondent appeals from that part of the initial decision holding that it has engaged in false and misleading advertising through the use of representations that the smoking of Chesterfield cigarettes will have "no adverse effect upon the nose, throat or accessory organs." Counsel supporting the complaint appeals from that part of the initial decision dismissing those charges in the complaint which alleged that respondent falsely represents that Chesterfield cigarettes are "milder," "soothing and relaxing" and leave "no unpleasant aftertaste." He also specifically excepts to the hearing examiner's finding that there is no substantial public interest in attempting to settle by litigation the question of whether a particular cigarette has an unpleasant aftertaste, whether it is milder, or whether it is soothing and relaxing and to the further finding that such claims constituted mere puffing.

In an earlier initial decision dated July 8, 1954, the hearing examiner had held that such statements are mere "puffing"

terms in the consideration of which there was no substantial public interest, and that counsel supporting the complaint had failed to make out a *prima facie* case on that phase of the complaint. On interlocutory appeal, in an opinion dated March 28, 1955, the Commission reversed the hearing examiner and held that the expressions in question were not mere laudatory, harmless or "puffing" terms, and that the questioned representations went to qualities which Chesterfield cigarettes might or might not possess. As a further ground for reversal it was stated that the public interest warranted adjudication of the issues presented.

From the foregoing, it is clear that the Commission already has determined the question of public interest. And we find in the record now before us no persuasive reason to change our opinion. In our view the advertising statements in which are used the words "milder," "soothing and relaxing" and "no unpleasant aftertaste" are clear and positive affirmations of the quality of Chesterfield cigarettes, made to induce their purchase. They are not mere "puffing."

Respondent in its appeal excepts to the examiner's findings that it has represented that the smoking of Chesterfield cigarettes will have "no adverse effect upon the nose, throat and accessory organs" and that this representation was false. Exception is taken also to the related conclusions and to the order to cease and desist insofar as it inhibits the use of that representation.

Respondent's position is that its advertising merely reported an investigation conducted for it by a reputable consulting organization and that it was within its rights in stating the facts in connection with that matter. It is apparent, however, as the hearing examiner held, that the advertising was intended to induce the public to purchase Chesterfield cigarettes and that its obvious purpose was to convey to the public the impression that Chesterfield cigarettes have no adverse effect upon the nose, throat and accessory organs. The only remaining issue is whether the representation was true.

In resolving this issue there is for consideration the testimony of five experts in the fields of physiology, pharmacology, otolaryngology, allergy, and anesthesiology who were called in support of the complaint. The testimony of four of these was based not only upon general knowledge, but upon wide clinical experience. All agreed that cigarette smoke, as an irritant, affects the mucuous membrances of the nose, throat and accessory organs.

Then we have the evidence as to the panel study conducted

under stated conditions over a period of time which was the basis for the "no adverse effect" advertising copy. While the hearing examiner did not doubt the good faith of the respondent, or of the organization conducting the experiment, or of the expert evaluating its results, he did question whether the experiment had probative value as a scientific test in the real sense. There is, he stated, an absence of any definite information as to the smoking habits of the participants on the testing panel and a lack of any substantial evidence that they smoked Chesterfields exclusively during the period involved. Furthermore, he noted the lack of direct evidence as to the number of cigarettes smoked per day by the panel members and, finally, he questioned the adequacy of the experiment as to the frequency of examinations conducted in that there was an absence of any real information as to the condition of participating panel members between examinations.

There is also the testimony of three occupational medical specialists employed by large industrial organizations and that of the otolaryngologist retained to test the participating panel members, all called as witnesses by respondent.

From our view of the whole record, we have concluded that respondent's evidence in defense of the "no adverse effect" charge is inadequate to overcome the evidence in support of that charge. We agree with the hearing examiner that the evidence on this issue preponderates in favor of the pertinent allegations of the complaint. We are persuaded to this conclusion particularly since the record discloses that, without exception, all of the physicians and scientists called as witnesses, whether in support of or in opposition to the complaint, recognized cigarette smoke as an irritant capable of affecting adversely to some extent the nose, throat and accessory organs. Respondent's appeal on this aspect of the case is denied.

We turn now to the appeal of counsel supporting the complaint with regard to the use, by respondent in its advertising of Chesterfield cigarettes, of the terms "milder," "soothing and relaxing" and "no unpleasant aftertaste."

The complaint alleges that through the use of the term "milder," respondent represents "that the smoke from Chesterfield cigarettes is milder * * * and consequently less irritating to the user than all other cigarettes." Respondent vigorously objected before the hearing examiner to the use of the word "all" in the interpretation of its advertising. On this point the hearing ex-

aminer concluded, and we think correctly, that the term "milder" constitutes a comparative representation that Chesterfield cigarettes are milder than cigarettes generally, or than most other cigarettes. He concluded, however, that this charge in the complaint had not been sustained * * * "First, because as used in respondent's advertising the word 'milder' merely denotes a quality product, pleasant to the senses; and second, because if the term should be construed as representing that Chesterfield cigarettes are less irritating to the nose, throat and accessory organs than cigarettes generally, the record fails to establish to the contrary."

This conclusion in effect is an acceptance of respondent's contentions that the word "milder" relates only to sensory feelings such as taste, smell, etc.: that it did not purport to relate to physiological or pathological effects or conditions such as inflammation or irritation in the nose, throat, or accessory organs; and that the term merely connotes a quality product, "a well-blended, pleasant tasting cigarette." This conclusion also, and necessarily, constitutes a rejection of the pertinent arguments advanced by counsel supporting the complaint seeking to conjoin the issue of mildness with the paramount question of whether the smoke from Chesterfield cigarettes has any irritating consequence, and therefore adverse effect, upon the nose, throat and accessory organs. We agree that the dictionary attributes to the word "milder" more than one meaning, one of which is "moderate sensuous effect." However, this particular definition of the word cannot be applied to the advertising in question.

Respondent has disseminated the following, among other advertisements, wherein the representation "Buy Chesterfields—*Much Milder*" appears in eye-arresting type at the bottom thereof:

In determining whether advertising is false or misleading, regard must be had not to fine-spun distinctions and arguments that may be made in excuse, but to the effect which, in its over-all context, it might reasonably be expected to have upon the general public, *P. Lorillard Co.* v. *Federal Trade Commission*, 186 F.2d 52 (C.A. 4, 1950). Or, as succinctly stated by the United States Court of Appeals, Seventh Circuit, in *Aronberg* v. *Federal Trade Commission*, 132 F.2d 165, 167 (1942):

> But the buying public does not ordinarily study or weigh each word in an advertisement. The ultimate impression upon the mind of the reader arises from the sum total of not only what is said but also of all that is reasonably

implied. * * * Advertisements must be construed in their entirety, and as they would be read by those to whom they appeal. * * * Advertisements are intended not "to be carefully dissected with a dictionary at hand, but rather to produce an impression upon" prospective purchasers.

In the advertisement, heretofore reproduced taste or flavor is not mentioned, nor are sensory effects referred to at all. Looking at the whole context of the advertisement and to the use of the term "milder" therein, the Commission is of the opinion that the term inferentially relates to a physiological condition, or effect, and that it was intended to be, and does constitute, an announcement that Chesterfield cigarettes are "less irritating" generally than other cigarettes. The advertisement deals with nothing but purported scientific discovery of physiological effects. And, as we have previously seen, all of the experts testifying without exception recognized that cigarette smoke to some degree is an irritant and is capable of adversely affecting the nose, throat and accessory organs. We conclude, therefore, that the hearing examiner was in error in ruling that the term "milder" relates only to sensory feelings such as taste, smell, etc., as contradistinguished from the physiological or pathological connotations of the word. This is particularly self-evident when the connotations of the term "milder" are viewed in the light of the whole context of the advertising in question.

There is next, then, for disposition the appeal from the hearing examiner's conclusion that the record fails to establish that Chesterfield cigarettes are not "*less irritating*" than other cigarettes generally.

Dr. Clarence D. Wright, of the Food and Drug Administration, conducted a series of tests to determine the comparative nicotine and tar content of five leading brands of cigarettes, including Chesterfields. Dr. Errett Albritton, duly qualified as an expert statistician and physiologist, received his M.D. from Johns Hopkins University and has taught biochemistry and pharmacology, which latter subject includes a knowledge or study of the effect of tobacco smoke on human beings. He testified that the Wright tests, as regards nicotine and chloroform extract content (tars), showed that Chesterfield smoke "is not significantly different from the smoke of the other brands." And, in answer to a question as to whether Chesterfields are milder than the other four cigarettes involved in the Wright tests (predicated upon his examination of the Wright report plus his expert knowledge in the allied fields of physiology and pharmacology), Dr. Albritton

replied, "I would say that there is no evidence in that exhibit that would indicate that Chesterfields are milder or less irritating to the throat than any other of those brands."

The hearing examiner rejected the Wright tests as having no probative value because "cigarette smoke contains other irritating substances besides nicotine and tars, and the experiments * * * did not purport to trap or measure such other substances." He also rejected the testimony of Dr. Albritton based on the Wright report as being without probative value. This was apparently on his evaluation of the evidentiary value he placed upon the report itself.

There is in the record no evidence as to the quantities of substances, other than nicotine and tars, present in cigarette tobacco or as to their qualities as irritants. In fact, the record contains nothing to show that the comparative irritating capacity of any of the cigarettes tested would be varied to any extent by their presence. The record does establish that nicotine and tars are the principal irritants present in cigarette smoke. The Commission is of the opinion that it was erroneous to reject the Wright report and Dr. Albritton's testimony. The Wright report accurately reflects the measurement of the nicotine and tar content of the smoke from cigarettes tested; and discloses no significant difference between Chesterfields and the other four leading brands in that respect.

The hearing examiner likewise questions as to reliability and substantiality—but does not clearly reject—the testimony of practicing physicians (nose and throat specialists) that in their practice they had noted no difference in the irritating capacity of various different brands of cigarettes, including Chesterfields. The record also contains testimony of other physicians, an allergist and an anesthesiologist, who likewise testified that in their clinical observations they found no appreciable difference in the irritating effect of smoke of any of the cigarettes smoked by their patients. The initial decision adverts in no way to this latter testimony.

The Commission is of the opinion that the testimony of the nose and throat specialists is entitled to greater weight than that accorded it by the hearing examiner. They arrived at the opinions expressed by accumulating from their patients information which in their professional judgment was necessary adequately to inform themselves of all clinical factors pertinent to

the formulation of a diagnosis of, and treatment for, nose and throat ailments attributable at lease in part to cigarette smoke. Dr. Moffett, a throat specialist, testified, for example, that for over 35 years he had observed the effect of various brands of cigarettes in general on the throat and nose, and that he had concluded all cigarettes were equally irritating and that he has not observed any difference among those patients who smoke Chesterfields, or any other cigarette.

Dr. Waldbott, an allergist, testified that in examining hundreds of patients he asked as to the brand of cigarette smoked, where the patient was a cigarette smoker, and that he had observed no significant difference between irritation caused by the smoke from Chesterfields and that from other brands of cigarettes. He reaffirmed this observation when under cross-examination.

Dr. Greene, an anesthesiologist, whose testimony also appears not to have been considered in the initial decision, testified at considerable length as to the basis for his clinical observation that there is no significant difference in the irritating qualities of any of the leading brands of cigarettes, including Chesterfields.

In the preparation of patients for administration of anesthesia prior to surgical operations, he queried over 1,500 patients as to their smoking habits, including reference to the "brand factor." His interest was prompted by the apparently high incidence of bronchitis in cigarette smokers, and this, of course, was important to him in relation to the administration of anesthetics. He found, and so testified, that there was no difference in irritation attributable to differences in brands of cigarettes smoked. On direct examination he stated he had never noticed any significant difference between the irritation caused by Chesterfields from that caused by other cigarettes. And, under cross-examination, Dr. Greene testified that a significant number of his patients were Chesterfield smokers and that after the first 1,500 patients had been asked what brand they smoked, he had stopped asking about brands because he found no difference in the irritation caused by smoke from any of the brands of cigarettes. The Commission is of the opinion that Dr. Greene's testimony is highly significant and that the examiner erred in failing to take it into consideration.

There is, of course, in the record contradictory evidence both as to the evaluation of the Wright report by respondent's wit-

nesses and on the question of whether Chesterfields, in fact, are milder than other leading brands of cigarettes. The Commission has concluded, however, after careful review of the whole record before it, that the preponderance of the evidence substantiates the charge that respondent, through employing the term "milder" in advertising Chesterfield cigarettes, represents that they are "less irritating" than other cigarettes and that this constitutes a misleading and deceptive statement or representation. We find, accordingly, that the record establishes that Chesterfield cigarettes or the smoke therefrom are not milder or less irritating than other cigarettes or the smoke produced from them. We find further that use of the term "milder" here has the capacity and tendency to lead members of the purchasing public into the erroneous and mistaken belief that such statement, or representation, is true, and into the purchase of substantial quantities of respondent's product because of such erroneous and mistaken belief. The appeal of counsel supporting the complaint on this aspect of the case is granted.

Considered next is the hearing examiner's finding that there is no substantial evidence to establish as untrue the representation that Chesterfield cigarettes "produce a soothing and relaxing smoke." The complaint alleges that dissemination of this claim constitutes a representation that "the smoke from Chesterfield cigarettes will soothe and relax the nerves of smokers irrespective of the physical condition or the smoking habits of smokers" and, further, that in truth and in fact the smoke from Chesterfield cigarettes "will not soothe or relax the nerves in the case of all smokers." The hearing examiner characterizes the representation as meaning nothing more than that usually the smoking of Chesterfields will have a soothing and relaxing effect, and he found that there is no substantial evidence that the statement is untrue.

The Commission, on the contrary, is of the opinion that the reasonable interpretation to be placed on the advertisement is that it constitutes a categorical claim that Chesterfield cigarettes will produce a soothing and relaxing effect without qualification as respects any particular individual reading it; and this without regard to whether the reader is an habitual smoker, an occasional smoker, a heavy smoker, a light smoker, or an individual who might be described as a new smoker. The advertisement is directed to all categories of smokers without limitation. It fails to give recognition to the fact that the effect upon an individual of a

given amount of cigarette smoke depends in a large measure upon the degrees of physical normalcy, sensitivity and tolerance of the individual, variances which exist in all persons to a greater or lesser extent.[1]

The weight of the evidence in this proceeding clearly preponderates in establishing that while cigarette smoke may afford an habitual smoker, who may have experienced a sense of restlessness when deprived of cigarettes, some temporary palliation of tension, this relief will be afforded only to such habituated smokers, and even for them is a purely subjective reaction, temporary and transitory in nature. For example, Dr. Albritton, a physiologist and pharmacologist, testified in support of the complaint as follows:

Q. Doctor, in your opinion, will the smoking of Chesterfield cigarettes soothe and relax the smoker?

The Witness: Your question is directed toward the general effect on the individual, rather than the local effect, as I understand it, on his respiratory tract, and I would have to divide my answer into two sections here.

The chronic smoker who was habituated to the use of cigarettes and who developed a tension and restlessness when deprived of cigarettes would get a relief of that tension from taking his next cigarette regardless of the brand. I base this answer on the nicotine content of the smoke as shown in that exhibit.

The nonsmoker is also encompassed in your question, the person who is just starting to smoke. My answer would have to be different in the case of the nonsmoker who was just beginning to smoke. There I would see no soothing and relaxing effect; having gone through the experience personally of becoming habituated to tobacco, I know it had no such effect on me.

The Commission is of the opinion, therefore, and finds that respondent's Chesterfield cigarettes or the smoke therefrom will not, as a matter of fact, soothe or relax the nerves of cigarette smokers generally and that respondent's representations to the contrary are false and misleading. The appeal of counsel supporting the complaint on this point is granted.

Finally, counsel supporting the complaint has appealed from

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[1] *Federal Trade Commission* v. *R. J. Reynolds Tobacco Co.*, 192 F.2d 535 (C.A. 7, 1951). The court sustained the Commission's findings and order to cease and desist, including a representation to the effect that the smoke from cigarettes is soothing and relaxing. The Commission had found in effect as a general proposition that in some cases, if a person is accustomed to smoking cigarettes and becomes tense and nervous, the smoking of a cigarette may have a psychological tendency to relieve the tension and produce a quieting effect, but the smoking of cigarettes will not under any condition be physiologically beneficial to any of the bodily systems (circulatory, respiratory, digestive, nervous, neuromuscular and special senses). And the Commission further found that the effect of smoking is not the same on every individual; that in the case of persons not accustomed to smoking the effect of even one cigarette will be the opposite to that produced on the habitual smoker to the extent that the former probably will become ill and quite upset as a result of his experience.

the hearing examiner's finding that the record does not sustain the charge that Chesterfield cigarettes will leave an unpleasant aftertaste. The initial decision held that the matter of taste is largely one of personal opinion and preference among individuals and that it would seem difficult, if not impossible, to adjudicate the question.

The Commission is of the opinion that the question of whether or not any aftertaste is present in cigarette smoke is one of fact susceptible of proof. On the record in this proceeding we think it clearly established that cigarette smoke, including the smoke from Chesterfield cigarettes, does leave an aftertaste. The weight of the evidence, however, does not establish that that aftertaste in the case of Chesterfields is unpleasant as a matter of fact. We accept as correct, therefore, the examiner's finding that the testimony presented on this phase of the case does not constitute substantial competent evidence warranting a conclusion that the charge that Chesterfields leave no unpleasant aftertaste has been sustained. The contentions of counsel supporting the complaint to the contrary are rejected and his appeal from that finding is denied.

In accordance with the foregoing, and to the extent indicated hereinabove, respondent's appeal is denied and the appeal of counsel supporting the complaint is granted in part and denied in part. The findings and conclusions contained in the initial decision are hereby modified in accordance with this opinion, and the order to cease and desist will be modified to conform herewith. As so modified the initial decision will be adopted as the Decision of the Commission.

Commissioners Gwynne and Kern did not participate in the decision herein, Commissioner Gwynne for the reason he did not hear oral argument.

FINAL ORDER

Respondent and counsel supporting the complaint having filed cross-appeals from the initial decision of the hearing examiner in this proceeding; and the matter having been heard by the Commission on the whole record, including briefs and oral argument; and the Commission having rendered its decision denying respondent's appeal and granting in part and denying in part the appeal of counsel supporting the complaint and modifying the initial decision in conformity with the Commission's opinion:

It is ordered, That the order contained in the initial decision be, and it hereby is, modified to read as follows:

"*It is ordered,* That respondent, Liggett & Myers Tobacco Company, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as 'commerce' is defined in the Federal Trade Commission Act, of Chesterfield cigarettes, or any other cigarettes of substantially similar composition, do forthwith cease and desist from representing, directly or by implication:

"(1) That such cigarettes or the smoke therefrom will have no adverse effect upon the nose, throat or accessory organs.

"(2) That such cigarettes or the smoke therefrom is milder when used to connote that the smoke therefrom is less irritating than the cigarettes or the smoke of any other brands of cigarettes.

"(3) That such cigarettes or the smoke therefrom will soothe or relax the nerves."

It is further ordered, That the complaint be, and it hereby is, dismissed as to all charges not covered by the foregoing order.

It is further ordered, That the initial decision as so modified be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondent Liggett & Myers Tobacco Company, 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 to cease and desist contained in the initial decision as modified.

Commissioner Gwynne not participating for the reason he did not hear oral argument, and Commissioner Kern not participating.

IN THE MATTER OF

UNITED INSURANCE COMPANY

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

Docket 6253. Complaint, Oct. 14, 1954—Order, Sept. 17, 1958

Order dismissing for lack of jurisdiction, following the Supreme Court's reversal of the Commission's desist orders in the *National Casualty Company* and *The American Hospital and Life Insurance Company* cases (357 U. S. 560), complaint charging a life insurance company in Chicago with misrepresenting the benefits and coverage of its health and accident policies.

Mr. Frederick J. McManus, for the Commission.

Thompson, Raymond, Mayer, Jenner & Bloomstein, by *Mr. Anan Raymond* and *Mr. William H. Madden, Jr.*, of Chicago, Ill., for respondent. *Mr. Almore H. Teschke*, General Council, Chicago, Ill., also for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding is one brought under the Federal Trade Commission Act as affected and amended by the McCarran-Ferguson Act, 15 U.S.C., §§1011–1015 inclusive, the complaint charging the respondent corporation, in substance, with having transmitted in interstate commerce certain alleged false, misleading and deceptive advertising concerning its individual health-and-accident insurance policies. Group hospitalization or life insurance is not involved. The complaint is dismissed herein for lack of jurisdiction by the Commission over the subject-matter thereof, pursuant to the recent decision of the Supreme Court of the United States, relating to that subject.

The Supreme Court, in one *per curiam* opinion issued on June 30, 1958, decided two cases, entitled *Federal Trade Commission* v. *National Casualty Company* (No. 435) and *Federal Trade Commission* v. *The American Hospital and Life Insurance Company* (No. 436), 357 U.S. 560 (1958). The Supreme Court accepted jurisdiction of these cases on writs of certiorari from the Courts of Appeals for the Sixth and Fifth Circuits, respectively, to review their "interpretation of an important federal statute." It affirmed the judgment of each of such Circuits in setting aside the Commission's cease-and-desist orders against the said respondent in-

surers. In the course of its opinion, the Supreme Court rejected all contentions of the Federal Trade Commission purporting to sustain its jurisdiction, and, in affirming the said judgments of said Courts of Appeals, held that the Commission is prohibited by the McCarran-Ferguson Act from regulating the practices complained of by it within those states having statutes authorizing the regulation of such practices.

With particular pertinence to the case at bar, the Supreme Court, covering in the one case a casualty-insurance company and in the other a life-insurance company, held:

> Respondents, the National Casualty Company in No. 435 and the American Hospital and Life Insurance Company in No. 436, engage in the sale of health and accident insurance. National is licensed to sell policies in all States, as well as the District of Columbia and Hawaii, while American is licensed in fourteen States. Solicitation of business for National is carried on by independent agents who operate on commission. The company's advertising material is prepared by it and shipped in bulk to these agents, who distribute the material locally and assume the expense of such dissemination. Only an insubstantial amount of any advertising goes directly by mail from the company to the public, and there is no use of radio, television, or other means of mass communication by the company. American does not materially differ from National in method of operation.
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> * * * There is no question but that the States possess ample means to regulate this advertising within their respective boundaries.
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> * * * Each State in question has enacted prohibitory legislation which proscribes unfair insurance advertising and authorizes enforcement through a scheme of administrative supervision.

In footnote 6 of its opinion, the Supreme Court said:

> At the time the complaints were filed thirty-six States had enacted the "Model Unfair Trade Practices Bill for Insurance." Eight others had statutes essentially the same in effect as the "Model Bill."

The opinion of the Supreme Court is sweeping and general in its language. It does not attempt to cite the numerous statutes of the several States which constitute the entire regulatory plan of each of such States. And to do so herein is wholly unnecessary; suffice it to say that official notice is taken that all States, by statute, provide for the licensing and regulation of all types of insurance agents; that all the States now have legislative acts providing more or less specifically for the regulation of life-insurance companies' business of health-and-accident insurance, including the advertising thereof; and that, with respect to the business of casualty-insurance companies, nearly all of the States have specific regulatory statutes, but in each of the remaining few, the general regulatory powers of the Insurance Department

are sufficiently broad, when coupled with the criminal and other statutes of the State, to provide a system of regulation of any unfair advertising by such companies and their agents, which the Supreme Court apparently deems adequate to regulate such business in such States. It holds, in effect, that under the McCarran-Ferguson Act each State is given latitude to enact such laws and provide such regulatory processes as each State deems proper within its own jurisdiction, and that the degree of actual law enforcement, if any, in the several States is wholly immaterial.

In the instant proceeding, the complaint was issued on October 14, 1954. Respondent subsequently joined issue, and, among other pleas, adequately raised the issue of the Commission's jurisdiction over the subject-matter. The record is fairly voluminous, but, in view of the conclusion reached herein, only a few undisputed facts need be stated. While at the conclusion of the proceeding each of the parties submitted extensive and detailed proposed findings of fact as well as conclusions of law, and a proposed order, some of which proposed findings and conclusions are quite proper, for brevity all such proposals have been rejected.

The respondent is a stock life-insurance company duly organized, existing and doing business under the laws of the State of Illinois, with its office and principal place of business in Chicago, Ill. At the time the complaint was issued, respondent was duly licensed in thirty-nine States of the United States and the District of Columbia. Since that time it has become licensed in several other states. On July 1, 1955, it adopted the corporate name of United Insurance Company of America. Its business in each jurisdiction is done through agents duly licensed therein. A few advertising-circular letters were sent out by local agents of the company, and one agent, at his own expense, without prior knowledge or approval of respondent, published one advertisement in the Journal of the American Medical Association, a magazine of substantial national circulation, directed solely to physicians and surgeons, concerning a special health-and-accident insurance policy for which only such medical specialists could qualify. Similar ads appeared in certain State medical journals of more limited and largely intra-state circulation. Determination whether it is legally proper for the Federal Trade Commission to assume special guardianship over this eminently learned professional class, who deal almost daily with their patients' health-and-accident insurance coverage of all types, is unnecessary to this decision. Except in the few isolated in-

stances above stated, the respondent life-insurance company, during the period covered by this proceeding, has never used any mass media of communication to the public. The exceptions noted must be, in any view, considered *de minimis* as "an insubstantial amount" under the *National Casualty Company* decision.

This proceeding, therefore, falls squarely within the principles enunciated by the Supreme Court in its said decisions. Accordingly,

It is ordered, That the complaint herein be, and the same hereby is, dismissed for lack of jurisdiction.

FINAL ORDER

The date on which the hearing examiner's initial decision would have become the decision of the Commission having been extended by order issued September 10, 1958, until further order of the Commission; and

The Commission having now determined that said initial decision is adequate and appropriate in all respects:

It is ordered, That the initial decision of the hearing examiner duly providing for dismissal of this proceeding for lack of jurisdiction be, and it hereby is, adopted as the decision of the Commission.

Decision

IN THE MATTER OF

LUMBERMENS MUTUAL CASUALTY COMPANY

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

Docket 6448. Complaint, Nov. 18, 1955—Order, Sept. 17, 1958

Order dismissing for lack of jurisdiction, following the Supreme Court's reversal of the Commission's desist orders in the *National Casualty Company* and *The American Hospital and Life Insurance Company* cases (357 U. S. 560), complaint charging a life insurance company in Chicago with misrepresenting the benefits and coverage of its health and accident policies.

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

Mr. Chase M. Smith and *Mr. Lowell D. Snorf, Jr.*, of Chicago, Ill., and *Kirkland, Fleming, Green, Martin & Ellis*, of Chicago, Ill., and Washington, D. C., by *Mr. Hammond E. Chaffetz, Mr. Perry S. Patterson* and *Mr. Frederick M. Rowe*, for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding is one brought under the Federal Trade Commission Act as affected and amended by the McCarran-Ferguson Act, 15 U.S.C., §§1011–1015 inclusive, the complaint charging the respondent corporation, in substance, with having transmitted in interstate commerce certain alleged false, misleading and deceptive advertising concerning its individual health-and-accident insurance policies. Group health-and-accident insurance is not involved. The complaint is dismissed herein for lack of jurisdiction by the Commission over the subject-matter thereof, pursuant to the recent decision of the Supreme Court of the United States, relating to that subject.

The Supreme Court, in one *per curiam* opinion issued on June 30, 1958, decided two cases, entitled *Federal Trade Commission* v. *National Casualty Company* (No. 435) and *Federal Trade Commission* v. *The American Hospital and Life Insurance Company* (No. 436), 357 U.S. 560 (1958). The Supreme Court accepted jurisdiction of these cases on writs of certiorari, from the Courts of Appeals for the Sixth and Fifth Circuits, respectively, to review their "interpretation of an important federal statue". It affirmed the judgment of each of such Circuits in setting aside the Commission's cease-and-desist orders against the said

respondent insurers. In the course of its opinion, the Supreme Court rejected all contentions of the Federal Trade Commission purporting to sustain its jurisdiction, and, in affirming the said judgments of said Courts of Appeals, held that the Commission is prohibited by the McCarran-Ferguson Act from regulating the practices complained of by it within those states having statues authorizing the regulation of such practices.

With particular pertinence to the case at bar, the Supreme Court, covering in the one case a casualty-insurance company and in the other a life-insurance company, held:

> Respondents, the National Casualty Company in No. 435 and the American Hospital and Life Insurance Company in No. 436, engage in the sale of health and accident insurance. National is licensed to sell policies in all States, as well as the District of Columbia and Hawaii, while American is licensed in fourteen States. Solicitation of business for National is carried on by independent agents who operate on commission. The company's advertising material is prepared by it and shipped in bulk to these agents, who distribute the material locally and assume the expense of such dissemination. Only an insubstantial amount of any advertising goes directly by mail from the company to the public, and there is no use of radio, television, or other means of mass communication by the company. American does not materially differ from National in method of operation.
>
> * * * There is no question but that the States possess ample means to regulate this advertising within their respective boundaries.
>
> * * * Each State in question has enacted prohibitory legislation which proscribes unfair insurance advertising and authorizes enforcement through a scheme of administrative supervision.

In footnote 6 of its opinion, the Supreme Court said:

> At the time the complaints were filed thirty-six States had enacted the "Model Unfair Trade Practices Bill for Insurance." Eight others had statutes essentially the same in effect as the "Model Bill."

The opinion of the Supreme Court is sweeping and general in its language. It does not attempt to cite the numerous statutes of the several States which constitute the entire regulatory plan of each of such States. And to do so herein is wholly unnecessary; suffice it to say that official notice is taken that all States, by statute, provide for the licensing and regulation of all types of insurance agents; that all the States now have legislative acts providing more or less specifically for the regulation of life-insurance companies' business of health-and-accident insurance, including the advertising thereof; and that, with respect to the business of casualty-insurance companies, nearly all of the States have specific regulatory statutes, but in each of the remaining few, the general regulatory powers of the Insurance Department are

sufficiently broad, when coupled with the criminal and other statutes of the State, to provide a system of regulation of any unfair advertising by such companies and their agents, which the Supreme Court apparently deems adequate to regulate such business in such States. It holds, in effect, that under the McCarran-Ferguson Act each State is given latitude to enact such laws and provide such regulatory processes as each State deems proper within its own jurisdiction, and that the degree of actual law enforcement, if any, in the several States is wholly immaterial.

In the instant proceeding, the complaint was issued on November 18, 1955. Respondent subsequently joined issue, and, among other pleas, adequately raised the issue of the Commission's jurisdiction over the subject-matter. The record is fairly voluminous, but, in view of the conclusion reached herein, only a few undisputed facts need be stated. While at the conclusion of the proceeding each of the parties submitted extensive and detailed proposed findings of fact as well as conclusions of law, and a proposed order, some of which proposed findings and conclusions are quite proper, for brevity all such proposals have been rejected.

The respondent is a mutual casualty-insurance company duly organized, existing and doing business under the laws of the State of Illinois, with its office and principal place of business in Chicago, Ill. It is duly licensed to do business in the District of Columbia and forty-eight States (but not in the newly admitted State of Alaska). Its business is done in each jurisdiction through agents duly licensed therein. During the period of time covered by this proceeding, the respondent casualty company never sent any advertising by mail directly from its home office to the public generally, and did not use radio, television or other mass media of communication to the public. It sent all advertising material directly to its agents, who distributed it locally at their own expense.

This proceeding, therefore, falls squarely within the principles enunciated by the Supreme Court in its said decisions. Accordingly,

It is ordered, That the complaint herein be, and the same hereby is, dismissed for lack of jurisdiction.

FINAL ORDER

The date on which the hearing examiner's initial decision would have become the decision of the Commission having been extended

by order issued September 10, 1958, until further order of the Commission; and

The Commission having now determined that said initial decision is adequate and appropriate in all respects:

It is ordered, That the initial decision of the hearing examiner duly providing for dismissal of this proceeding for lack of jurisdiction be, and it hereby is, adopted as the decision of the Commission.

Decision

IN THE MATTER OF

ETTINGER MANUFACTURING COMPANY ET AL.

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

Docket 6806. Complaint, May 20, 1957—Decision, Sept. 23, 1958

Order requiring manufacturers in Chicago to cease labeling as "All wool filled," bed comforters the filling of which contained a substantial amount of fibers other than wool and when the only batting they purchased from their sources of supply was either "reprocessed wool" or "Wool Shoddy felt"; and to cease representing falsely by means of advertising streamers, flyers, and inserts enclosed in the individual containers as well as by other advertising circulated to the retail trade, that their products had been moth-proofed and bacteria-proofed, that certain of them had been manufactured by Pepperell Manufacturing Co., that the filling in some was composed of all wool, and that the amount of $24.95 or other specified price was the usual retail price.

Mr. William A. Somers, for the Commission.

Mr. Lawrence A. Jacobson, of Chicago, Ill., for himself and other respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding involves charges that respondents have, in numerous particulars, violated the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 and the Rules and Regulations of the Commission promulgated thereunder by manufacturing and selling in commerce certain wool products which were misbranded. This initial decision finds generally that the allegations of the complaint are amply sustained upon the whole record by a preponderance of the reliable, probative and substantial evidence as required by §7(c) of the Administrative Procedure Act and the Commission's Rules of Practice for Adjudicative Proceedings adopted pursuant thereto and that respondents have violated the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder as alleged in the complaint. A cease and desist order is issued herein appropriate to the findings and conclusions which are hereinafter set forth.

This case was instituted by the filing of a complaint on May 20, 1957, regular service of which was duly had on each of the

several respondents. On June 19, 1957, respondent, Ettinger Manufacturing Company, a corporation, filed its answer but the case was tried on the theory that said answer also constituted the answer of the several individual respondents although neither of them formally answered the complaint. The initial hearing was held on July 24, 1957, in Chicago, Illinois, whereat the individual respondents appeared in person and on behalf of the respondent corporation, and at which evidence was adduced in support of the Commission's case in chief. Thereafter, on December 2, 1957, respondents filed their petition to dismiss, supported by affidavits, which petition was opposed on December 6, 1957, by an answer wherein counsel supporting the complaint prayed denial of said petition to dismiss. Said petition to dismiss having been filed before the completion of the Commission's case in chief, the same was denied on May 13, 1958. Meanwhile, further hearings were held on the Commission's case in chief in Dayton, Ohio, on May 8, 1958, and in Washington, D.C., on May 9 and 12, 1958, at which time counsel supporting the complaint rested. Respondents did not appear at these latter hearings although duly notified thereof nor did they elect to present evidence on their own behalf as ordered by the hearing examiner on May 13, 1958. On July 22, 1958, counsel supporting the complaint filed his proposed findings, conclusions and order pursuant to authority granted by the hearing examiner, but the respondents failed to file any although also authorized to do so.

The hearing examiner heard and observed all the witnesses. Their conduct and demeanor while testifying, together with all of the evidence presented on the record including a number of respondents' advertising streamers, flyers, inserts and comforters, and all admissions in the answer have been fully and fairly considered. This evidence and all fair and reasonable inferences arising therefrom, together with all statements, arguments, and proposals of counsel, have been fully evaluated and weighed. Therefore, upon the whole record, it is found that the material allegations of the complaint are each and all fully and fairly established as to all of the respondents. The proposed findings, conclusions and order of counsel supporting the complaint have been adopted, and the hearing examiner specifically finds as follows:

Respondent Ettinger Manufacturing Company is a corporation organized, existing and doing business under and by virtue of

the laws of the State of Illinois. Respondents Homer V. Lundeberg and Lawrence A. Jacobson are president and treasurer, respectivey, of said corporate respondent and formulate, direct and control the acts, policies and practices of the said corporate respondent. Said respondents' offices and place of business is located at 1319 South Michigan Avenue, Chicago, Ill. The answer admits most of these facts although denying that respondent Jacobson was an officer of corporate respondent. The evidence establishes, however, that respondent Jacobson, together with an associate, owns two-thirds of the stock of the corporate respondent and has held the office of treasurer for some years past as well as being its attorney. Although by an affidavit filed in support of his motion he denies that he had anything to do with the advertising or labeling of respondent corporation's product, there is no evidence of record upon which adjudication of such fact can be made, respondents apparently having abandoned further defense as hereinbefore stated. It is now basic that corporate officers who direct, control and formulate the acts and practices of a corporate respondent as established herein are proper parties respondent, and the order hereinafter issued, therefore, includes them.

Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since January 1953, respondents have manufactured for introduction into commerce, introduced in commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in that Act, wool products, as "wool products" are defined therein. These facts are all admitted in the answer as well as established by the evidence.

Certain of respondents' wool products were falsely and deceptively labeled or tagged with respect to the character and amounts of the constituent fibers in batting or filling contained therein contrary to the intent and meaning of §4(a)(1) of the Wool Products Labeling Act of 1939. Among respondents' misbranded wool products were bed comforters labeled or tagged as "All wool filled," whereas in truth and in fact the filling of such bed comforters did not consist of all wool but contained a substantial amount of fibers other than wool. The respondents did not use virgin wool as the term "wool" is defined in §2(b) of the Wool Products Labeling Act, but to the contrary the only batting which they purchased from their sources of supply was either "reprocessed wool" or "Wool Shoddy felt."

Certain of respondents' wool products were further misbranded by respondents in that they were not stamped, tagged or labeled as required under the provisions of §4(a)(2) of the said Wool Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated under said Act. The permanent labels attached to the comforters received in evidence and the testimony of Frank J. Feeny, a chemist who tested the comforter products of respondent in evidence, clearly established that the "wool batting" of the several exhibits only, in substance, tested out as being from about 67 percent to 94.2 percent wool, the rest being acetate, rayon, or cotton residue with traces of nylon and rayon, or other unidentified residues other than wool.

In the course and conduct of their business in commerce, and for the purpose of inducing the purchase of their comforters, the respondents have enclosed in the individual containers therewith advertising streamers, flyers and inserts in the words and figures as alleged and set out in the complaint issued herein, along with many other similar advertising streamers, flyers and inserts, and have circulated other advertisements containing various statements and representations to the retail trade for the purpose of inducing the purchase of their products. Respondents do not by the answer deny the allegations of paragraph 6 therefore deemed admitted, but the record is complete with exhibits and testimony showing the foregoing facts. The respondents, directly or by implication, have made false statements and representations on the streamers, flyers and inserts used with and attached to their products in the following particulars:

1. Their said products had been moth-proofed and bacteria-proofed, whereas they admitted in their testimony this was untrue, and both of respondents' suppliers of batting deny that the batting sold respondents was moth-proofed or bacteria-proofed;

2. Certain of their products have been manufactured by Pepperell Manufacturing Company whereas respondents' answer and the alleged wool label attached to one of their comforters states, "Made by the Ettinger Manufacturing Co." with their address as found herein;

3. The filling or padding contained in certain of their products was composed of all wool, whereas the testimony and other evidence is quite to the contrary;

4. That the amount of $24.95 or the specified prices on their

advertising inserts are the prices at which their said products were sold by retailers in their usual and regular course of business. Respondents admitted these prices were set arbitrarily by them to meet competition or to satisfy a retail purchaser of their product and that in fact the actual prices at which respondents' products were sold by the retail trade ranged between $19.95 and $7.95 and that the price to the retail trade charged by respondents was only $4.75. The evidence of two buyers of comforters for large department stores indicated that the usual markup of products of this nature was from 34 percent to 40 percent but that respondents' products which they had examined were a very cheap product that would actually sell from about $4 to $7.95 regardless of any price set out in respondents' advertising streamers attached thereto.

By means of the acts and practices as hereinbefore set forth, respondents place in the hands of retailers, means and instrumentalities whereby such retailers may mislead and deceive members of the purchasing public with respect to statements and representations hereinbefore found made by the respondents. The evidence establishes that respondents did sell to retailers in interstate commerce not only their comforters which were not wool but that there were attached thereto false and misleading streamers, flyers and inserts which the public were able to observe during their purchase of such products.

Respondents admit that in the course and conduct of their business they were in competition in interstate commerce with other corporations, firms and individuals who also engaged in the sale of wool products.

The use by the respondents of the false, deceptive, and misleading statements and representations, hereinbefore found, has had and now has the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are and were true and into the purchase of substantial numbers of respondents' said products because of such erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce is and has been unfairly diverted to the respondents from their competitors, and substantial injury has been and is being done by competition in commerce.

CONCLUSIONS

1. The acts and practices of the said respondents, as herein-

above found, 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 in violation of the Wool Products Labeling Act of 1939 and the Federal Trade Commission Act.

2. The Federal Trade Commission has jurisdiction over all of the respondents' acts and practices which have been hereinabove found to be false, misleading and deceptive.

3. The public interest in the proceeding is clear, specific, and substantial.

Upon the foregoing findings of fact and conclusions of law, the following order is hereby entered:

ORDER

It is ordered, That respondents Ettinger Manufacturing Company, a corporation, and its officers, and Homer V. Lundeberg and Lawrence A. Jacobson, 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 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 bed comforters or other "wool products," as such products are defined in and subject to said Wool Products Labeling Act, which products contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool," or "reused wool," as those terms are defined in said Act, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers contained 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 percentage by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers;

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

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

It is further ordered, That Ettinger Manufacturing Company, a corporation, and its officers, and Homer V. Lundeberg and Lawrence A. Jacobson, 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 or distribution of bed comforters or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly:

1. Representing that bed comforters or other products are moth proofed or bacteria proofed when such is not a fact.

2. Representing that their bed comforters or other products are manufactured by Pepperell Manufacturing Company or any other corporation, person or firm, unless such is the fact.

3. Misrepresenting in any way the constituent fiber or material used in their products or the respective percentages thereof.

4. Representing in any manner that certain amounts are the regular and usual retail prices of their products when such amounts are in excess of the prices at which such products are usually and customarily sold at retail.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 23d day of September 1958, 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

CHATHAM MANUFACTURING COMPANY

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

Docket 7057. Complaint, Feb. 7, 1958—Decision, Sept. 23, 1958

Consent order requiring a manufacturer in Elkin, N.C., to cease misrepresenting the fiber content of blankets by such practices as including with mixed fiber blankets, mailing inserts bearing the word "Nylon" in conspicuous headlines; by failing to disclose the rayon content in blankets simulating silk or wool, and the acetate in bindings manufactured to simulate silk; and to cease describing its blanket bindings in advertising as "Guaranteed" without disclosing the nature and extent of said guarantee.

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

Mr. J. Milton Cooper, of Washington, D. C., and *Womble, Carlyle, Sandridge & Rice*, by *Mr. C. W. Womble*, of Winston-Salem, N.C., for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint alleges that in its manufacture of blankets containing various fibers, including nylon, rayon, and cotton, with bindings composed of acetate, respondent has violated the Federal Trade Commission Act by failing clearly to disclose such fiber content, so that the purchasing public is led to believe, contrary to fact, that the blankets contain silk or wool, or that said products contain larger proportions of such fibers than is actually the fact.

After the issuance of the complaint, respondent, its counsel, and counsel supporting the complaint 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 transmitted to the hearing examiner for consideration.

The agreement identifies respondent, Chatham Manufacturing Company as a corporation existing and doing business under and by virtue of the laws of the State of North Carolina, with its office and principal place of business located at Elkin, N. C.

The agreement provides, among other things, that respondent admits all the jurisdictional facts alleged in the complaint, and agrees that the record may be taken as if findings of

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

Respondent waives any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon fully disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Federal Trade Commission Act. Accordingly, the hearing examiner finds this proceeding to be in the public interest, and accepts the agreement containing consent order to cease and desist as part of the record upon which this decision is based. Therefore,

It is ordered, That respondent, Chatham Manufacturing Company, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale or selling of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "nylon" or any other work indicative of nylon to designate or describe any product which is not composed entirely of nylon; provided, however, that in the case of a product composed in part of nylon and in part of other fibers or materials, such words may be used as descriptive of the nylon content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing such other constituent fibers or materials;

2. Stating that a blanket binding or any other product is

guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder, are clearly and conspicuously disclosed, unless the guarantee is without limitation or qualification;

3. Advertising, offering for sale or selling products composed in whole or in part of acetate or rayon without clearly disclosing such acetate and rayon content, by accurately designating and naming each constitutent fiber in the order of predominance by weight, with or without accompanying statement of the fraction or percentage by weight of the entire mixture which each represents;

4. Putting into operation any plan whereby retailers or others may misrepresent the fiber content of merchandise, including bindings, trimmings and decorations.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 on the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 23d day of September 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Chatham Manufacturing Company, 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 to cease and desist.