It appearing from the record that the ruling referred to occurred during the early stages of the hearings and that the respondents made no attempt to obtain a review thereof either by way of an interlocutory appeal to the Commission under the provisions of §3.20 of the Rules of Practice or by way of an appeal from the initial decision under the provisions of §3.22 of said rules, but, on the contrary, permitted said ruling to remain unchallenged until the present time; and

It further appearing that the respondents have made no showing of changed conditions of fact or of law which would or might require a modification of the Commission's decision and have made no showing that the public interest would or might require such action; and

The Commission being of the opinion that, in the circumstances, no further consideration of the respondents' request for reopening of the proceeding is warranted:

It is ordered, That said request be, and it hereby is, denied.

IN THE MATTER OF

MODERN METHODS, INC., ET AL.

Docket 7568. Order, Dec. 31, 1959

Interlocutory order upholding hearing examiner's denial of motion to dismiss, holding the prior dismissal by the Solicitor of the Post Office Department, primarily because of inadequacy of the record, could not bar proceeding under the principles of *res judicata*.

The Commission having considered the respondents' appeal from the hearing examiner's order of November 18, 1959, denying the respondents' motion to dismiss the complaint or, in the alternative, to strike therefrom paragraphs five through eight, inclusive; and

It appearing that the question for determination is whether this proceeding is barred under the principles of *res judicata* by an order of the Solicitor of the Post Office Department, dated July 18, 1958; and

It further appearing that the Solicitor of the Post Office Department by the aforesaid order reversed an initial decision of a hearing examiner and dismissed "without prejudice" a proceeding against the corporate respondent, allegedly instituted in connection with the sale of the same correspondence courses of instruction as those involved herein, in which proceeding the respondent was charged with having conducted a scheme for obtaining money through the mails by means of false and fraudulent pretenses, representations and promises in violation of Title 39, U.S. Code, §§259 and 732; and

It further appearing, however, that the order discloses on its face that no final action was taken on the issues in the proceeding in which it was issued, but that, on the contrary, the proceeding was dismissed primarily because of the inadequacy of the record, particularly in that it did not show what representations had been made by the respondent for a period of more than three years; and

The Commission being of the opinion that in the circumstances, and aside from the question of whether the issues and parties in the two proceedings were the same, the prior action of the Solicitor of the Post Office Department could not under the principles of *res judicata* bar this proceeding; and

The order of the hearing examiner to this effect being correct:

It is ordered, That the respondents' appeal therefrom and request for oral argument be, and hereby are, denied.

RECOTON CORPORATION ET AL.

Docket 7601. Order, Dec. 31, 1959

Order denying motion to defer hearings pending joinder as co-respondents, business concerns engaged in practices similar to those challenged.

This matter having come on for hearing upon the motion filed by respondent Recoton Corporation which requests that hearings be suspended pending joinder as co-respondents to this proceeding of the business concerns named in the motion, and stated in the motion's supporting affidavit to be engaged in practices similar to those challenged in the complaint; and

The Commission having duly considered the motion and its supporting affidavit and exhibits and the answer thereto filed by counsel supporting the complaint; and

The Commission having determined that the public interest will be better served if this case proceeds in regular course for disposition on its merits and that the motion should be denied, and the Commission having additionally directed that the Secretary transmit copies of the affidavit and exhibits to the Commission's Bureau of Investigation for appropriate consideration:

It is ordered, That the motion of respondent Recoton Corporation be, and it hereby is, denied.

SUNBEAM CORPORATION

Docket 7409. Order, Jan. 14, 1960

Interlocutory order denying appeal from the hearing examiner's rulings sustaining respondent's objections to receipt in evidence of certain documents and oral testimony.

Counsel in support of the complaint having filed an interlocutory appeal from a number of rulings of the hearing examiner sus-

taining the respondent's objections to the receipt in evidence of certain documents and oral testimony; and

It appearing that no showing has been made that the effect of said rulings is anything more serious than to require counsel to prove by other available evidence the facts sought to be established by the rejected documents and testimony; and

Counsel having thus failed to demonstrate that the rulings involve substantial rights or will materially affect the final decision of the case, or that a determination of the correctness of said rulings before conclusion of the trial would better serve the interests of justice; and

The Commission being of the opinion that the appeal is not one to be granted under §3.20 of the Rules of Practice:

It is ordered, That the aforesaid appeal be, and it hereby is, denied.

SNAP-ON TOOLS CORPORATION

Docket 7116. Order and Opinion, Jan. 21, 1960

Interlocutory order reversing as erroneous, dismissal of a charge of maintenance of exclusive territories along with a ruling that prima facie cases were established with respect to resale price maintenance agreements.

ON APPEAL FROM RULING OF HEARING EXAMINER GRANTING IN PART A MOTION TO DISMISS

By the COMMISSION:

This matter is here for consideration of an interlocutory appeal, filed by counsel in support of the complaint, from an order of the hearing examiner granting in part the respondent's motion to dismiss the complaint, made at the close of the case-in-chief. The correctness of the order insofar as it denied the motion to dismiss is not in question.

The complaint charges the respondent with engaging in unfair acts and practices or an unfair method of competition in commerce in violation of Section 5 of the Federal Trade Commission Act. This is done, it was alleged, through and by means of written contracts with retail dealers providing, among other things, (1) that the dealer will not sell any of the products purchased from the respondent at a price varying from the price fixed by the respondent, (2) that he shall sell such products only within the geographical limits of a territory described in the agreement, (3) that he shall not sell to certain persons or firms specified in the agreement, and (4) that in the event of termination of his contract he will not for a period of one year thereafter engage in a similar business within the state in which he has been operating.

Treating the validity of each of these contract provisions as a

separate issue, the hearing examiner in ruling on the motion to dismiss held (1) that the complaint states a cause of action, (2) that on the issues of resale price maintenance agreements and the imposition of restrictions against former dealers engaging in a similar business, prima facie cases have been established, and (3) that on the issues of maintaining exclusive territories and restrictions against dealers selling to certain specified parties, prima facie cases have not been established. The appeal is from the ruling with respect to the maintenance of exclusive territories, the contention of counsel in support of the complaint being that any limitation by a manufacturer on the territory in which an independent dealer is permitted to sell his own products is unlawful *per se*.

This, however, is not a question that has to be decided in this case. The complaint, after setting forth the terms and conditions of the dealer contracts and a general description of the respondent's related activities, further alleges that each of the agreements, conditions and activities "either individually or collectively," is in undue restraint of trade. Thus, the complaint, in addition to challenging the legality of each of the conditions and limitations included in the contracts, strikes generally at the respondent's overall course of dealing and places in issue the broad question of whether the respondent's entire method of doing business, including the imposition on its dealers of all of the terms and conditions of the contracts and the use of all of the acts and practices engaged in pursuant thereto, considered together, constitute a restraint of trade in violation of the Federal Trade Commission Act.

Viewed in this light, it is immediately apparent that the ruling of the hearing examiner, based on considerations relating to separate fragments of the broad issue so presented, rather than to the issue as a whole, is erroneous. If, as the examiner held, a prima facie showing of illegality has been made with respect to the respondent's resale price maintenance agreements and its practice of restricting former dealers from engaging in similar businesses, either separately or collectively, the motion to dismiss the complaint should have been denied in toto. Assuming that the prima facie case is not rebutted, the subsidiary question of whether the maintenance of exclusive territories and the respondent's related practices, either or both, contribute to the illegality of the arrangement is one to be considered in final disposition of the case.

The ruling appealed from will be reversed with the direction that the respondent's motion to dismiss the complaint be denied.

ORDER

Counsel in support of the complaint having filed an interlocutory appeal from the hearing examiner's order of October 5, 1959, grant-

ing in part the respondent's motion to dismiss the complaint in this proceeding; and

The Commission, for the reasons set forth in the accompanying opinion, having determined that the hearing examiner was in error:

It is ordered, That the appeal be, and it hereby is, granted.

It is further ordered, That the order appealed from be, and it hereby is, vacated and set aside.

It is further ordered, That the case be referred back to the hearing examiner with directions to deny the motion to dismiss.

ALPINE QUILTING COMPANY, INC., ET AL.

Docket 7619. Order, Jan. 27, 1960

Order denying respondents' request for opportunity to execute agreement to cease and desist, the record in the case being substantially complete.

The respondents, by motion filed December 16, 1959, renewed January 12, 1960, having requested the Commission to stay this proceeding for the purpose of permitting them to enter into a voluntary agreement to cease and desist from the practices alleged to be unlawful; and

It appearing that the Commission, by issuing its complaint on October 22, 1959, indicated its prior administrative determination that a formal proceeding against the respondents would be in the public interest, and no showing having been made that this determination was incorrect; and

It further appearing that the trial of the case has proceeded to the point where the record is substantially complete, thus precluding the possibility of avoiding the expenditure of time and money by the acceptance of an informal agreement to cease and desist, as contemplated by §1.51 of the Commission's Rules of Practice, Procedures and Organization; and

It further appearing that no useful purpose would be served by oral argument on the respondents' motion:

It is ordered, That said motion be, and it hereby is, denied.

RADIO TELEVISION TRAINING ASSOCIATION, INC., ET AL.

Docket 6616. Order, Feb. 10, 1960

Order vacating initial decision and remanding case for ruling on the parties' proposed findings of fact.

This matter having come on for hearing upon the motion filed by the respondent Radio Television Training Association, Inc., which requests that this proceeding be remanded to the hearing examiner or, alternatively, that other procedural orders be entered by the Commission; and

The Commission having considered said motion, the answer in opposition filed by counsel supporting the complaint, and the reply thereto tendered by counsel for movant, counsel's request for leave to file such reply being hereby granted; and

The motion having stated that the hearing examiner's prior rulings did not clearly inform said respondent as to the action taken by the hearing examiner on each of the proposed findings of fact filed by respondents after the taking of evidence was completed, and it appearing that subsequent to the filing of such motion the hearing examiner has prepared and submitted a supplemental order under date of January 27, 1960, purporting to rule on the respondents' proposed findings of fact; and

The Commission having determined that the order dated January 27, 1960, should be stricken and that the initial decision should be vacated and the case remanded to the hearing examiner for filing of order ruling on the parties' proposed findings of fact and for incorporating any changes in the initial decision which he may desire to make in the light thereof:

It is ordered, That the hearing examiner's order dated January 27, 1960, be, and it hereby is, stricken from the record.

It is further ordered, That the initial decision be, and it hereby is, vacated.

It is further ordered, That the case be remanded to the hearing examiner.

LIBBY-OWENS-FORD GLASS COMPANY ET AL.

Docket 7643. Order and Opinion, Feb. 26, 1960

Interlocutory order granting respondent's application for access to one motion picture film in investigational files—as to which counsel for CBS stated his client had no objection—but denying it as to all other confidential material.

ON APPLICATION FOR ACCESS TO CERTAIN FILE MATERIAL

By the COMMISSION:

The respondent Libby-Owens-Ford Glass Company requests that two motion picture films designated in its application, together with any other motion picture films secured in the course of the Commission's investigation culminating in the institution of this proceeding, be exhibited to respondent's representatives.

Under the Commission's Rules of Practice adopted for the protection of material and information coming into the possession of the Commission or within the knowledge of any of its officers or employees in the performance of their official duties, all file material in the category to which the application relates constitutes

confidential information. With respect to one of the films referred to in the application, namely, that prepared by United States Testing Company, Inc., for CBS Television Network, counsel for Columbia Broadcasting System, Inc., has stated in a memorandum submitted with the application that his client has no objection to the films being exhibited to counsel for respondent Libbey-Owens-Ford Glass Company. CBS Television Network presumably was one of the media through which respondents disseminated advertising during the period to which the charges of the complaint relate. The Commission has determined that the application should be granted to the extent that it requests that the film prepared for CBS Television Network be exhibited to applicant's counsel.

Broad powers of compulsory process and visitation have been conferred by law upon the Commission. The releasing of information obtained by the Commission in the discharge of its statutory duties is consistent with its responsibilities in respect thereto only when such course will serve the public interest. The effective discharge of the Commission's duties requires that it request evidentiary information and receive voluntary submissions thereof from the public and the business community; and promptness and expedition in such submittals are fostered and promoted by duly preserving the confidential status of information so received. Other considerations of public policy become governing in the event the public interest requires introduction of such information in support of charges in adversary public proceedings. It accordingly is not controlling that applicant is of the view that access to Commission investigation files may assist applicant in preparing its defense to the charges of the complaint.

The application for access to confidential material other than the aforementioned film prepared for CBS Television Network is denied. An appropriate order granting the application to the extent noted above is being entered.

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

ORDER

Respondent Libby-Owens-Ford Glass Company having made application for access to all motion picture films contained in the files of the Commission's investigation in this matter; and

The Commission having considered the matter and granted the application insofar as it relates to a motion picture film prepared for CBS Television Network by The United States Testing Company, Inc., and the Commission having additionally determined that such application should be in all other respects denied:

It is ordered, That counsel supporting the complaint in this pro-

ceeding be, and they hereby are, directed to exhibit the aforesaid motion picture film to counsel for respondent Libbey-Owens-Ford Glass Company.

Commissioner Tait not participating.

CONSOLIDATED FOODS CORPORATION

Docket 7000. Order and Opinions, Mar. 4, 1960

Interlocutory order upholding denial of motion to dismiss complaint at close of case in chief.

ON APPEAL FROM HEARING EXAMINER'S RULING

By KERN, *Commissioner:*

The complaint in this matter, issued December 18, 1957, charges the respondent with having violated Section 7 of the Clayton Act, as amended. At the conclusion of the case in chief, the respondent filed a motion seeking dismissal of the proceeding on the ground that the proof thus far adduced fails to establish a *prima facie* case. Briefs in support of and in opposition to the motion were filed, and on December 11, 1959, the hearing examiner entered an order denying the motion. The case is here on the respondent's interlocutory appeal from that order.

In his order denying the motion, the hearing examiner in pertinent part stated:

> The hearing examiner has given consideration to the motion of respondent, answer thereto, reply, and the record herein, and is of the opinion that dehydrated onion and dehydrated garlic comprise the lines of commerce involved in this proceeding and that there is reasonable, probative and substantial evidence in the record which, when considered in connection with reasonable inferences which may be drawn therefrom, would support an order in the absence of rebutting testimony.[1]
>
> *It is therefore ordered*, That motion of respondent to dismiss this proceeding be, and the same is hereby, dismissed.

The respondent concedes that the test applied by the hearing examiner in finding a *prima facie* case represents the established view of the Commission, but contends that the use of such test is not in conformity with the rule now followed by the Federal district courts in ruling on motions to dismiss actions tried by the court without a jury. It contends also that the hearing examiner has prematurely delineated the lines of commerce to be considered in the proceeding, thereby apparently precluding the respondent from proving as part of its case that the relevant market must include both raw and dehydrated onion and garlic.

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[1] *Vulcanized Rubber and Plastics Company*, D. 6222, 52 F.T.C. 533; *The Timken Roller Bearing Company*, D. 6504; *Scott Paper Company*, D. 6559.

As pointed out by the respondent, the standard applied in Commission proceedings in the disposition of motions to dismiss for failure of the evidence to establish a *prima facie* case was first articulated in 1955 in the matter of *Vulcanized Rubber and Plastics Company*, Docket 6222, 52 F.T.C. 533.

Like the motion here, the motion in that case was made at the conclusion of the case in chief and was based on the ground that a *prima facie* case had not been established. As in this case, also, the questions for determination were, first, whether, under the provisions of §3.20 of the Commission's Rules of Practice, the interlocutory appeal fell within that category of appeals which the Commission would consider on the merits, and, second, if so, whether the ruling appealed from was erroneous. The second question was never reached, and no decision was made thereon, for, as the opinion shows, the appeal was not one to be considered on the merits. And this was so, the Commission explained, because the ruling appealed from constituted only a determination that there was then in the record sufficient evidence to justify the requirement that the respondent proceed with its defense, which determination could have no material effect on the final decision of the case within the meaning of §3.20. The Commission, among other things, stated:

> It is also clear that for the Commission to entertain appeals of this nature would be but to encourage the submission of cases for decision piecemeal, with resulting unjustifiable delays; and that, in the opinion of the Commission, would not "better serve the interests of justice."

Thus, while the Commission in *Vulcanized Rubber* did express approval of a standard to be applied in determining whether a *prima facie* case has been established, the point decided was that under the applicable rules of practice an interlocutory appeal will be considered only if it is shown that the ruling appealed from will in some manner affect the final decision of the case or that for some other reason substantial rights of the parties are involved. This is still the Commission's policy. Under this policy it is incumbent on the party appealing from a ruling denying a motion to dismiss initially to show the existence of such circumstances. This has not been done in this case, and it follows that the ruling here, like the ruling in Vulcanized Rubber, is not subject to interlocutory appeal.

In view of the foregoing, it is not necessary to dwell at length on the respondent's contention that a hearing examiner, when confronted with a motion to dismiss a Commission proceeding for failure of proof at the close of the case in chief, should in all instances weigh the evidence, including all possible inferences, both pro and con, with the same finality as would be required in an

ultimate decision on the merits. We do note, however, that this is not the first time this suggestion has been made. Moreover, it may be that the test applied by the Commission is not well understood, and for the benefit of all concerned we shall briefly explain it.

In attacking the Commission's test, the respondent, assuming apparently that this is the basis and reason for it, quotes from the opinion in *Vulcanized Rubber* as follows:

> A hearing examiner in ruling on a motion to dismiss for failure of proof, made at the close of the case in chief, like a Federal district court in ruling on a similar motion in a non-jury trial, views the evidence and inferences reasonably to be drawn therefrom in the light most favorable to the complaint.

And this, it says, is not a correct statement of the rule now followed in the Federal district courts. The Commission is aware of the fact that the courts of appeals in a number of circuits in recent years have not so stated the test. One of the leading cases on the point is *Allred* v. *Sasser*, 170 F. 2d 233 (7th Cir. 1948), in which the court said:

> The trial court was the trier of the facts, and in considering the evidence was not bound to view it in a light most favorable to the plaintiff, with all attendant favorable presumptions, but was bound to take an unbiased view of all the evidence, direct and circumstantial, and accord it such weight as he believed it entitled to receive. (170 F. 2d at 235.)

Substantially, the same test has been stated by the Courts of Appeals for the Second, Fifth and Sixth Circuits.[2]

It is to be noted, however, that all these cases have involved appeals from judgments on *the merits against the plaintiffs*, resulting in final disposition of the cases. And under Rule 41(b) of the Rules of Civil Procedure (as amended, effective March 19, 1948), the requirement in such a situation is that the district court as trier of the facts *shall make findings as provided in Rule 52(b)*. This, also, is the procedure in the same circumstances in a Commission proceeding. (See §§3.8(e) and 3.21 of the Commission's Rules of Practice, under which if a motion to dismiss a complaint is granted with the result that a proceeding is terminated, the hearing examiner must make and file an initial decision containing a statement of findings and conclusions upon all the material issues of fact, law or discretion, based upon a consideration of the whole record, and an appropriate order.) Rule 41(b) further provides, however, that in an action tried by the court without a jury the court when presented with a motion to dismiss on the ground that the plaintiff has shown no right to relief may *decline to render any judg-*

[2] See *Huber* v. *American President Lines*, 240 F. 2d 778 (2d Cir. 1957); *Benton* v. *Blair*, 228 F. 2d 55 (5th Cir. 1956); *Bach* v. *Friden Calculating Machine Co., Inc.*, 148 F. 2d 407 (6th Cir. 1945).

ment until the close of all the evidence, and if that course is followed there is no requirement for the court to make any findings at all.

The Commission, on the other hand, has no rule authorizing its hearing examiners to withhold decision on a motion to dismiss a complaint. Presumably, if it did have, the motion could be denied solely as a matter of sound discretion and the question of weighing the evidence, as such, would not arise. The Commission feels, however, that if at the conclusion of the evidence in support of the complaint it appears reasonably certain that the respondent has not violated the law, the complaint against it should be immediately dismissed. In all other cases, the public interest requires the development of a full record on the basis of which all questions of law, fact and discretion may be considered and decided in the light of all the circumstances. Thus, the disposition of a motion to dismiss may involve a single step, that of denial because of the presence of sufficient evidence to justify the requirement that the respondent present its defense, or two, a determination that such evidence is not present and, in addition, a detailed consideration of the record, including all inferences to be drawn therefrom, and the preparation of an appropriate initial decision. A respondent filing a motion to dismiss a Commission proceeding is not only not prejudiced by an application of the Commission's test to determine the existence of a *prima facie* case, but actually gets an advantage it might not get under the current Rules of Civil Procedure.

The remaining point in the respondent's appeal requires little additional discussion. In stating that he "is of the opinion that dehydrated onion and dehydrated garlic comprise the lines of commerce involved in this proceeding," the hearing examiner, of course, was not making a final determination of this question any more than he was finally determining any other question. Applicable here is an observation made by the Commission in its ruling on a similar contention in the matter of *Brillo Manufacturing Company, Inc.*, Docket 6557, May 23, 1958 (on cross-appeals from an initial decision):

> * * * No showing has been made in the appeal that the hearing examiner heretofore has excluded evidence pointing to a substantial competitive interrelationship between industrial steel wool and other abrasives. As noted above, the issue as to the bounds of the relevant market in Section 7 proceedings is one of fact. Thus, the respondent's right to present evidence showing that products other than steel wool are included within the area of effective competition and, therefore, are a part of the relevant line of commerce is fully protected * * *.

The respondent's appeal will be denied.

Chairman Kintner and Commissioner Tait concur in the result.

CONCURRING OPINION

By TAIT, *Commissioner:*

I concur in the result. The respondent's challenge to the hearing examiner's denial of its motion to dismiss cannot succeed in any event because respondent has not shown that the application of a standard differing from the one enunciated in the matter of *Vulcanized Rubber and Plastics Company*, Docket 6222, 52 F.T.C. 533, would have produced a different result.

However, after long reflection and careful consideration, I have reached the conclusion that the standard employed in *Vulcanized Rubber* is erroneous.

Although the *Vulcanized Rubber* opinion flatly declared that the standard set forth therein regarding establishment of a *prima facie* case was "likened" to that used by the Federal district courts in *non-jury* trials, the interpretation now placed upon that opinion by the majority herein seems to be at variance with that previous frank assertion. It is not clear to me what is being proposed at this time by my able colleagues. However, I am now certain of one thing with respect to the *Vulcanized Rubber* standard and that is this: As expressed originally and unqualifiedly it parallels the standard employed by the Federal district courts in *jury* trials rather than *non-jury* trials.

Even though the *Vulcanized Rubber* rule was originally misstated in its comparison with the test used by the Federal district courts, it does not necessarily follow that the rule adopted for use by the Commission in its own adjudicatory proceedings is improper. In determining what rule is properly adaptable to our own quasi-judicial proceedings, however, it would be helpful, although not conclusive, to examine some of the reasons which led to the development of the different standards used by the Federal courts in jury and non-jury trial cases.

The "most favorable inference" standard used in passing upon mid-trial motions to dismiss in jury trials was developed primarily to accord with the allocation of decisional functions in such cases. In a jury case the role of the judge is a limited one; he determines the law, but the jury is the sole trier of the facts, and its role is protected from direct judicial invasion by the strictures of the Seventh Amendment. It follows that the judge in passing upon a mid-trial motion to dismiss cannot be given an unrestricted commission to try the facts. The jury standard is consistent with the limited role of the judge. The judge must send the case to the jury if there is substantial proof of the elements of the plaintiff's charge, even if the judge, if he were the trier of the facts, would himself decide the case against the plaintiff. *Slocum* v. *New York Life Ins.*

Co., 228 U.S. 364 (1913); *Gunning* v. *Cooley*, 281 U.S. 90 (1930); *United States* v. *United States Gypsum Co.*, 67 F. Supp. 397, 416–421 (D.D.C. 1946), *reversed on other grounds*, 333 U.S. 364 (1948).

But in an action tried without a jury this division of functions no longer obtains. And if a standard prescribing a limited role for the judge lacks utility in this different setting, it should not be applied. Justice Stephens of the Court of Appeals for the District of Columbia in his classic discussion of the two standards states emphatically that:

> It is not reasonable to require a judge, or motion to dismiss under Rule 41(b), to determine merely whether there is a *prima facie* case, such as in a jury trial should go to the jury, when there is no jury—to determine merely whether there is a *prima facie* case sufficient for the consideration of a trier of the facts *when he is himself the trier of the facts. United States* v. *United States Gypsum Co., supra*, at 418.

A number of learned commentators have acknowledged the force of Justice Stephens' reasoning. In the commentary, *The Motion to Dismiss in Non-Jury Cases*, 9 Federal Rules Service 986 at 991–992 (1946), the point was made that:

> Since * * * the judge, in passing upon a motion to dismiss at the close of the plaintiff's evidence, can refer the decision upon * * * [conflicting inferences, the weight of the evidence and credibility] * * * only to himself, there is no necessity for him to "assume" the truth of the plaintiff's evidence in the first instance, and by inquiring of himself concerning the weight and credibility of the evidence in the next.

Another anomaly inherent in the use of the two-step procedure in a non-jury case where functions have coalesced can best be revealed by posing a hypothetical: A judge sitting without jury in passing upon plaintiff's motion to dismiss employs the jury standard. He is of the opinion that if he were sitting as trier of the fact he would be compelled to grant the motion. However, after resolving all conflicts in favor of the plaintiff, the judge finds that there is a "case for the jury," and denies the motion. The defendant immediately rests without presenting evidence. The judge, as trier of the fact, is compelled to find for the defendant immediately after denying defendant's motion to dismiss. This anomaly has long haunted judicial minds. See *Lambuth* v. *Stetson & Post Mill Co.*, 14 Wash. 187, 190–191, 44 Pac. 148, 149 (1896), cited with approval in *United States* v. *United States Gypsum Co.*, *supra*.

In Commission proceedings the Commission both determines the law and finds the facts, just as does the judge in an action tried without jury. All the reasons that support the adoption of the non-jury standard in judicial proceeding where these functions are combined equally support the use of the non-jury standard in administrative proceedings. And there is an additional reason why

the non-jury standard would appear to be better fittted for agency use. The Commission is an expert body. Its specialized knowledge and experience should give it a heightened sensitivity to the factual situations before it. There is little reason to impose an artificial restraint on a body so equipped. In addition, it should be noted that the anomaly discussed in the *Lambuth* case, *supra*, is just as apt to occur in proceedings before this Commission as in judicial proceedings.

The principal reason for the development of the standard used in non-jury trials was the enhancement of the cause of justice through the elimination of delay. Justice Stephens states the principle in this manner:

> * * * [If] the reason for the jury trial practice does not exist in non-jury trials, where the judge is the trier of the facts, the jury trial practice ought not to be applied but should give way in favor of a practice consistent with the spirit of the Federal Rules of Civil Procedure. Rule 1 expressly provides that the rules "shall be construed to secure the just, speedy, and inexpensive determination of every action." Therefore, a court should dispose of a case at the first opportunity which is appropriate under the rules and in accord with the rights of the parties. When a court sitting without a jury has heard all of the plaintiff's evidence, it is appropriate that the court shall then determine whether or not the plaintiff has convincingly shown a right to relief. 67 F. Supp. at 417–418.

Due considerations of "just, speedy, and inexpensive determination of every action" are no less applicable to the administrative adjudicatory process. If it is unfair to require a defendant in a non-jury trial to expend the time and money necessary to put in his case where the plaintiff has failed to show a right to relief without the aid of most favorable inferences, then it is no less unfair to impose this requirement upon a respondent in our proceedings. If the expenditure of the time of the court and of public funds required in the continuation of the trial after the plaintiff has failed to show a right to relief cannot be justified, then the expenditure of the time of this Commission and its appropriated funds in a similar situation is also unjustifiable.

Plaintiffs contending for the application of the jury standard in non-jury cases have argued that the use of the Rule 41(b) standard deprives them of the opportunity to hear the defendant's witnesses and to bolster the case-in-chief through the use of cross-examination. Justice Stephens rejected this contention, saying:

> A plaintiff who has had full opportunity to put on his own case and has failed to convince the judge as trier of the facts, of a right to relief has no legal right under the due process clause of the Constitution, to hear the defendant's case, or to compel the court to hear it, merely because the plaintiff's case is a *prima facie* one in the jury trial sense of the term. 67 F. Supp. at 418.

This contention was rejected also by Judge Learned Hand in *Global Commerce Corp. S. A.* v. *Clark-Babbitt Industries, Inc.*, 255 F. 2d 105 (2d Cir. 1958).

The foregoing considerations would seem to apply with equal force to our own proceedings. In a number of cases the result will be the same regardless of which standard is employed. This is so where the operative facts are not disputed, where only one inference reasonably may be drawn from a basic fact, and where there are no issues of credibility. And there is a penumbral area of substantial breadth where there are conflicts in the evidence or issues of credibility present, but the trier applying the jury standard nevertheless grants motions to dismiss. This result is reached whenever the trier decides that the evidence adduced so clearly fails to establish the essential elements of the proponent's case that further hearings would be a waste of time.

It should be borne in mind as well that Federal Rule 41(b) is a discretionary rule. Among other things, it provides that:

> In an action tried by the Court without a jury the court as *trier of the facts* may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. (Emphasis supplied.)

In a close case the judge may either deny the motion and require the defendant to put in his case, or dismiss the complaint without prejudice. See 5 Moore, Federal Practice, Para. 41.13 [4] (1951). I cannot agree with the majority that the Commission's hearing examiners are wholly without a similar discretion. The powers of the hearing examiner derive basically from Section 7(b) of the Administrative Procedure Act. Attorney General's Manual on the Administrative Procedure Act, pp. 74, 75. The enumerated powers therein, coupled with our own Rules of Practice, notably Section 3.15(c)(7), seem to indicate that a hearing examiner has the necessary discretion. Nor does Section 3.8(e) of our Rules appear to impose any limitation as intimated by the majority. To the contrary, the negative inference to be drawn from Section 3.8(e) itself is that the hearing examiner can *deny* a motion to dismiss at close of the case-in-chief and do so without the necessity of making findings and rendering an initial decision as would otherwise be required by the granting of such a motion. Should any reasonable doubt exist as to the authority of the hearing examiner, it would be a simple matter to clarify our Rules of Practice. There need be no fear that a close and doubtful case involving a substantial public interest would be dismissed prematurely.

The "public interest" is not a unitary concept. One of the criteria of "public interest" in the broad sense is that decisions will be reached on the basis of a record developed under fair rules of pro-

cedure. Indeed, in order to retain full public confidence the procedure, in the words of Mr. Justice Holmes, "must not only be fair, but give the appearance of being fair."

It is my firm belief that the Commission should abandon the standard adopted in *Vulcanized Rubber* and adopt the standard now employed by the Federal courts in non-jury cases. By doing so our hearing examiners and counsel will also have readily available a body of precedents to guide them.

Chairman Kintner joins with Commissioner Tait in this concurring opinion.

ORDER

The respondent having filed an interlocutory appeal from the hearing examiner's order denying its motion to dismiss the complaint; and

The Commission, for the reasons set forth in the accompanying opinion, having determined that the appeal is not one to be granted under the provisions of §3.20 of the Rules of Practice:

It is ordered, That said appeal be, and it hereby is, denied.

Chairman Kintner and Commissioner Tait concurring in the result.

INTERNATIONAL PAPER COMPANY [1]

Docket 6676. Order, Mar. 23, 1960

Order consenting to the transfer of 15,000 shares of stock from the voting trustee to a charitable, etc., foundation for sale thereby, but denying blanket consent to future transfers of the rest of the 160,000 shares deposited with said trustee, in compliance with divestment order in merger proceeding.

Whereas, the Commission by order issued June 25, 1957, in the above-entitled matter ordered International Paper Company to divest itself absolutely, in good faith within 10 years, of all stock in Longview Fibre Company which was acquired through the merger of The Long-Bell Lumber Corporation and Long-Bell Lumber Company with respondent; and

Whereas, pursuant to said order as an initial step in such divestiture International Paper Company with the Commission's approval transferred said stock, viz., 160,000 shares to The Hanover Bank, as voting trustee under a Voting Trust Agreement dated August 29, 1957, between the International Paper Company and said Bank, in a form approved by the Commission; and

Whereas, said voting trust agreement provides for transfer of any or all of said shares to International Paper Company on the

[1] Order to cease and desist dated June 25, 1957, 53 F.T.C. 1192.

Commission consenting thereto or on certification by International Paper Company to said Bank that it has sold or contracted to sell the same in accordance with the terms of the order; and

Whereas, International Paper Company has petitioned the Commission to consent to the transfer to it from time to time (under appropriate safeguards for carrying out the requirements of the Commission's order) of any or all of the shares of said stock in the hands of the Voting Trustee in connection with the donation of such shares to one or more charitable, scientific or educational foundations or institutions, but states that the only donation which it presently intends making is one of 15,000 shares to the International Paper Company Foundation;

Now, therefore, upon consideration thereof,

It is ordered, That the said petition be and it is hereby denied insofar as it requests consent to the transfer of all of the shares of the capital stock of Longview Fibre Company in the hands of the Voting Trustee in connection with the donation from time to time of the same to one or more charitable, scientific or educational foundations or institutions, but without prejudice to the right of International Paper Company to petition for consent pursuant to the terms of the Voting Trust Agreement to future transfers in connection with donations of the same to charitable, scientific or educational foundations or institutions as the occasion therefor may arise.

It is further ordered, That consent is hereby given to the transfer pursuant to the said Voting Trust Agreement, by The Hanover Bank to the International Paper Company of 15,000 shares of capital stock of Longview Fibre Company held by said Bank as Voting Trustee under said Voting Trust Agreement upon the certification of International Paper Company to said Bank by an instrument signed by its President or Vice-President that it has assigned all its right, title and interest in said 15,000 shares to International Paper Company Foundation, a New York membership corporation, and that said International Paper Company Foundation has sold or contracted to sell said 15,000 shares to a purchaser or purchasers to whom International Paper Company would have been entitled to sell the same under the terms of the Commission's order of June 25, 1957.

BRILLO MANUFACTURING COMPANY, INC.

Docket 6557. Order and Opinion, Mar. 25, 1960

Order vacating dismissal of complaint charging violation of Sec. 7 of the Clayton Act by a producer of steel wool and steel wool products which acquired all the capital stock of a competitor, and remanding the case for further proceedings.

OPINION OF THE COMMISSION

By KERN, *Commissioner:*

For the second time we are called upon to consider the correctness of a ruling by the hearing examiner upon respondent's motion to dismiss at the conclusion of evidence in support of the Commission's complaint charging violation of Section 7 of the Clayton Act, as amended. On the earlier occasion, the hearing examiner denied the motion insofar as it related to the industrial steel wool market but granted it insofar as it related to the household steel wool market. He based his ruling in each instance upon the market shares of respondent and of the acquired company in the particular line of commerce involved. We reversed and remanded to the hearing examiner for his further consideration of the record. Now before us is the hearing examiner's initial decision, in which he has found that a *prima facie* case was not established by the evidence. Counsel supporting the complaint has appealed from that holding and the initial decision's order which would dismiss the complaint.

Respondent produces steel wool and steel wool products. In July, 1955, it acquired all of the capital stock of the Williams Company which processed similar products. The complaint alleges that the effects, among others, of that acquisition may be substantially to lessen competition and tend to create a monopoly in the production and sale of industrial and of household steel wool and steel wool products. The correctness of the hearing examiner's findings that industrial and household steel wool and steel wool products constitute separate and distinct lines of commerce within the meaning of the Act is not in issue in the present posture of the case. The appeal's exceptions instead are directed to the hearing examiner's conclusions that the record does not reveal reasonable probabilities of substantial lessening of competition or tendency to create monopoly.

At the outset, it is important to take particular note of the procedural posture in which the hearing examiner made his decision. In this regard, we believe that he has failed to evaluate the evidence in support of the case-in-chief in accordance with the Commission's previous directives. The sole task confronting the hearing examiner in initially considering the motion to dismiss at the close of the case-in-chief was to ascertain whether a *prima facie* case had been established. In the performance of that task the principle expressed in *Vulcanized Rubber and Plastic Company*, D. 6222, reiterated in the *Timken Roller Bearing Company* case, D. 6504, and recently reaffirmed in *Consolidated Foods Corporation*, D. 7000, decided March 4, 1960, should have been applied. The principle

involved, as well as its application, is a simple matter. It requires that on a motion made at this stage of the case, the evidence and inferences reasonably to be drawn therefrom should be viewed in the light most favorable to the complaint. We conclude that the hearing examiner failed to apply this principle and in consequence committed manifest error.

It seems to us that the hearing examiner's first ruling upon the motion which, upon appeal, we reversed and remanded, was unduly preoccupied with pursuing the so-called quantitative substantiality doctrine—in this case to a point unjustified by existing judicial precedents interpreting the requirements of Section 7 of the Clayton Act—and thereby gave overwhelming consideration to market shares to the complete exclusion of all other relevant economic factors. However, the hearing examiner in the initial decision now before us on appeal, with an ambivalence that we deem unjustified by our remand direction, seems repelled by that which he once embraced. He now ignores the great and perhaps conclusive weight to be given to these very same considerations when viewed in connection with an already existing heavy industry concentration and other relevant record facts. When we refused to adhere to the rigid yardstick utilized by the hearing examiner in his earlier ruling, and directed that he look at all the relevant facts of competition, we did not want to be taken to conclude that in certain situations the rigid yardstick of market shares might not only be extremely meaningful, but indeed perhaps conclusive under some circumstances on the issue of probability of competitive injury or tendency to monopoly. Obviously the more concentrated an industry, the more meaningful it becomes; indeed, the more meaningful any additional single evidentiary element bearing on this issue becomes.

With those guideposts in mind, we turn to the evidence supporting the complaint.

Industrial steel wool wares are sold into the paint and furniture manufacturing trades and to janitor supply houses and other jobbers. At the time of the acquisition in 1955, Brillo and Williams and five other producers were selling steel wool nationally in the industrial market. As found by the hearing examiner, Brillo in 1954 was the largest producer with 29.1% of the industrial market; and Williams was No. 4 with 18.2% of that market. He further found, among other things, that the evidence showed that the industrial market had continued to be as keenly competitive after the acquisition as before and that there was no record basis for concluding that it would not so continue. The appeal contends that probable substantial lessening of competition is evident from the large market share afforded respondent and that such adverse effects

will be greatly enhanced by other marketing and economic facts of record.[1]

The salient record information bearing on the general competitive situation in the industrial market and financial conditions of the producers included the following matters. Brillo's profit on net sales in 1955 was 5.1%. The limited data relating to S.O.S. indicate that its profit situation has been satisfactory. S.O.S., like Brillo, markets the great majority of its volume in the household market where profit margins substantially exceed those for the industrial line of commerce. The marginal type of operation from a profit standpoint which has resulted for one of the producers is evident from an exhibit received. Another company which had its first full year of operation in 1956 incurred substantial losses. The record points to profits of 4% on gross sales or less for the other producers.

Contributing to such low margins has been the excess plant capacity by all except Brillo and the circumstance that the industrial market has been a relatively static one. This has meant that to secure added volume a producer usually must induce buyers to switch from their established sources. The result has been keen and intense competition contributing to low prices and narrow profit levels.[2] In the light of these matters, it also is apparent that the handicaps to profitable operations and normal business growth

[1] Counsel supporting the complaint alternatively contended before the hearing examiner and argues here that because the evidence portraying the competitive and economic factors operating in the industrial market did not detract from inferences of lessened competition properly to be drawn from the size of the market shares involved, a *prima facie* case of probable anti-competitive effects was therefore established. When rejecting this, the hearing examiner stated such proposed standard would improperly shift the burden of proof to respondent and also contravene the rule of law expressed in the Commission's order of remand. We do not agree with the initial decision's concept of improper shifting of burden of proof inasmuch as it erroneously assumes that market share data have no evidentiary value in determining probable effects of the acquisition. The Commission's prior remand was based on the view that although market share data constituted an important evidentiary facet of the case, decision as to the presence or absence of a *prima facie* case was not to be based on market share evaluations to the exclusion of all other factors as the hearing examiner had originally done.

Nor did the Commission hold thereby that proof of violation would turn solely on whether the attendant competitive factors appeared affirmatively to enhance or give added impetus to adverse effects inhering in the expanded market share acquired. On the other hand, the hearing examiner's rejection of the rule of law advocated in the appeal perhaps had no effect on his instant disposition of the case inasmuch as he found that inferences of substantial lessening of competition were negated by competitive factors cited in the initial decision. However, to the extent the decisional formula pressed by staff counsel contemplates that no showing of added impetus to injury from surrounding competitive circumstances should ever be required if consequential market shares are involved, it is incorrect.

[2] Substantial increases in production and shipping costs for steel wool occurred in the years subsequent to 1950. However, the prices at which certain medium and coarser grades of steel wool were sold by the producers in the first nine months of 1956 were two cents per pound below those made effective by them in December, 1950; and Brillo's prices for such 1956 period were the same on its coarser grades as its prices of December 8, 1950. A representative of one of the producers testified his firm did not pass on increased production costs because it was not feasible to raise prices unless Brillo did so.

which exist in the industrial market impose formidable barriers to the success of new entrants into the field. Hence, conclusions of easy entry into the industry are of dubious validity.

The record additionally indicates great and progressively widening disparity in resources and sales volume between Brillo and the other producers excluding S.O.S. For example, in 1955, Brillo's total assets were $5,234,000 and its surplus $3,259,000. Excluding Williams and S.O.S., the aggregate sales of the remaining producers in the composite industrial and household markets were substantially less than Brillo's surplus. Further illustrating that disparity is the more than 1.4 million dollars spent by Brillo on advertising in that year, primarily for promoting the sale of its household line. American, the third ranking producer in the total steel wool field, with a market share of 4.5% in that year, had a volume of $1,311,654. Its market share for that year in industrial steel wool was 20.3%. In the period 1950–56, the smaller producers lost market shares in the industrial line of commerce and Brillo progressively gained. The record supports reasonable inferences that none of the smaller producers engaged exclusively in marketing steel wool has made appreciable financial growth in the half-decade preceding the acquisition.

Another issue concerns the impact, if any, upon competition resulting from Brillo's access to the plant facilities involved in the acquisition. Brillo's plant is located in Brooklyn and the Williams' factory is in London, Ohio. Steel wool manufacturers traditionally have sold at freight prepaid prices based on three zones which zone areas vary slightly among the producers. The eastern or first zone price has been one cent below the central zone and two cents under that for the far west. All producers are located in the first zone, however, and their zone differentials look to partially compensating them for added freight costs into distant markets. The hearing examiner found (1) that the potential freight savings afforded by Brillo's control of midwest production facilities would not appreciably improve its competitive position; (2) that conclusions that respondent would lower prices among markets in proportion to freight savings would be based on far-fetched assumptions that it would abandon the traditional zone system for selling industrial steel wool; and (3) that to find that anti-competitive effects instead of enhanced competition might result from price reductions would be to insulate weak competitors from the rigors of competition and be inconsistent with the public policy underlying the antitrust laws.

Low prices when used in competitive settings enabling sellers to achieve monopolistic power are but a prelude to higher prices.

The goal of amended Section 7 therefore is to preserve competition to the end that competition may preserve low prices. Hence, in cases of proved likelihood of anti-competitive effects, the fact that the statutory remedy will reduce undue competitive handicaps for the violator's rivals is no bar to corrective action. A chart attached to the appeal brief indicates that very substantial freight savings can be realized by shipping from London, Ohio, instead of Brooklyn or vice-versa. For example, the savings through Ohio shipments to ten typical cities in the south, southeast, midwest, southwest and west average $1.45 per hundred pounds on an l.c.l. basis and approximately $1.00 on a carload basis. The choice of shipping points made available to respondent by the acquisition accordingly affords substantial freight savings to respondent.

Nor is it reasonable to conclude that respondent may never elect to abandon the industry's present zone pattern of pricing. It is the only industry member having two production points; and it is the price leader in the industrial field.[3] Were Brillo to lower its prices in areas where it has freight advantages over competitors, retaliatory decreases based on corresponding savings by individual producers with single production points necessarily would involve fewer markets. Also, instead of abandoning zone pricing, respondent could formulate area prices differing as between Brillo and Williams. Differing prices between the two companies in fact prevailed in the first nine months of 1956, Williams being lower on some grades than respondent and its competitors. The dual plant aspects of the acquisition, accordingly, represented a material change in competitive patterns theretofore existing in the industrial line of commerce for steel wool and its potential for strengthening respondent's marketing power or handicapping or foreclosing other producers in some markets is evident.

The foregoing economic factors affecting the industrial line must, of course, be regarded in the context of the highly concentrated

[3] The briefs in support of and in opposition to the appeal contained extended arguments on whether the respondent has been the price leader in the industrial field. The hearing examiner found it was not. Inasmuch as this is not a Sherman Act proceeding, the absence of such market power is not controlling to decision; but if present, it is a relevant market factor of which due regard should be taken. To analyze all the evidence bearing on this issue would unduly lengthen this memorandum. It suffices instead to note that general price increases for industrial wares occurred in December, 1950, August, 1954, January, 1956, and October, 1956. Brillo was the first to promulgate prices at those times. It is true that most of the producers were selling their coarser grades at two cents above Brillo for an extended period and later, up to January, 1956, sold at one cent over Brillo. Such differentials do not signify, however, that Brillo was merely following the leadership of other producers when raising its prices. This holds true because the new prices established by it on some grades usually exceeded those of its rivals on such grades. Brillo alone had the ability to initiate price movements upward which would be followed by other or like raises on the part of the remaining producers. The record thus supports reasonable inferences that respondent was the leading factor in the industrial market as early as 1950 and subsequently established price leadership.

market structure resulting from the acquisition. Respondent, which had 29.1% of the industrial market in the year prior to the acquisition, gained control of a competing enterprise which had 18.2% of that market. Thus the expanded market share controlled by respondent represented 47.3%. The record further shows, among other things, that there had been progressive losses of market shares in the industrial line of commerce by the smaller producers for several years preceding the acquisition and concomitant gains by Brillo and that the great disparities in financial resources which theretofore existed between respondent and all but one of the other producers were widened by the acquisition. In view of all those factors, we believe that the hearing examiner erred in failing to find that a *prima facie* case of statutorily proscribed adverse effects in the industrial line of commerce was established by the record.

As to the household line of commerce, Brillo's share of such sales in the year prior to the acquisition was 45.3%, that for S.O.S. amounted to 50.9%, and Williams had 0.3%. The shares of American and Durawool, the only other producers selling in the household market, were 1.4% and 0.3%, respectively. The hearing examiner found the acquisition lacking in competitive impact on the smaller producers inasmuch as they had been unwilling or unable to incur the substantial expenditures for advertising required for gaining consumer acceptance and access to retail outlets in the household field. We think it evident from the record, however, that the failure of Durawool and American to emulate Brillo and S.O.S. by engaging in national advertising has stemmed from financial inability, not unwillingness. The high entry fee in that respect also explains why certain of the other steel wool manufacturers who are factors in the industrial steel wool field do not try to sell in the household market.

Other record considerations also detract from the initial decision's conclusions that the acquisition would have no adverse effects on the smaller producers. One of the reasons for Brillo's acquisition was the inadequacy of its own plant facilities for meeting anticipated sales demands. After the acquisition, Williams' production was increased over 400% for making Brillo products. Thus, Brillo's access to added production capacity has strengthened it competitively and as a corollary tended to widen the disparities in competitive capacities for entering or surviving in the household field which theretofore existed between Brillo and the smaller producers.

The initial decision's conclusions of lack of anti-competitive effects in the household line also must be weighed with due regard to any tendencies to industry concentration which may appear. This is

warranted because there may be lessening of competition or tendency to monopoly if a merger substantially increases concentration. *United States* v. *Bethlehem Steel Corp.*, 168 F. Supp. 576, 603 (S.D.N.Y., 1958).

In 1950 and up into 1954, there were six producers selling in the household market. In the latter year, S.O.S. acquired Cleanser whose market share was 1.8%. In 1953 respondent and S.O.S. had 95.7% of the market, their shares being 45.4% and 50.3%, respectively. The share held by Williams was 0.3% in 1954 and 1955. In 1956, the combined share of the Big Two, including that of the affiliated Williams, was 98.5%. In 1953, American (1.6%) and Durawool (0.2%), accounted for 1.8% of the household market; in 1956, their combined share was 1.5%. Brillo's share in 1953 was 45.4% as noted above, and 45.3% in 1954, and in 1956 Brillo's combined share with Williams was 46.5%. It thus appears that between 1953 and 1956, the combined shares of the small producers slightly decreased percentagewise, the shares held by the two large producers increased both individually and in the aggregate, and the number of independent companies competing in the household field declined by one-third or 33⅓%.

Bearing in mind that aggravation of an existing oligopoly framework comes within the statutory concept of "tend to create a monopoly," *United States* v. *Bethlehem Steel Corp.*, *supra*, p. 607, the foregoing market facts reasonably support the inference that respondent's acquisition has operated to intensify the marked concentration which theretofore existed in the household field. It therefore is not controlling that the share held by Williams was a fraction of one percent. The Act also encompasses minute acquisitions which tend to monopoly. *United States* v. *Brown Shoe Co.* (D.C. Mo., 1959; CCH Trade Reg. Rep. 69531). We think the hearing examiner erred in failing to find that a *prima facie* case of statutorily proscribed adverse effects in the household line of commerce was established by the record.

Viewing the evidence in this record and inferences to be drawn therefrom in the light most favorable to the complaint, we conclude that a *prima facie* case has been established of statutorily proscribed adverse effects in both the industrial steel wool and in the household steel wool lines of commerce and that the hearing examiner erred by dismissing the complaint. In the present posture of the case we, of course, draw no conclusions on the merits. Respondent will have ample opportunity to rebut, explain or contradict the proof adduced in support of the complaint in the next stage of the proceeding.

Finally for determination is the appeal of counsel supporting the complaint excepting to the hearing examiner's refusal to regard

the composite industrial-household market as a statutory line of commerce and find violation therein. In this connection we find counsel in support of the complaint on somewhat thin ground. First, with respect to the pleadings, it would require the broadest possible interpretation of the complaint to disagree with the hearing examiner's conclusion that the position of counsel supporting the complaint is "contrary to the allegations of the complaint." Moreover, both the theory of presentation and the substance of the evidence in support of the case-in-chief indicates that perhaps this proposition may have been an afterthought. We concur with the hearing examiner's conclusion on this matter. This aspect of the appeal is denied.

The appeal of counsel supporting the complaint, except as above indicated, is granted. The initial decision accordingly is being vacated and set aside and the case remanded to the hearing examiner for further proceedings consistent with this opinion.

Chairman Kintner and Commissioner Tait concur in the result.

ORDER

This case having come on for hearing upon the appeal of counsel supporting the complaint from the hearing examiner's initial decision dismissing the complaint for failure to establish a *prima facie* case; and

The Commission, for reasons stated in the accompanying opinion, having determined that the hearing examiner erred, and having granted the appeal:

It is ordered, That the initial decision be, and it hereby is, vacated and set aside.

It is further ordered, That this case be remanded to the hearing examiner for further proceedings.

Chairman Kintner and Commissioner Tait concurring in the result.

REYNOLDS METALS COMPANY

Docket 7009. Order and Opinion, Mar. 30, 1960

Order denying petition to reopen proceeding to adduce new evidence and modify desist order of Jan. 21, 1960 (p. 743 herein).

ON PETITION TO REOPEN PROCEEDING

By TAIT, *Commissioner:*

Respondent has petitioned the Commission to reopen this proceeding for alternative purposes of adducing new and additional evidence, rehearing the matter on certain stated grounds, and modifying the order of January 21, 1960.

Request to Introduce New and Additional Evidence

The new and additional evidence which respondent seeks to offer appears to relate principally to the alleged entry of a new company in the florist foil field and the expansion of the florist foil sales of another firm. The concerns mentioned are Kaiser Aluminum & Chemical Sales, Inc., a division of Kaiser Aluminum & Chemical Corporation, and Archer Aluminum, a division of R. J. Reynolds Tobacco Company. Respondent states that the Kaiser firm began to sell florist foil in 1960 and that Archer Aluminum has intensified and extended its activities in the florist foil field since the close of hearings on October 30, 1958.

Respondent contends that the entry of the one new firm and the expansion of the other, both with averred competitive strength comparable to respondent, shows (a) that the respondent's acquisition of Arrow Brands has not had the effect of a probable lessening of competition or a tendency to monopoly and (b) that any lessening as a result of the acquisition can not be laid at the door of the respondent.

The new facts which respondent seeks to have added to the record relate to alleged changes in the competitive structure of the market occurring since the record was closed. The fact is that respondent was shown at the time of the hearings to be in violation of Section 7. This requires an order of divestiture under the statute. Even though subsequent events may show that future competitive conditions are not as anticipated, this would not make legal that which was illegal, nor relieve the respondent of the consequences of its action, unlawful as of the time of trial. It follows that the new evidence could have no bearing on the outcome of this proceeding.

The mere entry of a new company or the broadening of the activities of an existing company in the industry would not show the Commission's determination to be incorrect. The decision was not made on the basis that respondent had so monopolized the field as to preclude competition. It was made with an awareness that new companies could come into the business, particularly companies with large resources. The acquisition was nevertheless found to be illegal. Competition in the industry before the merger was represented by a number of firms, not very large in size, which were vigorous, aggressive competitors in price, service, design and other ways. We found that the acquisition seriously and substantially lessened the competition in the relevant line of commerce. A new entry comparable in strength to Reynolds Metals Company could no doubt offer competition to the respondent; it would not restore the kind of competition which has been reduced or eliminated. Moreover,

in the case of the Kaiser firm, it is too early to tell what may be the impact on the market of the entry of this company.

Respondent claims that since this case was closed, the importations of florist foil have substantially increased and have resulted in the loss of customers by Arrow Brands and other domestic companies. The effect of import foil on competition in the American market was a factor considered by the Commission in its decision.

Respondent seeks to show that certain named competitors continue in business and that they have not been injured and will not likely be injured by the acquisition. The issue before the Commission in deciding the case was not one of probable injury to competitors, but of probable injury to competition. Therefore, the fact that these firms continue in business, as claimed, would not change the decision.

A further point raised by the respondent is the assertion that during 1959, Arrow Brands suffered a decrease in its sales volume. This is sufficiently disposed of by our prior discussion. If true, it would not change our decision. Respondent's other points either do not relate to new developments or they concern factors which, if shown, would make no difference in the determination.

Request for Rehearing and Reargument

In the second part of its petition, respondent requests a rehearing and reargument on certain grounds, all of which relate to points previously raised before the Commission on respondent's appeal from the initial decision and disposed of by the Commission's decision. No showing has been made which would justify a rehearing of the same issues.

Request for Modification of the Order

Finally, respondent has petitioned the Commission to modify the order of divestiture issued January 21, 1960. Specifically, it requests the deletion of the provisions which relate to the new plant at Torrance, California, and to other assets and properties put into Arrow Brands since the acquisition.

The order in pertinent part requires divestiture of respondent's interest in Arrow Brands

> together with the new plant built after the acquisition for Arrow Brands, Inc., and so much of any other assets and properties put into the business of Arrow Brands, Inc., since the acquisition as may be necessary to restore it to at least the same relative, competitive standing it formerly had in the florist foil industry at or around the time of the acquisition.

We do not interpret the order as necessarily requiring respondent to divest itself of the new plant and the added equipment if there

is any other way in which it can reestablish the competitor as ordered. A further provision requiring the submission of a plan for compliance gives respondent the opportunity to submit for approval some method of complying with the order which does not involve the Torrance, California, plant and other property put into the company, if it can. In view of this, we do not think respondent's objections to the form of the order are well taken.

Accordingly, respondent's petition to reopen will be denied.

Commissioner Kern did not participate in the decision herein.

ORDER

Respondent, having filed a petition on March 11, 1960, requesting alternatively that this proceeding be reopened for the purpose of (a) adducing new and additional evidence, (b) rehearing the matter on certain stated grounds, and (c) modifying the Commission's order issued January 21, 1960; and

The Commission, for the reasons stated in the accompanying opinion, having determined that the aforementioned petition should be denied:

It is ordered, That respondent's petition to reopen the proceeding, filed March 11, 1960, be, and it hereby is, denied.

Commissioner Kern not participating.

SNAP-ON TOOLS CORPORATION

Docket 7116. Order and Opinion, Apr. 4, 1960

Order denying respondent's petition for rehearing on decision vacating hearing examiner's dismissal in part and remanding case with direction to deny motion to dismiss *in toto*.

ON PETITION FOR REHEARING

By the COMMISSION:

In our decision of January 21, 1960, we granted an interlocutory appeal by counsel supporting the complaint, vacated the hearing examiner's order insofar as it granted in part the respondent's motion to dismiss for failure to establish a *prima facie* case, and remanded the case with the direction that he deny such motion *in toto*. Respondent's petition for rehearing requests that our decision be withdrawn and that the appeal be reheard and decided on the specific issues deemed controlling by opposing counsel and duly argued in their briefs.

Respondent contends in its petition that the Commission improperly decided something not before it on appeal. When considering such appeal however, the Commission made its own independent analysis of the issue basically presented and controlling

to decision in the then posture of the case; and it thereupon decided the appeal on the basis of applicable legal principles. Moreover, the petition makes no showing as to the Commission's aforementioned analysis being erroneous or of invalidity respecting legal standards applied by it.

The petition's additional argument that substantive law relating to formal appellate procedures forecloses the Commission from deciding appeals on issues other than those deemed governing by counsel also is rejected. Such principle has no application whatsoever to interlocutory appeals in administrative proceedings wherein no final dispositions of cases are being made.

Nor is it necessary to grant a rehearing because the *per se* illegality of respondent's contract provisions may ultimately become the prime issue in this proceeding. The petition's allegations on this score are in part based on assumptions that the hearing examiner subsequently may find that all issues except that relating to the exclusive territory provision are rendered moot by reason of certain revisions and modifications by respondent in its dealer contracts. However, our prior decision duly recognized that the question of maintenance of exclusive territories, including the extent to which activities in that respect may have contributed to illegality inhering in the respondent's dealer arrangements, was one more appropriately to be considered upon final disposition of the case. The issuance during adversary proceedings of advisory opinions in the nature contemplated in the petition would encourage fragmentary submission of cases for decision, make for piecemeal decisions and inevitably result in unjustifiable delays in the disposition of Commission proceedings.

Respondent also claims prejudicial or reversable error attending the Commission's failure to hear its counsel on oral argument in opposition to the appeal. Because the record and briefs afforded adequate basis for informed decision on the merits of the appeal, the Commission exercised its sound discretion and determined that oral argument should not be granted. The same holds true respecting the petition's instant request for oral hearing and it is likewise denied.

The petition for rehearing is denied accordingly.

Commissioner Kern did not participate in the decision herein.

ORDER

The Commission having determined, for reasons stated in the accompanying opinion, that the respondent's petition for rehearing on the Commission's decision of January 21, 1960, should be denied:

It is ordered, That said petition be, and it hereby is, denied.

Commissioner Kern not participating.

EDWIN M. FREEMAN ET AL. TRADING AS FREEMAN & FREEMAN

Docket 4735. Order, Apr. 7, 1960

Order denying respondents' request for modification of desist order because of change in formula of product.

This proceeding having been reopened and the matter referred to a hearing examiner for the purpose of receiving evidence in support of and in opposition to the respondents' request for modification of the order to cease and desist entered herein on May 2, 1945; and

The Commission having considered the evidence received and having determined therefrom that the changes alleged to have been made in the formula and composition of the respondents' product since the date of the order to cease and desist do not require any change in the terms of said order to cease and desist:

It is ordered, That the respondents' request, made in their motion of July 30, 1958, for modification of the order to cease and desist be, and it hereby is, denied.

SIMPSON TIMBER COMPANY ET AL.

Docket 7713. Order and Opinion, Apr. 20, 1960

Interlocutory order upholding denial of respondent's motion to quash subpoena duces tecum requesting trade data submitted by members to redwood association.

OPINION OF THE COMMISSION

By KERN, *Commissioner:*

This matter is before the Commission upon appeal of Philip T. Farnsworth, executive vice president and general manager, California Redwood Association, from a ruling by the hearing examiner denying a motion to quash a subpoena duces tecum issued at the request of counsel supporting the complaint. The requested data include, for a specified period of time, documents identifying members, subscribers and other companies which have submitted data to the Association relating to the production and shipment of redwood; originals or true copies of all reports submitted to the Association by said companies relating to the production or shipment of redwood; all worksheets and tabulations used by the Association in the preparation of statistical reports to its members which relate to the production or shipment of redwood; and all additional documents used by the Association in computing aggregate annual production and annual aggregate shipment of redwood by all companies.

The principal argument advanced by appellant is that the subpoena calls for data obtained by the Association on a confidential basis; that disclosure of that data in response to a subpoena will cause irreparable harm to the Association and impair its operations; and that the data sought is readily available directly from the companies involved. In support of this argument, appellant relies on the Commission's action in quashing a subpoena duces tecum *In the Matter of Foremost Dairies, Inc.*, Docket No. 6495, 3 CCH Trade Reg. Rep. par. 27,844.

Appellant's reliance on that action is misplaced. In that matter, the Attorney General of the State of California, on behalf of the Director of Agriculture of that State, appealed from a ruling by the hearing examiner which denied a motion to quash or limit a subpoena duces tecum issued by the hearing examiner at the instance of respondent Foremost Dairies, Inc. In addition to other grounds, the State Attorney General argued that the material required to be produced was privileged and confidential under the laws of the State of California and that the data was available from other sources. The Commission's action was not based on either of these two grounds. It was our view that the production of the requested data would seriously impair the operations of the State Department of Agriculture. We concluded that the public interest that would be served by not impairing the operation of the state agency outweighed the public interest that would be served by the production of the requested material. While the fact that the data may have been available from other sources was a consideration in balancing the public interest to be served, it was not the basis for our holding as contended by appellant. In this connection, it is well established that "* * * there is no lawful restraint upon the use of the subpoena duces tecum which limits its use to cases where the subpoenaed property is the sole source of the information." *Fleming* v. *Montgomery Ward & Co.*, 114 F. 2d 384 (C.A. 7, 1940), *cert. denied*, 311 U.S. 690 (1940). Thus, our ruling in the *Foremost* case does not impose a restriction on the power of the Commission to obtain information by subpoena but resulted from an exercise of our discretion on the basis of the particular facts of that case.

The facts in this case are more closely analogous to those in *Federal Trade Commission* v. *W. W. Tuttle*, 244 F. 2d 605 (C.A. 9, 1957), *cert. denied*, 354 U.S. 925 (1957). Appellant in that case similarly argued that the data requested was confidential and that the production thereof would be injurious to the business of his accounting firm. The court rejected both of these contentions and we agree with the hearing examiner that the court's ruling in that matter is controlling here.

Appellant also contends that the Commission alone has the power to issue a subpoena duces tecum against third parties and since this subpoena was issued by the hearing examiner, it is invalid. This argument is rejected for the reasons set forth in our opinion in *Foremost Dairies, Inc., supra.*

No question has been raised on this appeal as to the relevancy of the documents requested in the subpoena duces tecum and we find no reason to overrule the hearing examiner's holding that the documents are relevant to the issues in this proceeding.

Accordingly, the interlocutory appeal of Philip T. Farnsworth is denied.

ORDER

This matter having come on to be heard upon the interlocutory appeal of Philip T. Farnsworth, Executive Vice-President and General Manager, California Redwood Association, from the ruling of the hearing examiner denying a motion to quash a subpoena duces tecum issued by the examiner at the instance of counsel supporting the complaint; and

The Commission having determined, for the reasons appearing in the accompanying opinion, that the appeal should be denied:

It is ordered, That the interlocutory appeal of Philip T. Farnsworth, Executive Vice-President and General Manager, California Redwood Association, be, and it hereby is, denied.

BROWNING KING & COMPANY, INC., ET AL.

Docket 7060. Order, May 4, 1960

Interlocutory order upholding denial of motion to dismiss.

This matter having been heard by the Commission upon respondents' interlocutory appeal from the hearing examiner's ruling denying respondents' motion to dismiss the complaint, in support of which respondents have filed a brief and a supplemental brief; and

It appearing that the only effect of the hearing examiner's ruling denying respondents' motion to dismiss for alleged failure of proof is to require respondents to present their defense and, thus, it is not shown that the ruling involves any substantial rights or that it will materially affect the final decision in this matter; and

The Commission, therefore, being of the opinion that respondents' appeal is not one to be granted under §3.20 of the Commission's Rules of Practice, and that, in the circumstances, no useful purpose would be served by granting respondents' request for oral argument on the appeal:

It is ordered, That respondents' interlocutory appeal and their request for oral argument on the appeal be, and they hereby are, denied.

LIFETIME CUTLERY CORP. ET AL.

Docket 7292. Order, May 23, 1960

Interlocutory order denying respondents' appeal from the hearing examiner's order, holding relevancy of evidence to be received and place of hearings to be peculiarly within his sound discretion.

Respondents having filed an interlocutory appeal from the hearing examiner's order of May 2, 1960, giving notice of a hearing to be held in Providence, Rhode Island, beginning on May 25, 1960; and

It appearing that the grounds in support of said appeal are that the subject matter of the proposed hearing is not within the scope of the Commission's order of October 30, 1959, remanding this case for additional evidence, and that the selection of Providence, Rhode Island, as the place of hearing is arbitrary and unreasonable; and

The Commission being of the opinion that the questions thus raised, namely, the relevancy of evidence to be received and the place of hearings, are matters peculiarly within the sound discretion of the hearing examiner, and that his determinations of such questions should not be disturbed in the absence of a showing of abuse of this discretion; and

The Commission being of the further opinion that in this instance no such abuse has been shown:

It is ordered, That the respondents' appeal be, and it hereby is, denied.

H. P. HOOD & SONS, INC.

Docket 7709. Order, May 23, 1960

Interlocutory order upholding—on the basis of the Commission's traditional policy against injecting itself into the trial of adjudicatory proceedings—the hearing examiner's denial of respondent's pre-trial motion for order directing counsel to furnish opposing counsel names and affiliations of witnesses.

The respondent having filed an interlocutory appeal from the hearing examiner's order denying its pretrial motion for an order directing counsel to furnish opposing counsel, not less than two weeks prior to each hearing, the names and company affiliations of witnesses whom they expect to call at such hearings; and

The Commission having considered the appeal's arguments that sound administrative policy requires that motions for exchange of witnesses' names be granted save in extraordinary circumstances and that its hearing examiners should be so instructed by the Commission, but the Commission having determined that just disposition of those and other procedural requests requires that broad discretion be exercised by such officers and that a contrary policy would violate the Commission's traditional policy against injecting itself into the trial of adjudicatory proceedings; and

The Commission having additionally determined that no showing has been made in the appeal that the challenged ruling constitutes an abuse of discretion by the hearing examiner or that said ruling involves substantial rights or will materially affect the final decision of the case:

It is ordered, That the interlocutory appeal of the respondent be, and it hereby is, denied.

Commissioner Kern not participating.

JOSEPH A. KAPLAN & SONS, INC.

Docket 7813. Order, June 2, 1960

Interlocutory order upholding hearing examiner in failing to direct complaint counsel to furnish respondent requested particulars.

The respondent having filed an interlocutory appeal from so much of the hearing examiner's order of May 10, 1960, as fails to direct counsel in support of the complaint to furnish the respondent all of the particulars requested in its motion to clarify complaint filed April 28, 1960; and

It appearing that no showing is made in the appeal that the challenged ruling constitutes an abuse of the discretion vested in the hearing examiner or that said ruling involves substantial rights or will materially affect the final decision of this case:

It is ordered, That the aforesaid appeal be, and it hereby is, denied.

STIPULATIONS

DIGEST OF STIPULATIONS EFFECTED AND HANDLED THROUGH THE COMMISSION'S DIVISION OF STIPULATIONS

9202. **Fur products—Misrepresenting Prices.**—Ellis Fisher, an individual doing business as Sheldon Furs with place of business in San Francisco, Calif., agreed that in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of any fur product, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, he will cease and desist from representing, directly or indirectly, that his prices of fur products are wholesale prices when such is not the fact, or from otherwise misrepresenting the price of a fur product. (5923269, July 1, 1959.)

9203. **Woolen Batting—Misrepresenting Fiber Content.**—Famous Wool Corporation, a New York corporation with place of business in Brooklyn, N.Y., and Oscar Fishman, its officer, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution in commerce of woolen batting, or any other wool product within the meaning of the Wool Products Labeling Act, they will cease and desist from:

(1) Stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein in any manner not in accordance with the facts;

(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;

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

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

(3) Failing to maintain proper fiber content records as required by the Wool Products Labeling Act:

(a) Showing the percentage of wool, reprocessed wool, and reused wool, and of each kind of fiber other than wool, placed in the respective wool products of Famous Wool Corporation, in the form of fiber, yarn, fabric or other form;

(b) Showing such numbers, information, marks, or means of identification as will identify the said records with the respective wool products to which they relate; and

(c) By keeping and maintaining as records under the Act all invoices, purchase contracts, orders or duplicate copies thereof, bills of purchase, business correspondence received, factory records, and other pertinent documents and data showing or tending to show (1) the purchase, receipt, or use by said Famous Wool Corporation, of all fiber, yarn, fabric or fibrous material, or any part thereof, introduced in or made a part of any such wool products of said Famous Wool Corporation; (2) the content, composition or classification of such fiber, yarn, fabric or fibrous material with respect to the information required to appear upon the label of the wool products of said Famous Wool Corporation; and (3) the name and address of the person or persons from whom such fiber, yarn, fabric or fibrous materials were purchased or obtained by said Famous Wool Corporation.

and further agreed that in connection with the offering for sale, sale or distribution of woolen batting, or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, they will cease and desist from misrepresenting the percentages or amounts of the constituent fibers of which their products are composed, in sales invoices, shipping memoranda or in any other manner. (5823133, July 1, 1959.)

9204. **Electrical Lamps—Fictitious Preticketing.**—Jerrold Stephan Co., Inc., a Minnesota corporation with place of business at Minneapolis, Minn., and Dan R. Frank and William L. Cutts, its officers, agreed that in connection with the offer and sale in commerce of electrical lamps or other merchandise, they will cease and desist from:

(a) Supplying purchasers of electrical lamps or other merchandise with cartons or any other packaging or labeling material or advertising having prices or amounts which are in excess of the usual or regular retail selling prices of said electrical lamps or other merchandise, or otherwise representing that the usual or regular retail selling price of lamps or other merchandise is any amount greater than the price at which such lamps or other merchandise are usually and regularly sold at retail;

(b) Putting into operation any plan whereby retailers or others may misrepresent the regular and usual price of electrical lamps or other merchandise. (5823198, July 14, 1959.)

9205. **Restaurant and Hotel Supplies, Kitchen Utensils, etc.—Dealer as Manufacturer.**—Gessler Manufacturing Corp., a New York corporation with place of business in Brooklyn, N.Y., and Walter Schlessel and Celia Haas, its officers, agreed that in connection with the offer and sale of restaurant and hotel supplies, kitchen utensils and other merchandise in commerce, they will cease and desist from representing, directly or by implication:

Through the use of the word "Manufacturing," or any other word of similar import or meaning, as a part of a trade or corporate name, or by any other means, that the company manufactures any merchandise sold by it, unless and until it owns, operates or absolutely controls the manufacturing plant wherein such merchandise is manufactured. (5823629, July 14, 1959.)

9206. **Combs—Misrepresented as Rubber.**—Victor Leon, an individual trading as Kee Products Co. with place of business at Seaford, N.Y., agreed that in connection with the offer and sale of combs in commerce, he will cease and desist from representing, directly or by implication:

By any advertisement, packaging, labeling, branding, stamping, or other marking or indication that such combs are "rubber," "hard rubber," "resin rubber," "rubber resin" or "rubber kralastic" or are made of rubber or hard rubber unless such combs are in fact made of vulcanized hard rubber. (5923015, July 14, 1959.)

9207. **Fur Products—Non-compliance With Labeling Act.**—W. M. Durnil, an individual doing business as Durnil's Department Store with place of business in Muskogee, Okla., agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of furs or any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of furs or any fur product, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, he will

cease and desist from advertising fur products in any manner or by any means where the advertisement:

(1) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to Section 7(c) of the Act.

(2) Does not show that the fur product or fur is bleached, dyed or otherwise artificially colored fur when such is the fact.

(3) Does not properly show the name of the country of origin of any imported furs or those contained in a fur product.

(4) Makes use of comparative price representations or percentage savings claims unless there is maintained by said individual an adequate record disclosing the facts upon which such claims or representations are based. (5923416, July 16, 1959.)

9208. **Wool Blankets—Misbranding as to Composition.**—George F. Joly, Jr., J. Dean Joly and George F. Joly, III, co-partners trading as Philadelphia Blanket Co. with place of business in Philadelphia, Pa., agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution in commerce of blankets, or any other wool product within the meaning of the Wool Products Labeling Act, they will cease and desist from:

(1) Stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein in any manner not in accordance with the facts;

(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 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. (5823577, July 31, 1959.)

9209. **Ladies' Skirts—Non-compliance with Wool Products Labeling Act.**—Jack Kleinman, Irving Zaneoff and Louis Ezratty, copartners

trading as Bon Dana Sportswear Company, with place of business in New York, N.Y., agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution in commerce of ladies' skirts, or any other wool product within the meaning of the Wool Products Labeling Act, they will cease and desist from:

(1) Stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein in any manner not in accordance with the facts;

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

(3) Failing to use the common generic name of the fiber when setting forth fibers in the required information except where another name is required or permitted under the Act or Regulations. (5923192, July 31, 1959.)

9210. **Fur Products—Non-compliance with Labeling Act.**—Nathan Morgan, an individual doing business as Nat Morgan with place of business in New York, N.Y., agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of furs or any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of furs or any fur product, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, he will cease and desist from:

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

(a) The name or names of the animal or animals producing the

fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations;

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

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

(d) Such other information as may be required by Section 5(b)(1) of the Fur Products Labeling Act.

(2) Setting forth on invoices required information in abbreviated form.

(3) Using on invoices the name of an animal other than that producing the fur.

(4) Using on invoices the term Mouton in describing dyed Lamb except as a part of the designation "Dyed Mouton-processed Lamb." (5923621, Aug. 19, 1959.)

9211. **Used Automobiles—Misrepresenting Financing Rates and Terms.**—Royal Motors, Inc., a Maryland corporation with place of business in Washington, D.C., and Raymond J. Anselmo, an officer, agreed that in connection with the offer and sale of automobiles or other products, in commerce, they will cease and desist from representing the rates of financing or other terms or conditions under which the automobiles or other products they sell may be purchased except in accordance with the facts. (5923289, Aug. 24, 1959.)

9212. **Plastic Slats for Venetian Blinds—Falsely Claiming Government Indorsement.**—Artcraft Veni-Plex Company a Missouri corporation with place of business in St. Louis, Mo., and Oscar Brand, Martin L. Brand, O. K. Patterson, Anna B. Brand and Bertha Brand, its officers, agreed that in connection with the offer and sale of plastic slats or any other product, in commerce, they will cease and desist from representing directly or by implication that any product has been endorsed, approved, or recommended by the United States Government, or any agency thereof, when such is not the fact. (5923481, Aug. 24, 1959.)

9213. **"Vibra-King Actavator" Device—Falsely Claiming Therapeutic Properties.**—District Certified T.V. Service, Inc., a Maryland corporation with place of business in Washington, D.C., and Bernard Taff, an officer, agreed to cease and desist from disseminating and causing to be disseminated any advertisement for the product now designated "Vibra-King Actavator," or any other product of substantially similar design, construction or properties, which represents, directly or by implication:

(a) That the product is of any value for use in cases of (1) arthritis, bursitis or rheumatism or any other arthritic or rheumatic

condition (2) bronchial conditions (3) colds (4) asthma or (5) any other disease of the human body;

(b) That the product has any beneficial effect on indigestion, constipation or headaches;

(c) That the product is of any value for use in cases of diseases or disorders of the nervous system or circulatory system;

(d) That the product (1) strengthens facial muscles (2) prevents sagging features or wrinkles (3) eliminates blackheads, whiteheads or surface blemishes (4) helps retain elasticity of the skin (5) eliminates double chin or (6) has a beneficial effect on such conditions;

(e) That the price at which a product is offered for sale is a special or a reduced price or is applicable for a limited period of time, when the offer is not so limited and such price is the regular and customary price at which such product is sold. (5723520, Aug. 24, 1959.)

9214. **Medicinal Preparation for Kidney Ailments—Falsely Claiming Therapeutic Properties; Dealer as Manufacturer.**—Bernard J. Ufheil, an individual trading as B. J. Pharmacal Company with place of business in San Antonio, Texas, agreed to cease and desist from disseminating or causing to be disseminated any advertisement for the product now designated "B–7 Tablets," or any other product of substantially similar composition or properties, which represents, directly or by implication:

(a) That the product will cause the kidneys to work properly or that it is an effective or adequate treatment for or will have any therapeutic value in the treatment of any disease, disorder or dysfunction of the kidneys or any symptom or manifestation thereof including headache, leg pains, dizziness, jumpy nerves, swollen ankles, backache or puffiness under the eyes;

(b) That the product will remove or cause the kidneys to remove waste matter, acids or poisons from the system or blood or have any therapeutic effect upon any symptom or condition which may result therefrom;

(c) That the product is a new or scientific discovery or tested formula;

(d) That the product is of any therapeutic value in excess of that of a mild diuretic;

(e) That he manufactures the product unless and until said product is made in a factory which he owns, controls or operates;

(f) That he owns, controls, or operates a laboratory unless and until such is a fact;

(g) That a product is guaranteed unless the nature and extent of the guarantee and the manner in which he will perform there-

under are clearly and conspicuously disclosed in close conjunction with the representation of guarantee;

(h) That the regular price of a product is an amount in excess of the price at which the product is customarily and usually sold at retail;

(i) That the purchase of a product at a price at which it is offered constitutes a savings of any amount unless the regular and usual price therefor is a higher price and the amount claimed as savings represents the difference between such offering price and the regular and usual price. (5923495, Aug. 24, 1959.)

9215. **Shoes—"Orthopedic", Corrective, Handsewn, Etc.**—Ortho-Vent Shoe Company, Inc., a Virginia corporation with place of business in Salem, Va., and William F. Brand, Edward C. Brand and LeRoy S. Ahalt, its officers, agreed that in connection with the offer and sale, in commerce, of their shoes they will cease and desist from representing in any manner:

(a) That the shoes are "orthopedic" or "corrective" shoes, or contain orthopedic or corrective features;

(b) That the shoes or any feature thereof will keep the feet healthy, will be affirmatively conducive to the health of the feet, or will correct or prevent any defect, deformity or abnormality of the feet;

(c) That the shoes or any feature thereof will correct, prevent or assuredly relieve foot fatigue, hurting feet, or aching feet;

(d) That the shoes or any feature thereof will correct, prevent or have any significant beneficial effect on fallen arches, flat feet, weak arches, weak feet, strained arches, sagging arches, bunions, hallus valgus, hard corns, soft corns, calluses, athlete's foot, inflammation, swelling, turned ankles, bone displacement, bone weakness, tired legs, leg pains, stretched ligaments, strained ligaments, pelvic disorders, rheumatic pains, poor posture, headaches, nervousness, pinched nerve fibers, nervous stomach, or stoop shoulders;

(e) That the shoes or any feature thereof will provide natural support, custom made support or needed support, will fit the arch, will fill up the vacant space underneath the arch, will conform to the arch, or will promote natural development of the feet;

(f) That the shoes or any feature thereof will hold or keep the foot in proper position or will correct improper positioning of the foot:

(g) That the shoes or any feature thereof will significantly aid in effecting proper distribution of body weight or in effecting proper body balance;

(h) That the shoes or any feature thereof will stimulate or aid circulation of blood, or will relieve pressure on nerves, muscles or blood vessels;

(i) Through use of "Ortho-Plas-Tik Arch" as a designation for such device, or in any other manner, that the device is an orthopedic or plastic device or that it will provide any orthopedic, plastic or therapeutic benefit;

(j) That the shoes or any feature thereof will provide insulating protection in X-Ray rooms or protection against X-Rays;

(k) That they manufacture any of the shoes which they sell and distribute, when such is not a fact;

(l) That the shoes are hand sewn except as to such part or parts as may be sewn by hand; or that hand operations are embodied in their manufacture except in accordance with the facts;

(m) That leather used in the shoes is tanned by Indians or that the leather is tanned by anyone other than in accordance with the facts. (5823162, Aug. 24, 1959.)

9216. **Fur Products—Non-compliance with Labeling Act.**—James Wall, Harold Wall, and B. K. Wall, co-partners doing business as Newton Wall Company with place of business in Shawnee, Okla., agreed that in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of any fur product, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, they will cease and desist from:

(1) Failing to affix labels to fur products showing each element of information required to be disclosed under Section 4(2) of the Fur Products Labeling Act.

(2) Failing to furnish invoices to purchasers of fur products showing each element of information required to be disclosed under Section 5(b)(1) of the Fur Products Labeling Act.

(3) Making claims or representations in advertisements respecting prices or values of fur products unless there are maintained full and adequate records disclosing the facts upon which such claims or representations are based. (5923562, Sept. 1, 1959.)

9217. **Clocks—Deceptive Guarantees.**—The General-Gilbert Corporation, a Connecticut corporation with place of business in Winsted, Conn., trading as The William L. Gilbert Clock Company, and Robert S. Wallach and Benjamin R. Ozaroff, its officers, agreed that in connection with the offer and sale of clocks or other products, in commerce, they will cease and desist from representing directly or by implication:

That products are guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform

thereunder are clearly and conspicuously disclosed. (5923301, Sept. 1, 1959.)

9218. **Lubricating Oil—Reclaimed as New.**—Norman P. Schlott, an individual trading as Warren Oil Company with place of business in Omaha, Nebr., agreed that in connection with the offer and sale of lubricating oil, in commerce, he will cease and desist from:

(1) Representing, directly or by implication, contrary to fact, that such lubricating oil is processed from other than previously used oil;

(2) Advertising, offering for sale or selling, any lubricating oil which is composed in whole or in part of oil which has been reclaimed or in any manner processed from previously used oil, without disclosing such prior use in advertising and in sales promotion material, and by a clear and conspicuous statement to that effect on the container. (5923505, Sept. 1, 1959.)

9219. **Shower Heads—Non-disclosure of Japanese Origin.**—Gross Plumbing and Rubber Co., Inc., and Hancock Manufacturing Company, Pennsylvania corporations with places of business in Philadelphia, Pa., and Louis Gross, Samuel Gross, Jack Gross and Harold Gross, officers thereof, agreed that they will cease and desist from offering for sale, selling and distributing, in commerce, shower heads or any other product of foreign origin, without clearly and conspicuously disclosing the country of origin of such product. (5923177, Sept. 1, 1959.)

9220. **Men's Suits and Slacks—Non-disclosure of Fiber Content, Misbranding.**—Markson Bros., Inc., a Maine corporation with place of business in Los Angeles, Calif., and Robert T. Markson, an officer, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation or distribution in commerce of suits and slacks, or any other wool product within the meaning of the Wool Products Labeling Act, they will cease and desist from 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:

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

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

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

gaged 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;

and further agreed that in connection with the offer and sale in commerce of suits, slacks or other textile products, they will cease and desist from:

(1) Using the word "silk" or any word or term indicative of silk, to designate or describe any product or portion thereof which is not composed wholly of silk; provided, that in the case of products or portions thereof which are composed in substantial part of silk and in part of other fibers or materials the word "silk" may be used as descriptive of the silk content of the product or portion thereof if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully designating each constituent fiber or material thereof in the order of its predominance by weight; provided further, that if any fiber or material so designated is not present in a substantial quantity, the percentage thereof shall be stated.

(2) Using the word "wool" or any word or term indicative of wool, to designate or describe any product or portion thereof which is not composed wholly of wool; provided, that in the case of products or portions thereof which are composed in substantial part of wool and in part of other fibers or materials the word "wool" may be used as descriptive of the wool content of the product or portion thereof if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully designating each constituent fiber or material thereof in the order of its predominance by weight; provided further, that if any fiber or material so designated is not present in a substantial quantity, the percentage thereof shall be stated.

(3) Using the word "Dacron" or any other word or term indicative of acrylic fiber to designate or describe any product or portion thereof which is not composed wholly of acrylic fiber; provided, that in the case of products or portions thereof which are composed in substantial part of acrylic fiber and in part of other fibers or materials the word "Dacron" may be used as descriptive of the acrylic fiber content of the product or portion thereof if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully designating each constituent fiber or material thereof in the order of its predominance by weight; provided further, that if any fiber or material so designated is not present in a substantial quantity, the percentage thereof shall be stated.

(4) Advertising or otherwise offering for sale or selling products composed in whole or in part of rayon or of acetate without clearly disclosing such rayon or acetate content.

It was understood that nothing in the stipulation shall be construed as relieving the parties of the necessity of complying with the requirements of the Textile Fiber Products Identification Act and the Rules and Regulations issued thereunder, effective March 3, 1960. (5623456, Sept. 8, 1959.)

9221. **Fur Products—Non-compliance with Labeling Act.**—Calhoun's Dry Goods Company, Inc., an Oklahoma corporation with place of business in Muskogee, Okla., and George W. Goldman, an officer, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of any fur product, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, they will cease and desist from advertising fur products in any manner or by any means where the advertisement:

(1) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to Section 7(c) of the Act.

(2) Uses the term Mouton in describing dyed Lamb except as a part of the designation "Dyed Mouton-processed Lamb."

(3) Fails to set out all of the required information in legible type of equal size and conspicuousness and in close proximity with each other.

(4) Does not properly show the name of the country of origin of any imported furs or those contained in a fur product.

(5) Represents directly or by implication that their regular or usual price of a fur product is any amount which is in excess of the price at which they have usually and customarily sold such product in the recent regular course of business.

(6) Makes use of comparative price representations or percentage savings claims unless there is maintained by said corporation and individual an adequate record disclosing the facts upon which such claims or representations are based. (5923417, Sept. 10, 1959.)

9222. **Imported Fabrics—Non-compliance with Wool Products Labeling Act.**—Cohn-Hall-Marx Co., Inc., a New York corporation with place of business in New York, N.Y., and Arthur Holtz, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation or distribution in com-

merce of fabric or any other product which is a wool product within the meaning of the Wool Products Labeling Act, they will cease and desist from:

(1) Stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein in any manner not in accordance with the facts;

(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 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. (5923195, Sept. 17, 1959.)

9223. **Fur Products—Non-compliance with Labeling Act.**—Arthur Golden, an individual doing business under his own name with place of business in Philadelphia, Pa., agreed that in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of furs or any fur product, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, he will cease and desist from:

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

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

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

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

(d) Such other information as may be required by Section 4(2) of the Fur Products Labeling Act.

(2) Mingling, on labels, non-required information with required information.

(3) Setting forth on labels required information in handwriting.

(4) Failing to set forth on labels the term "Dyed Broadtail-processed Lamb" in the required manner.

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

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

(b) Such other information as may be required by Section 5(b)(1) of the Fur Products Labeling Act.

(6) Failing to set forth on invoices the item number or mark assigned to the fur product for purposes of identification. (5923729, Sept. 22, 1959.)

9224. **Wool Fabrics—Non-compliance With Labeling Act.**—A. D. Juilliard & Company, Inc., a Delaware corporation with place of business in New York, N.Y., and Abraham Wiener, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation or distribution in commerce of woolen fabric, or any other wool product within the meaning of the Wool Products Labeling Act, they will cease and desist from 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:

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

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

(3) 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. (5723474, Sept. 22, 1959.)

9225. **Ladies' Skirts—Non-compliance With Wool Products Labeling Act.**—Sam Becker and Irving Cohen, co-partners trading as Smiley Casuals, with place of business in New York, N.Y., agreed that in connection with the introduction, or manufacture for introduction,

into commerce, or the sale, transportation, or distribution in commerce of ladies' skirts, or any other wool product within the meaning of the Wool Products Labeling Act, they will cease and desist from:

(1) Stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein in any manner not in accordance with the facts;

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

(3) Failing to use the common generic name of the fiber when setting forth fibers in the required information except where another name is required or permitted under the Act or Regulations. (5923193, Sept. 22, 1959.)

9226. **Electric Storage Batteries—Deceptive Guarantees.**—Economy Auto Stores, Inc., a Georgia corporation with place of business in Atlanta, Ga., agreed that in connection with the offer and sale of its batteries in commerce, it will cease and desist from representing, directly or by implication, that a battery 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. (5923542, Oct. 6, 1959.)

9227. **Electric Storage Batteries—Deceptive Guarantees.**—Scranton Cellomatic Battery Corporation, a Pennsylvania corporation with place of business in Archbald, Pa., agreed that in connection with the offer and sale of its batteries in commerce, it will cease and desist from representing, directly or by implication, that a battery 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. (5923662, Oct, 6, 1959.)

9228. **Electric Storage Batteries—Deceptive Guarantees.**—Aid Stores, Inc., a New York corporation with place of business in Woodside, N.Y., agreed that in connection with the offer and sale of its batteries in commerce, it will cease and desist from representing, directly or by implication, that a battery 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. (5923657, Oct. 6, 1959.)

9229. **Electric Storage Batteries—Deceptive Guarantees.**—William S. Moore, Inc., an Ohio corporation with place of business in Newark, Ohio, agreed that in connection with the offer and sale of its batteries in commerce, it will cease and desist from representing, directly or by implication, that a battery 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. (5923661, Oct. 6, 1959.)

9230. **Electric Storage Batteries—Deceptive Guarantees.**—Coast to Coast Stores Central Organization, Inc., a Minnesota corporation with place of business in Minneapolis, Minn., agreed that in connection with the offer and sale of its batteries in commerce it will cease and desist from representing, directly or by implication, that a battery 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. (5923663, Oct. 6, 1959.)

9231. **Electric Storage Batteries—Deceptive Guarantees.**—Nic-L-Silver Battery Company, a California corporation with place of business in Santa Ana, Calif., agreed that in connection with the offer and sale of its batteries in commerce it will cease and desist from representing, directly or by implication, that a battery 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. (5923405, Oct. 6, 1959.)

9232. **Electric Storage Batteries—Deceptive Guarantees.**—Ward International, Inc., a California corporation doing business as International Tire & Rubber Co., with place of business in Los Angeles, Calif., and Donald C. Ward, an officer, agreed that in connection with the offer and sale of their batteries in commerce they will cease and desist from representing, directly or by implication, that a battery 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. (5923344, Oct. 6, 1959.)

9233. **Electric Storage Batteries—Deceptive Guarantees.**—Auto-Lec Stores, Inc., a Louisiana corporation with place of business in New Orleans, La., agreed that in connection with the offer and sale of its batteries in commerce it will cease and desist from representing,

directly or by implication, that a battery 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. (5923660, Oct. 6, 1959.)

9234. **Binoculars, etc.—Foreign as Domestic; Dealer as Manufacturer; Deceptive Guarantees.**—Swift & Anderson, Inc., a Massachusetts corporation with place of business in Boston, Mass., and Robert W. Swift, Humphrey H. Swift, Clifford O'Brien and Charles H. Kent, its officers, agreed that in connection with the offer and sale, in commerce, of binoculars and other products, they will cease and desist from:

(a) Representing in any manner that binoculars or other products which are made in whole or in substantial part in a foreign country are of domestic manufacture or origin;

(b) Representing in any manner that they manufacture a product unless they own, operate or absolutely control the plant or factory in which the product is made;

(c) Representing in any manner that a product (1) is unconditionally guaranteed when there are conditions or limitations attached to the guarantee or (2) is guaranteed unless the nature and extent of the guarantee and the manner of performance thereunder are clearly and conspicuously disclosed in close conjunction with the representation of guarantee. (5823700, Oct. 13, 1959.)

9235. **Arthritis Treatment—Unique Therapeutic Properties; Tests.**—Southwest Pharmaceutical Corp., Inc., a corporation with place of business in Norton, Va., and Alexander C. Durden, Monroe B. Thrower and Maxine Durden, its officers, agreed to cease and desist from disseminating or causing to be disseminated any advertisement for the product now designated "Dur-Den-Col," or any other product of substantially the same composition or properties which represents, directly or by implication:

(a) That the product is an adequate, effective or reliable treatment for or will afford complete relief of, any kind of rheumatism or arthritis, or that it has a therapeutic effect upon any of the symptoms or manifestations of any kind of rheumatism or arthritis in excess of affording temporary relief of the minor aches or pains thereof;

(b) That the product has been scientifically tested, when such is not a fact;

(c) That the product has a unique or unusual therapeutic effect. (5923387, Oct. 13, 1959.)

9236. **Fur Products—Non-compliance With Labeling Act.**—Frank Collin, an individual doing business under his own name with place of business in Philadelphia, Pa., agreed that in connection with the sale, advertising, offering for sale, transportation or distribution of any

fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of furs or any fur product, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, he will cease and desist from:

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

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

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

(c) Such other information as may be required by Section 4(2) of the Fur Products Labeling Act.

(2) Using the term "blended" to describe furs which have been pointed, bleached, dyed or tip-dyed.

(3) Mingling, on labels non-required information with required information.

(4) Setting forth on labels required information in handwriting.

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

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

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

(c) Such other information as may be required by Section 5(b)(1) of the Fur Products Labeling Act.

(6) Failing properly to describe "Dyed Broadtail-processed lamb" on invoices.

(7) Setting forth on invoices required information in abbreviated form. (5923726, Oct. 13, 1959.)

9237. **Men's Slacks—Non-compliance With Wool Products Labeling Act.**—Malibu Sportswear, Ltd., a New York corporation with place of business in New York, N.Y., and Walter Wiener and Lawrence Smith, its officers, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution in commerce of woolen slacks, or any other wool product within the meaning of the Wool Products Labeling Act, they will cease and desist from:

(1) Stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein in any manner not in accordance with the facts;

(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 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; and

further agreed that in connection with the offer and sale of slacks or any other textile product in commerce, they will cease and desist from labeling, invoicing or otherwise offering for sale or selling products composed of rayon or acetate, or composed of rayon or acetate and other non-woolen fibers, without clearly disclosing such rayon and acetate content in the order of predominance.

It was understood that nothing in the stipulation shall be construed as relieving the parties of the necessity of complying with the requirements of the Textile Fiber Products Identification Act and the Rules and Regulations issued thereunder after the effective date thereof, or prohibit them from labeling, invoicing, advertising or otherwise offering for sale or selling products subject to that Act in the manner prescribed by such Act and the Rules and Regulations thereunder. (5923181, Oct. 13, 1959.)

9238. **Paints—Fictitious Pricing; Free Product.**—S. H. Kress & Company, a New York corporation with office in New York, N.Y., agreed that in connection with the offer and sale of paints and other products, in commerce, it will cease and desist from:

(a) Representing directly or by implication that the regular and usual price of a product is any amount in excess of the price at which such product is regularly and usually sold;

(b) Using the word "free" or any other word or words of similar import, as descriptive of an article of merchandise or service, which is not an unconditional gift;

(1) When all of the conditions, obligations, or other prerequisites to the receipt and retention of the "free" article of merchandise or service offered are not clearly and conspicuously set forth at the

outset so as to leave no reasonable probability that the terms of the offer will be misunderstood; and, regardless of such disclosure,

(2) When, with respect to any article of merchandise required to be purchased in order to obtain the "free" article or service, the ordinary or usual price of such article of merchandise is increased or its quality, quantity or size is reduced. (5923429, Oct. 14, 1959.)

9239. **Men's Jackets—Domestic as Foreign.**—I. Spiewak & Sons, Incorporated, a New Jersey corporation with offices in Jersey City, N.J., and Philip Spiewak, Chairman of the Board, and Gerald Spiewak, Robert Spiewak and Martin Spiewak, its officers, agreed that in connection with the offer and sale of mens' jackets or other products, in commerce, they will cease and desist from:

Representing, directly or impliedly that any product is of foreign origin when such is not the fact; provided however, that nothing herein shall be construed as preventing the use of the name "Swiss Blouse" to describe a jacket not made in Switzerland when that name is accompanied by a clear and conspicuous disclosure of the country of origin of such product. (5923343, Oct. 27, 1959.)

9240. **Trusses—Unique Nature and Effectiveness.**—The Web Truss Company, Inc., a corporation with place of business in Hagerstown, Md., and W. A. Westphal, its President, agreed to cease and desist from disseminating or causing to be disseminated any advertisement for the device now designated "Web Truss," or any other device of substantially the same design, style, workmanship and properties, which represents directly or by implication:

(1) That the product (a) is a new, modern, miraculous or revolutionary development, (b) more closely duplicates natural safety, strength or support than other products, (c) affords results that are different from all other products or that no other product affords results equivalent to those obtainable by its use or (d) possesses factors overlooked in the manufacture of other products;

(2) That the product will hold ruptures or hernias securely in place under all conditions of activity or strain;

(3) That the use of the product in cases of single rupture or hernia will prevent the development of double ruptures or hernias;

(4) That the product will cure hernias or ruptures or have any beneficial effect for use in cases thereof except to retain reducible inguinal hernias or ruptures;

(5) That the product is guaranteed unless the nature and extent of the guarantee and the manner of performance thereunder are clearly and conspicuously disclosed in connection with the representation of guarantee. (5923476, Oct. 29, 1959.)

9241. **Fur Products—Non-compliance With Labeling Act.**—Montgomery Ward & Co., Incorporated, an Illinois corporation with place of busi-

ness in Chicago, Ill., agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of any fur product, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, it will cease and desist from:

(1) Failing to furnish to purchasers of fur products an invoice showing all of the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

(2) Representing directly or by implication that any fur product is of a higher grade, quality, price or value, than is the fact, by means of illustrations or depictions of higher priced or more valuable products than those actually available for sale at the advertised price, or in any other manner.

(3) Failing to set forth the information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in type of equal size and conspicuousness and in close proximity with each other. (5923707, Nov. 3, 1959.)

9242. **Ladies' Sportswear—Cashmere Content.**—Bobbie Brooks, Incorporated, an Ohio corporation with place of business in Cleveland, Ohio, and Maurice Saltzman, Dave Margolis, Cele Stein Isaacson, and Jacob Landis, its officers, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution in commerce of ladies' sportswear or any other wool product within the meaning of the Wool Products Labeling Act, they will cease and desist from:

(1) Stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein in any manner not in accordance with the facts;

(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 of one or more persons engaged in introducing such wool product into commerce, or in the offering

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

(3) Furnishing false guarantees that ladies' sportswear, or other wool products 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. (5923259, Nov. 5, 1959.)

9243. **Men's Outerwear—Misbranding as to Wool Content.**—Chief Apparel, Inc., a New York corporation with place of business in New York, N.Y., and Louis Kuhn, an officer, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution in commerce of men's outerwear, or any other wool product within the meaning of the Wool Products Labeling Act, they will cease and desist from:

(1) Stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein in any manner not in accordance with the facts;

(2) Failing to securely affix to or place on each such product a stamp, tag, label or other means of identification showing in the 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.

(3) Furnishing false guarantees that men's outerwear, or other wool products 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. (5723777, Nov. 5, 1959.)

9244. **Clutch Plates—Non-Disclosure of Rebuilt Nature, Disparaging Competing Products.**—Borg-Warner Corporation, an Illinois corporation with place of business in Chicago, Ill., agreed that in connection with the offer and sale of rebuilt clutch plates, or any other

product containing previously used parts, directly or through any corporate or other device, in commerce, it will cease and desist from:

(1) Representing, directly or by implication, that any product containing used or reconditioned parts is new or unused;

(2) Advertising, offering for sale or selling any product containing parts which have been previously used without disclosing such prior use in any advertising and sales promotion material disseminated therefor, and by a clear and conspicuous statement of such prior use made on the product with sufficient permanency to remain thereon after installation, and on the container in which the product is packed.

(3) Making or publishing any falsely disparaging representation concerning rebuilt or reconditioned products of any competitor, or supplying or placing in the hands of distributors or others any statement, claim, report or data that may be used by such distributors or others as a means of or basis for any falsely disparaging representation concerning rebuilt or reconditioned products of competitors. (5923215, Nov. 19, 1959.)

9245. **Fur Products—Non-compliance With Labeling Act.**—Gimbel Bros. New York, a New York corporation with place of business in New York, N.Y., agreed that in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of any fur product, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, it will cease and desist from:

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

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

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

(c) Such other information as may be required by Section 4(2) of the Fur Products Labeling Act.

(2) Failing to show, on labels, the term "Second Hand" when the fur product being offered for sale had been previously used by an ultimate consumer.

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

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur

Products Name Guide and as prescribed under the Rules and Regulations;

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

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

(d) Such other information as may be required by Section 5(b)(1) of the Fur Products Labeling Act.

(4) Failing to set forth on invoices the item number or mark assigned to the fur product for purposes of identification.

(5) Setting forth on invoices required information in abbreviated form. (5923620, Nov. 24, 1959.)

9246. **Men's Shirts—Rayon as Wool.**—Block-Heller Company, a Minnesota corporation with place of business in Minneapolis, Minn., and Nathan H. Heller and Bert Block, its officers, agreed that in connection with the offer and sale, in commerce, of men's shirts or other textile products, they will cease and desist from:

(1) Using the word "wool" or any word or term indicative of wool, to designate or describe any product or portion thereof which is not composed wholly of wool; provided, that in the case of products or portions thereof which are composed in substantial part of wool and in part of other fibers or materials such terms may be used as descriptive of the wool content of the product or portion thereof if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully designating each constituent fiber or material thereof in the order of its predominance by weight; provided further, that if any fiber or material so designated is not present in a substantial quantity, the percentage thereof shall be stated.

(2) Advertising or otherwise offering for sale or selling products composed in whole or in part of rayon without clearly disclosing such rayon content in the order of predominance.

It was understood that nothing in the stipulation shall be construed as relieving respondents of the necessity of complying with the requirements of the Textile Fiber Products Identification Act and the Wool Products Labeling Act, and the Rules and Regulations under both Acts. (5923435, Nov. 24, 1959.)

9247. **Water Conditioning Equipment—Deceptive Guarantees; Fictitious Pricing.**—Eugene M. Lindner, an individual trading as Century Soft Water Company with place of business in South Bend, Ind., agreed that in connection with the offer and sale in commerce of water conditioning equipment, including water softeners, or any other product, he will cease and desist from directly or impliedly:

(a) Representing that a guarantee pertaining to a product which

applies only during the lifetime of the original owner thereof and for only his benefit constitutes a lifetime guarantee of the product itself;

(b) Representing any guarantee in its entirety or any portion thereof as a lifetime guarantee when such is not a fact;

(c) Representing that a guarantee pertaining to one product is applicable to another product when such is not a fact;

(d) Representing that a product is guaranteed unless the nature and extent of the guarantee and the manner of performance thereunder are clearly and conspicuously disclosed in close conjunction with the representation of guarantee;

(e) Representing that the regular, usual and normal price of a product is any amount in excess of the price at which it is regularly, usually and normally sold. (5923327, Dec. 1, 1959.)

9248. **Braided Rugs—Wool Content.**—Troy Yarn & Textile Co., a Rhode Island corporation with place of business in Pawtucket, R.I., and Jacob Percelay, Morris Percelay and Merrill Percelay, its officers, agreed that in connection with the offer and sale in commerce of rugs or of any other textile product they will cease and desist from:

(1) Using the term "Wul-Tweed," or any other word or term indicative of wool to designate or describe any product or portion thereof which is not composed wholly or wool, the fiber from the fleece of the sheep or lamb, or hair of the Angora or Cashmere goat, or hair of the camel, alpaca, llama, or vicuna, which has never been reclaimed from any woven or felted product; provided, that in the case of products or portions thereof which are composed in substantial part of wool and in part of other fibers or materials, the term "wool" may be used as descriptive of the wool content of the product or portion thereof if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully designating each constituent fiber or material thereof in the order of its predominance by weight; provided further, that if any fiber or material so designated is not present in a substantial quantity, the percentage thereof shall be stated. Nothing herein shall prohibit the use of the terms "reprocessed wool" or "reused wool" when the products or those portions thereof referred to are composed of such fibers.

(2) Using the term "cotton" or other word or term indicative of cotton to designate or describe any product or portion thereof which is not composed wholly of cotton; provided, that in the case of products or portions thereof which are composed in substantial part of cotton and in part of other fibers or materials, the term "cotton" may be used as descriptive of the cotton content of the product or

portion thereof if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully designating each constituent fiber or material thereof in the order of its predominance by weight, provided further, that if any fiber or material so designated is not present in a substantial quantity, the percentage thereof shall be stated.

(3) Labeling, advertising or otherwise offering for sale or selling products composed in whole or in part of rayon or acetate without clearly disclosing such rayon and acetate content in the order of predominance.

(4) Representing that a rug is larger in any dimension than is a fact.

It was understood that nothing in the stipulation shall be construed as relieving the parties of the necessity of complying with the requirements of the Textile Fiber Products Identification Act and the Rules and Regulations issued thereunder after the effective date thereof, or prohibit them from labeling, advertising or otherwise offering for sale or selling products subject to that Act in the manner prescribed by such Act and the Rules and Regulations thereunder. (5823597, Dec. 1, 1959.)

9249. **Electric Storage Batteries—Deceptive Guarantees.**—Oklahoma Tire & Supply Company, a Delaware corporation with place of business in Tulsa, Okla., agreed that in connection with the offer and sale of its batteries in commerce, it will cease and desist from representing, directly or by implication, that a battery 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. (5923659, Dec. 8, 1959.)

9250. **Braided Rugs—Wool Content.**—Textile Industries, Inc., a Rhode Island corporation with place of business in Woonsocket, R.I., and Abraham M. Percelay, its president, agreed that in connection with the offer and sale in commerce of rugs or of any other textile product they will cease and desist from:

(1) Using the terms "Wool," "Woolspun," or any other word or term indicative of wool to designate or describe any product or portion thereof which is not composed wholly of wool the fiber from the fleece of the sheep or lamb, or hair of the Angora or Cashmere goat, or hair of the camel, alpaca, llama, or vicuna, which has never been reclaimed from any woven or felted product; provided, that in the case of products or portions thereof which are composed in substantial part of wool and in part of other fibers or materials, the term "wool" may be used as descriptive of the wool content of the product or portion thereof if there are used in immediate connection or conjunction therewith, in letters of at least

equal size and conspicuousness, words truthfully designating each constituent fiber or material thereof in the order of its predominance by weight; provided further, that if any fiber or material so designated is not present in a substantial quantity, the percentage thereof shall be stated. Nothing herein shall prohibit the use of the terms "reprocessed wool" or "reused wool" when the products or those portions thereof referred to are composed of such fibers.

(2) Labeling, advertising or otherwise offering for sale or selling products composed in whole or in part of rayon or acetate without clearly disclosing such rayon and acetate content in the order of predominance.

It was understood that nothing in the stipulation shall be construed as relieving the parties of the necessity of complying with the requirements of the Textile Fiber Products Identification Act and the Rules and Regulations issued thereunder after the effective date thereof, or prohibit them from labeling, advertising or otherwise offering for sale or selling products subject to that Act in the manner prescribed by such Act and the Rules and Regulations thereunder. (5823680, Dec. 10, 1959.)

9251. **Fur Products—Non-compliance With Labeling Act.**—Sverre Norland, and individual doing business as Sverre Norland Furs with place of business in Erie, Pa., agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of any fur product, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, he will cease and desist from:

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

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

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

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

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

(e) Such other information as may be required by Section 4(2) of the Fur Products Labeling Act.

(2) Mingling, on labels, non-required information with required information.

(3) Setting forth on labels required information in abbreviated form or in handwriting.

(4) Failing to set forth on labels the term "Persian Lamb" in the required manner.

(5) Failing to set forth on labels required information in the proper sequence.

(6) Failing to show on labels affixed to fur products an item number or mark assigned to such product for identification purposes.

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

(8) Representing that the furs contained in fur products are of domestic origin when in fact the furs contained in such products are of foreign origin.

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

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

(b) Such other information as may be required by Section 5(b)(1) of the Fur Products Labeling Act.

(10) Failing to set forth on invoices the item number or mark assigned to the fur product for purposes of identification. (6023140, Dec. 10, 1959.)

9252. **"Leather" Wallets—Composition.**—Max Kandler, an individual trading as Art Craft Leather Goods with place of business in New York, N.Y., agreed that in connection with the offer and sale in commerce of wallets or other merchandise he will cease and desist from representing directly or by implication that wallets, or other merchandise, made in whole or in part of substance other than leather are made of leather. (5923592, Dec. 10, 1959.)

9253. **Fur Products—Non-compliance With Labeling Act.**—Ullman & Emanuel, Inc., a Virginia corporation trading as The Spot with place of business in Norfolk, Va., and Richard B. Emanuel and Ethel G. Emanuel, its officers, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of any fur product, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, they will cease and desist from:

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

(a) The name or names of the animal or animals producing the fur contained in the fur product as set forth in the Fur Products

Name Guide and as permitted under the Rules and Regulations;

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

(c) Such other information as may be required by Section 4(2) of the Fur Products Labeling Act.

(2) Mingling, on labels, non-required information with required information.

(3) Setting forth on labels required information in handwriting.

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

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

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

(c) Such other information as may be required by Section 5(b)(1) of the Fur Products Labeling Act.

(5) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to Section 7(c) of the Act;

(b) Fails to set out all of the required information in legible and conspicuous type of equal size;

(c) Represents the inventory of fur products to be in excess of the actual inventory.

(6) Failing to disclose on labels, invoices and in advertising that fur products are second-hand used fur when such is the fact.

(7) Failing to disclose on labels, invoices and in advertising the names of the pieces of which fur products are composed as required by Rule 20 of the Regulations. (5923464, Dec. 17, 1959.)

9254. **Fur Products—Non-compliance With Labeling Act.**—Regan Furs, Inc., a New York corporation with place of business in New York, N.Y., and Gilbert Worshay and Henrietta DuMont, its officers, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, they will cease and desist from:

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

(a) The name or names of the animal or animals producing the

fur contained in the fur product as set forth in the Fur Products Name Guide and as permitted under the Rules and Regulations;

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

(c) Such other information as may be required by Section 4(2) of the Fur Products Labeling Act.

(2) Mingling, on labels, non-required information with required information.

(3) Setting forth on labels required information in handwriting.

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

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

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

(c) Such other information as may be required by Section 5(b)(1) of the Fur Products Labeling Act.

(5) Failing to disclose on labels and invoices the names of the pieces of which fur products are composed as required by Rule 20 of the Regulations.

(6) Failing to disclose on labels and invoices that fur products are second-hand used fur when such is the fact. (5923464, Dec. 17, 1959.)

9255. **Paints—Comparative Merits, Economy, Unique Nature.**—Baltimore Paint and Chemical Corporation, and Baltimore Paint & Color Works, Inc., and Murphy Paints, Inc., its subsidiaries, Maryland corporations with places of business in Baltimore, Md., and William F. Kane and Albert A. Shuger, officers of said corporations, agreed that in connection with the offer and sale of paints, in commerce, they will cease and desist from representing directly or by implication:

(1) That said paints give greater coverage in one coat than other paints give in two coats, or otherwise representing the area which said paints will cover or the hiding power thereof not in accordance with the facts;

(2) That said paints do not lose their original gloss or appearance, or otherwise representing that the durability of the original gloss or appearance of said paints is greater than is the fact;

(3) That use of said paints will cut costs, time or work in half or will effect any savings not in accordance with the facts;

(4) That the said paints give the world's lowest cost per square foot or that the cost of painting with said paints is lower than it is with other paints;

(5) That the cost of painting using said paints is 1½¢ per square foot or any other amount not in accordance with the facts;

(6) That any of their paints are odorless;

(7) That the gloss of said paints is unequalled by any other paint. (5923328, Dec. 29, 1959.)

9256. **Metal Plating Kits—Results, Comparative Merits, Etc.**—Warshawsky and Company, Inc., a Delaware corporation, J. C. Whitney & Co., its subsidiary, an Illinois corporation, with places of business in Chicago, Ill., and Roy Warshawsky and Lowell Warshawsky, officers of said corporations, agreed that in connection with the offer and sale of metal plating kits in commerce, they will cease and desist from representing directly or by implication:

With respect to the "J.N.T. Electroplating Kit"

(1) That the kits or components thereof will produce a chromium plating;

(2) That the kits plate over chromium or will plate over any other metal when such is not the fact;

(3) That the kits will produce platings equal to those obtained by commercial plating methods, or otherwise representing that the kits produce results not in accordance with the fact;

(4) That the "Regular" kit will satisfactorily plate an area six feet square, or representing in any manner that the plating capacity of any of the kits is greater than it actually is;

(5) That the kits are complete or contain all materials needed for plating;

(6) That the kits will renew or restore metal surfaces;

(7) That the kits will restore the original lustre of rusted, peeled or worn out plating, or will replate such surfaces without clearly disclosing that the old metal must first be thoroughly cleaned and smoothed;

With respect to the "Albicrome Plating Kit"

(1) That the kits or components thereof will produce a chromium plating;

(2) That the kits will produce platings equal to those obtained by commercial plating methods, or otherwise representing that the kits produce results not in accordance with the facts;

(3) That the kits will provide the same copper-nickel-chrome build-up or durability as electroplating;

(4) That the kits will produce a permanent coating or finish;

(5) That the "Custom" kit will satisfactorily replate all the chrome on one car, or representing in any manner that the plating capacity of any of the kits is greater than it actually is;

(6) That the plating done by the kits will match the original chrome;

(7) That users of said kits will be able to plate metals instantly or in seconds or within any other specified period of time not consistent with the facts;

(8) That the kits will replate rusted or worn areas without clearly disclosing that such areas must first be thoroughly cleaned and smoothed. (5823703, Jan. 5, 1960.)

9257. **"Leather" Wallets—Composition.**—Adam-Steven Leather Goods, Inc., a New York corporation with place of business in New York, N.Y., and Norbet Frost and Isidore Guterman, its officers, agreed that in connection with the offer and sale in commerce of wallets or other merchandise they will cease and desist from:

(a) Representing directly or by implication that wallets, or other merchandise, made in whole or in part of substance other than leather, are made of leather;

(b) Using "Fiestahyde" or any other name containing the word "hide" or simulations thereof to designate or describe wallets or parts of wallets, or other merchandise, made of plastic or other non leather material unless wherever used such name is accompanied by such disclosure of the general nature thereof or the coating used as will clearly show that it is not leather. (5923455, Jan. 7, 1960.)

9258. **Fur Products—Non-compliance With Labeling Act.**—Trask, Prescott & Richardson Co., a Pennsylvania corporation with place of business in Erie, Pa., and James R. McBriar, Lydia McCain, Robert M. Becker and Anthony W. Vollmer, its officers, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, they will cease and desist from:

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

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

(b) Such other information as may be required by Section 4(2) of the Fur Products Labeling Act.

(2) Mingling, on labels, non-required information with required information.

(3) Setting forth on labels required information in handwriting.

(4) Failing to set forth on labels affixed to fur products an item

number or mark assigned to such product for identification purposes.

(5) Failing to set forth on labels required information in the proper sequence.

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

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

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

(c) Such other information as may be required by Section 5(b)(1) of the Fur Products Labeling Act.

(7) Advertising fur products in any manner or by any means where the advertisement:

(a) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to Section 7(c) of the Act.

(b) Does not show that the fur product or fur is bleached, dyed or otherwise artificially colored fur when such is the fact.

(c) Does not show the name of the country of origin of any imported furs or those contained in a fur product.

(d) Fails to set out all of the required information in legible and conspicuous type of equal size.

(e) Uses the name of an animal other than that producing the fur.

(f) Makes use of comparative price representations unless there is maintained by said corporation an adequate record disclosing the facts upon which such representations are based. (6023139, Jan. 12, 1960.)

9259. **Fur Products—Non-compliance With Labeling Act.**—Walter E. Kayser, an individual doing business as W. Kayser Furs with place of business in Glenside, Pa., agreed that in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of any fur product, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, he will cease and desist from:

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

(a) The name or other identification issued and registered by the Commission of one or more persons who manufactured such fur product for introduction into commerce, introduced it in commerce,

sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce;

(b) Such other information as may be required by Section 4(2) of the Fur Products Labeling Act.

(2) Mingling, on labels, non-required information with required information.

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

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

(b) Such other information as may be required by Section 5(b)(1) of the Fur Products Labeling Act.

(4) Setting forth on invoices required information in abbreviated form.

(5) Using the term "Bld." (blended) to describe the pointing, bleaching, dyeing or tip-dyeing of furs.

(6) Failing to set forth on invoices the item number or mark assigned to the fur product for purposes of identification. (6023222, Jan. 19, 1960.)

9260. **Fur Products—Non-compliance With Labeling Act.**—Benjamin Feldman and Joseph Feldman, co-partners doing business as Feldman Brothers Furs with place of business in Niagara Falls, N.Y., agreed that in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of any fur product, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, they will cease and desist from:

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

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

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

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

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

(e) Such other information as may be required by Section 4 (2) of the Fur Products Labeling Act.

(2) Mingling, on labels, non-required information with required information.

(3) Setting forth on labels required information in handwriting.

(4) Failing to show on labels affixed to fur products an item number or mark assigned to such product for identification purposes.

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

(6) Using the term "blended" to describe the pointing, bleaching, dyeing or tip-dyeing of furs.

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

(8) Failing to set forth on labels the term "Dyed Broadtail-processed Lamb" in the required manner.

(9) Failing to set forth on labels and invoices the term "Persian Lamb" in the required manner.

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

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

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

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

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

(e) Such other information as may be required by Section 5(b)(1) of the Fur Products Labeling Act.

(11) Setting forth on invoices required information in abbreviated form.

(12) Failing to set forth on invoices the item number or mark assigned to the fur product for purposes of identification. (6023110, Jan. 19, 1960.)

9261. Fur Products—Non-compliance With Labeling Act.—Eddie Friedman, John Friedman, Larry Friedman and Richard Friedman, co-partners doing business as Eddie Friedman with place of business in San Francisco, Calif., agreed that in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product made in whole or in part of fur which has been shipped

and received in commerce, or the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of any fur product, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, they will cease and desist from:

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

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

(b) Such other information as may be required by Section 4(2) of the Fur Products Labeling Act.

(2) Mingling, on labels, non-required information with required information.

(3) Failing to set out on one side of the label all of the required information with respect to the fur product.

(4) Failing to set forth on labels and invoices the term "Dyed Broadtail-processed Lamb" in the required manner.

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

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

(b) Such other information as may be required by Section 5(b)(1) of the Fur Products Labeling Act.

(6) Failing to set forth on invoices the term "Dyed Mouton-processed Lamb" in the required manner. (5923390, Jan. 19, 1960.)

9262. **"A. & R. Tablets" Arthritis Treatment—Effectiveness, History, Use.**—George W. Smithson, an individual trading as National Pharmacal Company with place of business in Birmingham, Ala., agreed to cease and desist from disseminating or causing to be disseminated any advertisement for the product now designated "A & R Tablets," or any other product of substantially similar composition or properties, which represents directly or by implication that:

(1) The product is an adequate, effective or reliable treatment for, will arrest the progress of or correct the underlying causes of, or cure arthritis, rheumatism, neuritis, neuralgia, bursitis or gout or any other arthritic or rheumatic condition;

(2) The product is an adequate, effective or reliable treatment for the symptoms or manifestations of arthritis, rheumatism, neuritis, neuralgia, bursitis, or gout or any other arthritic or rheumatic condition, will afford complete or long lasting relief of the pains or aches of any such condition or have any therapeutic effect upon any of the symptoms or manifestations thereof in excess of affording temporary relief of minor aches or pains;

(3) The product is used, prescribed, dispensed or sold by doctors, hospitals, clinics or industrial institutions;

(4) The product is (a) a medical discovery, (b) a new type analgesic or anodyne, or (c) a product of research;

(5) The ingredients of the product separately or in combination are powerful or that such ingredients are newly discovered prescription type ingredients. (5923549, Jan. 19, 1960.)

9263. **Fur Products—Non-compliance With Labeling Act.**—Helen Pizzi and Salvatore G. Pizzi, co-partners doing business as S. G. Pizzi with place of business in Reading, Pa., agreed that in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of any fur product, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, they will cease and desist from:

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

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

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

(c) Such other information as may be required by Section 4(2) of the Fur Products Labeling Act.

(2) Mingling, on labels, non-required information with required information.

(3) Failing to set forth on labels affixed to fur products an item number or mark assigned to such product for identification purposes.

(4) Failing to set forth separately on labels attached to fur products composed of two or more sections containing different animal furs the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder with respect to the fur comprising each section. (6023057, Jan. 26, 1960.)

9264. **Metal Coating Product—Results, Comparative Merits, History, Guarantee, Earnings.**—Bexell Associates, Inc., an Illinois corporation with place of business in Evanston, Ill., and Fred J. Bexell, Sophia J. Bexell, June L. Boyle and Jack A. Boyle, its officers, agreed that

in connection with the offer and sale of a product for coating metal and other surfaces, in commerce, they will cease and desist from representing directly or by implication that:

(1) The product will produce a chromium plating or coating, or any other metal plating or coating not in accordance with the facts;

(2) The product will result in coatings or finishes comparable to those obtained by commercial plating or by mechanical or electroplating methods;

(3) The product constitutes a new discovery;

(4) The product is sold under a money-back guarantee without at the same time clearly and conspicuously disclosing that in returning the product under such guarantee, purchasers are required to pay transportation costs;

(5) The product will satisfactorily refinish rusted surfaces without disclosing that such surfaces must first be thoroughly cleaned and smoothed;

(6) Salesmen selling said product may expect to earn $50 to $100 per day, or any other amount in excess of the net average earnings made by a substantial number of salesmen selling said product in the ordinary and usual course of business and under normal conditions and circumstances. (5923229, Feb. 19, 1960.)

9265. "Ritasal" Arthritis Treatment—Effectiveness, Unique Nature, Guarantee.—Hyman Kasofsky, an individual trading as Kayson Pharmacal with place of business in Los Angeles, Calif., agreed to cease and desist from disseminating or causing to be disseminated any advertisement for the product now designated "Ritasal," or any other product of substantially similar composition or properties, which represents, directly or by implication that:

(1) The product is an adequate, effective or reliable treatment for, or that it will arrest the progress of, correct the underlying causes of, or cure arthritis, rheumatism, neuralgia, neuritis, backache or bursitis or any other arthritic or rheumatic condition;

(2) The product will afford any relief of the severe aches, pains and discomforts of arthritis, rheumatism, neuralgia, neuritis, backache or bursitis, or any other arthritic or rheumatic condition or have any therapeutic effect upon any of the symptoms or manifestations of any arthritic or rheumatic condition in excess of affording temporary relief of the minor aches or pains thereof;

(3) The product is an adequate, effective or reliable treatment for the pain, stiffness, limitation of motion or swelling of arthritis, rheumatism, neuralgia, neuritis, backache or bursitis or any other arthritic or rheumatic condition;

(4) The product affords relief for a day or a night or day and night or for any period of time not in accordance with fact;

(5) The product will enable one to sleep all night or for any other period of time not in accordance with fact;

(6) The product is (1) different, amazing or new, (2) a scientific discovery or a product of modern science, (3) instantaneous in effect, or (4) longer lasting in effect than competing products;

(7) The product is guaranteed unless the terms and conditions thereof and the manner of performance thereunder are conspicuously revealed in close conjunction with the representation of guarantee. (5923720, Feb. 17, 1960.)

9266. **Cosmetic Products, Soap—Domestic as of Spanish Origin.**—Goyescas Corporation, a New York corporation with place of business in New York, N.Y., agreed to cease and desist from disseminating or causing to be disseminated any advertisement for cosmetic products which uses the words "Alma de Espana" or other words, word, symbol or term indicative of Spanish or other foreign origin to designate or otherwise refer to cosmetic products made or compounded in the United States, unless it is clearly and conspicuously revealed in close connection and conjunction therewith that such products are manufactured or compounded in the United States; also agreed that in connection with the offer and sale of cosmetic products it will cease and desist from using the words "Alma de Espana" or other words, word, symbol or term indicative of Spanish or other foreign origin on the labels or in the labeling therefor to designate or otherwise refer to cosmetic products made or compounded in the United States unless it is clearly and conspicuously revealed in close connection and conjunction therewith that such products are manufactured or compounded in the United States; and further agreed that in connection with the offer and sale in commerce of soap and related products it will cease and desist from using the words "Alma de Espana," or other words, word, symbol or term indicative of Spanish or other foreign origin, in the advertising, on the labels or in the labeling therefor to designate or otherwise refer to soap or related products made or compounded in the United States unless it is clearly and conspicuously revealed in close connection and conjunction therewith that the soap is manufactured or compounded in the United States. (5923245, Feb. 24, 1960.)

9267. **Woolen Fabrics—Composition.**—Goold & Handman, Inc., a New York corporation with place of business in New York, N.Y., and David Handman and Michel Handman, its officers, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution in commerce of woolen fabrics, or any other wool product within the meaning of the Wool Products Labeling Act, they will cease and desist from:

(1) Stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein in any manner not in accordance with the facts;

(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 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. (5923561, Mar. 1, 1960.)

9268. **"Silver Plus"—Results, Dealer as Laboratory.**—Empire-La Vive Corp., a New York corporation with place of business in Mount Vernon, N.Y., and Emanuel A. Piller, its President, Treasurer and Secretary, agreed that in connection with the offer and sale in commerce of a product designated "Silver Plus," or any other product of the same or substantially the same composition, they will cease and desist from:

(1) Representing that the product deposits a coating on silver or that it coats other than the worn areas of silverware where the base metal is exposed;

(2) Representing that the product will preserve or restore silver plated ware;

(3) Using the word "Laboratories" to designate, describe or refer to their business, or in any other manner representing that they own, operate or control a laboratory containing substantial equipment and apparatus for use in conducting research and experimentation. (5923760, Mar. 1, 1960.)

9269. **Ophthalmic Lens Processor—Dealer as Manufacturer, Japanese Product as Domestic, Special Offer and Prices.**—Ezra Novak, an individual trading as New West Optical Company with place of business in Los Angeles, Calif., agreed that in connection with the offer and sale of a product for use in processing ophthalmic lens designated the Novamatic Auto-Dual Edger and the Novamatic Layout Marker, or any other product, in commerce, he will cease and desist from representing directly or by implication:

(1) That he manufactures any product unless and until he owns, operates or absolutely controls the manufacturing plant wherein the product is manufactured;

(2) That any product made in a foreign country is made in the United States, or otherwise representing the origin of such product in any manner not in accordance with the facts;

(3) That any offer is special when such offer is in fact customarily and regularly made in the regular course of business;

(4) That the price of any article is introductory or special when it is the established and usual price or is unlimited as to time. (5923477, Mar. 8, 1960.)

9270. **Fur Products—Non-compliance With Labeling Act.**—Benjamin Shusterman, an individual doing business as B. Shusterman with place of business in Philadelphia, Pa., agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of furs or any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of furs or any fur product, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, he will cease and desist from:

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

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

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

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

(d) Such other information as may be required by Section 4(2) of the Fur Products Labeling Act.

(2) Setting forth on labels required information in abbreviated form.

(3) Mingling, on labels, non-required information with required information.

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

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

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

(c) Such other information as may be required by Section 5(b)(1) of the Fur Products Labeling Act.

(5) Setting forth on invoices required information in abbreviated form.

(6) Failing to set forth on invoices the item number or mark assigned to the fur product for purposes of identification. (6023187, Mar. 8, 1960.)

9271. **Ladies' Dresses—Non-compliance With Wool Products Labeling Act.**—Molly Modes, Inc., a New York corporation with place of business in New York, N.Y., and Albert Schultze, Jack Malawer and Hyman Scholl, its officers, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation or distribution in commerce of woolen dresses, or any other wool product within the meaning of the Wool Prducts Labeling Act, they will cease and desist from 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:

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

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

(3) 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; and

further agreed that in connection with the offer and sale of dresses or any other textile product in commerce, they will cease and desist from labeling, invoicing or otherwise offering for sale or selling products composed of rayon or acetate without clearly disclosing such rayon and acetate content in the order of predominance.

It was understood that nothing in the stipulation shall be construed as relieving the respondents of the necessity of complying with the requirements of the Textile Fiber Products Identification Act and the Rules and Regulations issued thereunder after the effective date thereof, or prohibiting them from labeling, invoicing, advertising or otherwise offering for sale or selling products sub-

ject to that Act in the manner prescribed by such Act and the Rules and Regulations issued thereunder. (5923152, Mar. 15, 1960.)

9272. **Fur Products—Non-compliance With Labeling Act.**—Seldin Coat Company, Inc., a Maryland corporation with place of business in Baltimore, Md., and Benjamin Seldin and Marion Siegal, its officers, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of fur or any fur product, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, they will cease and desist from:

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

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

(b) Such other information as may be required by Section 4(2) of the Fur Products Labeling Act.

(2) Mingling, on labels, non-required information with required information.

(3) Failing to set forth on labels affixed to fur products an item number or mark assigned to such product for identification purposes.

(4) Failing to precede the name of the country of origin on labels with the term "fur origin."

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

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

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

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

(d) Such other information as may be required by Section 5(b)(1) of the Fur Products Labeling Act.

(6) Failing to set forth on invoices the item number or mark assigned to the fur product for purposes of identification. (6023254, Mar. 15, 1960.)

9273. **Fishing Equipment Swivels—Falsely Representing Ball-bearing Construction.**—Dura-Pak Corporation, an Iowa corporation with place of business in Sioux City, Iowa, and Morey J. Wheeler, Jack Kos-

berg and Soll Kronick, its officers, agreed that in connection with the offer and sale of fishing equipment swivels or other similar products, they will cease and desist from representing, directly or by implication that said products have "ball action" or that the maneuverability thereof is due to ball action unless ball bearings are used in the construction thereof. (6023055, Mar. 29, 1960.)

9274. **Luggage—Fictitious Pricing.**—Mossel International, Inc., a New York corporation with place of business in New York, N.Y., and Michael Klebanoff, Victor Capelluto and Joshua Ashkenazi, its officers, agreed that in connection with the offer and sale in commerce of luggage or any other product, they will cease and desist from representing, directly or by implication, that a certain amount is the usual and regular retail price of merchandise being offered for sale when such amount is in excess of the price at which said merchandise is usually and regularly sold at retail. (6023184, Mar. 29, 1960.)

9275. **Cosmetic Preparation—Domestic as French.**—Cosmair, Inc., a Delaware corporation with place of business in New York, N.Y., agreed to cease and desist from disseminating or causing to be disseminated any advertisement for products now designated L'Oreal of Paris, or any other cosmetic, which advertisement:

Uses any French name or word as a trade or brand name or as a part thereof, or any name, word, term or depiction indicative of French origin in connection with products manufactured or compounded in the United States, unless it is clearly and conspicuously revealed in immediate connection and conjunction therewith that such products are manufactured or compounded in the United States. (5923203, Mar. 29, 1960.)

9276. **Fur Products—Non-disclosure of Producing Animal, Artificial color.**—Gunther-Jaeckel, Inc., a New York corporation with place of business in New York, N.Y., agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of any fur or fur product, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, it will cease and desist from advertising fur or fur products in any manner or by any means where the advertisement:

(1) Does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to Section 7(c) of the Act.

(2) Does not show that the fur product or fur is bleached, dyed or otherwise artificially colored fur when such is the fact. (6023490, Apr. 5, 1960.)

9277. **Magazines—Deceptive Collection Letters.**—The Parents' Institute, Inc., a New York corporation with place of business in New York City, and George J. Hecht, Allison R. Leininger, Edward A. Sand, G. Theodore Zignone and Thomas P. Brady, its officers, agreed that in connection with the collection of accounts in commerce they will cease and desist from:

(1) Using any trade or corporate name in the collection of past due accounts in such manner as to mislead or deceive;

(2) Representing that a wholly owned subsidiary set up for the collection of past due accounts is an independent organization;

(3) Representing that a fictitious collection agency is an independent organization engaged in the business of collecting past due accounts;

(4) Representing that past due accounts have been referred for collection to an attorney, collection agency, independent organization or individual not connected with the company, when such is not the fact;

(5) Using collection letters, notices, forms or other communications purporting to emanate from an individual or organization not connected with the company, when suc his not the fact;

(6) Attempting to induce payment of an account by any deceptive means. (5823445, Apr. 12, 1960.)

9278. **Safety Razors—Free Goods and Refunds.**—Eversharp, Inc., a Delaware corporation with place of business in New York, N.Y., agreed that in connection with the offer and sale of safety razors, or any similar product, it will cease and desist from:

(1) Using the word "free" or any other word or words of similar import, as descriptive of an article of merchandise or service, which is not an unconditional gift when all of the conditions, obligations, or other prerequisites to the receipt and retention of the "free" article of merchandise or service offered are not clearly and conspicuously set forth at the outset so as to leave no reasonable probability that the terms of the offer will be misunderstood.

(2) Offering to refund the purchase price of any article without at the same time clearly and conspicuously disclosing the time limitations or other material conditions of such offer. (5923596, Apr. 12, 1960.)

9279. **Japanese Pipe Fittings—Non-disclosure of Foreign Origin, Maker of Products Sold, Etc.**—Jamaica Manufacturing Company, Inc., and National Foundry Company of New York, Inc., New York corporations with places of business in Brooklyn, N.Y., and Harry

Lipman and Michael Lipman, officers of the corporations, agreed that in connection with the offer and sale of pipe fittings, plumbing supplies, showerheads and other products, in commerce, they will cease and desist from:

(1) Offering for sale or selling products made in Japan, or any other foreign country, without clearly and conspicuously disclosing the country of origin of said products;

(2) Using the word "Foundry" or any simulation thereof as part of any corporate or trade name, or implying or representing in any other manner that they own, control or operate a foundry, when such is not the fact;

(3) Representing that they manufacture any product sold by them, when such is not the fact. (5723827, Apr. 21, 1960.)

9280. **Silver Polish—Results and Unique Nature.**—The Fisher Silversmiths, Inc., a New York corporation with place of business in Newark, N.J., and Samuel Fisher, Allan E. Fisher and H. Martin Fisher, its officers, agreed that in connection with the offer and sale in commerce of silver polish they will cease and desist from:

(1) Representing directly or by implication that repeated applications of the polish will provide a coating any thicker than the original application;

(2) Representing that the product coats other than the worn areas of silverware where the base metal has been exposed;

(3) Representing that the product is completely different from any other silver polish. (6023214, May 3, 1960.)

9281. **FM Guide—Coverage.**—FM Guide, Inc., an Illinois corporation with place of business in Chicago, Ill., and Robert C. Victor, Howard Grafman and Frank Atlass, its officers, agreed that in connection with the offer and sale of the Chicago FM Guide, or any other publication, they will cease and desist from representing, directly or by implication, that the publication:

(1) Contains the FM program listings of all Chicago FM stations when such is not the fact, or contains program listings of any stated number of stations which is in excess of the actual number of stations having complete program listings appearing therein;

(2) Furnishes the most complete program information available, when such is not the fact;

(3) Contains the program listing of any station unless the program of such station is fully set forth for the complete programmed day, or a clear and conspicuous disclosure is made that the program information appearing therein is not complete. (6023063, May 5, 1960.)

9282. **"Relax-A-Cizor"—Guarantee and Refunds.**—Relaxacizor, Inc., a California corporation with place of business in Los Angeles, Calif.;

Relaxacizor Sales, Inc., a Delaware corporation with place of business in New York, N.Y.; Burton Skiles, Jack M. Ostrow, E. Ric Clark, Edward J. Oehmen and Marlys Taber, officers of Relaxacizor, Inc.; and Burton Skiles, Jack M. Ostrow, E. Ric Clark, Marlys Taber and M. Robert Ressler, officers of Relaxacizor Sales, Inc., agreed to cease and desist from disseminating or causing to be disseminated any advertisement for the product now designated "Relax-A-Cizor," or any other product of substantially the same composition or design as the aforesaid product, which represents directly or by implication that:

(1) The 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;

(2) A refund will be made of the purchase price or deposit upon return of the product purchased or for which deposit was made, without clearly and conspicuously disclosing the conditions or limitations under which such refund will be made. (5923085, May 5, 1960.)

9283. **Fur Products—Non-disclosure of Animal Producing Fur.**—Revillon Freres, a New York corporation with place of business in New York, N.Y., agreed that in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the transportation or distribution in commerce of fur or any fur product, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, it will cease and desist from advertising fur or fur products in any manner or by any means where the advertisement does not show the name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations. (6023709, May 10, 1960.)

9284. **Foam Rubber Mattresses—Availability in Stock, Substituting Product.**—Silray Foam Products, Inc., a New York corporation with place of business in New York, N.Y., and Sylvan Wasserman, its president, agreed that in connection with the offer and sale in commerce of foam mattresses or any other product, they will cease and desist from:

(1) Representing, directly or by implication, that a product is in stock and available for prompt delivery, when such is not the fact;

(2) Shipping any merchandise not identical in all respects with the merchandise ordered by any purchaser, except with the consent of such purchaser. (6023261, May 10, 1960.)

9285. **Umbrella Handles—Entire Product as Made in Italy.**—Charles

Gottlieb, Herman Gottlieb and Bernard Gottlieb, copartners trading as Chas. Gottlieb & Sons with place of business in New York, N.Y., agreed that in connection with the offer and sale of umbrella handles or other products, in commerce, they will cease and desist from:

(1) Offering for sale or selling products containing parts imported from Italy or other foreign country, which products are so marked as to represent or imply that the complete product was made in Italy or other foreign country;

(2) Supplying to or placing in the hands of others the means of representing that an umbrella or other product was made in Italy or other foreign country, when such is not the fact;

PROVIDED, that neither of the above provisions shall be construed as preventing a truthful statement that a part of the product was manufactured in Italy or other foreign country when such part is clearly and conspicuously identified. (5923006, May 12, 1960.)

9286. **Lubricating Oil—Non-disclosure of Used Nature, Under-Sized Containers.**—Champion Refining Company, an Arkansas corporation with place of business in North Little Rock, Ark., and George H. Christopher, an officer, agreed that in connection with the offer and sale in commerce of lubricating oil, they will cease and desist from:

(1) Advertising, offering for sale, packaging or selling any lubricating oil which is composed in whole or in part of oil which has been reclaimed or in any manner processed from previously used oil, without disclosing such prior use to the purchaser or potential purchaser in advertising and in sales promotion material, and by a clear and conspicuous statement to that effect on the container;

(2) Representing in any manner that lubricating oil composed in whole or in part of oil that has been manufactured, reprocessed, or re-refined from oil that has been previously used for lubricating purposes, has been manufactured from oil that has not been previously used;

(3) Offering for sale, packaging or selling oil in previously used quart cans which, after reconditioning, hold less than the standard U.S. quart, without expressly disclosing such fact clearly, conspicuously and legibly on the container;

(4) Representing in any manner that the capacity of their container is greater than is actually the case. (6023180, May 12, 1960.)

9287. **Clocks, Barometers—Non-disclosure of Foreign Origin.**—Peter F. Bollenbach, an individual trading as Peter F. Bollenbach Co. with place of business in Illinois, agreed that in connection with the offer and sale of clocks, barometers or other products, in commerce, he

will cease and desist from offering for sale or selling any product, the whole or any substantial part of which was made in a foreign country, without clearly disclosing thereon the country of origin of such product or part. (6023125, May 12, 1960.)

9288. **Cameras—Selling Unavailable Stock, Refusing Refunds, Substituting Merchandise, etc.**—Grand Central Camera Exchange, Inc., and Camera Import Corporation, New York corporations with places of business in New York, N.Y., and Harry Braunstein, Charles Pelish and Paul Lamle, officers thereof, agreed that in connection with the offer and sale in commerce of used and new cameras and allied equipment, or other products, they will cease and desist from:

(a) Advertising or offering for sale any product unless it is stocked or otherwise available in sufficient quantities to supply the reasonably anticipated demand of customers and is available at the price designated or unless the fact of the limited quantity of the merchandise advertised is clearly and conspicuously disclosed;

(b) Keeping or cashing checks, money orders or other monetary remittances received from customers or potential customers for merchandise which is not in stock or available for prompt delivery;

(c) Failing to make prompt refund of purchase money to customers or potential customers upon their demand therefor when merchandise ordered by them is not in stock or available for prompt delivery;

(d) Engaging in dilatory or harassing activities in an effort to coerce or to attempt to coerce customers into accepting substitute merchandise for merchandise ordered by them;

(e) Advertising, offering for sale or selling any product which has been used or contains parts or materials which have been used without clearly and conspicuously disclosing prior to the purchase thereof that such product has been used or contains parts or materials which have been used;

(f) Advertising, offering for sale or selling any camera, or other such product, without lens or lenses, without clearly and conspicuously disclosing prior to the purchase thereof the absence of the lens or lenses; and further agreed to cease and desist from representing through use of "Import" as a part of the name of such corporation, or in any other manner, that it is an importer. (5723678, May 19, 1960.)

9289. **Truss—Results, Comparative Merits, Demand, Guarantee, Seller's Qualifications, etc.**—Walter H. Barlow, an individual trading as AAA Phelps Hernia Control with place of business in Denver, Colo., agreed to cease and desist from disseminating or causing to be disseminated any advertisement for the product now designated "AAA Phelps Hernia Control," or any other product of substantially the

same construction or possessing substantially the same component parts, which represents, directly or by implication:

(1) That the product is a new development or new method of hernia control, is an improvement over all other such products, is the safest of all such products, gives better results than all such products, or that the product will stay in place or hold hernias or ruptures under all circumstances or conditions of activity or strain;

(2) That the product does not have a bulb, belt or strap, or does have a vacuumatic pad, or otherwise representing the construction or constituent parts of the product not in accordance with the facts;

(3) That the product or any part thereof produces a vacuumatic effect, or any other effect not in accordance with the facts;

(4) That use of the product will correct or cure backaches, tiredness or uneasiness or any other condition, disorder or disability;

(5) That the product builds up broken down muscles;

(6) That the product is nationally recognized or that its use is more widespread than is the fact;

(7) Through use of such terms as "Certified Truss Specialist" or by any other means, that he has been certified by a recognized official or group qualified to confer certifications, or representing his qualifications in any manner not in accordance with the facts;

(8) That either the product or the results from its use are guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed;

(9) That the product will correct or cure hernias or ruptures or have any beneficial effect for use in cases thereof except to retain reducible inguinal hernias or ruptures. (5923374, May 26, 1960.)

9290. **Lubricating Oil—Non-disclosure of Reclaimed Nature and Under-Size Containers.**—George Leon Tucker, an individual trading as State Wide Oil Company with place of business in Russellville, Ark., agreed that in connection with the offer and sale in commerce of lubricating oil he will cease and desist from:

(1) Advertising, offering for sale, packaging or selling any lubricating oil which is composed in whole or in part of oil which has been reclaimed or in any manner processed from previously used oil, without disclosing such prior use to the purchaser or potential purchaser in advertising and in sales promotion material, and by a clear and conspicuous statement to that effect on the container;

(2) Representing in any manner that lubricating oil composed in whole or in part of oil that has been manufactured, reprocessed, or re-refined from oil that has been previously used for lubricating purposes, has been manufactured from oil that has not been previously used;

(3) Offering for sale, packaging or selling oil in previously used quart cans which, after reconditioning, hold less than the standard U.S. quart, without expressly disclosing such fact clearly, conspicuously and legibly on the container;

(4) Representing in any manner that the capacity of a container is greater than is actually the case. (6023181, May 26, 1960.)

9291. **Refrigerators and Freezers—Deceptive Warranties and Guarantees.**—Borg-Warner Corporation, an Illinois corporation, and Norge Sales Corporation, an Indiana corporation, with places of business in Chicago, Ill., agreed that in connection with the offer and sale of refrigerators, freezers or other products in commerce, they will cease and desist from representing, directly or by implication, that under the Five Year Protection Plan Warranty, or any other warranty, repairs or replacement of parts will be made without cost to the purchaser when such is not the fact, or otherwise representing that a product is warranted unless the nature and extent of the warranty and the manner in which the warrantor will perform thereunder are clearly and conspicuously disclosed in close conjunction therewith. (6023189, May 26, 1960.)

9292. **Imported Pliers and Other Tools—Non-disclosure of German Origin.**—Harrold Tool Company, an Ohio corporation with place of business in Columbiana, Ohio, and Emil Dubeck and Helen Dubeck, its officers, agreed that in connection with the offer and sale in commerce of foreign-made tools or other products, they will cease and desist from failing to disclose clearly and conspicuously the country of origin thereof in such a manner as to be readily apparent to prospective purchasers of such products. (5923611, June 9, 1960.)

9293. **Wool Fabrics—Misbranding as to Camel's Hair Content.**—The Chatham Manufacturing Company, a North Carolina corporation with place of business in Elkins, N.C., agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution in commerce of woolen fabrics, or any other wool product within the meaning of the Wool Products Labeling Act, it will cease and desist from:

(1) Stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein in any manner not in accordance with the facts;

(2) Failing to affix labels to wool products showing each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939. (5923730, June 9, 1960.)

9294. **Woolen Stock—Non-disclosure of Fiber Content on Labels and Invoices; Overstating Cashmere Content.**—Forte Investment Fund, Inc., a Massachusetts corporation with place of business in Boston, Mass.,

and Donald Forte, Orville W. Forte, Jr., John H. Forte, Robert A. Fairbairn and Boyce W. Godsoe, its officers, agreed that in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce of woolen stock, wool waste or other "wool products," as such products are defined in and subject to the Wool Products Labeling Act, they will cease and desist from misbranding such products by failing to securely affix labels to wool products showing each element of information required to be disclosed by Section 4(a)(2) of said Act; and further agreed that they will cease and desist from misrepresenting the constituent fibers of which their products are composed or the percentages or amounts thereof on invoices or other shipping memoranda or in any other manner. (5923125, June 9, 1960.)

9295. **Fur Products—Non-compliance With Labeling Act.**—John G. Myers Company, Inc., a New York corporation with place of business in Albany, N.Y., and Roy H. Myers and Robert E. Irish, its officers, agreed that in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of fur or any fur product, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, they will cease and desist from:

(1) Mingling, on labels, non-required information with required information.

(2) Setting forth on labels required information in handwriting.

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

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

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

(c) Such other information as may be required by Section 5(b)(1) of the Fur Products Labeling Act.

(4) Setting forth on invoices required information in abbreviated form.

(5) Making claims or representations respecting price reductions, savings or values unless full and adequate records are maintained disclosing the facts upon which such claims and representations are based. (5923560, June 14, 1960.)

9296. **Fire Retardant Paint—Misrepresenting Flame Spread Rating and Toxicity.**—The St. Regis Corporation, a Colorado corporation with place of business in Denver, Colo., agreed that in connection with the offer and sale of fire retardant paints in commerce, it will cease and desist from representing, directly or by implication:

(1) That a product has a specific flame spread rating unless such rating accords with the facts and the pertinent conditions under which the rating was realized are clearly set forth in connection therewith, or otherwise representing the fire retardant properties of the product in any manner not in accordance with the facts;

(2) That a product is nontoxic or produces no toxic fumes when such is not the fact;

(3) That use of a fire retardant primer is not necessary or essential when the flame spread rating is based on use of such a prime coat. (6023064, June 16, 1960.)

9297. **"One-for-all" Vitamin Mineral Preparation—Scientific Facts; Therapeutic Properties.**—Allied Vitamins, Inc., a New York corporation with place of business in New York, N.Y., and Joe Rosenfield, Jr., and Joe Rosenfield, III, its officers, agreed to cease and desist from disseminating or causing to be disseminated any advertisement for the product now designated One-for-all vitamins, or any other product of substantially the same composition or possessing substantially the same properties, whether sold under that name or any other name, which represents directly or by implication:

(1) That vitamin or mineral deficiencies are the usual or customary cause of ill health, lack of vigor or vitality, aches or pains or other commonly occurring conditions or symptoms;

(2) That the product will contribute to health or alertness unless expressly limited to cases in which ill health or lack of alertness is due to a deficiency of one or more of the vitamins or minerals supplied by the product;

(3) That the product will help one feel better, give one more vigor or vitality, prevent or relieve aches or pains or is of value in the treatment of any symptom or condition unless expressly limited to cases where such symptoms or conditions are the result of a deficiency of one or more of the vitamins or minerals supplied by the product;

(4) That the product will prevent tooth or bone decay;

(5) That vitamin "K" is a wonder vitamin or that it is more effective than it in fact is. (5823004, June 16, 1960.)

9298. **Felt—Overstating Wool Content.**—Beckmann, Inc., a New York corporation trading as Beckmann Felt Company with place of business in New York, N.Y., and Leo Beckmann and Selig Beckmann, its officers, agreed that in connection with the introduction, or man-

ufacture for introduction, into commerce, or the sale, transportation or distribution in commerce of felt, or any other wool product within the meaning of the Wool Products Labeling Act, they will cease and desist from:

(1) Stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein in any manner not in accordance with the facts;

(2) Failing to affix labels to wool products showing each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939. (5723702, June 21, 1960.)

9299. **Microscopes, Surgical and Mechanical Drawing Instruments—Deceptive Guarantees.**—Graf-Apsco Company, an Illinois corporation with place of business in Chicago, Ill., and Joseph M. Graf, an officer, agreed that in connection with the offer and sale of microscopes or other products in commerce, they will cease and desist from representing, directly or by implication, that a 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. (6023500, June 21, 1960.)

9300. **Fur Products—Non-compliance With Labeling Act.**—Harry Berman, Inc., a New York corporation with place of business in New York, N.Y., and Harry Berman, Marvin Berman and Ira Berman, its officers, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of fur or any fur product, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, they will cease and desist from:

(1) Failing to affix labels to fur products showing in words and figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act;

(2) Mingling, on labels, non-required information with required information;

(3) Setting forth on labels required information in handwriting. (6023351, June 21, 1960.)

9301. **Magnifying Glasses, Microscopes, Medical Supplies—Domestic as Imported, Stock as Army or Navy Surplus, Fictitious Pricing.**—Irving Horowitz, an individual trading as Arista Surgical Company with place of business in New York, N.Y., agreed that in connection with the offer and sale, in commerce, of medical supplies and equipment, magnifying glasses, microscopes or other products, he will cease and desist from:

(1) Representing that his entire stock of an item is Army or Navy surplus, when such is not the fact;

(2) Including as Army or Navy surplus in advertising or promotional material any item which has never been U.S. Army or Navy property;

(3) Representing that magnifying glasses of domestic origin or any other item of domestic origin is imported;

(4) Representing that a microscope or other product is a professional instrument, when such is not the fact;

(5) Representing prices or savings in any manner not in accordance with the facts. (5723790, June 21, 1960.)

9302. **Combs—Misrepresenting as "Hard Rubber", etc.**—Walter Sporn, an individual trading as Walter Sporn Company with place of business in Chicago, Ill., agreed that in connection with the offer and sale of combs in commerce, he will cease and desist from representing, directly or by implication:

By any advertisement, packaging, labeling, branding, stamping, or other marking or indication that such combs are "rubber," "hard rubber," "resin rubber," "rubber resin" or "rubber kralastic" or are made of rubber or hard rubber unless such combs are in fact made of vulcanized hard rubber. (5923681, June 22, 1960.)

9303. **Thermometers, Barometers, etc.—Deceptive Guarantees.**—Airguide Instrument Company, an Illinois corporation with place of business in Chicago, Ill., agreed that in connection with the offer and sale of thermometers, barometers, hygrometers, ring speedometers, tachometers, marine and automobile speedometers, and field glasses or other products in commerce, it will cease and desist from representing, directly or by implication, that a 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. (6023497, June 23, 1960.)

9304. **Rubber Stair Treads—Misrepresenting Size.**—The Buxbaum Company, an Ohio corporation with place of business in Canton, Ohio, and Albert B. Buxbaum and Leonard L. Narens, its officers, agreed that in connection with the offer and sale in commerce of rubber stair treads or other products, they will cease and desist from representing the size of a product in any manner not in accordance with the facts. (5923489, June 28, 1960.)

9305. **"Touch-N-Chrome" Kit—Misrepresenting Chrome-Restoring Qualities, Savings, Refunds.**—Yale Engineering Company and K. P. Industries, Illinois corporations with places of business in Chicago, Ill.; William M. Karesh and Morton J. Smith, officers of said corporations; and George J. Provol, an individual trading as Best of the Buys with place of business in Chicago, Ill., agreed that in connec-

tion with the offer and sale of the product "Touch-N-Chrome" or any component thereof or any other product of similar or like composition, in commerce, they will cease and desist from:

(1) Using the word "Chrome" or any other term of similar import and meaning to describe or designate the product;

(2) Representing that the product will renew car chrome or provide a chrome finish;

(3) Representing that the product will produce a finish comparable in hardness to that of true chrome;

(4) Representing that the product will stop rust or render metal surfaces impervious to corrosion;

(5) Representing that the product will remove rust instantly and effortlessly, or making any other representations as to the capabilities of the product as a rust remover which are not in accord with the facts;

(6) Representing that the product will last "for years" or for any period of time not in accordance with the facts;

(7) Representing that the product will make all chrome surfaces look like new;

(8) Using "before-after" illustrations or any other illustrations which depict capabilities of the product not in accord with the facts;

(9) Representing directly or by implication that the regular or usual price of the product was or is any amount in excess of the price at which such product was formerly or is regularly and usually sold;

(10) Offering the product under a money-back guarantee or free trial basis without disclosing the limiting conditions of such offers, including all charges which customers returning the product for refund are required to pay. (6023009, June 28, 1960.)

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